

SUPPORTING STATEMENT FOR
OMB CONTROL NUMBER 2900-0085

(A) APPEAL TO BOARD OF VETERANS' APPEALS

A. JUSTIFICATION

1. Necessity

The VA Form 9, "Appeal to Board of Veterans' Appeals," provides a convenient form that individuals may use to complete their appeal to the Board of Veterans' Appeals (Board) from a denial of benefits by a Department of Veterans Affairs (VA) Regional Office. The completed form becomes the "substantive appeal" (or "formal appeal"), which is required by 38 U.S.C. §§ 7105(a) and (d)(3) and 38 C.F.R. § 20.202 in order to complete an appeal to the Board.

On February 19, 2015, the 30-day notice was published in the Federal Register. On March 13, 2015, an error in the Federal Register notice was identified. Specifically, the wrong agency was listed. A corrected 30-day notice was published in the Federal Register on May 22, 2015, at 80 FR at 29792-93.

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 on appeal and to prepare a decision responsive to the appellant's contentions and the legal and factual issues raised.

3. Use of Information Technology

In addition to mailing each appellant a blank copy of the form, the form is available for filling out and printing, via the Internet, at the following web address:

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

Governing statute and regulation provide that the filing of a VA Form 9 completes an appeal to the Board. 38 U.S.C. § 7105(a),(d)(3); 38 C.F.R. §§ 20.202, 20.300, 20.302. Generally, governing regulation states that the VA Form 9 is to be filed with the VA office from which the claimant received notice of the determination being appealed. 38 C.F.R. § 20.300. Thus, the law does not currently provide for electronic filing of the Form 9. However, VA is actively pursuing the development of an electronic claims processing system, which would eventually provide appellants with the option of filing the Form 9 online. VA's efforts in this regard initially have been focused on the filing of new claims and electronic filing of appeals forms has not yet been established. Once such method of filing is established, VA will seek to make any necessary changes to the applicable regulations.

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.

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5. Description of Methods Used to Minimize Burden on Small Businesses/Entities

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.

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 claimant's desire to appeal a VA benefits determination and, in that sense, is not controlled by VA.

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). *See* 79 Fed. Reg. 71506 (December 2, 2014). No comments were received.

9. Payments or Gifts to Respondents

None.

10. Description of Confidentiality

Under 38 U.S.C. § 5701(a), VA has statutory authority to protect the confidentiality of all files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents.

VA also complies with the Privacy Act of 1974 (5 U.S.C. § 552a).

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

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Approximately 58,602 appeal forms are filed each year.¹ Forms may be completed by an individual appellant 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 \$31.93 as the estimated hourly cost of completing the form.²

Appellants have wide discretion in the amount of time spent preparing the form. A majority of appellants (or their representatives) simply provide identifying data and furnish a few brief sentences describing the basis of their disagreement with the denial of VA benefits. Alternatively, some appellants (or their 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:

| | No. of respondents | x No. of responses | x No. of minutes | | Number of Hours |
|--|--------------------|--------------------|-----------------------------|--------------|-----------------|
| VA Form 9 | 54,340 | 1 | 60 | ÷ by 60 = | 54,340 |
| Withdrawal of Services by Representative | 550 | 1 | 20 | | 183 |
| Requests for Change to Hearing Dates | 3070 | 1 | 90 | | 4605 |
| Motions for Reconsideration | 642 | 1 | 60 | | 642 |
| Total | 58,602 | 1 | 61.196 (averaged) | | 59,770 |

13. Estimate of Annual Cost Burden to Respondents or Recordkeepers from Collection of Information

¹ This figure is equal to the average number of appeals docketed at the Board in Fiscal Years 2011, 2012, and 2013. Board of Veterans' Appeals, *Report of the Chairman*, Fiscal Year 2013, at 18.

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 14-1075, June 11, 2014, available at <http://www.bls.gov/news.release/ecec.nr0.htm>.

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| No. of Responses | Hours per Response | Total Hours | Cost per hour | Total Cost |
|------------------|--------------------|-------------|---------------|-------------|
| 58,602 | 1 | 58,602 | \$31.93 | \$1,871,162 |

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

In the course of the initial adjudication of claims, responses are reviewed by VA Regional Office Rating Specialists. In preparing recommended appeal dispositions for review by Board Veterans Law Judges, responses are reviewed by Board attorneys. Finally, in adjudicating appeals, responses are reviewed by Board Veterans Law Judges. Responses are maintained in preexisting VA claims files.

