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Veterans Accredited Representatives: Frequently Asked Questions

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SUMMARY

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Veterans Accredited Representatives: Frequently Asked Questions

Veterans accredited representatives are individuals accredited by the Office of General Counsel (OGC) at the Department of Veterans Affairs (VA) to help veterans, their survivors, and their dependents ("claimants") submit benefits claims to VA. Accredited representatives also may assist claimants in appeals to the Board of Veterans' Appeals. To be accredited, individuals must file a formal application with VA's OGC, accompanied by evidence that the representative has successfully completed a VA-approved training process.

Many accredited representatives work for nongovernmental, state, county, or tribal veterans service organizations (VSOs), which are organizations that aid and serve veterans, servicemembers, dependents, and survivors. VA also accredits attorneys and agents who are not affiliated with VSOs. All accredited representatives must receive initial and ongoing training, and the OGC oversees all accredited representatives. If an accredited representative violates specific requirements or a claimant is unhappy with an accredited representative, VA provides a complaint process that can lead to administrative penalties, including rescinding the representative's accreditation.

As attention has been given to the backlog of claims in VA, congressional offices have sought additional clarification regarding the role of accredited representatives in the claims process. Legislation in the 116th Congress has been introduced to allow nonaccredited representatives, such as congressional staff, access to veterans' records (H.R. 628). In addition, in response to a proposed rule to rescind the 48 hours currently given to accredited representatives to review claims determinations (85 *Federal Register* 9435, February 19, 2020), legislation has been introduced to require this access (S. 3761). Understanding accredited representatives' roles and how oversight of them can impact claimants could inform future congressional and regulatory action regarding these representatives.

Contents

Accredited Representatives: Overview 1
Who Are Accredited Representatives? 1
What Is the Difference Between an Accredited Representative and a Congressional Staff Member Who Works on Constituent Cases? 1
Can Federal Employees Be Accredited Representatives? 2
Are All Employees Who Work for Veterans Service Organizations Also Accredited Representatives? 2
Can a Non-Veterans Affairs-Accredited Attorney Represent Claimants? 2
Can an Accredited Representative Charge a Fee? 2
Where Can I Find a List of Accredited Representatives? 2
How Successful Are Accredited Representatives? 3
Becoming an Accredited Representative 3
Who Is Responsible for Accrediting Representatives? 3
What Does It Mean to Be an Accredited Representative? 3
What Training Do Accredited Representatives Receive? 4
Training by Veterans Affairs 4
Training by Veterans Service Organizations 4
Training by Legal Associations 4
How Often Must Accredited Representatives Undergo Training? 5
Complaints and Penalties 5
Who Monitors Accredited Representatives? 5
How Does a Claimant File a Complaint Against an Accredited Representative? 5
Can Veterans Affairs Revoke a Representative's Accreditation? 6
How Does Veterans Affairs (VA) Address Accredited Representatives Who Violate VA or Its Statutory Requirements? 6
What Can Claimants Do If They Believe They Were Represented by an Individual Who Falsely Claimed to Be an Accredited Representative? 6
Veterans Service Organizations and Accredited Representatives 7
What Is the Difference Between a Veterans Service Organization and an Accredited Representative? 7
Do Veterans Service Organizations Provide Access to Accredited Representatives? 7
Can a Claimant Use an Accredited Independent Agent, Attorney, or State or County Veterans Service Organization Representative from Outside the Claimant's County or State of Residence? 7

Tables

Table A-1. Veterans Affairs (VA) Requirements for Accreditation 8
Table B-1. Glossary of Abbreviations Related to Accredited Representatives 10

Appendixes

Appendix A. Veterans Affairs Accreditation Requirements 8

Appendix B. Glossary of Abbreviations 10

Contacts

Author Information 10

Accredited Representatives: Overview

Who Are Accredited Representatives?

