

## **SUPPORTING STATEMENT FOR**

**OMB CONTROL NO. 2900-0674**

### **NOTICE OF DISAGREEMENT**

#### **A. JUSTIFICATION**

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

Appellate review of the denial of Department of Veterans Affairs (VA) benefits is initiated by a claimant, or his/her representative, filing a Notice of Disagreement. 38 U.S.C.A. §§ 7105(a), (b)(2). A Notice of Disagreement is a written communication that expresses (1) dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction (AOJ) and (2) a desire to contest the result. 38 U.S.C.A. § 7105; 38 C.F.R. § 20.201. No special form or wording is required; however, the Notice of Disagreement must identify the specific determinations with which the claimant disagrees, and must be in terms that can be reasonably construed as disagreement with the AOJ's determination and a desire for appellate review. *Id.* If the AOJ receives a written communication expressing dissatisfaction or disagreement within one year (or 60 days for simultaneously contested claims) of mailing an adverse decision, but cannot clearly identify that communication as expressing an intent to appeal, or cannot identify which claims the claimant wants to appeal, then the AOJ will contact the claimant orally or in writing to request clarification of his/her intent. 38 C.F.R. § 19.26(b).

A claimant, or his or her representative, must file a Notice of Disagreement within one year (or in the case of simultaneously-contested claims, within 60 days) from the date that the AOJ mails the claimant notice of the determination with which he/she disagrees. 38 U.S.C.A. § 7105(b)(1); 38 C.F.R. § 20.302. When a timely Notice of Disagreement is filed, the AOJ must reexamine the claim and determine if additional review or development is warranted. 38 U.S.C.A. § 7105(d)(1); 38 C.F.R. § 19.26(a).

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

The information collected is used by the AOJ to identify the issues in dispute and prepare a Statement of the Case, which (1) summarizes the evidence in the case relating to the issues(s) with which the appellant disagrees, (2) summarizes the applicable laws/regulations and how they affect the determination, and (3) states the AOJ's determination on each issue and the reasons for each determination. 38 U.S.C.A. § 7105(d)(1); 38 C.F.R. § 19.29. The claimant generally has 60 days from the issuance of the Statement of the Case within which to file a Substantive Appeal. 38 U.S.C.A. §§ 7105(b)(1), (d)(3); 38 C.F.R. § 20.302(b). If the claimant subsequently files a timely Substantive Appeal (referred to as "perfecting an appeal"), the claim is certified to the Board of Veterans' Appeals (Board or BVA) for adjudication. *See* 38 U.S.C.A. §§ 7105(d)(3)-(5); 38 C.F.R. § 20.202. The information contained in the Notice of Disagreement is then used by the Board to determine whether it has proper jurisdiction over the appeal (*i.e.*, to verify that the Notice of Disagreement was timely filed), and to

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identify the issues on appeal. Additionally, where a claimant has presented arguments in his/her Notice of Disagreement, the Board considers and weighs these arguments when adjudicating the appeal.

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

VA is actively pursuing the development of an electronic claims processing system, which would provide claimants with the option of filing a Notice of Disagreement online. However, because the claims adjudication process currently relies solely on the presence of paper documentation reflecting the various stages of an appeal, this is not currently a viable option. Rather, the current claims processing system requires the Notice of Disagreement to be in paper form so that it can be associated with the respondent's "claims file," which contains all of the paperwork related to his/her 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 necessary to complete an appeal to the Board, as dictated by 38 U.S.C.A. §§ 7105(a) and (b) and 38 C.F.R. §§ 20.201, 20.300, 20.302(a), which does not currently allow for electronic filing. As such, electronic filing of the Notice of Disagreement would actually add a burden to the Federal Government, as any electronically submitted Notices of Disagreement would have to be printed out at the Federal Government's expense and then associated with the claims file.

#### **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, small service organizations or attorneys-at-law doing business as solo practitioners or at small firms, might qualify as small entities. However, insofar as the information requested is minimal and is the least required for the protection of a claimant's rights and the fulfillment of statutory requirements, the burden on these small entities is considered to be minimal.

