

## **SUPPORTING STATEMENT FOR: OMB 2900-0605**

### **JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

**a. VA Form 21a:** VA, through its Office of the General Counsel (OGC), accredits the recognized service organization representatives, claims agents, and attorneys who represent claimants in the preparation, presentation, and prosecution of claims for benefits under laws administered by VA. See 38 U.S.C. §§ 5901-5904. Through the recognition and accreditation process, the Secretary ensures that claimants for VA benefits have responsible, qualified and competent representation. See 38 U.S.C. §§ 5902 and 5904(a); 38 C.F.R. § 14.626. Representatives, agents, and attorneys may not lawfully represent claimants without completing and maintaining accreditation requirements. See 38 C.F.R. §§ 14.629(a)-(b); 14.633(b).

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** Accredited agents and attorneys are required to file with the Secretary of VA agreements for the payment of fees charged for representing claimants before VA. The Secretary of VA is authorized to review these agreements either on his or her own motion or upon the request of the claimant who is a party to the agreement. 38 U.S.C. § 5904(c). The purpose of the review is to determine whether the fees charged are excessive or unreasonable. *Id.* VA regulations delegate the authority to receive and review fee agreements to OGC. 38 C.F.R. § 14.636. Subject to certain limitations, attorneys and agents may enter into agreements with claimants that direct VA to withhold representation fees from any past-due benefits VA awards to the claimant and pay the fee directly to the agent or attorney. 38 U.S.C. § 5904(d). To process direct payments, VA requires filing a copy of a fee agreement with the local VA regional office where award payments are processed. 38 C.F.R. § 14.636(h)(4). VA is amending 38 C.F.R. § 14.636(g)(3) and (h)(4) to remove the requirement that an agent or attorney file a direct-pay fee agreement with both OGC and the agency of original jurisdiction, i.e., the VA regional office. The intended effect of this amendment is to require that direct-pay fee agreements be submitted only to the agency of original jurisdiction, thereby eliminating duplicate filings by agents and attorneys.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

**a. VA Form 21a,** Application for Accreditation as a Claims Agent or Attorney, is used to obtain basic information necessary to determine whether an individual may be accredited as an agent or attorney for purposes of representation of claimants before VA. The information requested includes basic identifying information, as well as certain information concerning training and experience, military service, and employment. The information is used to evaluate qualifications, ensure against conflicts of interest, and to

establish that statutory and regulatory eligibility requirements, e.g., good character and reputation, are met. 38 U.S.C. § 5904(a); 38 C.F.R. § 14.629(b)(1).

Once completed, VA Form 21a is forwarded by the applicant to VA and evaluated manually by an OGC employee to determine whether initial eligibility requirements are met. Applicants for accreditation as claims agents who meet these requirements are then notified that they are eligible to take the VA accreditation examination. VA also contacts character references listed on the form. Applicants are advised to contact their local VA Regional Counsel to make arrangements to take the examination. All completed examinations are forwarded by the Regional Counsel to OGC for grading. Applicants who pass the examination, whose character references are satisfactory, and who otherwise meet the good character and reputation requirement are issued a letter notifying them that they are authorized to represent claimants. Applicants for accreditation as attorneys are not required to pass an examination, but must meet all other qualification requirements.

All applicants who do not qualify for accreditation are informed of the reasons for the denial. Agent applicants who are denied accreditation because they did not achieve a passing score on the examination may retake the examination. Without this form, VA would have no standardized formal means of documenting applicant qualifications. The information collected under VA Form 21a will be expanded under the final rule to account for additional accreditation requirements imposed by Congress in Public Law No. 109-461.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** The information is used by OGC in reviewing fee agreements between VA claimants and their representatives to determine whether they are in compliance with the law governing representation and by VA regional offices in processing direct fee payment agreements.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

**a. VA Form 21a:** VA Form 21a is available on the VA website in a fillable electronic format. Respondents can fill in the blanks, print the form, and fax or mail the form to the VA agency of original jurisdiction or OGC as appropriate. VA is currently hosting this form on a secure server and does not currently have the technology in place to allow for the complete electronic submission of the form. Efforts within VA are underway to provide a mechanism to allow the electronic submission of certain benefit claims using signature technology. However, the accreditation program, which is separately administered by OGC, involves a comparatively small number of respondents making infrequent submissions. Accordingly, OGC may not be able to acquire electronic submission capability for VA Form 21a until VA has fully developed and implemented the technology.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:**

**(1) Fee Agreements.** Fee agreements filed with VA are written, signed contractual agreements similar to those customarily used in the practice of law. VA does not control the methodology used to produce fee agreements nor, with minor exceptions, the content of the agreements. Procedures for completing fee agreements online, electronic signature, and electronic filing are not practicable, inasmuch as these agreements are prepared primarily for the use of the parties, not for the government. Fee agreements are required by law to be in writing and signed by both the claimant and the agent or attorney. See 38 U.S.C. § 5904(c); 38 C.F.R. § 14.636(g).

