BERGMANN & MOORE

Code of Conduct

https://bmvetlaw.participoll.com/

Polling Question – Warm Up

How long have you been involved in helping Veterans obtain VA compensation benefits?

A. Less than one year.

B. More than one year, less than five years.

C. More than five years, less than ten years.

D. Over ten years.

Lesson 2 Learning Objectives

Learn about professional standards for VSOs, as set by VA:

- VA's Standards of Conduct.
- How to complete VA Form 21-22.
- How and when to withdraw representation.
- Learn about protecting a Veteran's confidential information and the type of information that must be disclosed to VA.

Definitions and Handouts

- VSR: Veteran Service Representative
- CVSO: County Veteran Service Officer
- SDVA: State Department of Veterans Affairs (CALVET)
- VSO: Veteran Service Organization (EX. American Legion, DAV, VFW, ETC)
- POA – Power of Attorney. The authority granted by the Veteran to an organization to represent the Veteran before VA, "Appointment of a Veterans Service Organization as Claimant's Representative," VA Form 21-22.

Lesson 2 Handouts

- Handout 1: **Standards of Conduct, these are set by VA**, including how VA can cancel an individual's accreditation.

The standards of conduct in 38 C.F.R. § 14.632 establish the appropriate behavior for VA-accredited attorneys, agents, and representatives.

- Handout 2: **VA's Accreditation Program Enforcement Authority**.

What Service Officer's *Must* Do

- **Faithfully execute their duties on behalf of a VA claimant.**
- **Be truthful in their dealings with claimants and VA.**
- **Provide claimants with competent representation before VA.**
- **Act with reasonable diligence and promptness in representing claimants.**
- Remember that you are an advocate – you are working on behalf of the Veteran.
- You must be truthful, with both VA and the Veteran.
- You must be competent - you must know what you're doing.
- Do more than the bare minimum and help the Veteran win the most VA benefits in the shortest amount of time.

What Service Officer's *Must Not* Do

(1) Violate the standards of conduct as described in 38 C.F.R. § 14.632.
(2) Circumvent the rules of conduct through the actions of another.
(3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty.
(4) Violate one or more of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations.
(5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation.
(6) Solicit, receive, or enter into agreements for gifts related to representation provided before an agency of original jurisdiction has issued a decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision.
(7) Delay, without good cause, the processing of a claim at any stage of the administrative process.
(8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA.
(9) Engage in, or counsel or advise a claimant to engage in, acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA.
(10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation.
(11) Engage in any other unlawful or unethical conduct.

Loss of Accreditation

VA can cancel a VSO's accreditation if the VSO:

- Knowingly violates or refuses to comply with the law,
- Knowingly presents a fraudulent or frivolous claim,
- Knowingly presents false information to VA, or
- Commits any other unlawful, unprofessional, or unethical practice.

