

**United States Department of Veterans Affairs
Memorandum of Agreement (MOA)**

**The Department of Veterans Affairs
And
The National Association of County Veterans Service Officers
(NACVSO)
In Support of Electronic Notice**



September 28, 2021

I. PURPOSE

This agreement, and the referenced handbooks and regulations set forth below, contain the terms, conditions, and safeguards under which the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA) will provide electronic notices to The National Association of County Veterans Service Officers (NACVSO). VBA's electronic notice program streamlines the benefits process by speeding up the flow of communication. Under this agreement, NACVSO agrees to receive benefit correspondence via electronic notice in lieu of paper documents. The time limit for NACVSO to appeal or request further review of a decision by VBA will be based on the date of the letter, not the date NACVSO reviews it.

For example, if VA sends NACVSO electronic notice of a decision on a claim for service connection on August 1, 2020, but NACVSO does not read the notification until August 9, 2020, NACVSO has one year from August 1, 2020 to file an appeal to the Board of Veterans' Appeals (Board) or request a higher-level review (HLR). In this example, if NACVSO files an appeal to the Board or requests an HLR on August 9, 2021, the appeal/review would be untimely. Note: the one-year submission requirement does not apply to the supplemental claim option for further review. However, a supplemental claim with new and relevant evidence received within one year is considered a continuously pursued claim and can be afforded the effective date provisions of 38 CFR 3.2500(h)(1).

By accepting these terms and conditions, NACVSO certifies that they have opted into receiving electronic notifications freely, voluntarily and without coercion, and understands that an electronic notice, when feasible and available, will replace the distribution of paper documents. In the event an electronic notice is not feasible and available, VA will revert back to the distribution of paper documents for that particular notification. This agreement will otherwise remain in effect. The NACVSO organization, as a whole, may opt out of this program at any time (see the Duration, Modification, and Termination section of this memorandum), indicating a desire to suspend receipt of all electronic notifications of VBA correspondence related to a review or determination on the claimant's claim(s) or decision review(s). Please note that a request to opt out of the program is not retroactive.

For example, if VA uploads NACVSO electronic letter notification on February 15, 2020 and receives the written request to opt out of the program on February 28, 2020, VA will not resend any notifications that were sent to NACVSO prior to February 28, 2020. VA will continue to send electronic notice for no fewer than 60 days after the opt out notice as noted in section VII below unless circumstances are such that VBA may implement the change sooner.

II. LEGAL REFERENCES

The following references relate to VA's duty to provide notice to claimants.

- A. 38 U.S.C. § 5103- Notice to claimants of required information and evidence

(a) Required Information and Evidence

(1) Except as provided in paragraph (3), The Secretary shall provide to the claimant and the claimant's representative, if any, by the most effective means available, *including electronic communication* or notification in writing, notice of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant. (emphasis added).

* * * *

(3) The requirement to provide notice under paragraph (1) shall not apply with respect to a supplemental claim that is filed within the timeframe set forth in subparagraphs (B) and (D) of section 5110(a)(2) of this title.

(b) Time Limitation

(1) In the case of information or evidence that the claimant is notified under subsection (a) is to be provided by the claimant, such information or evidence must be received by the Secretary within one year from the date such notice is sent.

B. 38 U.S.C. § 5104 - Decisions and notices of decisions

(a) In the case of a decision by the Secretary under section 511 of this title affecting the provision of benefits to a claimant, the Secretary shall, *on a timely* basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision. (emphasis added).

The following references relate to filing deadlines.

C. 38 C.F.R. § 3.110 - Computation of timelimit

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(b) The first day of the specified period referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see §§19.52, 20.203, and 20.110 of this chapter.

D. 38 U.S.C. § 7105 - Filing of appeal

* * * *

(b)(1)(A) Except in the case of simultaneously contested claims, a notice of disagreement shall be filed within one year from the date of the mailing of notice of the decision of the agency of original jurisdiction pursuant to section 5104, 5104B, or 5108 of this title.

(b)(1)(B) A notice of disagreement postmarked before the expiration of the one-year period shall be accepted as timely filed.

(b)(1)(C) A question as to timeliness or adequacy of the notice of disagreement shall be decided by the Board.

III. **DEVIATION FROM LAW**

Since 38 U.S.C. § 7105 specifically references the mailing of section 5104, 5104B or 5108 notices for purposes of calculating timelines, and 38 U.S.C. § 5902(c)(2) requires that VA provide notices to VSOs at the address designated by the VSO for receipt of these notices, this MOA serves as an understanding of deviation from this requirement. Henceforth NACVSO expressly requests and agrees to receive claim related correspondence via VBA-offered and approved electronic platforms (to include but not limited to systems such as VBMS) and agrees that no mailing will take place, when feasible and available, notwithstanding any other provision of law. The parties acknowledge that this agreement pertains only to copies sent to NACVSO and is being done at the request of NACVSO to improve handling procedures and eliminate returned mail." VBA will continue to follow statutory requirements in sending notices directly to claimants.

