

**SUPPORTING STATEMENT FOR**  
**OMB CONTROL NUMBER 2900-0042**

**A. Statement of Accredited Representative in Appealed Case**

**1. Necessity**

VA Form 646, "Statement of Accredited Representative in Appealed Case," provides a convenient form that a claimant's representative may use to represent the claimant regarding their appeal before the Board of Veterans' Appeals (BVA or Board). Claimants have a right to representation in all stages of the appeal process. *See* 38 U.S.C. § 7105(a); 38 C.F.R. § 20.600. The completed form provides a summary of the claimant's contentions. The information requested on this form is solicited under 38 U.S.C. § 7105(a) and (b)(2).

**2. How, by Whom, and for What Purpose the Information is to be Used**

This form, when completed, is a vehicle that an appellant's representative may use to present information concerning the appeal. The information is used by the Board to identify the issues in dispute and prepare a decision responsive to the appellant's contentions and the legal and factual issues raised. Further, it aids the BVA in assuring that rights to representation have been honored by establishing that the record has been made available to the representative for review and presentation of argument.

**3. Use of Information Technology**

A blank copy of the form is currently available to the public over the Internet for download and/or printing at:

<http://www.va.gov/vaforms/>

The veteran's representative may fill out the form on the computer before printing it and mailing it to the Board. Although the Board has explored the option of electronic submission, the Board finds that this is not a viable option at the present time for various reasons. First, the adjudication process relies solely on the presence of paper documents reflecting the various stages of an appeal. The Form 646 must be in paper form so that it can be associated with the appellant's "claims file," which contains all paperwork related to the appellant's appeal. Second, it would be prohibitively expensive to implement electronic submission of the document due to additional personnel costs associated with development, maintenance and management of a system. Finally, electronic signature and related security issues are long-term goals which are being addressed within VA. Until a secure method of accepting and authenticating electronic signatures is developed for use within VA, electronic submission of VA Form 646 is not feasible.

#### **4. Description of Effort to Identify Duplication**

There is no duplication of information gathered. The information, which is unique in each case, is not available elsewhere in VA and can only be obtained from the respondent.

#### **5. Description of Methods Used to Minimize Burden**

Some appellant's representatives, such as some small service organizations or attorneys-at-law doing business in solo practices or small firms, might qualify as small entities. However, the information requested is minimal and is the least required for the protection of appellants' rights and the fulfillment of statutory requirements. Further, it requires only essential data needed to identify the particular case to which it pertains and any argument that a representative voluntarily chooses to submit. There have been no complaints regarding difficulty in completing the form and the use of the form is well understood. Failure to provide the form would, in fact, increase respondent burden, for respondents would then need to devise other methods of conveying desired argument to VA and the Board.

#### **6. Description of the Consequence if the Collection were Conducted Less Frequently**

The failure to provide this form could lead to due process defects in appeals reaching the Board. This could result in time-consuming delays in the appellate process including remanding cases to document that a claimant's representative has been extended an opportunity to make a presentation on the claimant's behalf. The burden to individual respondents is minimized, inasmuch as the amount and frequency of information collected is the minimum required under the circumstances.

#### **7. Special Circumstances**

This collection complies with 5 CFR § 1320.5(d)(2) criteria.

#### **8. Consultation Outside the Agency**

Comments were solicited in compliance with 5 CFR 1320.8(d). *See* 71 Fed. Reg. 17563 (2006). No comments were received.

#### **9. Payment or Gifts to Respondents**

No payments or gifts are provided to respondents.

#### **10. Description of Confidentiality**

VA has complied with the provisions of 38 U.S.C. § 5701 and the Privacy Act of 1974 (5 U.S.C. § 552a). Assurances of confidentiality are provided in the system of records identified as "Compensation, Pension, Education and Rehabilitation Records—VA" (58VA21/22) established at 41 FR 9294 (3/3/76), and last amended at 67 FR 66457 (10/31/02).

## **11. Sensitive Questions**

This information “collection” does not employ questions of a sensitive nature.

## **12. Estimation of Respondent’s Reporting Burden**

Approximately 30,462<sup>1</sup> VA Form 646s are filed each year. Representatives have wide discretion in the amount of time spent in preparing the form. They may simply provide identifying data and furnish a few brief paragraphs describing the basis of their disagreement with the denial of VA benefits. Most representatives use this approach. On the other hand, a claimant’s representative may choose to spend several days researching the facts and the law and writing a detailed appellate memorandum. With this in mind, the Board’s best estimate would be that an average of one hour is spent in preparation of the form.