Accredited representatives may be independent agents or attorneys. The Department of Veterans Affairs (VA) defines an *accredited representative* as follows:

> An accredited representative is an individual who has undergone a formal application and training process and is recognized by VA as being capable of assisting claimants with their affairs before VA. Most accredited representatives work for veteran service organizations (VSOs), many of which are private non-profit groups that advocate on behalf of Veterans, Servicemembers, dependents and survivors. Accredited representatives may also work for state or county government entities.[1]

What Is the Difference Between an Accredited Representative and a Congressional Staff Member Who Works on Constituent Cases?

Both accredited representatives and congressional staff members may receive questions from veterans regarding their benefits. However, accredited representatives and congressional staff members have very different roles in, and tools for, addressing veterans' questions.

All accredited representatives approved to represent veterans, survivors, or their dependents ("claimants")

- are accredited through VA's Office of General Counsel (OGC),[2]
- are subject to OGC oversight,
- have completed specific, VA-approved training,
- have access to claimants' records,[3] and
- are authorized to upload relevant documentation into VA databases.

For more information on the accreditation process, see the "Becoming an Accredited Representative" section, below.

In contrast, congressional staff are not authorized to access VA claims files or upload documents into VA databases on behalf of claimants.[4] In addition, congressional staff are not subject to OGC oversight. They may provide publicly-available information to veterans or send inquiries to VA, but they may not represent claimants before VA.

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[1] See U.S. Department of Veterans Affairs (VA), "Accredited Representatives," at https://benefits.va.gov/vso/index.asp. Note that tribal veterans service organizations (VSOs) may also have accredited representatives; however, VA's definition does not currently include them.

[2] VA, "Office of General Counsel," at https://www.va.gov/OGC/.

[3] A claims file captures service personnel records, service medical records, VA treatment records, correspondence, and other records.

[4] The Working to Integrate Networks Guaranteeing Member Access Now (WINGMAN) Act (H.R. 628), introduced January 19, 2019, would allow designated congressional employees to access VA databases with a claimant's permission. This bill was referred to the Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans' Affairs on February 8, 2019. The subcommittee held hearings on the bill on October 22, 2019.

Can Federal Employees Be Accredited Representatives?

Federal employees cannot be accredited representatives. It is a federal crime for any officer or employee of the United States to act "as an agent or attorney for anyone before any department," other than as part of the officer's or employee's official duties.[5] In addition, 38 C.F.R. §14.629(a)(3) prohibits service organization accredited representatives from being "employed in any civil or military department or agency of the United States."

Are All Employees Who Work for Veterans Service Organizations Also Accredited Representatives?

Not all employees who work for veterans service organizations (VSOs) are accredited representatives. See "Do Veterans Service Organizations Provide Access to Accredited Representatives?" for more details.

Can a Non-Veterans Affairs-Accredited Attorney Represent Claimants?

A nonaccredited attorney may not represent veterans before VA. See 38 C.F.R. §14.629(b)(1), which states: "No individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose."

Can an Accredited Representative Charge a Fee?

Accredited representatives who work for recognized VSOs are prohibited from charging or collecting any type of fee.[6]

Accredited agents and attorneys not working for a recognized VSO may charge fees for their services under certain conditions:

- No agent or attorney can charge a fee until VA issues an initial decision on a claim.
- A fee may be charged only after the agency of original jurisdiction has made an initial decision.
- The fee must be agreed to in writing by the claimant and submitted to a VA Veterans Benefits Administration Regional Office.[7]

Where Can I Find a List of Accredited Representatives?

VA's OGC provides an online, searchable database of all accredited attorneys, agents, and VSO representatives at https://www.va.gov/ogc/apps/accreditation/index.asp. The site also provides access to complete lists of these accredited representatives, which can be downloaded from the database.

[5] 18 U.S.C. §205(a)(2).

[6] See 38 C.F.R. §14.636(b).

[7] 38 C.F.R. §14.636(f)(1) explains the fee structure.

How Successful Are Accredited Representatives?

