

**STATEMENT OF
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BEFORE THE SUBCOMMITTEES ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS AND OVERSIGHT AND INVESTIGATIONS OF THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON THE
VA ACCREDITATION, DISCIPLINE AND FEES PROGRAM**

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Good afternoon, Chairman Pappas, Chairwoman Luria, Ranking Member Mann, Ranking Member Nehls and other Members of the Subcommittees. Thank you for inviting me here today to present information on the Accreditation, Discipline and Fees program of the Department of Veterans Affairs (VA). I am accompanied today by Christa Shriber, Deputy Chief Counsel.

VA's Accreditation, Discipline and Fees program oversees individuals who provide representation to claimants before VA. Such representation is provided by VA-accredited representatives of Veterans Service Organizations (VSO), attorneys and agents. The Office of General Counsel (OGC) administers the program, aiming to ensure responsible, qualified representation for claimants in the preparation, presentation and prosecution of claims for VA benefits. The functions of the Accreditation, Discipline and Fees program are similar to those of a state bar association or licensing authority and include making determinations on initial accreditation, monitoring conduct, investigating complaints, deciding fee dispute matters (only for agents and attorneys), and removing accreditation, when necessary. These primary functions pertain in large part to individuals who, once accredited as attorneys or agents, are lawfully permitted to charge certain fees for legal assistance on Veterans' benefits claims.

The Accreditation Application Process

VSO representatives, attorneys, and agents may not lawfully represent claimants without completing and maintaining compliance with the accreditation requirements set forth in VA's regulations. To become accredited, an applicant must demonstrate his or her good character and reputation as well as competence to represent Veterans. For VSO representative applicants, VSOs are responsible for certifying that these criteria are met. For attorney applicants, these requirements are presumed to be satisfied by admittance to practice as an attorney and good standing with a State bar.

However, for claims agents, the review of applications for accreditation requires a greater amount of time and resources than the other types of accreditation because the Accreditation, Discipline, and Fees program must be its own investigative body,

conducting its own investigation into the applicant's character and fitness. OGC conducts basic background checks on all claims agent applicants and contacts character references provided by the applicants. If a potential area of concern is identified on the application, additional information may be requested from the applicant. VA also provides information to applicants who appear to have other VA benefit-related business interests (e.g., home care, financial planning, estate planning, medical consulting) warning of the potential for conflicts of interests that combining other businesses with the role of a VA-accredited claims agent could create. If an applicant does not acknowledge the potential for conflicts of interests, and/or if the applicant is unable to inform OGC how they will be adequately addressed, OGC generally will deny the application.

OGC also administers an online examination to claims agent applicants for purposes of determining competency. Claims agent applicants, who are determined to have the good character and reputation necessary to represent Veterans, are then notified that they are eligible to take the VA accreditation examination. Claims agent applicants who do not achieve a passing score on the examination may retake the examination at a later date. Claims agent applicants who pass the examination; whose character references are satisfactory; who have established their good character and reputation; and who otherwise demonstrate that they are competent to prepare, present and prosecute VA claims are issued a letter notifying them that they are authorized to represent claimants.

There are currently 90 VA-recognized VSOs and 7,650 accredited VSO representatives, 6,325 accredited attorneys and 473 accredited claims agents.

Monitoring and Outreach

Accredited attorneys and claims agents must annually recertify to OGC that they are in good standing in every court, bar or Federal or state agency to which they are admitted to practice or otherwise authorized to appear. Additionally, attorneys and agents must certify that during the first 12-month period following initial accreditation, and every 2 years thereafter, they completed 3 hours of state bar-approved continuing legal education (CLE) training covering Veterans benefits law and procedure. Such certifications must include the title of the CLE; date and time of the CLE; and identification of the CLE provider. OGC uses a system (govdelivery) to notify attorneys and claims agents via email when their annual certifications and CLEs are about to become due. In conjunction with this, over the past 5 years OGC has conducted a compliance review of attorneys and claims agents who were delinquent in CLE requirements. OGC notified them of their delinquency and suspended the accreditation of those who did not correct the delinquency. As a result, OGC removed the accreditation of approximately 11,000 individuals.

Similarly, VA-recognized VSOs are required to recertify their representatives every 5 years. In the past few years, OGC has made a significant effort to reach out to VSO-certifying officials to ensure that all certifications are up-to-date. For instance, at

the beginning of Fiscal Year (FY) 2020, 3,862 representatives were in need of being recertified or cancelled by their recommending organization. By the close of FY 2020, OGC had reduced that number to 570 representatives in need of recertification.