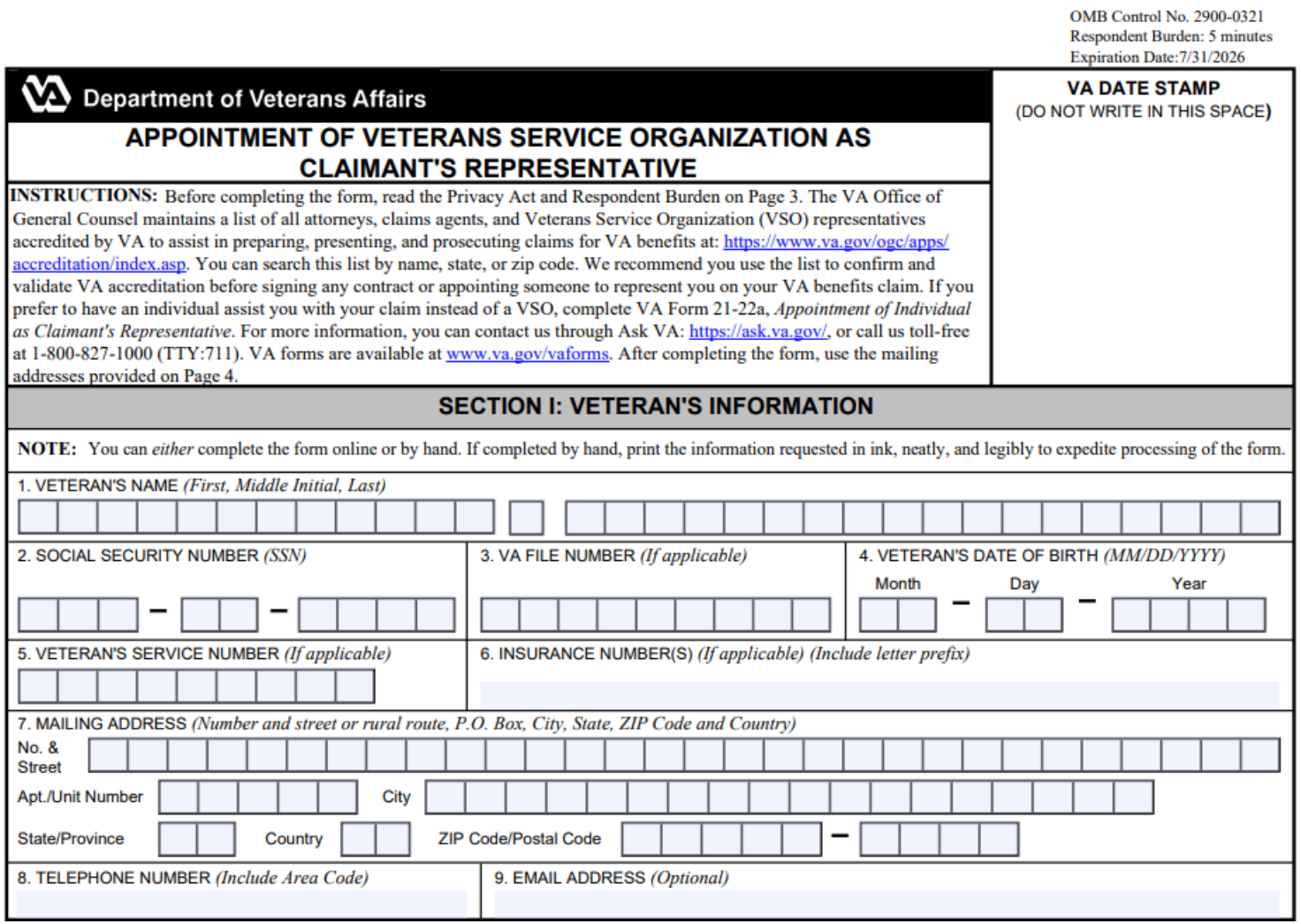
Fraudulent Claims

- Fraud is committed when a person knowingly makes, or assists in making, a false statement concerning a claim for VA benefits.
  - Submitting doctored documents.
  - Making false statements about their service.
  - The key is “knowing.”

Frivolous Claims

- A claim is frivolous if the service officer is unable to make a good faith argument on the merits of the claim.
- For example:
  - A Veteran never served in the Persian Gulf, yet wants to file a VA claim based on presumptive conditions only for Veterans deployed to Southwest Asia.
  - This would be a *frivolous* because there is no legal basis to support the Veteran's claim.

VA Form 21-22



OMB Control No. 2900-0321
Respondent Burden: 5 minutes
Expiration Date:7/31/2026

Department of Veterans Affairs

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

APPOINTMENT OF VETERANS SERVICE ORGANIZATION AS CLAIMANT'S REPRESENTATIVE

INSTRUCTIONS: Before completing the form, read the Privacy Act and Respondent Burden on Page 3. The VA Office of General Counsel maintains a list of all attorneys, claims agents, and Veterans Service Organization (VSO) representatives accredited by VA to assist in preparing, presenting, and prosecuting claims for VA benefits at: https://www.va.gov/ogc/apps/accreditation/index.asp. You can search this list by name, state, or zip code. We recommend you use the list to confirm and validate VA accreditation before signing any contract or appointing someone to represent you on your VA benefits claim. If you prefer to have an individual assist you with your claim instead of a VSO, complete VA Form 21-22a, *Appointment of Individual as Claimant's Representative*. For more information, you can contact us through Ask VA: https://ask.va.gov/, or call us toll-free at 1-800-827-1000 (TTY:711). VA forms are available at www.va.gov/vaforms. After completing the form, use the mailing addresses provided on Page 4.

