

**VETERANS LEGAL
ADVOCACY GROUP,**

V.

Respondent.

Vet. App. No. 20-2346

Pursuant to U.S. Vet. App. Rule 21(b), and the May 28, 2020, Order of the Court, Respondent, Robert L. Wilkie, Secretary of Veterans Affairs (Secretary), hereby responds to the Court's Order.

On April 2, 2020, the Veterans Legal Advocacy Group, Petitioner, filed a petition for extraordinary relief seeking to enjoin the Secretary from scheduling in-person VA compensation and pension examinations during the coronavirus pandemic. Petitioner filed a motion to dismiss the case on April 10, 2020, stating that “since the petition was filed, the VA and its contractors have stopped providing in-person examinations.” On April 16, 2020, Petitioner filed an opposed motion to “resume litigation.” As grounds for the motion, Petitioner stated that the original petition was not moot because VA is continuing to schedule examinations during the pandemic. The Secretary subsequently responded to Petitioner’s motion, arguing that Petitioner lacked standing and

failed to establish entitlement to the writ. The Court directed the Secretary to respond to Petitioner's motion to resume litigation. Based on the Secretary's response, the Court issued an order on April 28, 2020, dismissing the writ. On May 19, 2020, Petitioner filed a motion for reconsideration or, in the alternative, panel review of the Court's April 28, 2020, order alleging that VA continued to schedule in-person examinations. On May 20, 2020, the Court ordered Petitioner to submit a supplemental memorandum of law addressing Petitioner's standing to pursue the writ and the Court's jurisdiction over the issue. Petitioner responded that it has organizational, direct, and third-party standing to pursue the requested relief. Petitioner also argued that the Court has jurisdiction to provide the relief requested.

On May 28, 2020, the Court ordered the Secretary to file a supplemental memorandum of law addressing "(1) the petitioner's standing to seek and the Court's jurisdiction to provide the relief requested in the petition for extraordinary relief, and (2) the merits of the petitioner's motion for reconsideration or, in the alternative, panel review."

Petitioner Lacks Standing

Petitioner first asserts that it "has organizational standing to rectify its injuries, injuries to its members, and injuries to its clients caused by the VA." Petitioner's Motion for Reconsideration (Motion) at 2. Petitioner is wrong. This Court has explicitly rejected associational standing based on its limited jurisdiction. *Am. Legion v. Nicholson*, 21 Vet.App. 1 (2007) (en banc). In

American Legion, the Court held that “Congress has expressly limited our jurisdiction to addressing only appeals and petitions brought by individual claimants” and to award an association standing would “impermissibly expand our jurisdiction beyond that which Congress intended.” *Id.* at 8. Accordingly, Petitioner does not have associational standing as a grant of such standing would exceed the Court’s jurisdiction. *See also Vietnam Veterans of Am. & Veterans of Modern Warfare v. Shinseki*, 599 F.3d 654, 662, 389 U.S. App. D.C. 392 (D.C. Cir. 2010) (“one cannot have standing in federal court by asserting injury to someone else.”).

Petitioner also argues that it has third-party standing. Motion at 5-7. In support of that position, it contends that “it is in a better position to assert its injured clients’ rights.” *Id.* at 5. To that end, Petitioner states that “[n]ot only is VetLAG comprised of practiced attorneys in the field of veterans’ rights, but it has access to more information about the VA’s practices than its clients.” Motion at 7. Petitioner’s position is not supported by the law and would render the limited exception for third-party standing meaningless.

The Supreme Court has recognized limited circumstances “where it is necessary to grant a third party standing to assert the rights of another.” *Kowalski v. Tesmer*, 543 U.S. 125, 129-30, 125 S. Ct. 564, 160 L. Ed. 2d 519 (2004); *In re Stanley*, 9 Vet.App. 203, 210-11 (1996). To invoke third-party standing, “the party asserting the right [must have] a ‘close’ relationship with the person who possesses the right.” *Kowalski*, 543 U.S. at 130. The party

asserting the right must also show that "there is a 'hindrance' to the possessor's ability to protect his own interests." *Id.*

In *Warth v. Seldin*, the Supreme Court held that third-party standing was generally disfavored and would only be permitted "when enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights." 422 U.S. 490, 510, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). The Supreme Court extended this principle to attorney-client relationships where an attorney invokes the rights of an existing client, *Caplin & Drysdale, Chartered, v. United States*, 491 U.S. 617, 624 n.3, 109 S. Ct. 2646, 109 S. Ct. 2667, 105 L. Ed. 2d 528 (1989), but has expressly rejected the attorney-client relationship as insufficiently close where it involves the representation of a hypothetical client. See *Kowalski*, 543 U.S. at 131. In addition, the Supreme Court has noted a hesitancy to grant third-party standing to attorneys on behalf of their clients except in unusual cases, such as where the enforcement of a restriction against an attorney prevents his clients from contracting for his services, thus violating their due process right to obtain legal representation. *U.S. Dep't of Labor v. Triplett*, 494 U.S. 715, 720-21, 110 S. Ct. 1428, 108 L. Ed. 2d 701 (1990).

Here, Petitioner hinges its third-party standing argument on the fact that its attorneys are in a better position to remedy the alleged injuries than a pro se veteran. The Secretary does not disagree that attorneys, or as is the case here, law firms, are generally better suited to navigate the legal issues present in adjudicating veteran's claims. However, that is not the test for determining third-

party standing for attorneys. The issue is not whether Petitioner, a law firm, is better suited to represent the interests of a veteran but whether there is some “hinderance” to the ability of veterans’ to protect their own interests. *Kowalski*, 543 U.S. at 130. There is no such hinderance here. Any veteran who believes that he or she should not have to attend a scheduled VA examination may seek redress with the Agency or file a writ of mandamus on their own behalf. Moreover, said veteran could avail themselves of the services of Petitioner or any other law firm or attorney. There is no hinderance to them doing so, and as such, no need to invoke the exception of third-party standing. Taking Petitioner’s position to its logical conclusion would simply bestow third-party standing for attorneys in every case, turning an exception into the rule.