VA does not publish data on the success rates for initial claims for claimants who use accredited representatives versus those who represent themselves. It is unclear, therefore, if claimants who use an accredited representative from a VSO, a VA-accredited attorney, or a VA-accredited independent agent are more successful than claimants who file without an accredited representative.[8]

Becoming an Accredited Representative

Who Is Responsible for Accrediting Representatives?

VA's OGC reviews all applications from individuals and VSO representatives who seek accreditation. According to VA's *FY2021 Budget Submission*, the OGC reviews, on average, 3,500 to 4,000 total applications per year.[9] According to the OGC's accredited representative directory, as of June 23, 2020, there are approximately 8,080 accredited attorneys, 525 accredited claim agents, and 9,705 VSO representatives.[10]

What Does It Mean to Be an Accredited Representative?

Accredited representatives have undergone approved training and are subject to oversight by VA's OGC. VA provides two paths to accreditation: (1) an agent or attorney submits an application directly to VA's OGC, or (2) a VSO-affiliated representative provides an application to the appropriate VSO, which submits the application to VA's OGC on the representative's behalf.

In both paths, the application must include evidence that the representative has successfully completed VA-approved training and meets other guidelines.[11] **Appendix A** lists the requirements for VA accreditation for each type of representative.

VA's OGC offers additional guidance on what accredited representatives can and cannot do:

> VA accreditation is for the sole purpose of providing representation services to claimants before VA and does not imply that a representative is qualified to provide financial planning services or is otherwise endorsed by VA. VA accreditation may not be used for marketing financial products or promoting a financial services business. Despite VA's efforts to ensure accredited individuals are responsible and qualified to provide

[8] VA does, however, publish data in its Board of Veterans' Appeals (BVA) annual reports regarding the success rates for claims appealed to BVA. Each annual report includes a table showing the success rate for claimants' appeals, broken down by private VSOs (listed by name), state service organizations (in total), attorneys (in total), claims agents (in total), and those without representation (in total). The BVA posts its annual reports at VA, Board of Veterans' Appeals, "The Board of Veterans Appeals Annual Reports to Congress: 1991-2019," at https://www.bva.va.gov/Chairman_Annual_Rpts.asp.

[9] VA, Office of Budget, *FY2021 Budget Submission: Benefits and Burial Programs and Departmental Administration, Volume 3 of 4*, February 2020, p. GenAD-305.

[10] The VA Office of General Counsel directory at https://www.va.gov/ogc/apps/accreditation/index.asp, allows users to download the following: Complete Lists of Accredited Attorneys, Claims Agents, VSO Representatives, and names of VSOs which provide VSO representatives. This directory is refreshed every Monday, Wednesday, and Friday evening and does not include those individuals who are in the midst of the accreditation process.

[11] U.S. Government Accountability Office (GAO), *VA Benefits: Improvements Needed to Ensure Claimants Receive Appropriate Representation*, GAO-13-643, August 2013, p. 4, at https://www.gao.gov/assets/660/656500.pdf.

representation on VA claims, claimants should exercise caution when selecting a representative.[12]

What Training Do Accredited Representatives Receive?

Accredited representatives may receive training from multiple organizations. Some of these include VA, recognized VSOs, and legal associations.

Training by Veterans Affairs

VA trains its staff and accredited representatives using the online Training, Responsibility, Involvement, and Preparation of Claims (TRIP) Portal. The TRIP Portal is used to strengthen "VA's service to veterans and the timeliness of claims processing through a nationwide partnership between VA and all recognized VSOs." This online training program provides recognized VSOs and accredited representatives with "essential claims processing policy and procedure requirements,"[13] including updated training on claims filing and processing for accredited representatives. Both recognized VSOs and accredited representatives can coordinate access with a Regional Office TRIP coordinator to create an account.[14] The TRIP Portal is a VA-based system, only for use by those who are VA-accredited through either a VSO training program or a legal association's VA-approved training.

