

Supporting Statement for
VA Form 21-0958
Notice of Disagreement

A. Justification

1. The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Information is requested by this form under the authority of 38 U.S.C. 1114, 1521(d) and (e), 1115(1)(E), 1311(d), 1541(d) and (e). Regulatory authority is found in Title 38 CFR 3.351, 3.351(d), 3.351 (d)(2), 3.351(c)(2), 4.16, and 3.326(a).
2. VA Form 21-0958 will be used by the Veteran to indicate disagreement with a decision issued by a Regional Office (RO). VBA commenced a pilot program on March 1, 2012 and provided the NOD in all decision and notification letters at the pilot location. VAF 21-0958, *Notice of Disagreement*, is the first step in the appeal process. The respondent may or may not continue with an appeal to the Board of Veterans Appeals (BVA). If the veteran opts to continue to BVA for an appeal, this form will be included in the claim folder as evidence. VBA is drafting Regulatory language intended to designate this form as the required form for filing a Notice of Disagreement.
3. The form will be made available on the One-VA web site in a fillable electronic format. VBA does not have the technology in place to allow for the complete electronic submission of the form. There currently is no utility process in place that will allow the data submitted on the forms to be incorporated with an existing centralized legacy database. At this time, VA does not have the resources to add this form to VONAPP for electronic submission. However, as resources become available, VA will consider adding it to VONAPP and/or the eBenefits web portal.
4. Program reviews were conducted to identify potential areas of duplication. There is no known Department or Agency which maintains the necessary information, nor is it available from other sources within our department. Although claimants may use the existing VA Form 21-4138 to report a disagreement with VA's decision, the 21-4138 was not intended for this purpose. The new form will provide the claimant with a prescribed form designed to file a Notice of Disagreement on specific issues of contention. The form will also allow VA to process NOD's more efficiently.
5. The collection of information does not involve small businesses or entities.
6. This form is designed in a "user friendly" format, incorporating plain English, to comply with the President's Memorandum of June 1, 1998, Plain Language in Government Writing.

7. There is no special circumstance requiring collection in a manner inconsistent with 5 CFR 1320.6 guidelines.

8. The Department notice was published in the Federal Register on July 19, 2012 at page 42556. Two comments were received in response to this notice:

Comment 1:

“The proposal to submit a new form to file a Notice of Disagreement is unnecessary, redundant and confusing. Presently a NOD is filed using VA 21-4138 which is nothing more than a form with blank lines on it to write information. The 21-0958 will not replace the 21-4138 but become yet another form to manage and maneuver through the claims process system. If the person reading the 21-4138 cannot figure out if the claimant is submitting a NOD by reading it, then a special form may be of assistance. However, utilizing a new, special form to use to submit an NOD will undoubtedly cause legal interpretations and issues for claimants in the years ahead. The Department of Veterans Affairs needs to streamline its processes but must understand that the general public does not speak the language nor know the specific processes necessary to successfully negotiate the claims process system. While developing a new form specifically to identify it as an NOD, its use will undoubtedly be used against claimants for failure to submit information on the proper form.

The term Notice of Disagreement should be clearly defined and identified to the claimant and they can respond with a 21-4138, as they do now, without expensive setup and printing costs of new forms that are not needed.”

Response 1:

We appreciate and have considered your comments. The Notice of Disagreement form was created for a variety of reasons. In its current version, a Notice of Disagreement can and is being filed on any document, not just the 21-4138 as referenced in the comment. NODs are accepted on 21-4138s, memos from VSOs, handwritten letters from veterans and often times intertwined with a veteran's reopened, subsequent, or initial claim for something not contained in a previous rating decision or subject to appeal at that time.

The Board of Veterans Appeals remands claims based on the Manlincon case....where NODs have not been properly adjudicated by the Regional Office staff and are not ripe for certification and subsequent action by BVA. In many cases, convoluted submissions are not interpreted to be NODs until they are more than 365 days old and are sent back to the AOJ for appropriate action.