Petitioner likewise argues that it has direct standing. Motion at 7-8. The entirety of its support for this position is “it now has to work more for the same fees by now fighting over exam rescheduling and claims denied when a client does not show for an exam.” *Id.* at 7. Petitioner again fails to establish the legal requirements for standing.

The Court has adopted the “case or controversy” requirement of Article III, § 2, of the United States Constitution. *Mokal v. Derwinski*, 1 Vet.App. 12, 15 (1990). “[T]he irreducible constitutional minimum of standing contains three elements.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, the party invoking a court’s jurisdiction must have suffered an “injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized

and (b) actual or imminent, not conjectural or hypothetical.” *Id.* (internal quotation, footnote, and citation omitted). Second, the complained-of injury must be causally related to the conduct of the defendant. *Lujan*, 504 U.S. at 560. “Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* at 561 (internal quotation omitted).

Here, Petitioner has simply not suffered an injury in fact linked to the actions of VA. Whether Petitioner spent “100 hours advising, litigating, and appearing in media to protect our clients from the VA’s contractors” is of no import. Voluntarily pursuing an action against VA and spending time and resources in so doing is not an injury; it is a choice. VA’s place-holder scheduling in no way caused Petitioner to spend those resources or otherwise impeded its ability to take on additional clients. While perhaps noble, Petitioner’s actions simply do not establish standing.

The Court Lacks Jurisdiction to Provide the Relief Requested

The Court of Appeals for Veterans claims has exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. 38 U.S.C. § 7252(a). In addition, the Court has authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act. See *In re Fee Agreement of Cox*, 10 Vet.App. 361, 371 (1997), vacated on other grounds, 149 F.3d at 1364-66; see *Wick v. Brown (In re Wick)*, 40 F.3d 367, 373 (Fed. Cir. 1994); see also 38 U.S.C. §§ 7252(a), 7266(a); *Horowitz v. Brown*, 5 Vet.App. 217, 225 (1993) (prerequisite for Court to have jurisdiction over appeal is final Board decision).

While the All Writs Act empowers a court to act "in aid of [its] . . . jurisdiction[]," 28 U.S.C. § 1651(a), the Act cannot be used to expand the statutory jurisdiction of a court. See 9 J. Moore, B. Ward & J. Lucas, *Moore's Federal Practice*, P100.26 (2d ed. 1948 & Supp. 1989); *Erspamer v. Derwinski*, 1 Vet.App. 3, 12 (1990); see also *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 818, 100 L. Ed. 2d 811, 108 S. Ct. 2166 (1988) (The Court's jurisdiction derives exclusively from statutory grants of authority provided by Congress and the Court "may not in any case, even in the interest of justice, extend its jurisdiction where none exists.").

In this case, the Court lacks potential jurisdiction over the issue of whether Petitioner can enjoin VA from scheduling compensation and pension examinations as such a determination is beyond the jurisdiction of the Board. In that regard, "medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction." 38 C.F.R. § 20.104(b). Whether conditions are safe to conduct in-person examinations is clearly a determination that involves medical and scientific judgement and is therefore beyond the jurisdictional scope of the Board, and, hence, this Court.

Moreover, the principles of separation-of-powers caution against the Court's encroachment on such "technical VA decision-making," H.R. Rep. No. 100-963, at 21 (1988), and serve to "protect agencies from undue judicial interference with their lawful discretion," *Norton v. Southern Utah Wilderness*

Alliance, 542 U.S. 55, 66 (2004). Any judicial intervention into the determinations regarding when and how VA should resume compensation and pension examinations would amount to a clear evasion of the limited judicial review system designed by Congress and invite abuse of the writ of mandamus. See *In re Fee Agreement of Cox*, 10 Vet.App. 361, 370-71 (1997) (noting that the Court's "authority to issue writs of mandamus is restricted . . . to those cases in which the writ is in aid of that jurisdiction." (quoting *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 24-26, 63 S. Ct. 938, 87 L. Ed. 1185 (1943))), vacated on other grounds, 149 F.3d 1360 (Fed. Cir. 1998).

To the extent that Petitioner argues that the Court has jurisdiction over this matter because "the Board has jurisdiction over VA decisions on attorney fees," Motion at 9, its position is both confusing and unavailing. The issue at hand is whether the Court has jurisdiction to intervene in the internal policy decisions of the Agency and enjoin it from scheduling examinations. The issue does not concern attorneys' fees in any way and any suggestion otherwise would appear to contradict Petitioner's assertion that the sole purpose of the writ was to protect veteran's interests.

**Even Assuming Standing and Jurisdiction, Petitioner Fails
to Demonstrate Entitlement to the Writ**

"The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Vargas-Gonzalez v. Principi*, 15 Vet.App. 222, 224-25 (2001) (quoting *Kerr v. United States District Court*, 426 U.S. 394, 402 (1976)). A

petitioner seeking an extraordinary writ must satisfy three conditions: (1) The petitioner must demonstrate a “clear and indisputable” entitlement to the writ; (2) the petitioner must demonstrate that he lacks adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. See *Ramsey v. Nicholson*, 20 Vet.App. 16, 21 (2006) (citing *Cheney v. United States Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004)).

Moreover, the Court adheres to the case-or-controversy jurisdictional constraints provided for in Article III of the U.S. Constitution. See *Mokal*, 1 Vet.App. at 13-15. When the relief requested in a petition has been obtained, the appropriate course of action is for the Court to dismiss the petition as moot. See *Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam order).

Due to the national COVID-19 emergency, the Veterans Benefit Administration (VBA) Program Office instructed all VBA contract examination vendors to cease all in-person examinations on April 3, 2020. On April 4, 2020, a Temporary Suspension Notice was sent to all VBA contract vendors ordering the temporary suspension of all in-person, face-to-face examinations. See Respondent’s April 17, 2020, response and attachments.

Petitioner alleges that VA continues to schedule examinations and that at least one veteran had his claim denied for a failure to appear for an examination

scheduled during the pandemic. Motion at 2. While Petitioner may be correct on both counts, it is mistaken that such facts warrant granting this writ.