Forms may be completed by an appellant’s representative, whose earning capacity covers an extremely wide spectrum. Representatives may be employees of recognized veterans’ service organizations who provide appellate services as part of their overall free services to veterans, or they may be attorneys-at-law or accredited agents who may charge a fee. We have used \$26.05 per hour as the estimated hourly cost.<sup>2</sup> VA estimates the annualized burden hour cost to respondents as follows:

<b><u>No. of Responses</u></b>	<b><u>Hours per Response</u></b>	<b><u>Total Hours</u></b>	<b><u>Cost per hour</u></b>	<b><u>Total Cost</u></b>
30,462	1	30,462	\$26.05	\$793,535.10

## **13. Estimate of Annual Cost Burden to Respondents or Recordkeepers from Collection of Information**

There should be no costs to respondents other than those identified in question 12. No ongoing accumulation of information, or special purchase of services, supplies or equipment, is required.

## **14. Annual Cost to the Federal Government**

<sup>1</sup> During FY 2005, 34,175 decisions were rendered by the Board. Of those decisions, 3,713 were issued to non-represented veterans. The number of Form 646s filed in FY 2005 is approximately the number of decisions rendered of 34,175 minus the number of non-represented veterans, 3,713.

<sup>2</sup> This figure is equal to the wage and salary component of the average employer costs for employee compensation for civilian workers in private industry and State and local government in the United States. United States Department of Labor Bureau of Labor Statistics News Release 05-2279, December 9, 2005. <<http://www.bls.gov/news.release/ecec.nr0.htm>> The assumption is that most fringe benefits are covered by existing employment and that theoretical lost opportunity income would likely not produce significant additional fringe benefits.

Responses are reviewed by VA Regional Office Rating Specialists in the course of the adjudication of claims, by BVA attorneys in preparing recommended appeal dispositions for review by BVA Veterans Law Judges, and by BVA Veterans Law Judges in deciding appeals. Responses are maintained in preexisting VA claims files.

<b><u>Position &amp; Grade</u></b>	<b><u>Hourly Rate</u></b>	<b><u>Hours</u></b>	<b><u>Other Cost</u></b>	<b><u>Total</u></b>
VA Regional Office Rating Specialist-GS 12/3	\$30.96 <sup>3</sup>	7,615 (reviewing 30,462 responses at 1/4 hour each)		\$235,760.40
BVA Attorney / Adviser-GS 13/3	\$38.22 <sup>4</sup>	7,615 (reviewing 30,462 responses at 1/4 hour each)		\$291,045.30
BVA Board Member-AL3/B	\$55.91 <sup>5</sup>	7,615 (reviewing 30,462 responses at 1/4 hour each)		\$425,754.65
VA Publication Staff – GS 13/8	\$42.57 <sup>6</sup>	¼ hour <sup>7</sup>		\$10.64
<b><i>Total Costs</i></b>				\$952,570.99

## **15. Explanation for Program Changes or Adjustments**

<sup>3</sup> Salary Table 2005-RUS, Office of Personnel Management.

<sup>4</sup> Salary Table 2005-DCB, Office of Personnel Management.

<sup>5</sup> 2005 Locality Rates of Pay for Administrative Law Judges and Members of Boards of Contract Appeals, Office of Personnel Management--Washington-Baltimore, DC-MD-VA-WV. Annual rate of \$116,676 divided by 2,087 hours.

<sup>6</sup> Salary Table 2005-RUS, Office of Personnel Management.

<sup>7</sup> The estimated amount of time it takes to maintain an electronic version of VA Form 646 on the world-wide web annually.

The adjustment in burden is caused by an increase in the number of appeals filed by appellants represented by a veterans' service organization.

**16. Tabulation, Statistical Analysis, and Publication Plans**

The results of this information collection will not be published for statistical use. Board decisions are made available through the Internet to assist in complying with 5 U.S.C. § 552(a)(2).

**17. Reason for Seeking Approval Not to Display Expiration Date for OMB Approval of the Information Collection**

VA Form 646 does not display an expiration date. If VA were required to display a date on the form, it would result in unnecessary waste of existing stocks every three years. As such, the date requirement may also result in an unnecessary burden on the respondent. VA also seeks to minimize its cost to itself of collecting, processing, and using the information by not displaying the expiration date. For the reason stated, VA continues to seek an exemption that waives the displaying of the expiration date on VA Form 646. Furthermore, the control number is currently displayed on the form and in the applicable regulation, 38 C.F.R. § 20.202.

**18. Exception to the Certification Statement**

The retention period for recordkeeping requirements is not stated in this collection because there are no such requirements. Statistical survey methodology does not apply. Otherwise, no exceptions. This submission does not contain any exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB Form 83-I.

**B. Collection of Information Employing Statistical Methods**

The Board of Veterans' Appeal does not collect information employing statistical methods.