Training by Veterans Service Organizations

VSOs may apply for VA recognition to provide training for representatives. To become recognized, VSOs must show that they offer training programs to prepare their representatives to qualify for accreditation.[15] The training can take various forms—some organizations require months of on-the-job training, others require a certain number of classroom hours, and others hold one- or two-day workshops.[16]

Training by Legal Associations

The American Bar Association (ABA) and the National Veterans Legal Services Program (NVLSP) provide training opportunities for attorneys and agents. ABA's Veterans Claim Assistance Network (VCAN) offers attorneys the opportunity to learn "how to obtain and maintain VA accreditation, view webinars for VA accreditation, and locate organizations with pro bono opportunities."[17] The webinars posted on the VCAN website also qualify for continuing legal education (CLE) credits, which are part of the ongoing training requirement for accredited representatives. One of NVLSP's missions is "to train advocates in veterans' law so that they can

[12] VA, Office of General Counsel, "Accreditation and Discipline," at https://www.va.gov/ogc/accreditation.asp.

[13] VA, Office of Budget, *FY2020 Budget Submission: Benefits and Burial Programs and Departmental Administration, Volume 3 of 4*, 2019, p. VBA-170 (hereafter FY2020 VA Budget, Volume III).

[14] See VA, Stakeholder Enterprise Portal (SEP), "SEP FAQs," at https://www.sep.va.gov/web/guest/faq.

[15] See 38 C.F.R. §14.628(d)(1)(v).

[16] U.S. Congress, House Committee on Veterans' Affairs, *From The Inside Out: A Look at Claims Representatives' Role in The Disability Claims Process*, 112th Cong., 2nd sess., April 18, 2012 (Washington DC: GPO, 2013), at https://www.govinfo.gov/content/pkg/CHRG-112hhrg74176/pdf/CHRG-112hhrg74176.pdf.

[17] See American Bar Association, "ABA Veterans Claims Assistance Network," at https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/Military_Pro_Bono/aba-veterans-claims-and-assistance-network/.

efficiently help veterans secure benefits."[18] NVLSP's programs are conducted through webinars, in-person classes, or online.

How Often Must Accredited Representatives Undergo Training?

The frequency of ongoing training required for accredited representatives varies. VSOs may set the frequency of training for their members and must demonstrate to VA that the accredited individuals have the knowledge and ability to represent claimants. At least once every five years, VSOs must recertify that their training prepares individuals to represent claimants.

Accredited attorneys and agents must complete a minimum of three hours of CLE within the first 12 months after their accreditation. In addition, agents must successfully pass a written exam administered by VA. Within the first three years following initial accreditation and every two years thereafter, attorneys and agents must complete an additional three hours of CLE on veterans' benefit law and procedure.

Complaints and Penalties

Who Monitors Accredited Representatives?

VA's OGC, in coordination with the Federal Trade Commission (FTC), monitors accredited representatives.[19]

How Does a Claimant File a Complaint Against an Accredited Representative?

Veterans, dependents, and survivors may file a complaint against any accredited representative. VA provides two ways to file a complaint. First, a claimant may submit a complaint through the FTC's web-based Complaint Assistant. The FTC is to relay the complaint to VA's OGC.[20] Second, a claimant may submit VA Form 3288,[21] along with a written explanation of the complaint, directly to VA's OGC.

To streamline this process, the OGC and the FTC signed an information-sharing Memorandum of Agreement in November 2018 to place a direct link to FTC's complaint page on the OGC's website. These complaints are added to the FTC's "Sentinel" database, which provides federal, state, and local law enforcement agencies access to consumer complaints.[22]

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[18] See National Veterans Legal Services Program, "What We Do," at https://www.nvlsp.org/what-we-do/training.

[19] The OGC explained in VA's FY2020 Budget Submission that it is continuing to coordinate with the Federal Trade Commission (FTC) to increase oversight and enforcement activities in addressing complaints regarding VA-accredited claims representatives. FY2020 VA Budget, Volume III, pp. GenAD-296-297.

[20] FTC, "FTC Complaint Assistant," available at https://www.ftccomplaintassistant.gov.