To begin, as previously noted by the Secretary, VA has and will continue to schedule place-holder examinations. The purpose of such scheduling is clear; in order for VA to timely provide veterans with examinations, once conditions are deemed safe to do so, scheduling must have already occurred.¹ VA simply cannot go from a complete standstill to full examination capacity in an instant. Planning and forethought are required and that is exactly what the Agency is doing.

In that same vein, VA recently determined that examinations could safely resume in 20 select locations nationwide. See Attachment at 4-5. However, it is the express position of the Secretary that any veteran who does not “feel comfortable receiving in-person exams may opt to schedule their exam for a later date without impact to their disability claim” and that “[n]o final action will be taken on a claim while a required in-person exam is pending.” See Attachment at 4. To be clear, “VA will not deny a claim solely for a failure to report for an exam at this time.” *Id.* at 5. To the extent that any veterans have been erroneously denied benefits for failing to attend an in-person examination during the pandemic, the Agency is currently attempting to identify such veterans and

¹ Place-holds will be pushed out and continued to be rescheduled until its deemed safe and, for the most part, veterans should not even be aware of the process.

remedy the adjudicatory error without the need for any further action by the veteran. *See Id.* at 7.

Accordingly, because VA is only conducting in-person examinations where it has been deemed safe to do so and because no adverse action may be taken against a veteran for failing to appear for an examination during the pandemic, the petition remains moot and Petitioner's motion should be denied.

CONCLUSION

The Secretary is thoughtfully and carefully walking the proverbial tightrope of balancing the safety of the veterans it serves with the interests that many of those veterans have in obtaining a timely compensation and pension examination necessary to adjudicate a claim for benefits. The Secretary believes that he is accomplishing that goal by implementing a well-reasoned resumption of services, to include examinations, when it is deemed safe to do so. Petitioner's one-size fits all approach simply does not account for these competing interests and would, in fact, run contrary to the desires of many of the veterans that it claims to serve. Accordingly, the Secretary requests that the Court deny Petitioner's Motion for Reconsideration.

Respectfully submitted,

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Attachment



Office of
Field Operations
NCC

NOVEL CORONAVIRUS (COVID-19)

GENERAL INFORMATION

ISSUED DATE: MAY 29, 2020

GENERAL INFORMATION

The Centers for Disease Control and Prevention (CDC) considers novel coronavirus or COVID-19 to be a serious public health threat, but individual risk is dependent upon exposure. For the general American public—those who are unlikely to be exposed to this virus at this time—the immediate health risk is low.

The new virus causes respiratory illness in humans, usually 2–14 days after exposure. Illnesses have ranged from mild symptoms to severe, including fever, cough, and shortness of breath. The virus is thought to spread mainly from close contact with an affected person.

CRM/UD-O INTERACTION TYPE

Tracking of calls related to COVID-19 is important as VA continues to assess this situation. PCR's utilizing the Customer Relationship Management Unified Desktop Optimized (CRM/UD-O) must use the below interaction types for interactions related to COVID-19.

Interaction Type:

Novel Coronavirus

Interaction Sub-Type:

Stimulus Payment

VA Operations Status/Closures

VRE Appt Question

C&P Exam Reschedule Issue

Disabilities determined by VA to be related to your military service can lead to monthly non-taxable compensation, enrollment in the VA health care system, a 10-point hiring preference for federal employment and other important benefits. Ask your VA representative or Veterans Service Organization representative about Disability Compensation, Pension, Health Care, Caregiver Program, Career Services, Educational Assistance, Home Loan Guaranty, Insurance and/or Dependents and Survivors' Benefits.



U.S. Department
of Veterans Affairs



Hearing Reschedule Issue
Transfer to VAMC
Pre-screening at VA Facilities
General Inquiry

VA Solid Start (VASS) PCRs must add the VASS Tag “COVID-19” on the Interaction Details screen.

SUGGESTED SCRIPT FOR GENERAL INQUIRIES

“VA is actively monitoring the novel coronavirus (COVID-19) situation and the potential impact to the VBA workforce and benefit processing. We are processing claims and appeals as quickly as possible. We also expect no disruption to the issuance of benefit payments.”

SUGGESTED SCRIPT FOR MEDICAL INQUIRIES

“If you have questions or concerns about novel coronavirus (COVID-19), are experiencing symptoms, or need information about accessing VA medical facilities, please contact your local VA Medical Center. I can provide you with the telephone number and transfer your call there.”

PRE-SCREENING AT VA FACILITIES

Following CDC guidelines, VHA has implemented proactive screening procedures for everyone entering VHA Campuses; including Veterans, VA employees, and visitors. These procedures also apply to VBA facilities co-located with VHA facilities.

Screening Questions:

1. Do you currently have flu-like symptoms, i.e. fever, cough or difficulty breathing? [Click here for the CDCs list of Flu Symptoms.](#)
2. Have you traveled to an area (China, Iran, Italy, Japan, and South Korean) or states with widespread or sustained community transmission of COVID-19 within the last 14 days? [Click here for the CDC's list of international areas with sustained transmission.](#)
3. Have you been in close contact with someone, including health care workers, confirmed to have COVID-19?



VISITING A VHA FACILITY

Veterans who are experiencing flu-like symptoms, such as fever, cough, and shortness of breath, should call before visiting a local medical center or clinic. In addition to calling first, Veterans should also consider using virtual care options such as telehealth or MyHealtheVet Secure Messaging.

If non-patient visitors are not feeling well, they are advised to postpone any visits to VA facilities.

To help protect patients, visitors, and VA staff, VA requires everyone entering VHA facilities to wear a cloth face covering. Individuals should bring their own face covering when possible. If an individual cannot supply their own face covering, VA will provide one to wear during the visit. Those who wear an oxygen mask do not need to wear a face covering. VA will may ask individuals to wait in a designated space until their appointment time. For more information on how to wear, sanitize, and make a cloth face covering, go to the [CDC website](https://www.cdc.gov).

