



THE AMERICAN LEGION

SERVICE OFFICER CODE OF PROCEDURE

One of the most important responsibilities of the accredited representative is to ensure that the claimant receives Due Process under the laws and regulations of the Department of Veterans Affairs (VA). Once a Power of Attorney (VA Form 21-22) has been completed designating The American Legion as representative, there exists a legal obligation to assist claimants in the development and submission of evidence and claims. Thank you for your service to our nations veterans; your service to our nation's veterans and their family members is critical in their pursuit of benefits.

Louis J. Celli, Jr., Director
National Veterans Affairs and
Rehabilitation Division

This edition of the Code of Procedures, approved November 11, 1954, by the Department Service Officers and the National Veterans Affairs and Rehabilitation Commission, as revised June 9, 1958, April 26, 1973, July 21, 1975, June 23, 1978, August 8, 1983, July 24, 1992, May 1, 1996 and July 15, 2000, contains both minor and major modifications. Most changes have been added or modified for clarification purposes. The current revisions, for the most part, are restatements of existing Legion policy, Department of Veterans Affairs laws and regulations, and Court of Appeals for Veterans Claims holdings.

CONTENTS

	Page
Foreword	1
Recognition of Representative or Organization.....	1
1. Power of Attorney (POA).....	2
Detrimental or Contested Claims (NOTE-1).....	2
Dependent's POA (after veteran's death) (NOTE-2)	2
VA Form 21-22 (a).....	3
Who may be represented (b).....	3
Disclosure of Information to local representatives (c)(d)	3
County Veterans Service Representatives (d)(e)	3
Representative assisting claimant not accredited with The American Legion (d) (NOTE-3).....	3
State Organization POA (NOTE-4).....	3
Representative's Liability (g) (Paragraph 1)	5
Revoking a POA (g) (Paragraph 2)	5
What SO's cannot sign (h).....	5
Changing a POA	5
2. Confidential Nature of Claims	6
3. Penalties for Certain Acts	6
4. Contested Claims	6
5. Policy of the National VA&R Commission.....	7
Dual Representation (General) (A.).....	7
For Departments.....	7
Department-Level Policy Information (a).....	7
Dual Representation (CAVC) (B.)	7
Administrative Reviews (e)	8
Timely Filing of Claims (c)	8
Legal or Medical Opinions (e) (NOTE-6).....	8
Copies of BVA Decisions (f)	8
Court of Veterans Appeals Representation (g)	8
Discharge Review & Records Correction (h)	9
Social Security Representation (i)	9
(2) Representatives of other agencies who are accredited to The American Legion	9
(3) Insurance	10
Addendum 1 to Code of Procedure.....	11

THE AMERICAN LEGION CODE OF PROCEDURES

The following Code of Procedures (Code) has been adopted by all Departments of The American Legion and the National Veterans Affairs and Rehabilitation (VA&R) Commission through passage of Resolution 25 at the Spring Meeting of the National Executive Committee, Indianapolis, Indiana in May 2015. Adoption of the code assists in the processing of claims through proper channels and to facilitate the handling of rehabilitation matters.

In the preparation of the Code, consideration has been given to functions and status of The American Legion Service Officers, as well as representatives of other agencies accredited to The American Legion. It is important that all concerned are aware of the necessity to communicate to claimants the extent and limitation of representation to be provided by The American Legion.

Under U.S. laws and regulations, the final burden of proof in establishing a claim for Department of Veterans Affairs (VA) benefits rests with the claimant. The Veterans Claims Assistance Act and decisions of the United States Court of Appeals for Veterans Claims (CAVC or Court) have made it clear that VA has a legal obligation to assist the claimant in the development of certain information and evidence in a claim and to provide notice of a claimant's due process rights. The American Legion Service Officers at the local, county, or department level, must endeavor to explain to those seeking their advice and assistance with a claim, either in writing, in person, or by telephone, the eligibility criteria for the benefit sought, the evidence necessary to support the filing of an original or reopened claim, and the process by which the claim will be adjudicated including appellate procedure.

It is believed the Code will help ensure that persons seeking assistance from The American Legion are directed to the office best able to provide the service or information required. The acceptance of, and adherence to the Code by all concerned will enable the organization to make available the best possible service to claimants designating The American Legion as their accredited representative.