[21] VA Form 3288, *Request for and Consent to Release of Information from Individual's Records*, is available at https://www.va.gov/vaforms/va/pdf/VA3288.pdf.

[22] The Memorandum of Agreement can be found at FTC, *Memorandum of Agreement Between the Federal Trade Commission and the Department of Veterans Affairs*, at https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-va_memorandum_of_agreement_2018_1.pdf.

Can Veterans Affairs Revoke a Representative's Accreditation?

VA's OGC may revoke a representative's accreditation. The reasons and authority for the OGC to revoke an accreditation are provided in 38 C.F.R. §14.633(b) and (c). For accredited representatives who are attorneys, one such reason for revocation is if he or she becomes disbarred or suspended by a court, bar, or federal or state agency. In addition, 38 C.F.R. §14.633(a) permits an organization to request that VA suspend or revoke one of their representative's accreditation.

How Does Veterans Affairs (VA) Address Accredited Representatives Who Violate VA or Its Statutory Requirements?

VA is authorized by 38 U.S.C. §5904(b) to suspend or exclude from any further practice accredited attorneys or agents who violate certain practices established by VA, such as failing to meet VA's CLE requirements or engaging in activities that would statutorily suspend those representatives. The OGC recently revoked the accreditation of more than 1,000 attorneys for failing to meet VA's CLE requirements.[23] In addition, the OGC estimated that 60% of accredited attorneys were not in compliance with their CLE requirements. The OGC sent out Intent-to-Cancel letters requiring proof of CLE completion within 30 days or risk suspension of VA accreditation.[24] Activities that could disqualify an accredited representative from practicing or appearing before any federal agency could include being involved in unlawful, unprofessional, or dishonest practices or being suspended or disbarred by any court or bar. In addition, if an accredited representative wrongly withholds part of a claimant's benefits award, he or she could face criminal charges resulting in a fine or possible imprisonment.[25]

VA's OGC may also cancel accreditation for VSO representatives who present a fraudulent claim or accept compensation. A VSO can also ask VA to rescind accreditation for one of its representatives.[26]

What Can Claimants Do If They Believe They Were Represented by an Individual Who Falsely Claimed to Be an Accredited Representative?

Claimants should file a complaint through the FTC's web-based Complaint Assistant. The FTC will forward the complaint to VA's OGC, which will investigate and take action. Other federal or state law enforcement authorities may also launch investigations, depending on the nature of the complaint.[27]

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[23] FY2020 VA Budget, Volume III, pp. GenAD-296.

[24] VA, Office of Budget, *FY2021 Budget Submission: Benefits and Burial Programs and Departmental Administration, Volume 3 of 4*, 2020, p. GenAd-311.

[25] The penalty for this type of action is defined by 38 U.S.C. §5905, which states that an individual "shall be fined as provided in Title 18, or imprisoned not more than one year, or both." S. 2407, introduced in the 116th Congress, would expand the penalty to include those who act as agents or attorneys for veterans but are not accredited.

[26] GAO, *VA Benefits: Improvements Needed to Ensure Claimants Receive Appropriate Representation*, GAO-13-643, August 2013, p. 6, at https://www.gao.gov/assets/660/656500.pdf.

[27] See FTC, FTC Complaint Assistant, at https://www.ftccomplaintassistant.gov/Information?OrgCode=USVABLG#crnt&panel1-1

Veterans Service Organizations and Accredited Representatives

What Is the Difference Between a Veterans Service Organization and an Accredited Representative?

VSOs are *organizations* that serve and advocate for veterans. In contrast, accredited representatives are *individuals* who represent claimants before VA.

For more information on VSOs, see CRS Report R46412, *Veterans Service Organizations (VSOs): Frequently Asked Questions*.

Do Veterans Service Organizations Provide Access to Accredited Representatives?

Not all VSOs provide access to accredited representatives. Only VSOs recognized by VA may provide accredited representatives.