REGIONAL OFFICE CLOSURES

Due to an abundance of caution with the COVID-19 pandemic, and to protect older Veterans and those with underlying medical conditions as well as our employees, VBA Regional Offices will be temporarily closed to the public starting March 19, 2020.

EDUCATION BENEFITS

Many schools are in the process of or have already moved from in-person courses to online courses in the interest of public health.

Congress has passed legislation that gives VA the authority to continue GI Bill payments uninterrupted in the event of national emergencies. The new law allows for VA to continue to pay benefits regardless of the fact that the program has changed from resident training to online training. Also, students will continue to receive the same monthly housing allowance payments that they received for resident training until January 1, 2021, or until the school resumes normal operations of resident training.

On April 28, 2020, the President signed the *Student Veteran Coronavirus Response Act of 2020*. This new law gives VA additional authorities to continue GI Bill payments for the period beginning on March 1, 2020 and ending on December 21, 2020. It allows for:

- the continuation of payments to students participating in the Work Study Program who are furloughed or have to stop working.
- VA to continue to pay benefits for up to 4 weeks to GI Bill students whose classes are suspended, even if school is still open.
- a provision for restoration of entitlement for GI Bill students who lose credit due to school closure or schools' suspension of training.
- VA to extend the delimiting date for Montgomery GI Bill and Post-9/11 G Bill students if they are unable to attend training due to COVID-19. VA already has the authority to extend delimiting dates for Survivors and Dependent Educational Assistance Program (DEA) beneficiaries.

VA is working to immediately implement the new changes to address current and future school terms to ensure students continue to receive their education benefits. There is no action required from a GI Bill student.

PCRs must advise beneficiaries and school certifying officials to contact the Education Call Center with any questions and offer to transfer to 1-888-442-4551.

COMPENSATION & PENSION EXAMS

In-person examinations will be restarting in the 20 locations listed below, at VBA's contracted exam facilities only. VHA is reopening in these select locations, but are not resuming C&P exams at this time. Veterans within resumed service areas who do not yet feel comfortable receiving in-person exams may opt to schedule their exam for a later date without impact to their disability claim. No final action will be taken on a claim while a required in-person exam is pending. The end product will continue to remain pending. If any decisions can be made on these claims based on Acceptable Clinical Evidence (ACE) or telehealth examinations, the Force Majeure special issue should be applied. In-person exam requests will remain pending with the vendor until the exam.

VA expects to start conducting in-person exams in the following locations:

- White River Junction VA Medical Center, Vt.
- Syracuse VAMC, N.Y.
- Erie VAMC, Penn.
- Hershel “Woody” Williams VAMC, W. Va.
- Salem VA Healthcare System (HCS), Va.
- Ralph H. Johnson VAMC, S.C.
- West Palm Beach VAMC, Fla.
- James H. Quillen VA HCS, Tenn.
- Louis Stokes Cleveland VAMC, Ohio
- Tomah VAMC, Wis.
- William S. Middleton Memorial Veterans Hospital Madison VAMC, Wis.
- Kansas City VAMC, Mo.
- Central Arkansas Veterans HCS, Ark.
- South Texas VA HCS, Texas
- Fort Harrison VAMC, Mont.
- Puget Sound VAMC, Wash.
- Boise VAMC, Idaho
- VA Southern Nevada HCS, Nev.
- VA Southern Arizona HCS, Ariz.
- Fargo HCS, N.D.

For sites where exams have not resumed, VBA is utilizing options that do not involve in-person communications (such as virtual or telephone options). VBA will reach out to offer future C&P examinations via the telephone or virtually, if possible, and you will be contacted with instructions if you are scheduled for one of these C&P examinations. If telephonic or virtual examinations are not possible or agreeable to you, a note will be placed in your record stating no final action should be taken until an in-person examination is completed. VA will not deny a claim solely for a failure to report for an exam at this time. Claims processors are actively identifying claims where the record

contains sufficient medical evidence necessary to render a decision, tele-C&P exams can be completed, or they can use the ACE process. Claimants can continue to submit private treatment records or request that VBA obtain those records on their behalf in support of their claim. Veterans can request VBA obtain records by filing a VA Form [21-4142](#), *Authorization to Disclose Information to the VA* and/or VA Form [21-4142a](#), *General Release for Medical Provider Information to the VA*. This can be used for all non-VA providers, including those seen through the Tricare network or at military treatment facilities. Veterans who need additional assistance may also work with an accredited organization for assistance in completing claims for VA benefits and may also continue to monitor their claim status at va.gov/track-status.

- **Requests to cancel contract examinations:** PCRs must instruct Veterans and Servicemembers who wish to reschedule an exam due to COVID-19 concerns to contact the exam vendor directly. Vendors will hold the exam request in their system and will reschedule appointments once it is safe to do so.
 - If a Veteran or Servicemember indicates he/she is unable to reach the vendor, PCRs must send an encrypted email to the contract exam staff mailbox:
ContractExam.VBAVACO@va.gov
 - Include the Veteran's or Servicemember's name, SSN, the name of the vendor, and that he/she is unable to reach the vendor to cancel an exam due to COVID-19 concerns.
 - PCRs must not release the contract exam staff mailbox to the public.
- **Requests to cancel VHA examinations:** PCRs must follow existing procedures to request a C&P exam be rescheduled at a VHA facility. If a VAMC C&P clinic is not capable of rescheduling or conducting the exam, claims processors will route the exam request to a contract exam vendor.

If a Veteran reports he/she was advised by a vendor or VHA that he/she must attend a C&P exam in-person and that it cannot be rescheduled, PCRs must take the appropriate action to request the exam be rescheduled and send an encrypted email to [Krystal Connor](#) to report the following:

- Veterans name
- SSN

- Phone number Veteran is calling from
- Specifics of the situation
- Location of exam- VHA or vendor
- Date/time of call

If a claim was denied due to “failure to report” or “no show” for a requested exam, PCRs must enter a note in CRM/UD-O detailing the claim which was denied and the referral to the Processing Team for establishment of an EP 930.

