

Supporting Statement for:

VA Form 21-0788	Information Regarding Apportionment of Beneficiary's Award
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(2900-0666)

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. 5307 which states that a veteran's or beneficiary's compensation and pension benefits may be apportioned for his/her dependents. Regulatory authority is found in 38 C.F.R. 3.450 through 3.454 and 3.458 through 3.461.
2. VA Form 21-0788 is used to determine whether benefits may be apportioned under 38 C.F.R. 3.450 (a)(1)(i), 3.450(a)(2), and 3.451 and, if so, the amount. 38 C.F.R. 3.450 provides that a portion of a veteran's benefits may be paid to his/her spouse and children if they are not residing with the veteran and the veteran is not providing reasonable support. A portion of a surviving spouse's benefits may be paid to the veteran's children who are not living with the surviving spouse. 38 C.F.R. 3.451 states that an apportionment must not cause undue hardship on the veteran, and the resources, income, and special needs of the veteran and his/her dependents must be considered in determining the basis for an apportionment. This form will be completed separately by the veteran and the claimant in order to obtain the information needed to determine whether benefits may be apportioned and the amount payable.
3. VA Form 21-0788 is available on the One-VA Website in a fillable electronic format. VBA is currently hosting this form on a secure server and does not currently have the technology in place to allow for the complete submission of the form. Validation edits are performed to assure data integrity. Efforts within VA are underway to provide a mechanism to allow the information to be submitted electronically with a recognized signature technology. There currently is no utility process in place that will allow the data submitted on the form to be incorporated with an existing centralized legacy database.
4. Program reviews were conducted to identify potential areas of duplication; however, none were found to exist. There is no known Department or Agency which maintains the necessary information, nor is it available from other sources within our Department.
5. The collection of information does not involve small businesses or entities.
6. The form is used to collect the information that is necessary to determine whether an apportionment may be authorized and the reasonable amount that may be awarded. Without this

collection of information, VA would be unable to properly authorize apportionments of compensation and pension benefits.

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 (insert date), (Volume XX, No. X), (page/pages). (No or number) comments were received in response to this notice.

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 Rehabilitation Records—VA" as set forth in Privacy Act Issuances, 1993 compilation found in 74 Fed. Reg. 117 (June 19, 2009).

11. There are no questions of a sensitive nature.

12. Estimate of Information Collection Burden.

a. Number of Respondents: 25,000.

b. Frequency of Response is one time.

c. Annual burden is 12,500 hours.

d. Estimated completion time: 30 minutes.

e. According to the U.S. Bureau of Labor Statistics Average Hourly Earnings, the cost to the respondent is \$24, making the total cost to the respondents an estimated \$300,000 (12,500 burden hours x \$24 per hour).

13. This submission does not involve any recordkeeping costs.

14. Estimated Costs to the Federal Government:

a. Processing/Analyzing costs \$2,129,375

(GS-12/5 @ \$40.66 x 25,000 x 60/60 minutes = \$1,016,500)

(GS-9/5 @ \$28.04 x 25,000 x 90/60 minutes = \$1,051,500)

(GS-3/5 @ \$14.73 x 25,000 x 10/60 minutes = \$ 61,375)

b. Printing and production cost \$1,050

c. Total cost to government \$2,129,375

**15. Supplemental Statement regarding non-substantive changes made to VA Form 21-0788.**

On June 26, 2013, the Supreme Court held, in *United States v. Windsor*, that section 3 of the Defense of Marriage Act (DOMA) violates the Fifth Amendment by discriminating against same-sex couples who are lawfully married under state law.

VBA administers benefits and programs that depend on the definition of the terms “spouse” and “surviving spouse.” For purposes of VA benefits, 38 U.S.C. § 101(3) and § 101(31) define “surviving spouse” and “spouse” as persons “of the opposite sex.” These definitions (codified separately from DOMA) were not specifically addressed in the Supreme Court’s decision. On September 4, 2013, the United States Attorney General announced that the President had directed the Executive Branch to cease enforcement of 38 U.S.C. §§ 101(3) and 101(31), to the extent they preclude provision of Veterans’ benefits to same-sex married couples. Accordingly, VA will no longer enforce the above-mentioned statutory provisions or VBA’s implementing regulation (38 C.F.R. § 3.50), to the extent that they preclude provision of Veterans’ benefits to same-sex married couples. This announcement allows VA to administer spousal and survivors’ benefits to same-sex married couples, provided their marriages meet the requirements of 38 U.S.C. § 103(c).

Therefore, VA is revising VA Form 21-0788, to add the following statute language approved by the White House and Department of Justice, in the instructions section of the form:

IMPORTANT: If you are certifying that you are married for the purpose of VA benefits, your marriage must be recognized by the place where you and/or your spouse resided at the time of marriage, or where you and/or your spouse resided when you filed your claim (or a later date when you became eligible for benefits) (38 U.S.C. § 103(c)). Additional guidance on when VA recognizes marriages is available at <http://www.va.gov/opa/marriage/>.

We are not seeking approval to omit the expiration date for OMB approval.

The expiration date place holder has been added to the forms.

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

17. We are not seeking approval to omit the expiration date for OMB approval.

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

**B. Collection of Information Employing Statistical Methods**

This collection of information does not employ statistical methods.