**(2) Motions.** VA regulations require that claimants seeking OGC review of fee agreements file such motions in writing with OGC and serve these on the agent or attorney. See 38 C.F.R. § 14.636(i). Because the content of motions and responses to the motions are unique in each case, online procedures for requesting OGC review of fee agreements and electronic filing of motions and responses is not practicable.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

**a. VA Form 21a:** Procedures were reviewed to identify potential areas of duplication; however, none were found to exist. There is no known department or agency that maintains the necessary information, nor is it available from other sources within this Department.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** The purpose for which this collection exists requires use of unique information specific to each case. Information that is only "similar," should it exist, would be irrelevant. VA is removing the requirement that an agent or attorney file a direct-pay fee agreement with both OGC and the agency of original jurisdiction, i.e., the VA regional office. The intended effect of this amendment is to require that direct-pay fee agreements be submitted only to the agency of original jurisdiction, thereby eliminating duplicate filings by agents and attorneys.

**5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden**

**a. VA Form 21a:** The collection of information will not have a significant impact on a substantial number of small businesses or entities. The information collected from applicants is minimized inasmuch as the amount and frequency of information collected are the minimum required to accomplish the purposes of the forms.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:**

**(1) Fee Agreement Filing.** Attorneys and agents customarily require execution of written retainer agreements in the normal course of business. These agreements already contain most of the information VA needs, such as the names of the parties to

the agreement and fee calculation and payment terms. The only information required in these agreements over and above that which would normally be included in them is (1) a readily available VA file number, which enables VA to locate the relevant case file and, (2) at the option of the claimant and representative, a clause which enables VA to make direct payment of fees to the representative out of past-due benefits awarded to a claimant, as permitted by 38 U.S.C. § 5904(d). VA is removing the requirement that an agent or attorney file a direct-pay fee agreement with both OGC and the agency of original jurisdiction, i.e., the VA regional office. The intended effect of this amendment is to require that direct-pay fee agreements be submitted only to the agency of original jurisdiction, thereby eliminating duplicate filings by agents and attorneys.

**(2) Motions and Responses to Motions.** Information required is limited to that necessary to identify the case and to factually determine whether a fee agreement is in compliance with the law. Motions and responses thereto may be set out in ordinary letters with such evidence attached as the party chooses to submit.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

**a. VA Form 21a:** Absent the information provided on VA Form 21a, VA would have no way of determining whether applicants for accreditation as claims agents or attorneys meet the requirements of 38 U.S.C. § 5904(a) and 38 C.F.R. § 14.629(b).

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** This information is unique in each case and must be collected in each case to fulfill the statutory and regulatory purposes in 38 U.S.C. § 5904(c) and 38 C.F.R. § 14.636. Absent the information requested, VA would be unable to comply with statutory and regulatory mandates concerning fee agreements resulting in the loss of protections afforded to VA claimants against unreasonable fees. However, VA finds that filing a copy of the direct-pay fee agreement with the agency of original jurisdiction is sufficient. In cases where OGC needs to review a direct-pay fee agreement, it can obtain a copy of the agreement from the agency of original jurisdiction. Accordingly, VA is removing the requirement that an agent or attorney file a direct-pay fee agreement with both OGC and the agency of original jurisdiction, i.e., the VA regional office. The intended effect of this amendment is to require that direct-pay fee agreements be submitted only to the agency of original jurisdiction, thereby eliminating duplicate filings by agents and attorneys.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with guidelines in 5 C.F.R. 1320.6.**

**a. VA Form 21a:** There are no special circumstances that require the collection to be conducted in a manner inconsistent with 5 C.F.R. § 1320.6 guidelines.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** There are no special circumstances that require the collection to be conducted in a manner inconsistent with 5 C.F.R. § 1320.6 guidelines.

**8. a. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden**

**(1) VA Form 21a:** On May 7, 2007, in the proposed rule at 72 FR 25930, VA requested comments on the collections of information. We received no comments regarding the collections of information in response to this request.

**(2) Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** On February 10, 2014, and May 13, 2014, VA requested public comment on VA's amendment of 38 C.F.R. § 14.636(g)(3) and (h)(4) to remove the requirement that an agent or attorney file a direct-pay fee agreement with both OGC and the agency of original jurisdiction, i.e., the VA regional office. 79 FR 7743, 79 FR 27384. The intended effect of this amendment is to require that direct-pay fee agreements be submitted only to the agency of original jurisdiction, thereby eliminating duplicate filings by agents and attorneys. We received one positive comment endorsing this change. No change is warranted to the collection based on this comment.