PCRs must enter the following information into the [Processing Team Action Request SharePoint Site](#) to request an EP930 be established:

- Select PCR’s NCC location.
- Select the requested action from the dropdown.
- Enter the VA file number/Social Security Number.
- Enter the Veteran’s full name.
- Enter the caller’s state.
- Select email or mail response type

In this situation, PCRs must also provide the following script:

“I apologize that your claim was denied due to the exam issue. During the pandemic, VA has decided not to deny a claim solely for a failure to report for an exam. You do not need to file a supplemental claim; I will request that your claim be re-established. Would you like us to contact you via email or mail to confirm the action taken?”

CLAIM PROCESSING

VA will accept typed/digital signatures instead of wet signatures on its forms.

Effective March 1, 2020, if a claimant or a claimant’s authorized representative requests an extension of a time limit associated with a required action based on the COVID-19 pandemic, including,

- the filing of a claim that would perfect a previous expired communication of intent to file,
- the filing of a response to a proposed adverse action,

- the submission of requested evidence, or,
- attendance at a hearing or C&P examination,

VBA will grant these requests under the good cause provisions, provided the time limit would have expired or situation occurred on or after March 1, 2020.

To request an extension for filing due to COVID-19, claimants should note the request on their filing submission or attach the request as a separate document. Where an extension is requested after expiration of a time limit, the action required of the claimant must be taken concurrent with or prior to the filing of a request for extension of the time limit. To ensure full consideration of a time limit extension, claimants should note in their request that they are requesting an extension of the time allowed to take the specified action on a claim because of COVID-19, (or any related reference to COVID-19, the coronavirus, national pandemic, or similar language). If the request is submitted after initial submission of a pending claim or appeal, the claimant should specify the time limit for which they are seeking an extension to ensure accurate processing. Claimants who have already filed a claim may continue to submit requests in writing or over the telephone for extensions related to evidence submissions.

For the purpose of determining the date of entitlement, any correspondence addressed to VA between March 1, 2020 and 60 days following the date the President ends the national state of emergency, will be considered received on the date of the postmark affixed by USPS. In the event there is no postmark or date stamp by USPS, VA will consider any correspondence with a VA date stamp or Claims Intake Center COVID-19 watermark during the designated period as received no later than February 29, 2020.

The claimant or the claimant's appointed accredited power of attorney may request to extend time limits. When taken over the telephone, document the following on *VA Form 27-0820, Report of General Information*:

- Indication that a request for extension is because of COVID-19, (or any related reference to COVID-19, coronavirus, the national pandemic, or similar language).

- ask the time limit for which they are seeking an extension to ensure accurate processing, and document how much additional time the requestor needs (i.e. 15 days, 30 days, 60 days, etc.)

Important: Do not state that you are approving their extension request. This will be determined over the course of review by the RO. If the request is for a filing time limit extension for a claim or appeal, these types of extensions must be submitted in writing.

See [Policy Letter 20-02](#) for more information on extensions.

The National Personnel Records Center (NPRC) has reduced operations to an extremely limited capacity. NPRC will continue to process records requests related to burial benefits and emergency cases, but other requests will be delayed. To meet the needs of claimants whose claims depend on service records held by NPRC, effective immediately and until further notice:

- ROs will accept uncertified service verification documents, such as DD-214s, as valid proof of service unless reasonable evidence of fraud or forgery exists, and
- ROs will proceed in taking claim actions (including examination requests and, where appropriate, favorable adjudication of service connection) based on service information documented on uncertified DD Forms 214. Remaining issues dependent on the receipt and review of service records shall be deferred, and the end product (EP) kept in open status.
- In all cases, ROs must submit the PIES request (for service verification and/or records) and create a tracked item for the request. When no development other than that for NPRC response/records is possible, ROs will add a separate special issue indicator so the claim can be held by NWQ (Station 499) until NPRC resumes regular operations.
- If a PIES request is pending, no follow up to the PIES request should be made.

See [Temporary Guidance on Delayed Processing of Requests to the National Personnel Records Center \(NPRC\)](#) for more information on acceptance of uncertified service verification records.

APPEALS

Appeal hearings are currently being conducted via telephone or video conferencing. VBA will contact claimants who have already filed a claim or appeal and have VBA hearings to provide options that do not involve in-person communications (such as virtual or telephone options). If alternatives to in-person hearings are not possible or agreeable to the claimant, a note will be placed in the record stating no final action should be taken until a hearing is completed.

Appellants have the option to submit paperwork late for the following actions:

- submitting Notices of Disagreement
- submitting Substantive Appeals
- responding to Supplemental Statements of the Case

Appellants requesting extensions can simply submit them with any late-filed paperwork and do not have to proactively request an extension in advance. Extensions for appeal time limits must be received in writing. For added convenience, VA will also accept typed/digital signatures instead of wet signatures on its forms.

For appellants who have been diagnosed with COVID-19 and need immediate action on their appeals, as opposed to a filing extension, the Board of Veterans' Appeals will Advance their appeal on Docket (AOD). Motions for advancement on the docket, along with supporting documentation, should be submitted to the Board in writing via mail or fax.

SCHOOL CHILD DEPENDENCY CLAIMS

Due to COVID-19, schools may suspend, cancel or teach classes “virtually.” In these situations, claims processors should not remove the child as a dependent from the award.

If a school child stops attending school due to cancelled or postponed classes *solely* as a consequence of the COVID-19 pandemic, claims processors will treat the period during which the school child is unable to attend school because of the pandemic as a break between school sessions and will not remove the school child from the beneficiary's award.

If a school child now attends school “virtually” and, because of restrictions on social interactions the pandemic triggered, his/her current courses of instruction do not meet the standards set forth in M21-1, Part III, Subpart iii, 6.A.2.c claims processors will not remove the school child from the beneficiary’s award. Rather, a child should remain on the award if the only reason for removal is solely attributable to changes in the academic/learning environment for school children due to the COVID-19 pandemic.