SECTION I: VETERAN'S INFORMATION

NOTE: You can *either* complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing of the form.

1. VETERAN'S NAME *(First, Middle Initial, Last)*

2. SOCIAL SECURITY NUMBER *(SSN)*

3. VA FILE NUMBER *(If applicable)*

4. VETERAN'S DATE OF BIRTH *(MM/DD/YYYY)* — Month / Day / Year

5. VETERAN'S SERVICE NUMBER *(If applicable)*

6. INSURANCE NUMBER(S) *(If applicable) (Include letter prefix)*

7. MAILING ADDRESS *(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)*

No. & Street

Apt./Unit Number

City

State/Province

Country

ZIP Code/Postal Code

8. TELEPHONE NUMBER *(Include Area Code)*

9. EMAIL ADDRESS *(Optional)*

START HERE:

Complete VA Form 21-22, as it is required in order to assist a Veteran.

VA Form 21-22, cont.

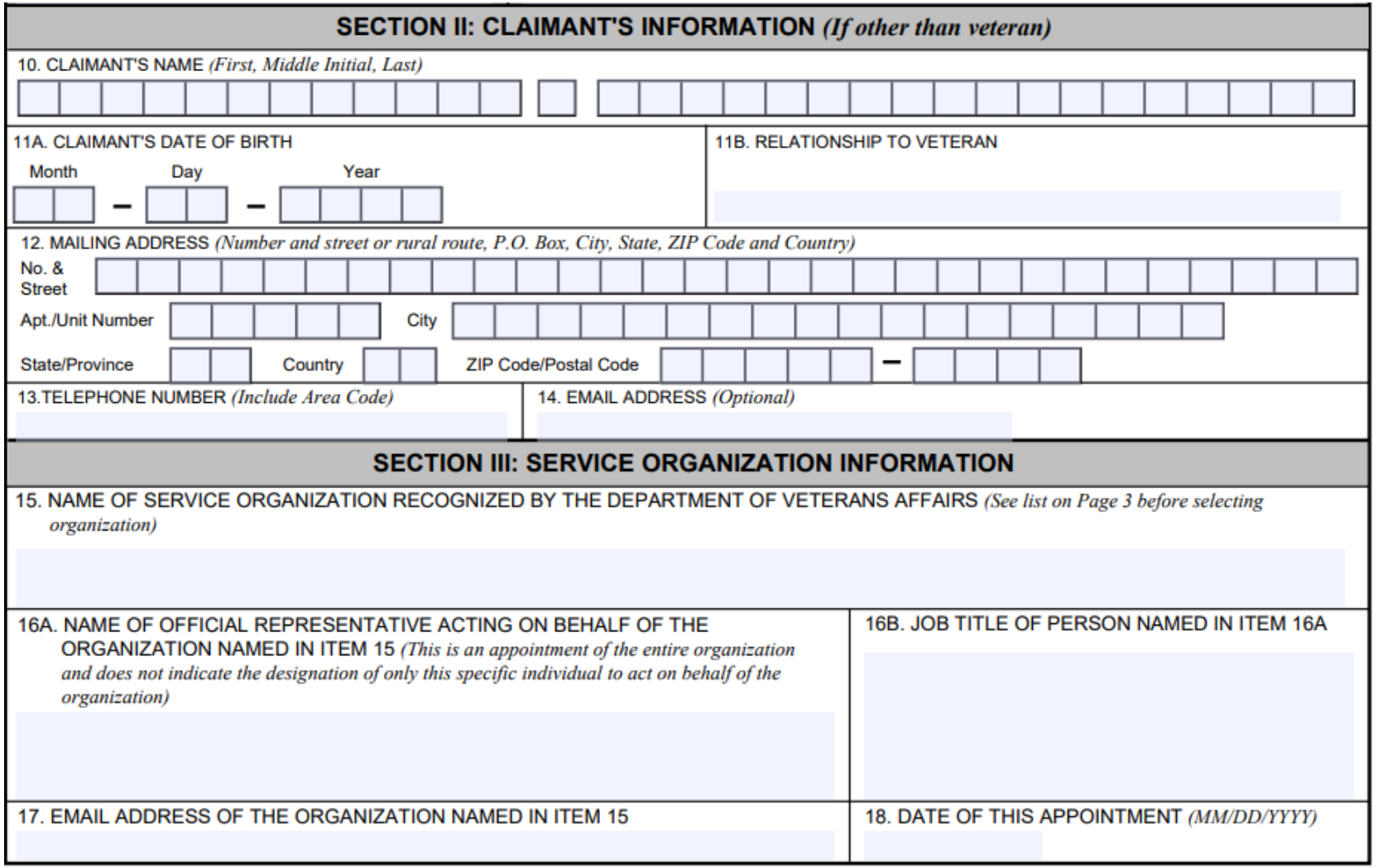
Section II: If someone other than the Veteran files the claim, then complete this section.