The standardized NOD form will allow VBA staff to easily identify a submission as an NOD for ease, speed and accuracy of processing. The form will also eliminate instances where the processing of intertwined claims is delayed. The NOD form also assists in properly identifying what the veteran or veteran's representative are appealing, and encourages up-front interaction between VA, veterans and veterans representatives in a manner that is designed to resolve appeals at their earliest level.

In addition, the standard form will be uploaded to eBenefits so that veterans have a prescribed form to assist with the filing of their appeal.

Comment 2:

Vietnam Veterans of America provided comments regarding the perseveration of appeal rights for veterans. VVA supports collecting the information in a form as long as the form is not mandatory and is included with a denial of benefits. VVA suggested the form include catch-all check boxes that allow a veteran to disagree with all or part of a decision and include space to indicate whether the veteran is submitting additional evidence or would like his or her case decided without submitting additional evidence. It was also suggested that VA make available an electronic version of the form with a “wizard” to improve the quality of the responses on the NOD form and, also, include Representatives in the process to quickly and accurately complete the form to minimize the burden of follow-up from VA personnel.

Response 2:

We appreciate and have considered your comments and the standardized NOD template your organization has drafted.

As you note in your comment, VA cannot mandate use of the proposed form in the absence of regulatory amendment. This Proposed Information Collection does not propose to amend regulations. We also agree that time burden is difficult to estimate, as individual VA claims vary greatly in both scope and complexity, and expression of disagreement with VA decisions on those claims may vary greatly as well. We agree that incorporation of a section where the claimant can indicate intent to submit additional evidence is desirable, and we will explore the feasibility of that suggestion. We also agree that incorporation of this form into eBenefits and the Stakeholder Enterprise Portal is desirable. We will explore the feasibility of that suggestion as well. Thank you again for your standardized NOD template and your insightful comments.

9. No payments or gifts to respondents have been made under this collection of information.

10. The records are maintained in the appropriate Privacy Act System of Records identified as 58VA21/22/28, “Compensation, Pension, Education, and Vocational Rehabilitation and Employee Records—VA” as set forth in Privacy Act Issuances, 1993 compilation found in 74 Fed. Reg. 117 (June 19, 2009), and last amended by 75 FR 22187 (April 27, 2010), with other amendments, as cited therein.

11. There are no questions of a sensitive nature.

12. Estimate of Information Collection Burden.

a. Number of Respondents is estimated at 144,000 per year. Historically, out of every 100 completed VBA decisions, approximately 12 Notices of Disagreement are received.

The estimated number of respondents is based on more than 1.2 million decisions in FY 2012.

- b. Frequency of Response is one time for most beneficiaries.
- c. Annual burden is 72,000 hours.
- d. The estimated completion time of 30 minutes is based on review by staff personnel.
- e. The total estimated cost to respondents is \$1,080,000 (72,000 hours x \$15/hour).

13. This submission does not involve any recordkeeping costs.

14. Estimated Costs to the Federal Government:

a. Processing/Analyzing costs	\$ 7,216,560
(GS-13/5 @ \$48.35 x 144,000 x 30/60 minutes = \$3,481,200)	
(GS-11/5 @ \$33.92 x 144,000 x 30/60 minutes = \$2,442,240)	
(GS-5/5 @ \$17.96 x 144,000 x 30/60 minutes = \$1,293,120)	
b. Printing and production cost	\$2,304
c. Total cost to government	\$7,218,864

15. This is a new data collection.

16. The information collection is not for publication or tabulation use.

17. The collection instrument, VA Form 21-0958 may be reproduced and/or stocked in paper form by respondents and veterans organizations. Requiring VA to display an expiration date on the form would result in unnecessary waste of existing stocks. Inclusion of the expiration date could also result in a delay of the Department's action on the benefit being sought (respondent trying to obtain a newer version, while VA would have accepted the older version). For the reasons stated, VA continues to seek an exemption that waives the displaying of the expiration date.

18. This submission does not contain any exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods

The Veterans Benefits Administration does not collect information employing statistical methods.