**b. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

**(1) VA Form 21a:** VA is in frequent contact with the claims agents and attorneys who currently use the VA Form 21a to apply for accreditation. We have revised parts of the form to better accommodate information provided by applicants.

**(2) Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** VA is in frequent contact with the agents and attorneys required to file fee agreements, a requirement in effect since 1988. The current scheme regarding the filing of fee agreements has proven generally acceptable to those providing paid representation.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

**a. VA Form 21a:** No payment has been authorized for respondents.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** No payment has been authorized for respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.** VA complies with the provisions of 38 U.S.C. 5701 and the Privacy Act of 1974 (5 U.S.C. 552a).

**a. VA Form 21a:** VA notifies respondents through a notice at the top of each form that information provided may be disclosed outside VA for certain routine uses, which have been published in the Federal Register. A summary of the pertinent routine uses is provided on each form under VA system of records 01VA0122.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** Assurances of confidentiality are provided in the systems of records identified as Compensation, Pension, Education and Rehabilitation Records—VA, 58VA21/22; Veterans Appellate Records System—VA, 44VA01; and Accreditation Records—VA, 01VA022.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information.**

**a. VA Form 21a:** VA Form 21a includes questions designed to enable the OGC to determine whether the applicant is of good moral character and reputation, qualified to render claimants valuable service, and is otherwise competent to assist claimants in presenting claims before VA. See 38 U.S.C. § 5904. To that end, VA Form 21a collects information that may be considered sensitive and includes questions regarding an applicant's criminal history, health, and record of admission to practice before State or Federal agencies. These questions are similar in nature to those asked by other State or Federal licensing entities and are necessary to determine whether an applicant is capable of providing competent representation to claimants seeking VA benefits.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** None of the information solicited for this collection is considered to be of a sensitive nature.

**12. Estimate of the hour burden of the collection of information.**

**a. VA Form 21a:** Assuming that this work will primarily be done by attorneys, OGC estimates that \$62.93<sup>1</sup> would be a reasonable cost per hour.

Number of responses = 2650

2650 x 45 minutes divided by 60 = 1987.50 total burden hours

The annual cost to the respondents is \$125,073.38 (1987.50 x \$62.93)

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<sup>1</sup> This figure is equal to the most recent United States average hourly wage for lawyers published by the U.S. Department of Labor Bureau of Labor Statistics, in this case data for May 2012.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:**

**(1) Fee Agreement Preparation and Filing:** VA estimates that agents and attorneys will file 12,000 such fee agreements annually. Additional information to be added to a fee agreement that might not normally be included in the representative's usual course of business consists chiefly of the VA file number and, for parties wishing to have fees paid by VA directly to the representative out of past-due VA benefits, a clause stating that payment arrangement. This file number is readily available in all VA benefits cases (it is routinely provided to claimants and it appears in VA correspondence about the case). Adding the file number to the fee agreement should result in no measurable additional cost. A representative who does not customarily perform VA benefits case work might spend 1 hour researching and drafting a direct payment clause. Many representatives before VA who use this arrangement represent a number of VA clients and this information is prepared once and then incorporated into their usual and customary fee agreement, thus entailing no additional time or expense in any but the first case. VA estimates that no more than 5% of respondents (600) would require this initial setup work and would therefore estimate that no more than 600 hours are expended annually in contract modification to comply with this collection. Assuming that this work will primarily be done by attorneys, OGC estimates that \$62.93 would be a reasonable cost per hour.

Total cost to respondents is \$157,325.

11,400 Repeat Filers	x	\$62.93 x 1900 hours (11,400 x 10 minutes/response)	=	\$119,567
600 First Time Filers	x	\$62.93 x 600 hours (600 x 60 minutes/response)	=	\$37,758
12,000 Total Filers	x	\$62.93 x 2500 hours (1900 hours + 600 hours)	=	\$157,325

VA estimates that it receives 11,700 direct-pay fee agreements annually. VA estimates that eliminating the requirement of filing direct-pay fee agreements with OGC would result in an hour burden and cost reduction to respondents. Respondents would no longer be required to mail their agreements to OGC. VA estimates an average hour burden reduction of 10 minutes per response, and a total annual burden of 1950 hours for all respondents for the removal of the duplicate filing of a direct-pay fee agreement with OGC.

The cost for mailing a first-class letter is \$0.49. The United States Department of Labor, Bureau of Labor Statistics estimates that, as of May 2012, the average hourly wage for a legal secretary is \$21.34. The estimated average cost for ten minutes of a legal secretary's time is \$3.56.

Total cost reduction to respondents is \$47,385.00.