Box 15: Enter CalVet

Box 16A & 16B: Enter your name and title.

Box 17: Enter an e-mail address.

Box 18: Enter the date.



SECTION II: CLAIMANT'S INFORMATION *(If other than veteran)*

10. CLAIMANT'S NAME *(First, Middle Initial, Last)*

11A. CLAIMANT'S DATE OF BIRTH — Month – Day – Year

11B. RELATIONSHIP TO VETERAN

12. MAILING ADDRESS *(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)*

No. & Street

Apt./Unit Number

City

State/Province

Country

ZIP Code/Postal Code –

13.TELEPHONE NUMBER *(Include Area Code)*

14. EMAIL ADDRESS *(Optional)*

SECTION III: SERVICE ORGANIZATION INFORMATION

15. NAME OF SERVICE ORGANIZATION RECOGNIZED BY THE DEPARTMENT OF VETERANS AFFAIRS *(See list on Page 3 before selecting organization)*

16A. NAME OF OFFICIAL REPRESENTATIVE ACTING ON BEHALF OF THE ORGANIZATION NAMED IN ITEM 15 *(This is an appointment of the entire organization and does not indicate the designation of only this specific individual to act on behalf of the organization)*

16B. JOB TITLE OF PERSON NAMED IN ITEM 16A

17. EMAIL ADDRESS OF THE ORGANIZATION NAMED IN ITEM 15

18. DATE OF THIS APPOINTMENT *(MM/DD/YYYY)*

VA FORM JUL 2023 **21-22** SUPERSEDES VA FORM 21-22, FEB 2019 Page 1

VA Form 21-22, page 2

Top of Every Page: Enter the Veteran's SSN.

Box 19: Veteran must check the box so VA releases information to CalVet.

Box 20: We don't advise limiting consent as it can prevent VSOs from viewing the claims file.

Box 21: If the Veteran wants VSO to be able to change the Veteran's address, then check the box.

VETERAN'S SOCIAL SECURITY NUMBER ☐☐☐ – ☐☐ – ☐☐☐☐

SECTION IV: AUTHORIZATION INFORMATION

19. AUTHORIZATION FOR REPRESENTATIVE'S ACCESS TO RECORDS PROTECTED BY SECTION 7332, TITLE 38, U.S.C. - By checking the box below I authorize VA to disclose to the service organization named on this appointment form any records that may be in my file relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

☐ I **authorize** the VA facility having custody of my VA claimant records to disclose to the service organization named in Item 15 all treatment records relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia. Redisclosure of these records by my service organization representative, other than to VA or the Court of Appeals for Veterans Claims, is not authorized without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the service organization named in Item 15, either by explicit revocation or the appointment of

20. LIMITATION OF CONSENT- I authorize disclosure of records related to treatment for all conditions listed in Item 19 except:

☐ DRUG ABUSE ☐ INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS (HIV)

☐ ALCOHOLISM OR ALCOHOL ABUSE ☐ SICKLE CELL ANEMIA

21. AUTHORIZATION TO CHANGE CLAIMANT'S ADDRESS - By checking the box below, I authorize the organization named in Item 15 to act on my behalf to change my address in my VA records.

