

DEPARTMENT OF VETERANS AFFAIRS
VETERANS BENEFITS ADMINISTRATION

JUNE 6, 2007

FAST LETTER 07-15

SUBJECT: PUBLIC LAW 109-461

This letter provides information concerning the new legislation governing the recognition of agents and attorneys representing claimants before VA. Enclosure One provides general answers to questions employees may receive during interviews or when answering telephones.

BACKGROUND

On December 22, 2006, the President signed Public Law 109-461. Section 101 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, amends chapter 59 of title 38, United States Code, governing the recognition of individuals for the preparation, presentation, and prosecution of claims for benefits before VA. The provisions shifting the entry point for paid representation are effective on June 20, 2007, and the provisions relating to fee assessments and review of fee agreements are effective upon publication of VA's final rule.

SUMMARY OF NEW LEGISLATION

Section 101 of Public Law 109-461 makes the following amendments to 38 U.S.C. 5902, 5903, 5904 and 5905:

- Eliminates the current prohibition on the charging of fees for services of an attorney or agent provided before the Board of Veterans' Appeals (Board) makes its first final decision in the case. As amended, section 5904 will allow accredited attorneys and agents to charge fees for services provided after a notice of disagreement (NOD) has been filed with the VA Regional Office (RO) in the case.
- Authorizes the Secretary to collect an assessment from an individual recognized as an agent or attorney under Section 5904 in any case where VA pays the agent's or attorney's fees from past-due benefits owed to a claimant. The amount of the assessment shall be equal to five percent of the amount of the

fee paid to the agent or attorney from past-due benefits. The assessment may not exceed \$100. An agent or attorney who is charged an assessment may not receive reimbursement for such assessment from the claimant. VA will deposit the amounts collected in an account available for administrative expenses for veterans' benefits programs.

- Authorizes VA to regulate the qualifications and standards of conduct applicable to agents and attorneys.

- Adds four additional categories to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA.

- Authorizes VA to review fee agreements between agents or attorneys and claimants and order a reduction in the fee if the Secretary finds that the fee is excessive or unreasonable, although a fee that does not exceed 20 percent of the past due amount of benefits awarded on the claim will be presumed to be reasonable.

- Eliminates fee matters as grounds for criminal penalties under 38 U.S.C. 5905.

- Subjects Veterans Service Organization representatives to suspension on the same grounds as apply to agents and attorneys.

REGULATIONS

VA is amending its regulations governing the representation of claimants for veterans' benefits in order to implement provisions of Public Law 109-461. VA published its proposed regulations in the Federal Register for notice and comment on May 7, 2007. After the proposed regulations are finalized, we will issue further guidance on the new regulations.

QUESTIONS

Questions concerning this fast letter and other issues related to agent and attorney representation should be submitted to the VAVBAWAS/CO/21Q&A mailbox.

/S/

Bradley G. Mayes, Director
Compensation & Pension Service

Enclosure

ENCLOSURE ONE:

GUIDELINES FOR ANSWERING INQUIRIES ON AGENT AND ATTORNEY REPRESENTATION

When did the law change?

On December 22, 2006, the President signed Public Law 109-461. The provisions shifting the entry point for paid representation are effective on June 20, 2007.

What forms do I need to complete to authorize an agent or attorney to represent me?

Under current law, a claimant must provide VA with a signed VA Form 21-22a to appoint an agent or individual VSO representative for purposes of representation. Attorneys may continue to provide representation based on a letterhead declaration of representation or may use a VA Form 21-22a. No signature is required for claimants to appoint attorneys; however, VA still requires a VA Form 21-22a, signed by the claimant, to authorize the disclosure of claimant information to an agent or attorney.

May I limit the scope of the agent's or attorney's representation?

You may limit the scope of your agent's or attorney's representation regarding a particular claim by describing the limitation on VA Form 21-22a. As an example, you may limit your agent's or attorney's representation to only your claim for Post-traumatic Stress Disorder.

When is an agent or attorney allowed to represent me on a fee basis?

Prior to this new law, an accredited agent or attorney was only permitted to charge fees for services after the Board of Veterans' Appeals issued a first final decision in the case. Under the new law, an accredited agent or attorney may charge fees for services after a notice of disagreement (NOD) has been filed with respect to the case. Such notice of disagreement must have been filed on or after June 20, 2007.

How do I pay my agent or attorney his or her fees?

Fee agreements must be in writing and signed by both the claimant and agent or attorney. Generally, there are two types of fee agreements. If you sign a fee agreement that indicates you wish VA to pay attorney fees directly out of past-due benefits, VA will pay the agent's or attorney's fees out of any past-due benefits awarded to you. If you sign a fee agreement that indicates otherwise or is unclear whether VA is to pay past-due benefits directly to an attorney, you are responsible for paying the attorney's fees.

What is the maximum fee that an agent or attorney is allowed to charge me?

The agent's or attorney's fees must be reasonable. Fees may be based on a fixed fee, an hourly rate, a percentage of benefits recovered, or a combination of such bases. Fees that do not exceed 20 percent of any past-due benefits are presumed to be reasonable. However, agents and attorneys may charge more than 20 percent for their services.

If I think that the fee is unreasonable or excessive, can I request VA to take action?

If you believe that your agent's or attorney's fee is unreasonable or excessive, you may contact the Office of General Counsel (OGC) at the following address: Office of General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. OGC will review the fee agreement and determine whether the fee is unreasonable or excessive.

Do I need to hire an agent or attorney to represent me before VA?

You do not need to hire an agent or attorney to represent you before VA. Specifically, VA has a duty to notify you of the information and evidence

necessary to substantiate a claim and to assist you in obtaining such evidence. Veteran Service Organization (VSO) representatives are also available to guide you through the claims process, without charge. VSO representatives are well-versed in veterans benefits law and are well-equipped to successfully assist you through the claims process.

Is my attorney or agent allowed to call the regional office and speak with a VA employee?

Each regional office has an Attorney Fee Coordinator who is designated to serve as a liaison for attorney and agent matters. Please refer the attorney or agent to the regional office's Attorney Fee Coordinator.