IV. **RESPONSIBILITIES OF THE PARTIES**

A. VBA Responsibilities

1. VBA will grant NACVSO and its associated VA-accredited representatives in good standing, system access for reviewing VBA claims notices electronically for individuals that they represent consistent with the rules for access found in 38 C.F.R. §§ 1.501-1.526, 1.600-1.603, VBA- Letter 20-16-08 and any current or future guidance governing electronic access.
2. VBA will ensure authorized records are available in the system for viewing. This agreement does not expand or modify restrictions under Federal privacy laws.
3. VBA will provide an electronic notice to NACVSO and its associated VA-accredited representatives in good standing, when feasible and available, once new claims correspondence has been completed for an individual that they represent.

B. National Association of County Veterans Service Officers (NACVSO) Responsibilities

1. NACVSO will follow and adhere to all Rules of Behavior as outlined in VA Handbook 6500, *"Risk Management Framework for VA Information Systems – Tier 3: VA Information Security Program, dated March 10, 2015, and its appendices, and VA Handbook 6500.3, Assessment, Authorization*

and Continuous Monitoring of VA Information Systems, dated February 3, 2014."

2. NACVSO will ensure all VA accredited representatives in good standing within their organization obtain system access for notification. NACVSO will immediately report any inappropriate file content or misfiling to VBA for correction.
3. NACVSO will report any employee misuse of the electronic system for review of system privileges.
4. NACVSO will provide and maintain the equipment necessary for NACVSO representatives to receive and view electronic notifications from VA, including, but not limited to, computers and internet access.

V. STIPULATIONS

- A. It is understood that, with the signing of this Memorandum of Agreement, NACVSO elects for VA accredited representatives in good standing to receive electronic notices via VBA offered and approved electronic platforms. No single accredited service officer in good standing will be exempt from electronic notice.
- B. NACVSO acknowledges that the electronic notices will suffice for proper representative notice under all relevant statutes and regulations.
- C. NACVSO acknowledges that letter dates will be used to calculate claimant deadlines for action (i.e., submission of evidence, notices of appeals, etc.).
- D. NACVSO acknowledges system limitations and agrees to perform workload management to ensure notices are reviewed in a timely manner to preserve claimants' appellate rights.

VI. RECORDS USAGE, DUPLICATION, AND REDISCLOSURE RESTRICTIONS

NACVSO will adhere to the following limitations on the use, duplication, and redisclosure of the electronic files and data provided by VBA under this agreement:

- A. NACVSO will use and access the data only for the preparation, presentation, and prosecution of claims for VA benefits claimants for whom NACVSO holds a valid and current Power of Attorney.
- B. NACVSO will not use the data to extract information concerning individuals therein for any purpose not specified by this agreement.

VII. REIMBURSEMENT

VBA will incur the costs necessary for providing NACVSO employees with the logical access necessary to receive the type of electronic notification(s) specified above, if the employee is compliant with VA's National Rules of Behavior (ROB) (i.e., completion of the ROB TMS course, signing ROB, etc.) and a member of good standing of (insert Veteran Service Organization).

There is no expectation of reimbursement from NACVSO.

VIII. DURATION, MODIFICATION, AND TERMINATION

- A. This agreement is effective on the date of signature for an indeterminate amount of time.
- B. This agreement may be modified at any time. Any modification must be in writing and signed by appropriate officials of both parties.
- C. Either party may unilaterally terminate this agreement upon written notice to the other party, in which case the termination shall be effective 60 days after the date of the notice, or later time specified in the notice.

IX. INTEGRATION CLAUSE

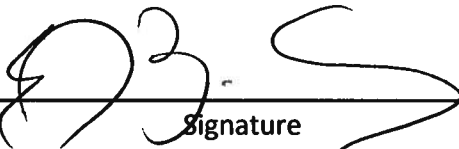
This agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all other agreements related to electronic notices between NACVSO and VBA. NACVSO and VBA have made no representations, warranties, or promises outside of this agreement. Both parties have entered into the agreement freely and willingly.

X. AUTHORIZED SIGNATURES

The signatories below warrant and represent that they have the competent authority on behalf of their respective agency/organization to enter into the obligations set forth in this agreement.

NACVSO

ED Zackery
National Service Director
(Past President 16-18)



Signature 9/29/2021

Michael Frueh
Principal Deputy Under Secretary for Benefits



Signature
9/30/2021

Date