#### **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. Failure to collect the information would result in the loss of the right to appeal. The frequency of collection depends solely upon the desire of VA claimants to appeal a VA benefits determination, and in that sense, is not controlled by VA.

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### **7. Special Circumstances**

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

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

In compliance with 5 C.F.R. § 1320.8(d), VA solicited comments from members of the public and affected agencies concerning the proposed Renewal of Information Collection Request for the Clarification of a Notice of Disagreement. *See* 77 Fed. Reg. 39, 12109 (Feb. 28, 2012). Specifically, VA requested comments on: (1) whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. *Id.*

VA received two comments from the public on the Renewal of Information Collection Request for the Clarification of a Notice of Disagreement. Of note, no comments were received regarding cost and/or hour burden. The first comment essentially argued that VA should not be wasting resources explaining the purpose of the Notice of Disagreement, and should instead focus on improving the assistance provided to Veterans during the appellate process once a Notice of Disagreement has been submitted (*i.e.*, assisting with evidence collection, providing medical examinations, and implementing a self-imposed deadline for issuing a Statement of the Case). The second comment essentially suggests that far fewer Notices of Disagreement would be filed if VA adopted a method of collecting feedback from Veterans regarding the adequacy of each VA examination (*i.e.*, implementing use of a questionnaire regarding whether the examiner properly completed the examination and/or accurately documented his/her complaints).

Significantly, however, neither comment specifically addressed whether the proposed collection of information is necessary for the proper performance of VA's functions; the accuracy of VA's estimate of the burden of the proposed collection of information; the quality, utility, and/or clarity of the information to be collected; or ways to minimize the burden of the information collection on those who are to respond. In this regard, VA highlights that the first comment is focused solely on VA's actions *following* the filing of a Notice of Disagreement, rather than on the necessity, utility, accuracy, quality, or quantity of the information collected by the Notice of Disagreement, or the method of such information collection. As such, this comment is outside the scope of VA's solicitation of comments. Additionally, with regard to the second comment, rather

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than suggesting a method of reducing the burden of the information collection on those who are to respond, this comment instead recommends the implementation of additional information collection in the form of a VA examination satisfaction survey, thereby imposing a further burden on respondents. Moreover, to the extent that no data or information was submitted to support the premise that there is a causal relationship between a Veteran's level of satisfaction with a VA examination and the subsequent filing of a Notice of Disagreement, VA is not persuaded that this additional burden would in any way improve the collection of information. In light of the foregoing, no further action will be taken with regard to the Renewal of Information Collection Request for the Clarification of a Notice of Disagreement in response to the two comments received.

#### **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 (Mar. 3, 1976), 66 FR 47725 (Sept. 13, 2001), and 70 FR 6079 (Feb. 4, 2005).

#### **11. Sensitive Questions**

The Notice of Disagreement includes no question of a sensitive nature.

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

Approximately 135,505 Notices of Disagreement are filed each year.<sup>1</sup> Notices of Disagreement may be completed by an individual claimant or his/her representative. See 38 C.F.R. § 20.301(a). In this regard, VA notes that the earning capacity of individual appellants spans an extremely wide spectrum. Additionally, an appellant's representative may be an employee of a recognized Veterans' service organization who provides appellate services as part of their overall free services to Veterans, or may be an attorney-at-law or accredited agent that charges a fee. In light of the foregoing, VA has used \$29.98 as the estimated hourly cost of completing the Notice of Disagreement.<sup>2</sup>

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<sup>1</sup> This figure is equal to the average number of new Notices of Disagreement received in the field (*i.e.*, at the various Regional Offices throughout the United States) in Fiscal Years 2009, 2010, and 2011.

<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 the United States, which includes private industry workers and State and local government workers. United States Department of Labor, Bureau of Labor Statistics, News Release 11-1305, September 8, 2011, *available at* <http://www.bls.gov/news.release/ecec.nr0.htm>.