☐ I **authorize** any official representative of the organization named in Item 15 to act on my behalf to change my address in my VA records. This authorization does not extend to any other organization without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I file a written revocation with VA; or (2) I appoint another representative, or (3) I have been determined unable to manage my financial affairs and the individual or organization named in Item 16A is not my appointed fiduciary.

I, the claimant named in Items 1 ***or*** 10, hereby **appoint** the service organization named in Item 15 as my representative to prepare, present and prosecute my claim(s) for any and all benefits from the Department of Veterans Affairs (VA) based on the service of the veteran named in Item 1. I authorize VA to release any and all of my records, to include disclosure of my Federal tax information (other than as provided in Items 19 and 20), to my appointed service organization. I understand that my appointed representative will not charge any fee or compensation for service rendered pursuant to this appointment. I understand that the service organization I have appointed as my representative may revoke this appointment at any time, subject to 38 CFR 20.6. *Additionally, in some cases a veteran's income is developed because a match with the Internal Revenue Service necessitated income verification. In such cases, the assignment of the service organization as the veteran's representative is valid for only five years from the date the claimant signs this form for purposes restricted to the verification match.* Signed and accepted subject to the foregoing conditions.

VA Form 21-22, page 2, cont.

SECTION V: SIGNATURES				
NOTE: THIS POWER OF ATTORNEY DOES NOT REQUIRE EXECUTION BEFORE A NOTARY PUBLIC				
22A. SIGNATURE OF VETERAN OR CLAIMANT **(Required)**			22B. DATE SIGNED *(MM/DD/YYYY)*	
23A. SIGNATURE OF VETERANS SERVICE ORGANIZATION REPRESENTATIVE NAMED IN ITEM 16A **(Required)**			23B. DATE SIGNED *(MM/DD/YYYY)*	
NOTE: As long as this appointment is in effect, the organization named herein will be recognized as the sole representative for preparation, presentation and prosecution of your claim before the Department of Veterans Affairs in connection with your claim or any portion thereof.				
VA USE ONLY	COPY OF VA FORM 21-22 SENT TO: ☐ VR&E FILE ☐ EDU FILE ☐ LG FILE ☐ INSURANCE FILE	DATE SENT *(MM/DD/YYYY)*	ACKNOWLEDGED *(Date) (MM/DD/YYYY)*	REVOKED *(Reason and date (MM/DD/YYYY))*
PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement of a material fact, knowing it to be false or for the fraudulent acceptance of any payment to which you are not entitled.				

VA FORM 21-22, JUL 2023 Page 2

Box 22A: Veteran signs form.

Box 22B: Veteran dates form.

Box 23A: Accredited representative signs form.

Box 23B: Accredited representative dates form.

Withdrawing Representation

Every organization retains the right to revoke a Power of Attorney (POA) at any time.

Revocations must be filed with VA to withdraw representation.

Polling Question

Veteran Sarah has completed and signed VA Form 21-22, establishing CalVet as her representative. She wants to file a claim for service connection for PTSD based on experiences during her service in Afghanistan, but she now refuses to complete any of the claim forms. “You’re supposed to do this for me,” she says. “You’re my representative now.”

Is Sarah’s refusal to cooperate in filing her claim a valid basis to withdraw as representative?

A. Yes

B. No

Answer 1

Yes.

- Yes, a Veteran’s refusal to cooperate in working on their claim is a valid basis to withdraw as representative. Submit a withdrawal memo to CALVET District Office.
- A representative’s obligations toward a Veteran are not unlimited.
- Try to discuss the issue with the Veteran to determine if there are any issues affecting their ability to work on their claim.

Examples of Reasons to Withdraw Representation

- Tampering or altering evidence.
- Providing false information.
- Refusing to cooperate with a VSO.
- Threats of violence toward the VSO, your office staff, or VA personnel.
- Harassment of VSOs by phone or in person.