| Position & Grade | Hourly Rate | Hours | Other Cost | Total |
|---|----------------------|--|------------|-----------|
| VA Regional Office Rating Specialist-GS 9/5 | \$26.02 ³ | 14,651 (reviewing 58,602 responses at 1/4 hour each) | | \$381,219 |
| Board Attorney /Adviser-GS 13/3 | \$45.96 ⁴ | 14,651 (reviewing 58,602 responses at 1/4 hour each) | | \$673,360 |
| Board Veterans Law Judge-AL3/B | \$67.43 ⁵ | 14,651 (reviewing 58,602 responses at 1/4 hour each) | | \$987,917 |

³ U.S. Office of Personnel Management, *Salary Table 2014-RUS, Incorporating the 1% General Schedule Increase and a Locality Payment of 14.16% for the Locality Pay Area of Rest of U.S.*, 2014, available at http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/RUS_h.pdf.

⁴ U.S. Office of Personnel Management, *Salary Table 2014-DC,B Incorporating the 1% General Schedule Increase and a Locality Payment of 14.16% for the Locality Pay Area of Washington-Baltimore, DC-MD-VA-WV*, 2014, available at http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/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 \$140,244 divided by 2,080 hours. Office of Personnel Management, *2014 Locality Rates of Pay for Administrative Law Judges for the Locality Pay Area of Washington-Baltimore, DC-MD-VA-WV*, 2014, available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/ALJ_LOC.pdf.

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| | |
|--------------------|------------|
| Total Costs | 02,042,496 |
|--------------------|------------|

With this submission, the overall cost to the Federal Government for these four information collection items is broken down below:

| Items Collected in this Information Collection | Total Cost to Federal Government |
|---|---|
| (A) Appeal to Board of Veterans' Appeals | 02,042,496 |
| (B) Withdrawal of Services by a Representative | \$5,002 |
| (C) Requests for Changes in Hearing Dates | \$38,299 |
| (D) Motions for Reconsideration | \$103,551 |
| Overall Cost to Federal Government | \$2,189,348 |

15. Explanation for Program Changes or Adjustments

The change in burden is due to the increase in the number of responses received. Additionally, the expiration date has been added to the form.

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).

17. Reason for Seeking Approval Not to Display Expiration Date for OMB Approval of the Information Collection

The expiration date has been added to the form.

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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical survey methodology does not apply.

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(B) WITHDRAWAL OF SERVICES BY A REPRESENTATIVE

A. JUSTIFICATION

1. Necessity

Pursuant to VA regulation, individuals appealing the denial of a claim for VA benefits to the Board have a right to be represented. 38 U.S.C. § 7105(a); *see also* 38 U.S.C. §§ 5901 through 5905. Appellants who appoint a representative depend upon that representative to protect their appellate interests. Additionally, VA looks to the representative for the completion of necessary representational services and is required to provide information concerning the status of the appellant's appeal to the representative. *See, e.g.*, 38 U.S.C. § 7104(e)(2). In order to adequately protect an appellant's due process rights, both the appellant and the Board must be notified when a representative withdraws from a case. *See* 38 C.F.R. § 20.608(a). Additionally, in the critical final stages of the appellate process, the Board attempts to protect appellants from the adverse consequences of being abandoned by their representative without good cause by requiring representatives to file a motion seeking permission to withdraw representation prior to withdrawing from a case. *See* 38 C.F.R. § 20.608(b).

On February 19, 2015, the 30-day notice was published in the Federal Register. On March 13, 2015, an error in the Federal Register notice was identified. Specifically, the wrong agency was listed. A corrected 30-day notice was published in the Federal Register on May 22, 2015, at 80 FR at 29792-93.

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

This information keeps both the appellant and VA apprised of an appellant's representation and assists in protecting appellants from unethical conduct by their representatives.

3. Use of Information Technology

Word-processing equipment may be used to complete the notice of withdrawal; however, a manual signature is desirable to ensure authenticity. The information gathered is unique in each case, and may be provided in the form of a letter; no special printed form or format is required. Although the Board's Information Technology staff has contemplated the use of electronic verification software, the cost to the Federal Government of using such software is prohibitive in light of the small number of responses. Moreover, pursuant to 38 C.F.R. § 20.608, the representative must give written notice of withdrawal, which is to be mailed to the address specified in the regulation.

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4. Description of Effort to Identify Duplication

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.

5. Description of Methods Used to Minimize Burden on Small Businesses/Entities

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 (*i.e.*, the information required may be provided in a simple business letter), 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.

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

The information is unique in each case and must be collected at each occurrence in order to afford protection of appellants’ due process rights and to keep VA apprised of who is providing representation in each individual appeal. The frequency of collection depends solely upon a representative’s desire to withdraw from a specific case and, in that sense, is not controlled by VA.