HOME LOAN GUARANTY

VA Loan Guaranty Service (LGY) is placing a moratorium on all in-person meetings by Specially Adapted Housing (SAH) agents. This includes initial interviews, suitability/feasibility assessments, compliance inspections, final field reviews, and all other in-person Veteran and stakeholder meetings.

During this period, LGY will continue to process new SAH grant requests and active grant projects as normal, except replacing face-to-face engagements with virtual processes where possible.

VA will continue its mission serving Veterans who are purchasing, refinancing, adapting, or retaining a home.

- Lenders may still close VA-guaranteed home loans.
- VA has issued flexible guidance to lenders related to Verifications of Employment in the event of temporary business closures.
- VA has issued underwriting guidance to lenders for the benefit of Veterans who may be experiencing a temporary curtailment of income due to COVID-19. This should not be considered a break in employment or income.
- VA has long accepted electronic documents, but recently has worked with Ginnie Mae to issue new guidance that will allow for the use of Remote Notaries (RONs) and submission and acceptance of an eNote as well as Electronic Mortgages (eMortgages).
- VA reminded holders of guaranteed loans to extend forbearance to borrowers in distress as a result of COVID-19. Servicers should work with impacted borrowers who are unable to make their mortgage payments to ensure they are evaluated for VA Loss Mitigation options.

- VA is requesting that Servicers place a moratorium on pending and initiating foreclosures for borrowers of VA-guaranteed loans for 60 days.
- VA is closely monitoring the availability of appraisers and will assist Veterans and lenders to ensure that valuations will be available.
- VA will temporarily allow Exterior-Only appraisals with enhanced assignment conditions or in limited instances a Desktop appraisal may be performed on certain types of loans.
- In extreme cases when an appraiser is not available to complete an appraisal assignment for a purchase, VA will issue a Memorandum of Value on a case-by-case basis.
- For more information about the VA home loan program, please visit <https://www.va.gov/housing-assistance/>.

PCRs must advise Veterans, contractors, lenders, appraisers, and other stakeholders to contact the Regional Loan Center with any questions and offer to transfer to 877-827-3702 (8:00am to 6:00pm ET).

DEBTS

If an individual has a VA debt, is affected by COVID-19 (such as a reduction in work hours, temporary layoff, or termination of VA Education benefits), and needs temporary financial relief, VA may be able to suspend collection or extend repayment terms. All actions on Veteran debts under the jurisdiction of the Treasury Department are suspended.

PCRs must advise debtors with a VBA debt to contact the Debt Management Center and offer to transfer to 800-827-0648 (7:30am to 7:00pm ET).

PCRs must advise debtors with a healthcare debt to contact the Health Resource Center and offer to transfer to 888-827-4817 (8:00am to 8:00pm ET).

NATIONAL CEMETERY SERVICES

All VA National Cemeteries are open and will continue to provide interments for Veterans and eligible individuals. However, the National Cemetery Administration (NCA) is continuing to adjust its

services and, as a result, on Friday, March 20, 2020, NCA will only conduct committal services at our 142 cemeteries nationwide for groups of 10 or fewer people. Larger groups will be asked to reduce their numbers or be refused service. In addition, families should know that volunteer veterans honor guards may no longer be providing services at all cemeteries.

Starting March 23, 2020, committal services and the rendering of military funeral honors, whether by military personnel or volunteer organizations, will not be conducted until further notice at VA national cemeteries. Immediate family members (limited to no more than 10 individuals) of the deceased may choose to witness the interment if desired. There is no service involved with witnessing an interment. Effective, Wednesday, April 15, 2020, to ensure social distancing at the cemetery, witnessing family members will now be asked to view the interment from their cars or the road very near their cars.

Families and funeral directors should contact the national cemetery where an interment is scheduled as soon as possible if the family wishes to postpone the interment. NCA will work to schedule a committal or memorial services at a later date for those families that choose to continue with the direct interment or postpone the interment.

The National Cemetery Scheduling Office will continue to provide scheduling services for the duration of the current emergency. To schedule a burial, please call 800-535-1117, option 1.

VA cemeteries will remain open to visitors, but NCA strongly urge all guests to obey local travel restrictions and avoid unnecessary travel. Visitors should expect that certain portions of a cemetery typically open to the public may be closed (for example, public information centers, chapels). Individuals should contact the local cemetery for more information, if needed.

FIDUCIARY

In scenarios where conducting a face-to-face examination is usually required, Fiduciary Hub employees will conduct a VA Video Connect (VVC) teleconference whenever possible.

In all instances where a field examiner (FE) determines a VVC is required in lieu of a face-to-face meeting, a telephone call is required to assess whether the individual is willing and has the necessary means to participate in a VVC. The individual must have access to a computer, smart phone or other device that has a camera.

When the beneficiary or fiduciary is not willing or able to use VVC, the FE will conduct the interview telephonically. In instances where the beneficiary's disabilities are such that a VVC or telephone interview is impracticable and the beneficiary resides in a facility, FEs will contact the facility to verify the beneficiary's status. If the beneficiary does not reside in a facility and a VCC or telephone interview is impracticable, the field examination will remain pending and the Fiduciary Hub will set a task to make another attempt at telephone contact in four weeks, and repeat process as needed until contact has been made or the beneficiary can be seen face-to-face.

FEs will not make unannounced personal visits when a beneficiary or fiduciary cannot be contacted. In lieu of unannounced personal visits to the beneficiary or fiduciary, the Hub will make three attempts to contact the individual through phone calls on three different dates. The Hub will send a total of two written notification letters. The first letter will be sent on the date of the first phone call, with an allowance of 15 days for a response. If no response is received, the Hub will make a phone call attempt and send the second letter to show due diligence in contacting the individual. If telephone contact is not made with the individual after a third attempt and no response is received to the final letter after 15 days, the Hub will suspend benefits.

FEs will utilize VBMS notes to document that a VVC field examination has been scheduled. The note will contain:

- the date and time that the tele-counseling interview is scheduled
- the first and last name with whom the tele-counseling field examination is scheduled, and
- any other information of importance specific to the interview.