Examples of Reasons to Withdraw Representation

- Representation could lead to conflict of interest.
- Representation could lead to violation of privacy.
- Representation of coworker or friend could risk inadvertent disclosure of confidential information.
- Representation of coworker or friend could create unreasonable expectations and disappointments.
- Benefits being received are contrary to law or regulation.

"Fair Representation"

- When you and the organization assume accept a Power of Attorney from an eligible claimant, it assumes an **obligation** to provide "**fair representation**" and **assistance and counseling"**

Fair Representation

"Fair Representation" means:

- Ensure that the claimant gets full due process.
- Take no action that would negatively impact the Veteran.
- Do not make any unauthorized disclosure of information.
- Act with reasonable diligence and promptness.

Confidential Nature of Claims

- All files, records, reports, and other papers and documents pertaining to any claim…shall be **confidential** and **privileged**.

38 U. S. Code § 5701(a)

Confidential Nature of Claims 1

- Office files are <u>confidential</u>.
- Requests for documents must be <u>in writing</u> and <u>signed</u> by the claimant.

Confidential Nature of Claims 2

Veterans are trusting *YOU and the organization on the POA* to protect their private information.

- Keep documents locked up.
- Don’t leave papers lying around.
- Safeguard computers:
  - Log off when away from desk.
  - Don’t share passwords or access cards.
- Don’t discuss a case outside of the office.

What Must be Disclosed?

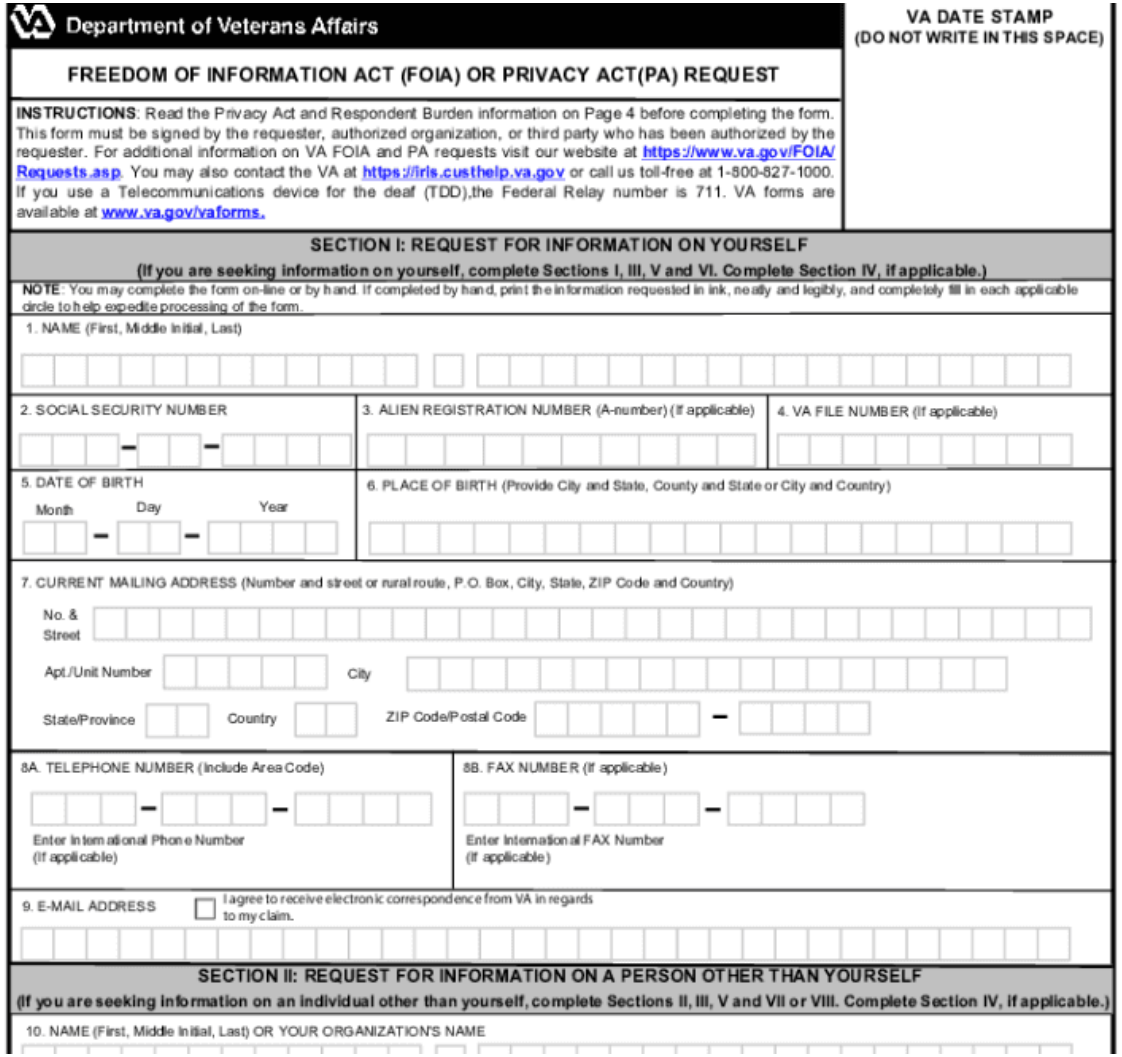
- You must not knowingly make false statements about a material fact, and
- You are required to submit evidence requested by VA.