7. Special Circumstances

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

8. Consultation Outside the Agency

Comments were solicited in compliance with 5 C.F.R. § 1320.8(d). *See* 79 Fed. Reg. 71506 (December 2, 2014). No comments were received.

9. Payments or Gifts to Respondents

None.

10. Description of Confidentiality

Under 38 U.S.C. § 5701(a), VA has statutory authority to protect the confidentiality of all files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents.

VA also complies with the Privacy Act of 1974 (5 U.S.C. § 552a).

11. Sensitive Questions

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None of the information solicited for this collection is considered to be of a sensitive nature.

12. Estimation of Respondent's Reporting Burden

Withdrawal of representation is relatively rare. No exact statistics are kept; however, VA estimates that there will be 550 responses annually, with approximately 500 responses prepared at the field level and approximately 50 responses prepared at the appellate level.

Notification of withdrawal is normally furnished in a simple business letter, and the amount of time spent by an individual preparing such notification varies. At the field level, simple notification of the withdrawal to VA and the represented party is all that is required. See 38 C.F.R. § 20.608(a). At the appellate level, the reasons for the withdrawal must also be provided. See 38 C.F.R. § 20.608(b). With this in mind, VA estimates that an average of 1/3 hour is spent in preparation of each notice. Some responses will be prepared by attorneys-at-law; others will be prepared by service organization representatives, accredited agents, clerical personnel, or other non-attorneys. As such, VA estimates that a fair average expense rate is \$37 per hour.⁶

| No. of Responses | Hours per Response | Total Hours | Cost per hour | Total Cost |
|-------------------------|---------------------------|--------------------|----------------------|-------------------|
| 550 | 1/3 hour | 183 | \$37.00 | \$6,771 |

13. Estimate of Annual Cost Burden to Respondent's or Recordkeepers from Collection of Information

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.

⁶ It is impossible to arrive at an exact rate; however, because a response might involve an attorney-at-law, VA believes that an average rate slightly higher than the wage and salary component of the average employer costs for employee compensation for civilian workers in private industry and State and local government in the United States is warranted. In this regard, the Board notes that, in Fiscal Year 2013, an attorney-at-law represented appellants in only 9.7% of cases before the Board. Board of Veterans' Appeals, *Report of the Chairman*, Fiscal Year 2013, at 25.

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14. Annual Cost to the Federal Government

At the field level, responses are reviewed by VA Regional Office personnel, who update VA's records and file a response. At the appellate level, responses are reviewed by Board attorneys, who prepare a recommended disposition on each motion for a Board Veterans Law Judge. A Board Veterans Law Judge then reviews the response and renders a decision regarding the motion to withdraw. Responses are maintained in preexisting VA claims files.

| Position & Grade | Hourly Rate | Hours | Total |
|---|----------------------|---------------------------------------|----------------|
| VA Regional Office Rating Specialist-GS 9/5 | \$26.02 ⁷ | 83.3 (500 responses at 1/6 hour each) | \$2,167 |
| Board Attorney/Adviser-GS 13/3 | \$45.96 ⁸ | 25 (50 responses at 1/2 hour each) | \$1,149 |
| Board Veterans Law Judge-AL3/B | \$67.43 ⁹ | 25 (50 responses at 1/2 hour each) | \$1,686 |
| Total Costs | | | \$5,002 |

15. Explanation for Program Changes or Adjustments

There are no program changes or adjustments.

16. Tabulation, Statistical Analysis, and Publication Plans

The results of this information collection will not be published for statistical use.

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. § 20.608, 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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical survey methodology does not apply.

⁷ *Supra*, note 3.

⁸ *Supra*, note 4.

⁹ *Supra*, note 5.

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(C) REQUESTS FOR CHANGES IN HEARING DATES

A. JUSTIFICATION

1. Necessity

VA provides hearings to appellants and their representatives, as required by basic Constitutional due process considerations and by 38 U.S.C. § 7107(b). From time to time, appellants request changes in hearing dates and/or times, withdraw hearing requests, and request new hearing dates after failing to appear at a scheduled hearing. See 38 C.F.R. §§ 20.702 and 20.704.

On February 19, 2015, the 30-day notice was published in the Federal Register. On March 13, 2015, an error in the Federal Register notice was identified. Specifically, the wrong agency was listed. A corrected 30-day notice was published in the Federal Register on May 22, 2015, at 80 FR at 29792-93.

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

The information provided is used by the Board, who schedules Central Office hearings and video-conference hearings, and VA Regional Office personnel, who schedule field hearings on behalf of the Board, to evaluate requests for changes in hearing dates and to reschedule hearings and/or remove cases from the hearing docket, as appropriate.

