

SUPPORTING STATEMENT FOR
OMB CONTROL NUMBER 2900-0042

STATEMENT OF ACCREDITED REPRESENTATIVE IN APPEALED CASE

A. JUSTIFICATION

1. Necessity

Department of Veterans Affairs (VA) appellants have a right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person. 38 U.S.C. § 7105(a); 38 C.F.R. § 20.600. The 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 in support of an appeal before the Board of Veterans' Appeals (BVA or Board). 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

The information is used by the Board to identify the issues in dispute and to prepare a decision that is responsive to the appellant's contentions and the legal and factual issues raised by the Veteran and his/her representative. This information is also used by the Board to ensure that a claimant's right to representation has been honored by establishing that the record has been made available to the representative for review when presenting argument on their client's behalf.

3. Use of Information Technology

An appellant's representative may fill out the form on a computer before printing it and mailing it to the Board. The form is available for filling out and printing, via the Internet, at the following web address:

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

VA is actively pursuing the development of an electronic claims processing system, which would provide appellants' representatives with the option of filing the VA Form 646 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. The current claims processing system requires the Form 646 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 the respondent's appeal. As such, electronic filing of the VA Form 9 would actually add a burden to the Federal Government, as any electronically submitted forms would have to be printed out at the Federal Government's expense and then associated with the claims file.

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4. Description of Effort to Identify Duplication

The information in this collection is unique to each case and can only be obtained from the respondent. Information that is only “similar,” should it exist, would be irrelevant.

5. Description of Methods Used to Minimize Burden

Some appellant’s representatives, such as 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 an appellant’s rights and the fulfillment of statutory requirements, the burden on these small entities is considered to be minimal. Specifically, the form requests only the essential data necessary to identify the particular case to which the completed form pertains and any argument that a representative voluntarily chooses to submit. Moreover, failure to provide the form would actually increase the burden on respondents, who would then be required to devise other methods of conveying desired argument to VA and/or the Board.

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

The failure to provide this form could result in due process defects in appeals reaching the Board, thereby causing time-consuming delays in the appellate process, such as requiring cases to be remanded in order to document that an appellant’s representative has been extended an opportunity to make a presentation on the appellant’s behalf. Moreover, insofar as generally only one VA Form 646 is collected per appeal, the frequency of collection is the least required under the circumstances and the burden to individual respondents is minimal.

7. Special Circumstances

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

8. Consultation Outside the Agency

Comments were solicited in compliance with 5 C.F.R. § 1320.8(d). The notice of Proposed Information Collection Activity was published in the Federal Register on July 2, 2012, on page 39346. There were no comments received in response to this notice.

9. Payment 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”

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(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

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

12. Estimation of Respondent's Reporting Burden

Approximately 44,551 VA Form 646s are filed each year.¹ Forms may be completed by an appellant's representative, whose earning capacity covers an extremely wide spectrum. 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 form.²

Representatives have wide discretion in the amount of time spent preparing the form. A majority of representatives simply provide identifying data and furnish a few brief paragraphs describing the basis of their client's disagreement with the denial of VA benefits. Alternatively, some representatives choose to spend several days researching the facts and the law and writing a detailed appellate memorandum. With this in mind, VA's best estimate is that an average of one hour is spent preparing the form.

Based on the foregoing, VA estimates that the annual cost burden to respondents for completing the form is 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>
44,551	1	44,551	\$29.98	\$1,335,638.98

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 form requires no ongoing accumulation of information, and no special purchase of services, supplies, or equipment.

14. Annual Cost to the Federal Government

¹ This figure is equal to the total number of decisions issued by the Board in Fiscal Year 2010 (*i.e.*, 49, 127), less the total number of cases in which the appellant was unrepresented in Fiscal Year 2010 (*i.e.*, 4,576). Board of Veterans' Appeals, *Report of the Chairman*, Fiscal Year 2010, at 23.

² 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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A member of the VA publication staff is required to maintain an electronic version of the VA Form 646 on the internet. VA estimates that such maintenance requires approximately a quarter of an hour per year.

Further, in the course of the initial adjudication of claims, responses are reviewed by VA Regional Office Rating Specialists. Additionally, in deciding appeals, responses are reviewed by BVA attorneys and BVA Veterans Law Judges. As discussed in the answer to question 12, most completed forms are no longer than a few sentences; however, some forms are several pages long. As such, VA estimates that the average time required to review each VA Form 646 is 15 minutes. 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	\$35.17 ³	11,138 (reviewing 44,551 responses at 1/4 hour each)		\$391,723.46
BVA Attorney/ Adviser-GS 13/3	\$45.51 ⁴	11,138 (reviewing 44,551 responses at 1/4 hour each)		\$506,890.38
BVA Veterans Law Judge-AL3/B	\$66.77 ⁵	11,138 (reviewing 44,551 responses at 1/4 hour each)		\$743,684.26
VA Publication Staff – GS 13/8	\$48.35 ⁶	¼ hour		\$12.09
Total Costs				01,642,310.19

15. Explanation for Program Changes or Adjustments

³ 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.

⁴ 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.

⁵ 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.

⁶ *Supra*, note 4.

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There are no program changes, but there is an adjustment in burden, which reflects 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

The OMB control number is currently displayed on the VA Form 646. The form is produced and distributed in large quantities, and it would not be practical to display an expiration date on the form since it would have to be changed every three years. This would result in the unnecessary waste of labor and distribution costs. Therefore, VA continues to seek exemption from the requirement to display the expiration date for OMB approval on the VA Form 646.

18. Exception to the Certification Statement

There were 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.