RECOGNITION OF REPRESENTATIVE OR ORGANIZATIONS UNDER TITLE UNITED STATES CODE (38 U.S.C § 5902)

The Secretary [of Veterans Affairs] may recognize representatives of the American Red Cross, The American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as he may approve, in the preparation, presentation, and prosecution of claims under the laws administered by the Secretary.

The Secretary may, at his discretion, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

No individual shall be recognized under this section—

- unless he or she has certified to the Secretary that no fee for compensation of any nature will be charged to any individual for services rendered in connection with any claim; and
- unless, with respect to each claim, such individual has filed with the Secretary a power of attorney, executed in such manner and form as the Secretary may prescribe.

1. POWER OF ATTORNEY

Before The American Legion may be recognized by the VA as the claimant's representative, VA Form 21-22, "APPOINTMENT OF VETERANS SERVICE ORGANIZATION AS CLAIMANTS REPRESENTATIVE", also known as the Power of Attorney (POA) form, must be completed designating "The American Legion" as the **only representative**, and be signed by the claimant or fiduciary.

A POA may be accepted by The American Legion only from individuals in the following categories: (1) the veteran; (2) an incompetent veteran's legally constituted guardian or spouse, parent, other near relative, or manager of a hospital or institution in which such veteran is maintained. In the event that The American Legion is notified that a guardian is appointed by a court of competent jurisdiction, the POA remains in effect. Upon notice of guardianship; The American Legion will notify guardian and request guardian to sign POA as guardian, (3) a deceased veteran's dependents or designated beneficiaries, or, if incompetent, the fiduciaries of such persons; and (4) persons entitled to reimbursement for expenses incurred in connection with the last sickness and burial of the veteran.

NOTE-1: It is contrary to the policy of The American Legion to accept POA from any person whose interests are detrimental or adverse to those of the veteran, regardless of the fact The American Legion does not hold POA from the veteran. In addition, accredited representatives of The American Legion may not participate in the prosecution of a claim in which two or more persons are claimants for the same monetary benefit. This includes cases that can be reasonably expected to become contested, such as, a claim for apportionment by an estranged spouse, as well as those that are "simultaneously" contested. (Also see section in Contested Claims).

NOTE-2: When advocating for a dependent's claim subsequent to the death of a veteran whose POA was held by The American Legion, be sure to obtain a new POA since the vet-

eran's POA coverage for dependents is limited. See 38 C.F.R. § 14.631(e).

- a) The POA (VA Form 21-22), now contains a section, #13, asking veterans to authorize the VA to release information *“relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV) or sickle cell anemia”* to the service organization named in #3. In item #14, the claimant must specify the disability(ies) he or she is allowing the VA to release.
- b) The new POA form no longer authorizes a local organization to receive information from the Veteran's record. The American Legion can release information to any **local accredited representative**; however, as a precaution we recommend the veteran sign a copy of the attached “Release of Information” form as an addendum.
- c) It is to be recognized that County Veterans Service Officers (CVSO) can be helpful in obtaining information for use in developing and presenting claims. The CVSO, however, need not be accredited to any organization to perform this function. In most cases, he or she serves as a point of contact and local case officer. VA accreditation is predicated upon the expertise and supervision of those who represent claimants personally before the VA in the review and presentation of cases at the VA Regional Office (VARO) in the name of The American Legion.

NOTE-3: If a service officer assisting a claim is not accredited with the service organization holding POA, he or she cannot sign their own name to a Notice of Disagreement or Substantive Appeal. The only valid signatures in these instances are the claimant, the claimant's legal guardian, or the accredited representative holding the POA. See 38 U.S.C. § 7105 (B) (2).

NOTE-4: When the claimant wants The American Legion to represent him or her in an appeal before the Board of Veterans' Appeals (BVA or Board), and POA of record is in the name of the Recognized State Organization, a new POA designating only “The American Legion” must be completed. Preferably, this should be completed before the case is transferred to the BVA.