11,700 Filed Agreements	x	\$0.49	=	\$5,733.00
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$$11,700 \text{ Filed Agreements} \quad \times \quad \$3.56 \quad = \quad \$41,652.00$$

$$\text{Total} = \$47,385.00$$

**(2) Motion Preparation or Response:** VA estimates that 21 motions will be filed annually to review fee agreements for reasonableness. OGC estimates that 14 motions will be filed by parties and 7 initiated by OGC. Time spent by a party in preparing a motion to file with OGC, or in responding to a motion originating with the OGC or filed by another party, will vary depending upon the complexity of the party's statement or argument, the evidence gathered in support of, or in response to, the motion, and the amount of legal research the party wishes to conduct. VA estimates that the amount of time for either a motion or a response to a motion will average 2 hours. As motions and responses to motions may be filed by any party to the fee agreement, some of the motions and responses will be drafted by claimants (typically non-lawyers) and others by attorneys. VA considers \$40 to be a fair average hourly rate.

Total cost to respondents is \$1,680.

$$21 \text{ Responses} \quad \times \quad \$40.00 \times 42 \text{ hours} \quad = \quad \$1,680$$

(2 hours/response)

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

**a. VA Form 21a:** There are no anticipated capital and start-up cost components resulting from this collection of information.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** 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. Representatives customarily maintain data to support their billing in the normal course of business. Since the scope of this collection involves the application to become an accredited agent and attorney and the filing of the fee agreements, VA does not anticipate any costs to veterans.

**14. Provide estimates of annual cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operation expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

**VA Form 21a:**

Total cost to the Federal Government is \$60,803.14



SUPPORTING STATEMENT FOR OMB 2900-0605

2,650 new applications	x	\$23.15 (GS 7/5) x 30 minutes/form	=	\$30,673.75
	x	\$67.88 (GS 15/5) x 10 minutes/form	=	\$29,980.33
Printing Cost	x	2,650 x .05625	=	\$149.06

**Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:**

**Filing of Fee Agreements**

OGC – 12,000 Fee Agreements Filed & Processed		1 x \$48,315 (GS7/5) annual salary	=	\$48,315.00
VBA – 11,700 Direct Pay Fee Agreements Filed & Processed at 57 VA Regional Offices	X	\$41.07 (GS12/5) x 15 minutes/fee agreement	=	\$120,129.75
		Sub-total Filing Costs	=	\$168,444.75

**Motions to Review Fee Agreements**

21 Motions for Admin. Review	X	\$23.15 (GS7/5) x 20 minutes/fee agreement	=	\$162.05
21 Motions for Attorney Review		\$57.70 (GS14/5) x 120 minutes/fee agreement	=	\$2,423.40
21 Motions for Supv. Atty. Review	X	\$67.88 (GS15/5) x 60 minutes/fee agreement	=	\$1,425.48
		Sub-total Motions to Review Fee Agreements	=	\$4,010.93
		<b>Total Cost to Government</b>	=	<b>\$172,455.68</b>

VA is removing the requirement that an agent or attorney file a direct-pay fee agreement with both OGC and the agency of original jurisdiction, i.e., the VA regional office. The intended effect of this amendment is to require that direct-pay fee agreements be submitted only to the agency of original jurisdiction, thereby eliminating duplicate filings by agents and attorneys. An OGC legal assistant is responsible for processing and filing direct-pay fee agreements. Removal of this function would result in an estimated cost savings of \$48,315.00 (GS7/5) annually.

**15. Explain the reason for any burden hour changes since the last submission.**

**a. VA Form 21a:** The adjustment is a program adjustment due to change in estimate number of filings.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** The adjustment is a program adjustment due to change in estimate number of filings. Also, VA is removing the requirement that an agent or attorney file a direct-pay fee agreement with both OGC and the agency of original jurisdiction. VA estimates an average burden hour reduction of 10 minutes per response, and a total annual burden reduction of 1950 hours for all respondents for the removal of the duplicate filing of a direct-pay fee agreement with OGC.

**c. Motion for Review of Representative's Charges:** VA may have a need to collect information for purposes of reviewing the expenses of agents and attorneys under 38 C.F.R. § 14.637; however, the information does not constitute a collection of information because of its infrequency of occurrence. See 5 C.F.R. 1320.3(c). Because (c) is not a collection of information for purposes of 5 C.F.R. part 1320, VA will not request that it be included in this collection.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

**a. VA Form 21a:** There are no plans to publish the information collected on any of the forms.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** There are no plans to publish the information collected on any of the forms.

**17. If seeking approval to omit the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

**a. VA Form 21a:** This form will display an expiration date placeholder.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** There is no VA form for submitting the information, and VA understands that display is not required. This collection is governed by a regulation, 38 C.F.R. § 14.636, that will display the appropriate OMB control number.

**18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-I.**

**a. VA Form 21a:** There are no such exceptions.

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** There are no such exceptions.

**19. Collections of Information Employing Statistical Methods.**

**a. VA Form 21a:** Not applicable as no statistical methods are employed

**b. Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements:** Not applicable as no statistical methods are employed.