

## **SUPPORTING STATEMENT FOR**

**OMB CONTROL NO. 2900-0674**

### **CLARIFICATION OF NOTICE OF DISAGREEMENT**

#### **A. Justification**

##### **1. Necessity**

A Notice of Disagreement is a written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction (AOJ) and a desire to contest the result. (38 U.S.C. § 7105; 38 C.F.R. § 20.201) A claimant, or his or her representative, must file a Notice of Disagreement with a determination by the AOJ within one year (or 60 days in the case of simultaneously-contested claims) from the date that that agency mails notice of the determination to him or her. (38 U.S.C. § 7105(b)(1); 38 C.F.R. § 20.302)

When a Notice of Disagreement is timely filed, the AOJ must reexamine the claim and determine if additional review or development is warranted. (38 U.S.C. § 7105, 7105A; 38 C.F.R. § 19.26)

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

The information is used by the AOJ to identify the issues in dispute and to prepare a Statement of the Case. The claimant generally has 60 days from the issuance of the Statement of the Case to file a Substantive Appeal. If the claimant files a Substantive Appeal (known as perfecting an appeal), the claim is certified to the Board of Veterans' Appeals (Board or BVA) for adjudication.

The information in the Notice of Disagreement is used by the Board to determine that it has proper jurisdiction over the appeal (i.e., that the Notice of Disagreement was timely filed) and to identify the issues on appeal. If the claimant has presented arguments in the Notice of Disagreement, the Board weighs these arguments in deciding the appeal.

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### **3. Use of Information Technology**

Although the Board has explored the option of on-line filing, the Board finds that this is not a viable option since the adjudication process relies solely on the presence of paper documents reflecting the various stages of an appeal. The Notice of Disagreement must be in paper form so that it can be associated with the respondent's "claims file," which contains all paperwork related to the respondent's appeal. Without a paper copy of the Notice of Disagreement in the claims file, the respondent will not have a valid appeal. In other words, the submission of the Notice of Disagreement is a legal requirement, as dictated by 38 U.S.C. § 7105 and 38 C.F.R. § 20.302, which does not allow for the option of electronic filing.

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

The information in this collection is unique to each case. Information that is only "similar," should it exist, would be irrelevant.

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

Some claimant'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 a claimant's appellate rights and the fulfillment of statutory requirements.

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

The information is obtained in connection with specific individual appeals and is required by law for each appeal. The frequency of collection depends solely upon the desire of VA claimants to appeal VA benefits determinations. Failure to "collect" the information would result in loss of the right to appeal.

### **7. Special Circumstances**

This collection complies with 5 C.F.R. § 1320.5(d)(2) criteria.

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

Comments were solicited in compliance with 5 C.F.R. § 1320.8(d). *See* Federal Register dated November 12, 2008, page 66960-66961.

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

None.

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

VA complies 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), 66 FR 47725 (9/13/01), and 70 FR 6079 (2/4/05).

### **11. Sensitive Questions**

None of the questions on this form are considered to be of a sensitive nature.

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

Approximately 113,539 Notices of Disagreement were filed in fiscal year 2008. Respondents have wide discretion in the amount of time spent in preparing the Notice of Disagreement. They may simply identify, in writing, the issues with which they are in disagreement. Some may add a few sentences explaining why they are in disagreement. Most respondents use this approach. On the other hand, a respondent may write several pages explaining why he or she is in disagreement with the decision. With this in mind, the Board’s best estimate would be that an average of one hour is spent in preparation of the Notice of Disagreement.

Notices of Disagreement may be written by individual respondents, whose earning capacity covers an extremely wide spectrum, or by their representatives. Representatives may, in turn, 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

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may charge a fee. We have used \$28.48 per hour as the estimated hourly cost.<sup>1</sup> VA estimates the annualized burden hour cost to respondents as follows:

<b>No. of Responses</b>	<b>Hours per Response</b>	<b>Total Hours</b>	<b>Cost per hour</b>	<b>Total Cost</b>
113,539	1	113,539	\$28.48	\$3,233,591

**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**

All responses are reviewed by VA Regional Office Rating Specialists, typically a GS-12 step 3, in the course of the adjudication of claims. The reviews take approximately 15 minutes each, depending on the length of the Notice of Disagreement. As indicated in paragraph 12, most Notices of Disagreement are no more than a few sentences in length.

If the respondent perfects his or her appeal, the claim is certified to the Board and the Notice of Disagreement is reviewed by a Board attorney and Veterans Law Judge. In fiscal year 2008, the Board issued 43,714 decisions, indicating that 43,714 Notices of Disagreement were reviewed by Board attorneys and judges. The Board attorney reviews the Notice of Disagreement when preparing a recommended appeal disposition for review by the Veterans Law Judge. The Veterans Law Judge reviews the Notice of Disagreement when deciding the appeal. The Board attorneys and judges each spend approximately fifteen minutes reviewing the Notice of Disagreement, depending on its length and complexity.

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<sup>1</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 08-1271, September 10, 2008. <<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.

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<b>Position &amp; Grade</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Other Cost</b>	<b>Total</b>
VA Regional Office Rating Specialist-GS 12/3	\$33.38 <sup>2</sup>	28,384.75 (reviewing 113,539 responses at 1/4 hour each)		\$947,483
BVA Attorney / Adviser-GS 13/3 <sup>3</sup>	\$42.40	28,384.75 (reviewing 113,539 responses at 1/4 hour each)		1,203,513
BVA Board Member-AL3/B <sup>4</sup>	\$61.98	28,384.75 (reviewing 113,539 responses at 1/4 hour each)		1,759,287
			<b>Total Costs</b>	<b>\$3,910,283</b>

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

There are no program changes. Adjustments reflect an increase in the number of Notices of Disagreement filed by respondents.

**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 on websites located on the World Wide Web to assist in complying with 5 U.S.C. § 552(a)(2).

<sup>2</sup> Salary Table 2008-RUS, Office of Personnel Management.

<sup>3</sup> Salary Table 2008-DCB, Office of Personnel Management.

<sup>4</sup> 2008 Locality Rates of Pay for Administrative Law Judges, Office of Personnel Management-- Washington-Baltimore, DC-MD-VA-WV. Annual rate of \$129,352 divided by 2,087 hours.

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

VA understands that display is not required. The collection is contained in a regulation, 38 C.F.R. § 20.302. There is no VA form for submitting the information.

**18. Exceptions 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.

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

This data collection does not employ statistical methods.