But …

- You are not required to present all evidence.

VA Records- FOIA

- VSO's are provided access to VA's systems as needed to advocate for Veterans.
- In some cases, VSOs can print records from VA systems.
- This functionality is to provide you the opportunity to advocate for Veterans for VA purposes.
- **DO NOT** use VA records as the means to provide information directly to a Veteran.
- Veterans may request files from their record through the Freedom of Information Act (FOIA). VA Form 20-10206



Department of Veterans Affairs

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

FREEDOM OF INFORMATION ACT (FOIA) OR PRIVACY ACT(PA) REQUEST

INSTRUCTIONS: Read the Privacy Act and Respondent Burden information on Page 4 before completing the form. This form must be signed by the requester, authorized organization, or third party who has been authorized by the requester. For additional information on VA FOIA and PA requests visit our website at https://www.va.gov/FOIA/Requests.asp. You may also contact the VA at https://iris.custhelp.va.gov or call us toll-free at 1-800-827-1000. If you use a Telecommunications device for the deaf (TDD),the Federal Relay number is 711. VA forms are available at www.va.gov/vaforms.

SECTION I: REQUEST FOR INFORMATION ON YOURSELF

(If you are seeking information on yourself, complete Sections I, III, V and VI. Complete Section IV, if applicable.)

NOTE: You may complete the form on-line or by hand. If completed by hand, print the information requested in ink, neatly and legibly, and completely fill in each applicable circle to help expedite processing of the form.

1. NAME (First, Middle Initial, Last)

2. SOCIAL SECURITY NUMBER

3. ALIEN REGISTRATION NUMBER (A-number) (If applicable)

4. VA FILE NUMBER (If applicable)

5. DATE OF BIRTH
Month Day Year

6. PLACE OF BIRTH (Provide City and State, County and State or City and Country)

7. CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)
No. & Street
Apt./Unit Number
City
State/Province
Country
ZIP Code/Postal Code

8A. TELEPHONE NUMBER (Include Area Code)
Enter International Phone Number (If applicable)

8B. FAX NUMBER (If applicable)
Enter International FAX Number (If applicable)

9. E-MAIL ADDRESS
I agree to receive electronic correspondence from VA in regards to my claim.

SECTION II: REQUEST FOR INFORMATION ON A PERSON OTHER THAN YOURSELF

(If you are seeking information on an individual other than yourself, complete Sections II, III, V and VII or VIII. Complete Section IV, if applicable.)

10. NAME (First, Middle Initial, Last) OR YOUR ORGANIZATION'S NAME

Managing Your Workload

Advocacy Tip: If you can't give a Veteran's claim the full attention it deserves, then encourage the Veteran to obtain another accredited representative.

Last Slide

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.