In the past 3 years, OGC has removed or suspended the accreditation of nearly 15,000 attorneys, claims agents and VSO representatives by enforcing our ongoing reporting requirements.

Processing Complaints

The OGC disciplinary process is designed to address complaints about VA-accredited individuals. If VA determines that an accredited attorney, claims agent or VSO representative has engaged in misconduct, demonstrated incompetence or improperly charged a fee for preparing, presenting, or prosecuting a claim prior to the issuance of an initial VA decision, VA may suspend or cancel the individual's accreditation. Disciplinary proceedings to suspend or cancel an individual's accreditation follow the procedures set out in VA regulations. When OGC receives credible written information from any source indicating improper conduct or incompetence, OGC will open an informal inquiry by informing the accredited individual of the allegations and the source of the complaint and providing the individual with an opportunity to respond. OGC may subsequently initiate a formal inquiry and provide the individual with an opportunity to request a hearing. A decision by the General Counsel is a final decision by VA and may be appealed to the Board of Veterans' Appeals (Board). If the individual's accreditation is cancelled through this disciplinary process, in addition to providing the appropriate VA-internal notifications, OGC also notifies all agencies, courts, and bars to which the individual is admitted to practice.

In the previous five years, VA has received nearly as many complaints against claims agents (44) as it has against attorneys (61) and VSO representatives (75). During that period, claims agents have consistently accounted for between only 1.5% and 3.3% of accredited individuals and have provided representation on 2.8% or fewer Board legacy dispositions, but have been the subject of nearly 25% of the complaints that VA has received against accredited individuals. In 2021, a claims agent was approximately six times more likely than an attorney and three times more likely than a VSO representative to be the subject of a complaint received by VA. Complaints against claims agents thus consume a disproportionate amount of OGC time and resources.

We have identified concerns that some accredited claims agents are not using their credentials to provide representation before VA, which is the purpose of VA accreditation, but instead are using the credentials to promote separate business interests. The co-mingling of accreditation and other business interests with prominent advertising based on VA accreditation raises significant concerns for VA as it can confuse Veterans and mislead them about VA's endorsement and oversight of the other products and services being offered by the accredited claims agent. OGC continues to explore potential solutions to improve its ability to ensure the fitness of applicants and

the proper oversight of VA-accredited claims agents.

If a complaint involves something related to, but outside the scope of, claims representation being provided to a claimant, such as financial planning, medical consulting or home care services, then OGC's Accreditation, Discipline and Fees program, which again is similar to a bar association that monitors the licensing of attorneys, often is not an appropriate entity to pursue the matter. In those instances, we try to immediately refer the matter to state or Federal enforcement entities that are better positioned to conduct investigations. This referral process—where we lack enforcement authority—is consistent with Rule 11 of the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement and its commentary, which contemplates that the assessment regarding jurisdiction, and possible referral to another enforcement agency, should take place *before* the investigation stage, "which is reserved for those matters determined to involve a lawyer subject to the jurisdiction of the agency and allegations which, if true, would constitute misconduct." See [Rule 11 \(americanbar.org\)](#). OGC's involvement does not end there.

Our office primarily serves as a possible resource for these other authorities by providing referrals or offering expertise regarding whether the alleged conduct is legally permitted if VA accreditation is asserted as a defense and about the VA benefits process. In addition, to better link Veteran complainants with the correct enforcement authorities, we currently recommend that Veterans and family members submit their complaints about an individual or organization assisting with VA benefits through the link to the Federal Trade Commission's (FTC) complaint assistant, which we provide on OGC's webpage and on OGC's fact sheet titled, "How to File a Complaint Regarding Representation." When this link is used, OGC staff can see all of the complaints submitted to FTC's Sentinel database through the link on OGC's webpage, and the complaint is also made accessible through that database to numerous other Federal and state law enforcement authorities for their possible investigation and prosecution.

In addition to overseeing the accreditation process, OGC is authorized to review fee agreements between claimants and attorneys and claims agents. Depending on the allegations and/or findings in a particular case, a review of a fee agreement may also lead to disciplinary proceedings, pursued separately or simultaneously as warranted. However, in our experience, this has been very rare. Nearly all motions received or initiated by our office for the review of fee agreements pertain to the amount of the fee, rather than the propriety of charging a fee, and simply lead to a determination by OGC of what constitutes a reasonable fee in that particular case.