NARA/NPRC CLOSURE

The National Archives and Records Administration (NARA) is committed to protecting the health and safety of visitors, customers, and employees during the COVID-19 pandemic. Museums and research

facilities are closed to the public until further notice. In-person services for the public and other Federal agencies have been suspended almost entirely. NARA is making every effort to continue providing essential services whenever possible, using online and remote capabilities.

The National Personnel Records Center (NPRC) closed operations effective March 23, 2020. Burial and urgent requests will be processed with a limited capacity.

TRANSITION ASSISTANCE PROGRAM

Effective March 30, 2020, and until further notice, VA will discontinue benefit briefings and services on military installations for transitioning servicemembers and their families through the interagency Transition Assistance Program (TAP). However, VA will provide virtual briefings and individualized counseling for transitioning service members where possible. Service members who have not received these briefings, as required by TAP, may access the Joint Knowledge Online (JKO) platform and register for “TGPS-US006: VA Benefits and Services.”

LIFE INSURANCE

VA’s life insurance program will now accept documents with typewritten signatures that are not authenticated and were not previously acceptable as a picture of a signature. VA will verify the individual’s intent by phone to ensure that the individual submitted the document to move forward in the process. VA insurance service will accept loan requests over the phone as long as the request is not accompanied, or recently preceded, by a change in address or change in direct deposit.

STIMULUS PAYMENT

Any amount paid to a beneficiary or claimant under the *2020 Recovery Rebate in the Coronavirus Aid, Relief, and Economic Security Act* will not count as income for determining eligibility for pension or any other VA benefit. No action is needed by the recipient of the payment.

VA is working directly with the Internal Revenue Service (IRS) and U.S. Treasury Department to ensure delivery of economic impact payments (EIP) to Veterans and survivors who receive Compensation and Pension (C&P) benefit payments from VA without additional paperwork or IRS

filings. The payments will be issued automatically to recipients of non-taxable VA benefits who did not file annual income tax returns for 2018 or 2019. For VA beneficiaries who filed a Form 1040 for 2018 or 2019, those payments will also be automatic. No further action is needed. Beneficiaries can track the status of their payments on the Get My Payment tool on IRS.gov. For non-tax filing VA beneficiaries, please note their information will be loaded on this tool within the next few weeks.

By May 5, 2020, VA beneficiaries who didn't file a tax return in 2018 or 2019 and have a dependent, should visit the [Non-Filer: Enter Payment Info Here](#) tool on IRS.gov to receive the additional dependent payment.

Many non-tax filing beneficiaries have already begun using the [IRS' EIP payment portal](#) to provide the necessary data to IRS to receive their EIP. There will be no interruption to payments being processed using the IRS portal, and Veterans with internet access are encouraged to continue providing information and track their EIP through the IRS portal. For those who do not have access, or choose not to use the IRS portal, their EIP will be processed without further action on their part.

If a Veteran or beneficiary expresses concern over a missed stimulus payment or alleges suspected fraud, PCRs must refer the individual to IRS.

VA & DOD ID CARDS

VA-issued Veteran Health Identification Cards (VHIC):

- During the COVID-19 pandemic, Veterans enrolled in VA health care who are seeking a [brand new VHIC](#) (initial) should contact their local VA medical facility for guidance on going to facility to request a card. Once issued, cards are valid for 10 years.
- Most Veterans will be able obtain a replacement VHIC (not initial VHIC) by contacting their local VA medical facility and making their request by phone, or they can call 877-222-8387, Monday through Friday, 8:00 a.m. to 8:00 p.m. ET. Once their identity has been verified, a replacement card will be mailed to them.

DoD-issued ID Cards:

Detailed information concerning DoD ID Card operations during the coronavirus pandemic can be found at the DoD Response to COVID-19 – DoD ID Cards and Benefits webpage

<https://www.CAC.mil/coronavirus>.

Common Access Cards (CAC) (including military and civilian personnel):

- DoD civilian cardholders who are transferring jobs within DoD are authorized to retain their active CAC.
- Cardholders whose DoD-issued CAC is within 30 days of expiration may update their certificates online to extend the life of the CAC through Sept. 30, 2020, without having to visit a DoD ID card office in person for reissue. Directions for this procedure may be found at <https://www.CAC.mil/coronavirus> under News and Updates / User Guide – Updating CAC/VoLAC Certificates.
- Cardholders whose DoD-issued CAC has expired will have to visit a DoD ID card office in person for reissuance. Visit <http://www.dmdc.osd.mil/rsl> to find a DoD ID card office near you and schedule an appointment at <https://rapids-appointments.dmdc.osd.mil>.

DoD-issued Uniformed Services ID Cards (USID) (including Reservist, military retiree, 100% disabled Veteran, and authorized dependent ID cards):

- Expiration dates on USID cards will be automatically extended to Sept. 30, 2020, within DEERS for cardholders whose affiliation with DoD has not changed but whose USID card has expired after Jan. 1, 2020.
- Sponsors of USID card holders may make family member enrollment and eligibility updates remotely.
- Initial issuance for first-time USID card-eligible individuals may be done remotely with an expiration date of one year from date of issue. The minimum age for first-time issuance for eligible family members has been temporarily increased from 10 to 14 years of age.

COVID-19 CHATBOT

VA has developed a COVID-19 FAQ interactive “chatbot” tool to better serve Veterans’ increased demand for information and services during the COVID-19 pandemic. The chatbot provides answers

to many common COVID-19 questions and directs Veterans to appropriate resources without requiring a phone call.

Any user on VA.gov can use the COVID-19 chatbot functionality. Users do not need a VA.gov account to access the chatbot. For the initial launch of the COVID-19 Chatbot, a user can access it from the VA.gov COVID-19 FAQ page and the facility locator page. Each page has a link that will take the user to a new page where the chatbot is located.

Direct url: www.va.gov/coronavirus-chatbot

[VA COVID-19 Chatbot Product Guide](#)

VOCATIONAL REHABILITATION AND EMPLOYMENT SERVICES (VR&E) – FREQUENTLY ASKED QUESTIONS

Q1: WHY IS MY VR&E IN-PERSON APPOINTMENT BEING CANCELLED?