The use of the State Organization/The American Legion on the VA Form 21-22 is not valid pursuant to 38 U.S.C. § 7105(b) (2); 38 C.F.R. §§ 14.631, 20.601. The CAVC decision in *Leo v. Brown*, 8 Vet.App. 410 (1995), has had a significant impact on POA designation.

- d) VA regulations give broad latitude on the method to be pursued in the preparation, presentation, and prosecution of claims under the authority given by the veteran in filing a VA Form 21-22. However, The American Legion, as the

recognized service organization, may refuse to work with secondary parties i.e., CVSOs, if it appears to be contrary to the best interest of the claimant.

- e) The American Legion may require all CVSOs to work through The American Legion Department Service Officer (DSO). This will help ensure the orderly representation of claimants. As a practical matter, many designated DSOs are, in fact, State Civil Service employees. As such, representation in the name of The American Legion is provided through such State organizations, which direct or cooperate with county and local agencies that may or may not be accredited to the State organization.

If a POA is revoked, The American Legion representative should make a good faith attempt to find alternative representation for the claimant. Remember, all claimants are entitled to fair and qualified representation, and sometimes the very nature of the claimant's illness can make working relationships challenging. When The American Legion accepts a POA from an eligible claimant, it assumes an obligation to provide "fair representation" and assistance and counseling to ensure that the claimant receives full Due Process. "Fair representation" means taking no act inconsistent with the furtherance of the claimant's interest. There is also an obligation to the claimant not to make any unauthorized disclosures of information, as the custody of records is privileged and private and they must be guaranteed. Although accredited representatives of The American Legion perform such services without fee, they may be subject to civil litigation.

- f) It should be understood, however, that The American Legion does reserve the right to revoke a POA at any time. The following are examples of reasons for withdrawing representation:

1. Tampering or altering of evidence, or providing false information of evidence;
2. Refusal to cooperate or establish a satisfactory and effective working relationship with the representative;
3. Threats or acts of violence towards the representative and co-workers, the Department and National Organizations, or VA personnel;
4. Harassment of representatives either by phone or in person;
5. Further representation may give rise to conflict of interest or violation of privacy;
6. The claim has no basis in law or fact in which it can be granted;

7. The benefits being received are contrary to law or regulation;
8. Representation of a co-worker or friend can present the risk of inadvertent disclosure of confidential information. It may also create unreasonable expectations and disappointments.

To revoke a POA before the claim is in appellate status, see 38 C.F.R. § 20.608(a).

It must be kept in mind that representation cannot and should not be withdrawn because of personal prejudice and discomfort. Questions concerning withdrawal of a POA should be brought to the attention of the DSO for approval. Efforts to assist claimants in securing representation should be taken should POA revocation occur. If a problem continues it should be referred to the Director of the National VA&R Division.

g) Please note a 1992 General Counsel opinion (VAOPGCPREC 11-92) determined that a veterans service organization representative, agent or attorney is not authorized to sign:

(1) an application for compensation or pension benefits, VA form 21-526, or

(2) an Eligibility Verification Report

on behalf of the claimant despite a properly executed appointment form (Power of Attorney).

It was also held that where a claimant's or beneficiary's duly appointed representative submits erroneous information on behalf of the claimant or beneficiary pertaining to eligibility or benefit rates, the claimant is responsible for any overpayment occurring as a result of the information supplied.

CHANGING POA WHILE A CASE IS IN APPELLATE STATUS

The VA&R Commission does not desire to accept POA while another service organization is actively representing a claimant whose case is in appellate status, either at the VARO or before the BVA. It is, therefore, recommended that the claimant be discouraged from changing POA while an appeal is pending. If the claimant insists, and if The American Legion representative believes this organization can be of material assistance to the claimant, the change may be accepted by a good cause motion, in writing, from the claimant¹. This also includes any appeals remanded to the RO by the BVA or remanded by the Court to the BVA. The fact that The American Legion accepts the POA does not guarantee that it will be accepted by the VA in conjunction with the current appeal².

