



**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefits Administration**  
**Washington, D.C. 20420**

May 13, 2009

Director (00/21)  
All VA Regional Offices and Centers

In Reply Refer To: 211A  
Fast Letter 09-21

Subject: 38 C.F.R. Parts 1, 14, 19 and 20  
Accreditation of Agents and Attorneys; Agent and Attorney Fees; Final Rule

This letter provides information concerning the Department of Veterans Affairs (VA) final rule that amends the regulations governing the representation of claimants for veterans benefits. VA published its final rule in the Federal Register on May 22, 2008, at *73 FR 29851-29880*. The final rule was effective June 23, 2008.

## **Background**

VA amended its regulations governing the representation of claimants for veterans benefits in order to implement provisions of Public Law 109-461. The law provides for greater choice in representation in cases where a notice of disagreement (NOD) was filed on or after June 20, 2007, with respect to an agency of original jurisdiction (AOJ) decision. An AOJ can be the regional office (RO) or other VA administration that made the initial determination on a claim or matter, or that handles any subsequent adjudication of a claim or matter in the first instance.

The amended regulations establish the procedures and rules necessary to facilitate the paid representation of claimants by agents and attorneys after an NOD has been filed. The purpose of these amended regulations is to ensure that claimants for veterans benefits have responsible, qualified representation.

The provisions shifting the entry point for paid representation to the time after the filing of an NOD became effective on June 20, 2007. The provisions relating to accreditation, power of attorney, fee assessments, and filing and review of fee agreements were effective June 23, 2008, thirty days after publication of VA's final rule in the Federal Register.

## **Highlight of Changes**

### **Accreditation**

Agents and attorneys must become accredited before they can represent claimants before VA. The Office of the General Counsel (OGC) manages VA's accreditation program. Agents and attorneys must apply to OGC for accreditation on a VA Form 21a, *Application for Accreditation as a Claims Agent or Attorney*. The qualifications for practice before VA are found at 38 C.F.R. § 14.629.

### **Power of Attorney (POA)**

Attorneys may no longer submit a declaration of representation on their letterhead. Under the new regulations, a properly executed power of attorney (POA), signed by both the claimant and representative, is required to represent claimants before VA. VA has two POA forms: one for agents and attorneys, VA Form 21-22a, *Appointment of Individual as Claimant's Representative*; and one for veterans service organizations (VSOs), VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*. A properly executed POA also authorizes VA to release confidential health information, protected under the provisions of 38 U.S.C. § 7332, to the representative.

### **Circumstances Under Which Fees May Be Charged**

If an NOD was filed on or after June 20, 2007, with respect to an AOJ decision on a claim, then apply the new law. Under the new law, an agent and attorney may charge fees after the following: an AOJ has issued a decision on a claim, including any claim to reopen or claim for increase in rate of benefit; an NOD 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 and fee agreement requirements. However, with respect to a request for revision of a decision of an AOJ based on clear and unmistakable error, an agent or attorney may charge fees for representation, if an NOD was filed with respect to the original challenged decision on or after June 20, 2007, and the agent or attorney has complied with the power of attorney and fee agreement requirements.

If an NOD was filed on or before June 19, 2007, with respect to an AOJ decision on a claim, then apply the old law. Under the old law, agents and attorneys may charge fees only for services provided after a final decision was promulgated by the Board of Veterans' Appeals (BVA), and the agent or attorney was retained not later than one year following the date that the decision by BVA was promulgated, or while the case was at the U.S. Court of Appeals for Veterans Claims.

## **Fee Agreements**

All fee agreements must be in writing and signed by both the claimant and the agent or attorney. An agreement that does not clearly specify whether VA is to pay fees directly out of past-due benefits, or that specifies a fee greater than 20 percent of past-due benefits, shall be considered an arrangement in which the agent or attorney is responsible for collecting any fees for representation directly from the claimant without assistance from VA.

All fee agreements must be filed with the Office of the General Counsel (022D), 810 Vermont Ave., NW, Washington, DC 20420, within 30 days of execution. In addition, if an agent or attorney desires a direct payment out of past-due benefits, he or she must file a copy of the fee agreement with the RO within 30 days of execution.

## **Reasonableness**

OGC is responsible for reviewing the reasonableness of fee agreements. If the fee agreement provides for the payment of fees by VA directly to the agent or attorney, the total fee payable (excluding expenses) cannot exceed 20 percent of the total amount of any past-due benefit awarded on the basis of a claim. This limit does not apply to cases where fees are not paid directly to the agent or attorney by VA. However, in all cases, the agent's or attorney's fees must be reasonable, as determined by OGC. Fees may be based on a fixed fee, an hourly rate, a percentage of benefits recovered, or a combination of such bases.

Fees which do not exceed 20 percent of any past-due benefits awarded are presumed to be reasonable. Fees which exceed 33 1/3 percent of any past-due benefits awarded are presumed to be unreasonable. These presumptions may be rebutted by establishing that, in specific circumstances, there is clear and convincing evidence that a fee that does not exceed 20 percent of any past-due benefits awarded is not reasonable, or that a fee that exceeds 33 1/3 percent is reasonable.

## **Motion for Review of Fee Agreement**

Before the expiration of 120 days from the date of the final VA action, OGC may review a fee agreement upon its own motion or upon the motion of a claimant or appellant. OGC 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) that the fee is unreasonable. OGC may approve a fee presumed unreasonable if it finds by clear and convincing evidence that the fee is reasonable. If an AOJ has made an eligibility determination, then OGC will limit its review and decision to the issue of reasonableness. The General Counsel's final decision may be appealed to BVA.

## **Assessment**

VA will charge and collect an assessment out of fees paid directly to an agent or attorney out of past-due benefits awarded. The amount of the assessment collected will be five percent of the fee required to be paid to the agent or attorney, but cannot exceed \$100. This assessment is for the cost of processing a direct payment. VA will issue an OFO Letter on the method by which VA will charge and collect assessments out of fees paid directly to agents or attorneys from past-due benefits awarded.

## **Questions**

Questions concerning this fast letter and other issues related to agent and attorney representation should be submitted to the attorney fee mailbox at VAVBAWAS/CO/AFC.

/S/

Bradley G. Mayes  
Director  
Compensation & Pension Service

Enclosures

Rescinds Fast Letter 07-15 Dated June 6, 2007