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Respondents have wide discretion in the amount of time spent preparing a Notice of Disagreement. A majority of respondents (or their representatives) simply identify the issue(s) with which they are in disagreement and furnish a few sentences explaining the basis of their disagreement. Alternatively, some respondents (or their representatives) choose to write several pages explaining the basis of their disagreement with the denial of VA benefits. With this in mind, VA's best estimate is that an average of one hour is spent preparing the Notice of Disagreement.

Based on the foregoing, VA estimates that the annual cost burden to respondents for completing a Notice of Disagreement is 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>
135,505	1	135,505	\$29.98	\$4,062,440

**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. Completion of the Notice of Disagreement requires no ongoing accumulation of information, and no special purchase of services, supplies, or equipment.

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

In the course of the initial adjudication of claims, responses are reviewed by VA Regional Office Rating Specialists. As noted above, approximately 135,505 Notices of Disagreement are filed at Regional Offices nationwide per year.<sup>3</sup> Additionally, if a respondent subsequently perfects his/her appeal, the case is certified to the Board, where the Notice of Disagreement is reviewed by both a Board attorney and a Veterans Law Judge during the course of the appeals adjudication process. In fiscal year 2011, the Board issued 48,588 decisions, indicating that 48,588 Notices of Disagreement were reviewed by Board attorneys and judges.

As discussed in the answer to question 12, most Notices of Disagreement are no longer than a few sentences; however, some Notices of Disagreement are several pages long. As such, VA estimates that the average time required to review each Notice of Disagreement is 15 minutes. Responses are maintained in preexisting VA claims files.

Based on the foregoing, VA estimates that the annual cost burden to the Federal Government is as follows:

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<sup>3</sup> *Supra*, note 1.

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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	\$35.17 <sup>4</sup>	33,876.25 (reviewing 135,505 responses at 1/4 hour each)		\$1,191,428
BVA Attorney /Adviser-GS 13/3	\$45.51 <sup>5</sup>	12,147 (reviewing 48,588 responses at 1/4 hour each)		\$552,810
BVA Board Member-AL3/B	\$66.77 <sup>6</sup>	12,147 (reviewing 48,588 responses at 1/4 hour each)		\$811,055
<b>Total Costs</b>				02,555,293

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

There are no program changes. Adjustments since 2007 reflect an increase in the number of Notices of Disagreement filed annually 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 accessible through the Internet to assist in complying with 5 U.S.C. § 552(a)(2).

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<sup>4</sup> U.S. Office of Personnel Management, *Salary Table 2011-RUS for the Locality Pay Area of Rest of U.S.*, 2011, available at [http://www.opm.gov/oca/11tables/pdf/rus\\_h.pdf](http://www.opm.gov/oca/11tables/pdf/rus_h.pdf).

<sup>5</sup> U.S. Office of Personnel Management, *Salary Table 2011-DCB for the Locality Pay Area of Washington-Baltimore, DC-MD-VA-WV*, 2011, available at [http://www.opm.gov/oca/11tables/pdf/dcb\\_h.pdf](http://www.opm.gov/oca/11tables/pdf/dcb_h.pdf).

<sup>6</sup> This figure is equal to the annual rate paid to an Administrative Law Judge in DC-MD-VA-WV at the AL-3/B level of \$138,878 divided by 2,080 hours. Office of Personnel Management, *2011 Locality Rates of Pay for Administrative Law Judges for the Locality Pay Area of Washington-Baltimore, DC-MD-VA-WV*, 2011, available at [http://www.opm.gov/oca/11tables/pdf/alj\\_loc.pdf](http://www.opm.gov/oca/11tables/pdf/alj_loc.pdf).

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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. This collection is contained in a regulation, 38 C.F.R. § 19.26, which displays the OMB control number. There is no VA form for submitting this information.

**18. Exceptions to the Certification Statement**

There are no exceptions. The retention period for recordkeeping requirements is not stated in this collection because there are no such requirements.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Statistical survey methodology does not apply.