Can a Claimant Use an Accredited Independent Agent, Attorney, or State or County Veterans Service Organization Representative from Outside the Claimant's County or State of Residence?

Claimants may consult their state or county veterans office to determine whether they may hire a state or county VSO representative from outside their county of residence. Many state veterans offices provide a list of county VSOs that can serve veterans in those counties. In addition, national VSOs may have internal rules governing who may represent claimants in certain states or counties. To access accredited agents and attorneys, claimants can ask the individual agent or attorney about restrictions in their jurisdiction. However, most attorneys authorized to practice before VA may represent any claimant before the agency, regardless of where the claimant lives.

Appendix A. **Veterans Affairs Accreditation Requirements**

Table A-1. Veterans Affairs (VA) Requirements for Accreditation

	VSO Representatives[a]	Attorneys	Agents
Description	*Representative* means a person who has been recommended by a recognized organization and accredited by VA's Office of General Counsel. Veterans Service Organization (VSO) representatives must meet the standards and qualifications in 38 C.F.R. §14.629(a).	*Attorney* means a member in good standing of a state bar who has met the standards and qualifications in 38 C.F.R. §14.629(b).	*Agent* means a person who is not an attorney and has met the standards and qualifications outlined in 38 C.F.R. §14.629(b).
Application	VA Form 21 (each state, tribal, regional, or local organization must complete the form, and each individual representative of a national VSO must complete the form).[b]	VA Form 21a[c]	VA Form 21a[c]
Individual Qualifications[d]	Be of good character and reputation. Provide competent and prompt representation. Be a member in good standing or a paid employee working more than 1,000 hours annually. Cannot be a federal employee.[e]	Be of good character and reputation. Provide competent and prompt representation. Be in good standing with state bar association. Provide character references & details for background check. Cannot be a federal employee.[e]	Be of good character and reputation. Provide competent and prompt representation. Provide character references & details for background check. VA makes affirmative determination of character. Cannot be a federal employee.[e]
Initial Training	VSO certifies an individual has demonstrated the ability to represent claimants before VA.	Complete three hours of qualifying continuing legal education (CLE) within 12 months.	Complete three hours of qualifying CLE within 12 months and pass a written exam administered by VA.
Ongoing Training	VSO must recertify representatives' ability to represent claimants every five years.	Complete three hours of qualifying CLE on veterans' benefits law and procedure no more than three years after initial accreditation and every two years thereafter.	Complete three hours of qualifying CLE on veterans' benefits law and procedure no more than three years after initial accreditation and every two years thereafter.
Fees Charged to Client	Prohibited	May charge "reasonable fees."[f]	May charge "reasonable fees."[f]

Source: Congressional Research Service (CRS), compiled from the *Code of Federal Regulations*, *U.S. Code*, and VA publications.

Notes:

a. 38 C.F.R. §14.628 defines and explains the criteria for a national, state, tribal, regional, or local organization to be recognized by VA.

b. VA Form 21, *Application for Accreditation as Service Organization Representative,* can be found at https://www.va.gov/vaforms/va/pdf/VA21.pdf.

c. VA Form 21a, *Application for Accreditation as a Claims Agent or Attorney Service Organization Representative*, can be found at https://www.va.gov/vaforms/va/pdf/VA21a.pdf.

d. 38 U.S.C. §5901-5905; 38 C.F.R. §§14.626-14.637.

e. 38 C.F.R. §14.629(a)(3).

f. 38 C.F.R. §14.636.

Appendix B. **Glossary of Abbreviations**

Table B-1. Glossary of Abbreviations Related to Accredited Representatives

Acronym	Entity
BVA	Board of Veterans' Appeals
CLE	Continuing Legal Education
FTC	Federal Trade Commission
OGC	Office of General Counsel
TRIP	Training, Responsibility, Involvement, and Preparation of Claims Portal
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration
VSO	Veterans Service Organization
WINGMAN	Working to Integrate Networks Guaranteeing Member Access Now Act

Source: Compiled by CRS.

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