¹ <http://www.gpo.gov/fdsys/pkg/CFR-2011-title38-vol2/pdf/CFR-2011-title38-vol2-sec20-1304.pdf>

² <http://www.gpo.gov/fdsys/pkg/CFR-2011-title38-vol2/pdf/CFR-2011-title38-vol2-sec20-1304.pdf>

2. CONFIDENTIAL NATURE OF CLAIMS (38 U.S.C. § 5701(a))

All files, records, reports and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of current or former personnel of the armed services and their dependents, in possession of the Department shall be confidential and privileged, and no disclosure thereof shall be made.... (All amended Public Law citations have been omitted).

NOTE-5: The American Legion office files are confidential. Requests made by the claimant for documents that may be in The American Legion office file must be in writing and signed by the claimant. This is especially true where when requests are received from family members or friends who may be assisting the claimant.

3. PENALTY FOR CERTAIN ACTS (38 U.S.C. § 5905)

Whoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.

4. CONTESTED CLAIMS

a) Accredited representatives of The American Legion may not participate in the prosecution of a contested claim or one that may reasonably become contested. This policy was restated by resolution.

In part, it reads as follows:

b) In those contested cases where the claimant has been advised that The American Legion cannot provide representation, but does not wish to cancel POA with respect to other claimed issues, it is suggested that the following statement be placed in the VA claims folder, either by letter, memorandum, or VA Form 646:

“This is a simultaneously contested claim, and, as such, cannot be participated in by The American Legion. The claimant has been notified but does not desire to revoke the current POA on other than the contested benefit.”

c) Uniform adherence to this policy and procedure will avoid embarrassment to The American Legion, as well as give claimants involved in contested cases the opportunity to assign POA to an organization that does afford representation under such circumstances.

5. POLICY OF THE NATIONAL VA&R DIVISION

- a) Dual Representation: Where a claimant designates The American Legion as representative and subsequently retains an attorney to represent him or her in a specific claim before the VA, without canceling VA Form 21-22, accredited representatives of The American Legion may not provide representation in any claim for VA benefits. In these cases, the policy of the VA&R Commission prevents representation or participation³.
- b) The only exception to the above is in cases appealed to the Court. If The American Legion holds POA for a claimant who has retained an attorney in conjunction with a CAVC appeal, and the claimant files a separate claim for other benefits at the VARO, The American Legion may represent the claimant at the VARO or BVA..
- c) The following are general procedures in claims and correspondence involving the National VA&R Commission:
1. For Departments
 - i. Policy matters requiring consideration and action by the National VA&R Commission will be forwarded to the:
Director
National Veterans Affairs and
Rehabilitation Division
The American Legion
1608 K Street, NW
Washington, DC 20006
Action will be taken on such matters when submitted or referred by:
 1. A National Convention;
 2. The National Executive Committee;
 3. The National Commander, National Adjutant, and any National Officer;
 4. Department Commanders and Adjutants, Department Service Officers and VA&R Directors, and other officials or individuals designated by the Department Commander or Adjutant.
 - ii. All The American Legion Service Officers shall clear claims and related matters through their respective DSO.
 - iii. Routine claims and those claims in which a time element is involved are to be filed directly with the VA by the DSO's. They should request that the VA furnish them with copies of correspondence and decisions in

³ <http://www.gpo.gov/fdsys/pkg/CFR-2011-title38-vol11/pdf/CFR-2011-title38-vol11-sec14-631.pdf>

connection with these claims. Keep in mind the most important point is ensuring that a preservation of effective date occurs.

- iv. Correspondence and claims from individual claimants or local service officers received by the National VA&R Division shall be referred to the DSO concerned for appropriate action.
- v. An administrative review of VARO decisions is a function of the VA Compensation and Pension (C&P) Service at the VA Central Office. DSOs asking the Director of the National VA&R Commission to obtain temporary transfer of a claims folder to Washington, D.C., for review by VA&R staff, should include in the request **a written brief of the relevant facts and reasons for disagreement with the VA field office decision**. Copies of VA correspondence and the decision received by the Director will be sent to the DSO who originated the request for review.

NOTE-6: All requests for legal or medical opinions from the National VA&R Division staff should also be in the form of a detailed written brief. The claims folder need not accompany the request as long as sufficient information is provided.