The process for allegations about non-accredited individuals or organizations engaging in misconduct or charging improper fees depends on whether we believe that the complaint falls within our limited enforcement authority. For allegations that a non-accredited individual or organization is charging improper fees to a claimant for the preparation, presentation or prosecution of a VA benefits claim, VA notifies such individual or organization to cease the unlawful practice. Because there are no criminal penalties under Federal law specific to unlawfully charging a fee for assisting a claimant

with an application for VA benefits, if an unaccredited individual or organization fails to cease the unlawful practice, VA often reports the matter to state or local agencies or Federal agencies that enforce rules against unauthorized legal practice; unfair business practices; or consumer or senior fraud laws.

To address our concern about the activities of non-accredited actors, OGC has proposed legislation that would amend section 5905 of title 38, United States Code, to reinstate the penalties for directly or indirectly soliciting, contracting for, charging or receiving, or attempting to solicit, contract for, charge or receive, any fee or compensation with respect to the preparation, presentation and prosecution of claims for VA benefits, except where otherwise authorized under VA statutes and regulations. Prior to 2006, section 5905 authorized penalties for this much broader range of conduct related to fees and compensation for representation on claims for VA benefits. However, section 5905 currently authorizes penalties only for those who wrongfully withhold from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary.

The criminal authority contained in section 5905 has been used only minimally, both before and after the amendment in 2006. However, since that change in the statutory language, there has been greatly increased interest in VA law and Veterans benefits. While we cannot know with certainty the numbers of non-accredited actors who are currently assisting claimants with the VA benefits claims, contrary to law, we can look at the increase in numbers of individuals who have sought VA accreditation. As of December 31, 2006, there were only seven accredited claims agents and 0 accredited attorneys. However, there now are 473 accredited claims agents and 6,325 accredited attorneys. This explosion in the number of VA law practitioners has created a national, and even international, industry. Further, representation is often not constrained by geographic boundaries. For example, it is not uncommon for a claimant located in one state (e.g., Washington) to be represented by an individual in another state (e.g., Kansas).

In the face of these large numbers and this geographic diversity, the lack of a single, national criminal prohibition restricts VA's ability to ensure the quality of representation provided to claimants for VA benefits. Because criminal enforcement is largely confined to state proceedings, individuals providing representation to VA claimants, and therefore also the claimants they provide services to, are subject to a patchwork system of enforcement. VA's ability to ensure the quality of representation, regardless of location, is hampered because it is possible that the conduct of an individual in one state could be subject to different prohibitions than would the identical conduct of an individual in a different state. Creating and imposing a single, national criminal prohibition would help address the current piecemeal approach. Further, the existence of a Federal criminal prohibition would provide a significant and consistent deterrent against bad actors, regardless of the actors' location.

Additionally, implementation of the proposal would allow for more meaningful enforcement against unaccredited individuals that are currently not subject to any

Federal punishment for violations of the statutes governing representation in Veterans' claims. From 2017 through 2021, over one-third of the complaints that VA's Accreditation, Discipline and Fees program received were against unaccredited individuals and organizations (there were 108 of these complaints as compared to 180 complaints against accredited individuals). VA's enforcement authority against these unaccredited individuals and organizations is, as noted, currently limited to sending cease and desist letters. Implementing a Federal criminal prohibition would create a significantly stronger deterrent effect against these actors and would serve to better protect the interests of claimants for VA benefits.

Moreover, to further bolster the collective services of OGC's Accreditation, Discipline and Fees Program, VA has put forth a proposal that would also establish a limited transfer authority to defray costs incurred in carrying out the program from funds appropriated, or otherwise available, to the Department for administrative expenses for Veterans' benefits programs.

Education and Outreach

OGC strives to ensure that Veterans are informed and empowered in selecting a representative and guarding against unlawful and improper practices by representatives. Our website provides a searchable database of VA-accredited representatives as well as a series of informational publications to assist in those processes. See <https://www.va.gov/ogc/accreditation.asp>. The materials include a PowerPoint presentation on how to select a qualified representative, which cautions Veterans regarding unaccredited representatives, potential predatory practices and limitations on fees a representative may charge. The website also contains fact sheets explaining VA's standards of conduct for representatives and how to file a complaint regarding a representative and providing information on specific areas of concern, such as practices often referred to as "pension-poaching."

Conclusion

This concludes my statement. I will be happy to answer any questions you or other Members of the Subcommittees may have.