A1. Your health and safety remain our top priority, and due to COVID-19, we are not conducting in-person meetings at this time. VR&E counselors are proactively working with Veterans to identify other options to conduct appointments and assist current and potential program participants instead of conducting in-person meetings.

Q2: WILL THIS SITUATION CREATE A DELAY IN MY APPOINTMENT OR THE PROCESSING OF MY CLAIM?

A2. No, VR&E counselors will be reaching out to establish a plan to maintain communication throughout this period and ensure there are no lapses in VR&E services or any negative impact on the processing of your claim.

Q3: WHAT OPTIONS ARE AVAILABLE TO REPLACE THE IN-PERSON MEETING?

A3. VR&E is utilizing Tele-counseling, which is similar to Telehealth, as a replacement for in-person meetings. Tele-counseling allows you to meet with your counselor virtually (face-to-face) and is available on any web-enabled device with a webcam and microphone (smartphone, tablet, computer). Your VR&E counselor will reach out to schedule a Tele-counseling session when necessary to ensure no lapses in benefits or to assist with the processing of a pending claim.

Q4: MAY I STILL REQUEST TO BE SEEN IN PERSON?

A4. Your health and safety remain our top priority, and due to COVID-19, we are not conducting in-person meetings at this time.

Q5: WHAT VR&E BENEFITS ARE AVAILABLE AS A RESULT OF THE *Student Veteran Coronavirus Response Act of 2020*?

A5. This new law gives VA additional authorities to continue VR&E payments for the period beginning on March 1, 2020 and ending on December 21, 2020. It allows for:

- the continuation of payments to students participating in the Work Study Program who are furloughed or have to stop working.
- VA to continue to pay benefits for up to 4 weeks to VR&E students whose classes are suspended, even if school is still open.
- a provision for restoration of entitlement for VR&E students who lose credit due to school closure or schools' suspension of training.
- VA to extend the delimiting date for VR&E students if they are unable to attend training due to COVID-19.
- VR&E students to continue to receive payments if a school permanently closes or a course of study is disapproved for up to 120 days or the end of the term, whichever occurs first.
- VR&E to extend payments for an additional two months while VR&E participants are seeking employment.
- VR&E to extend the 18-month limitation on employment services.

RESOURCES FOR ADDITIONAL INFORMATION

[VA Public Health site](#)

[Centers for Disease Control and Prevention \(CDC\)](#)

Vantage Point [Coronavirus: Be informed and call your provider if symptoms develop](#)

[Novel Coronavirus Disease \(COVID-19\) Operational Information Page](#)

News Release: [VA expands virtual services to support Veterans amid regional office closures due to COVID-19 pandemic](#)

[What You Need to Know about Coronavirus \(COVID-19\)](#)

[Mental Health Online Resources](#)

[VA.gov COVID-19 FAQ page](#)

[Policy Letter 20-02 Novel Coronavirus \(COVID-19\) Claims and Appeals Processing Guidance](#)

[Debt Management VBA Flyer](#) (included with documents issued through centralized printing)

News Release: [VA Partners with Treasury Department to Deliver Economic Impact Payments to Veterans and Survivors](#)

News Release: [VA gets boost from CARES Act to provide emergency assistance to Veterans who are homeless or at risk of homelessness during COVID-19 crisis](#)

EFFECTIVE DATE FOR QUALITY REVIEW PURPOSES	CHANGE
7/1/2020	<ul style="list-style-type: none">Added information about resumption of in-person C&P exams at select locationsAdded information about requesting EP930 for claim denied due to missed examRemoved requirement to refer stimulus payment issues to SLC Incident Team
7/1/2020	<ul style="list-style-type: none">Added information about face coverings in VHA facilitiesAdded information about submitting private treatment recordsAdded link to <i>VA gets boost from CARES Act to provide emergency assistance to Veterans who are homeless or at risk of homelessness during COVID-19 crisis</i>
7/1/2020	<ul style="list-style-type: none">Added dependent school child dependency claims informationAdded information regarding EDU and VRE benefits relating to <i>Student Veteran Coronavirus Response Act of 2020</i>Added information on acceptance of uncertified service verification documents

6/1/2020	<ul style="list-style-type: none"> Added information about VA & DOD ID cards Added information about chatbot
6/1/2020	<ul style="list-style-type: none"> Added additional information about VA partnership with IRS & Treasury for EIP and link to corresponding news release
6/1/2020	<ul style="list-style-type: none"> Added Stimulus Payment interaction type
6/1/2020	<ul style="list-style-type: none"> Added additional information regarding time limit extensions Added information regarding stimulus check for non-filers and for reporting fraud allegations Added link to DMC flyer
6/1/2020	<ul style="list-style-type: none"> Added VASS Tag requirement Added information to report C&P exam issue Added claim processing information Amended debt information Added additional LGY information Added additional appeal information Added information about stimulus payment Added links to What You Need to Know about Coronavirus (COVID-19), mental health resources, and VA.gov FAQ page, Policy Letter 20-02
6/1/2020	<ul style="list-style-type: none"> Added information about appeal hearings Added information about TAP Added information about life insurance Added link to 3/31/2020 news release
5/1/2020	<ul style="list-style-type: none"> Updated script for general inquiries Added fiduciary-related information Added NARA/NPRC information Added link to COVID-19 Operational Information Page
5/1/2020	<ul style="list-style-type: none"> Added DMC information Added NCA information
5/1/2020	<ul style="list-style-type: none"> Updated EDU benefit information Added information on SAH program

5/1/2020	<ul style="list-style-type: none"> • Updated RO closure information • Updated EDU benefit information • Added information about C&P exams • Added information about VR&E appointments
5/1/2020	<ul style="list-style-type: none"> • Added information about EDU benefits
5/1/2020	<ul style="list-style-type: none"> • Added information about pre-screening at VA facilities • Added information about visiting a VHA facility • Added information about RO closures • Added information about CRM/UD-O Interaction Types
5/1/2020	<ul style="list-style-type: none"> • Original Guidance Issued

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