- vi. Even though cases certified to the BVA in which The American Legion holds POA are seen by the VA&R Appeals Representatives, this does not preclude a DSO from sending a letter with additional comments on the merits of the case to the Legion BVA Unit after the case has been transferred to the BVA. Currently, the “official” copies of BVA decisions will be mailed by the BVA to the claimant and The American Legion Headquarters/BVA Unit pursuant to the CAVC holding in *Trammell v. Brown*, 6 Vet. App. 181, 182-83 (1994). Courtesy, or “red arrowed,” copies of the decisions will be sent to the DSOs by VA flat mail. The CAVC decision of *Leo v. Brown*, 8 Vet. App. 410 (1995), may have an impact on this mailing procedure involving cases that do not have POAs designating only “The American Legion” as the representative.
- vii. The American Legion policy regarding representation at the CAVC provides that The Legion may, in a limited number and category of cases, represent veterans before the Court. However, these cases involve precedential issues affecting large numbers of veterans. The American Legion has a contract with the National Veterans Legal Services Program (NVLSP) to provide such representation.

Due to The American Legion’s policy of taking only

selected issues to the Court, it is important that DSOs apprise claimants of the Court's 120-day (from the date of the BVA decision being appealed) filing deadline for an appeal. The claimant must be able to make arrangements in the event the case does not fit into the category of cases that The American Legion would consider pursuing at the Court.

Remember, an appeal to the Court may be withdrawn once it has been filed, but an appeal filed after the 120-day time limit may deprive the veteran of CAVC review. Written requests for initial review of a BVA decision by VA&R staff to determine if a case fits into the Legion's overall program for litigation may be submitted by the DSO. These requests should be directed to The American Legion Washington Office, Attention: Deputy Director for Claims. In all instances, an expeditious written response will be provided. If a case is not accepted and there appears to be a basis for further action or development by VA, specific recommendations will be made.

viii. Applications by individual claimants to local service officers for review of military discharge (DD Form 293) and for correction of military records (DD Form 149) should be sent to the proper DSO, who will then process the application through the Director, National VA&R Division. Copies of correspondence and decisions will be furnished by the Director only to the interested DSO.

The American Legion does not provide representatives for individuals seeking benefits from Social Security Administration.

2. Representatives of other agencies who are accredited to The American Legion

- i. To facilitate the activities of the VA&R Division, key Service Officers may be designated by their Department as the one to deal with questions relating to the Department's policy on claims and related matters. The key person, certified by the Department, must be accredited to The American Legion and must be located at or in close proximity to the VARO. One key person for each VARO will be recognized and their name, address and phone number included on the List of Department Service Officers maintained by the VA&R Division.
- ii. Service officers of other agencies, if authorized by The American Legion Department, may present policy matters to the Director, National VA&R Division.

Concerns surrounding claims and the advocacy of benefits

should be addressed with the state's DSO.

3. Department of Veterans Affairs (Insurance)

- i. The Chief Insurance Activities of the National VA&R Division's Staff, located at the VA Insurance Center in Philadelphia, Pa., is charged with the responsibility of handling insurance policy and claim matters with the VA. The VA&R Division also has a staff located at the St. Paul, Minn., VA Center, which has responsibility for policy and claim matters concerning the VA Debt Management System.

The Chief, Insurance Activities, handles all VA Insurance claims and transactions for veterans and their beneficiaries who have representation through The American Legion for their VA benefits. Insurance activities include Death (Policy Settlement) claims, applications for new insurance in the VA's Service-Disabled Insurance programs, both Basic and Supplemental issues, disability claims for waivers for premiums, reviews of Insurance application disapprovals, beneficiary guidance and updates, outreach contacts with veterans and beneficiaries on insurance applications, options and timeliness, and suspense reviews of all ongoing casework until final completion. Insurance activities also include transactional matters such as policy loans and cash surrenders, dividend transactions, and policy updates. The Chief, Insurance Activities, also provides information, guidance and coordination with senior VA Insurance Center staff as needed for the National Organization on major insurance policy actions and proposed American Legion resolutions and insurance legislation. Information and guidance is also provided to Department and Veterans Service Officers as requested nationwide.

- ii. Generally speaking, DSOs/VSOs will file all insurance claims, inquiries and policy matters related to contracts for government life insurance directly with the National VA&R Division insurance office at the Philadelphia VA Center. This office will ensure these matters are fully processed by the VA and that the DSOs/VSOs receive copies of all correspondence and decisions.

