

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 an appellant's representative may use to present written argument on behalf of their client's 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 appellant'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 Board in ensuring 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/>.

An appellant'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, this is not a viable option at the present time since the adjudication process still relies 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 paper "claims file," which contains all documents and evidence related to the appellant's appeal. Notably, VA is currently in the process of developing an electronic claims file. This process is in the pilot stages, and still undergoing refinement for more widespread use. This system will eventually allow for the electronic submission of VA Form 646 and various other forms used in the claims and appeals process. Part of that project also includes development of a secure method of accepting and authenticating electronic signatures. Electronic submission of VA Form 646 will be feasible in the future when these designs are complete.

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* Federal Register dated July 8, 2009, pages 32685-32686. There were no comments received in response to this notice.

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) republished in its entirety at 74FR14865 dated April 1, 2009.

11. Sensitive Questions

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

12. Estimation of Respondent’s Reporting Burden

Approximately 38,604¹ 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, an appellant’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 \$29.39 per hour as the estimated hourly cost.² VA estimates the annualized burden hour cost to respondents as follows:

<u>No. of Responses</u>	<u>Hours per Response</u>	<u>Total Hours</u>	<u>Cost per hour</u>	<u>Total Cost</u>
38,604	1	38,604	\$29.39	\$1,134,571.56

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.

¹ During FY 2008, 43,757 decisions were rendered by the Board. Of those decisions, 5,153 were issued to non-represented veterans. The number of Form 646s filed in FY 2008 is approximately the number of decisions rendered of 43,757 minus the number of non-represented veterans, 5,153.

² This figure is equal to 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 09-0634, June 10, 2009. <<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.

14. Annual Cost to the Federal Government

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.

<u>Position & Grade</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Other Cost</u>	<u>Total</u>
VA Regional Office Rating Specialist-GS 12/3	\$34.56 ³	9,651 (reviewing 38,604 responses at 1/4 hour each)		\$333,538.56
BVA Attorney / Adviser-GS 13/3	\$44.43 ⁴	9,651 (reviewing 38,604 responses at 1/4 hour each)		\$428,793.93
BVA Board Member-AL3/B	\$64.94 ⁵	9,651 (reviewing 38,604 responses at 1/4 hour each)		\$626,735.94
VA Publication Staff – GS 13/8	\$47.52 ⁶	¼ hour ⁷		\$11.88
Total Costs				\$1,389,080.31

³ Salary Table 2009-RUS, Office of Personnel Management.

⁴ Salary Table 2009-DCB, Office of Personnel Management.

⁵ 2009 Locality Rates of Pay for Administrative Law Judges, Office of Personnel Management--Washington-Baltimore, DC-MD-VA-WV-PA. Annual rate of \$135,553 divided by 2,087 hours.

⁶ Salary Table 2009-RUS, Office of Personnel Management.

⁷ The estimated amount of time needed to maintain an electronic version of VA Form 646 on the world-wide web annually.

15. Explanation for Program Changes or Adjustments

There are no program changes, but there is an adjustment. The adjustment in burden is caused by an increase in the number of appeals filed by represented appellants.

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 does not collect information employing statistical methods.