Special attention should be given to the following:

- d) Inquiries or claims concerning service members of Veterans Group Life Insurance which represent special problems may also be referred to the VA&R Division office in Philadelphia, as the VA Insurance management staff at the center has supervisory authority over these programs. The VA&R insurance staff will keep the involved service officers fully

informed of actions and requirements in these cases and keep a log of such activities.

- e) Designated Veterans Service Officers of other agencies who are accredited to The American Legion may refer claims and inquiries on insurance matter to the Chief Insurance Activities of the National VA&R Division staff in Philadelphia in the same manner as outlined for DSOs.

ADDENDUM 1 TO CODE OF PROCEDURE

Fugitive Felons

The law prohibits the payment of almost all VA benefits to veterans and to the dependents of veterans while they are fugitive felons⁴.

Under 38 U.S.C. § 5313b(b):

- A fugitive felon is a person who “is fleeing to avoid prosecution, custody or confinement for a felony and includes a person who is a fugitive by reason of violating a condition of probation or parole imposed for commission of a felony”.
- The term “felony” includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.
- The term “dependent” means a spouse, surviving spouse, child, or dependent parent of a veteran.

Special due process protections apply in cases where the VA proposes to reduce or terminate running awards. These protections apply even when the VA determines that a beneficiary is a fugitive felon. The VA is obligated to notify the beneficiary of the proposed termination before benefits are stopped⁵.

In the opinion of The American Legion, VA letters to fugitive felons should include the following:

1. The effective date of the proposed termination or suspension of benefits.
2. The fact that the beneficiary is considered a fugitive felon, according to VA.
3. The reason why VA believes that the beneficiary is a fugitive felon (for example, an outstanding warrant for the arrest of the veteran).
4. A citation to the law that authorizes the termination or suspension.
5. A request to the beneficiary for information that would

⁴ <http://www.gpo.gov/fdsys/granule/USCODE-2011-title38/USCODE-2011-title38-partIV-chap53-sec5313B>

⁵ <http://www.gpo.gov/fdsys/pkg/CFR-2011-title38-vol1/pdf/CFR-2011-title38-vol1-sec3-103.pdf>

tend to show the beneficiary is not a fugitive felon (for example, the beneficiary could provide a phone number of an official who can verify that the beneficiary is not a fugitive felon).

6. How and where the beneficiary can contact VA.
7. An explanation of how VA benefits can be resumed (for example, if the warrant is cleared by arrest or dismissal).
8. An explanation as to the one-year time limit to reopen their claim after release or dismissal.
9. An explanation as to why VA will wait 60 days (for the beneficiary to submit evidence showing why VA should not stop benefits) until taking action to stop the beneficiary's payments. How the beneficiary can submit evidence showing why benefits should not be stopped (by mail, through a representative or in person).
10. An explanation of why an overpayment may be created and how the beneficiary can avoid the creation of an overpayment.
11. Notice to the beneficiary that he or she has the right to representation and the right to a hearing.
12. Notification to the Service Organization representing the veteran.

It is not the policy of The American Legion to assist the Department of Veterans Affairs or law enforcement officials in capturing any fugitive felons. Our focus is and should remain to be as service officers providing assistance with VA issues and benefits. If contacted by any officials requesting our assistance in bringing a veteran in for arrest, you should contact National Headquarters and speak with either the Executive Director, the Director of VA&R or Deputy Director of Claims immediately.

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Periodically, veterans may wish to have you release information to outside organizations, such as county veterans service organizations. To ensure that you are protected from potential liability associated with the release of the information, we ask that the veteran completes a form acknowledging that they are directing the accredited representative to release the information. The form can be located at:

www.legion.org/documents/legion/pdf/VSO_Release_Form.pdf



THE AMERICAN LEGION

1608 K St. NW
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(202) 861-2700

 www.legion.org

National Headquarters Contact Information:

VA Policy/Claims: (202) 263-2985

VA Insurance: (215) 381-3022

VA Pension: (215) 381-3022

Debt Management Center: (612) 970-5660