3. Use of Information Technology

Word-processing equipment may be used to complete the request; however, a manual signature is desirable to ensure authenticity. As noted above, although the Board's Information Technology staff has contemplated the use of electronic verification software, the cost to the Federal Government of using such software is prohibitive in light of the small number of responses. Moreover, the applicable regulations require hearing date change requests to be in writing. See 38 C.F.R. §§ 20.702(c) and (d) and 20.704(c) and (d).

4. Description of Effort to Identify Duplication

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.

5. Description of Methods Used to Minimize Burden on Small Businesses/Entities

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. No burden is imposed on these small entities unless an appellant desires a change in the hearing calendar. However, where a hearing change request is made, to the extent that the information requested is minimal and is the least required for the protection of an appellant's rights and

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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 unique in each case and must be collected in order to maintain adequate control over hearing calendars and to provide hearings to appellants at times and places that they can attend. Apart from inconvenience to appellants, failure to obtain this information would result in a waste of government assets by allocating resources to hearings that will not be attended, and delaying hearings in other cases by scheduling hearings for claimants who cannot or will not appear. The frequency of collection depends solely upon the claimant's desire to modify the hearing schedule and, in that sense, is not controlled by VA.

7. Special Circumstances

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

8. Consultation Outside the Agency

Comments were solicited in compliance with 5 C.F.R. § 1320.8(d). *See* 79 Fed. Reg. 71506 (December 2, 2014). No comments were received.

9. Payments or Gifts to Respondents

None.

10. Description of Confidentiality

Under 38 U.S.C. § 5701(a), VA has statutory authority to protect the confidentiality of all files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents.

VA also complies with the Privacy Act of 1974 (5 U.S.C. § 552a).

11. Sensitive Questions

None of the information solicited for this collection is considered to be of a sensitive nature.

12. Estimation of Respondent's Reporting Burden

a. In fiscal year 2013, 16,131 Board hearings were requested. Of those requests, the Board conducted 11,431 hearings, with 436 conducted at the Central Office in Washington, DC; 5,217 conducted at VA regional offices; and 5,778 video-conference hearings conducted

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with the Veterans Law Judge located in Washington, DC, and the appellant located at a VA regional office other than the designated hearing location.¹⁰ Insofar as hearings are customarily requested in the course of completion of the VA Form 9, no additional burden for filing an initial hearing request is herein added.

b. Approximately ten percent (10%) of hearing requests (1,608 requests) were withdrawn prior to the hearing date pursuant to 38 C.F.R. §§ 20.702(e) and 20.704(e). VA estimates that approximately 9.5 percent (1,535) of all hearing requests involved a request for a new hearing date. Of that 9.5 percent, VA estimates that approximately half (768) were initial requests pursuant to 38 C.F.R. §§ 20.702(c)(1) and 20.704(c), and the remaining half (767) involved motions pursuant to the provisions of 38 C.F.R. §§ 20.702(c)(2), 20.702(d), and 20.704(d). Additionally, VA estimates that approximately 9.5 percent (1,535) of all hearing requests were “no shows,” where the Veteran failed to appear and did not file a motion for a new hearing.

c. With regard to withdrawals of hearing requests and requests for hearing date changes that do not require filing a motion, but rather, involve nothing more than the preparation of a simple letter requesting the withdrawal or change, VA believes that 1/4 hour is a fair estimation of the average preparation time. With regard to motions to reschedule in the remainder of cases, the time required will vary depending upon the degree of detail that the moving party wishes to present and the amount of legal research, etc., which the party wishes to perform. However, VA believes that, in such cases, one hour is a fair estimation of the average preparation time.

d. Most of the letters, motions, and responses will be drafted by non-attorneys, such as members of the general public whose earning capacity spans an extremely wide spectrum, and Veterans’ service organization representatives who represent VA appellants without charge as part of their service to Veterans. Other letters, motions, and responses will be drafted by attorneys. With this in mind, VA considers \$37 to be a fair average hourly rate.¹¹

¹⁰ *Supra*, note 1, at 27.

¹¹ *Supra*, note 6.

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e. VA estimates that the annual cost burden to respondents is as follows:

| No. of Responses | Hours per Response | Total Hours | Cost per hour | Total Cost |
|--|---------------------------|--------------------|----------------------|-------------------|
| 2,303 (1,535 withdrawal letters and 768 date change request letters) | 1/4 (drafting letter) | 576 | \$37.00 | \$21,312 |
| 767 (date change motions) | 1 (drafting motion) | 767 | \$37.00 | \$28,379 |
| Totals | | 1,3430 | | \$49,691 |

13. Estimate of Annual Cost Burden to Respondent’s or Recordkeepers from Collection of Information

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.

14. Annual Cost to the Federal Government

See the answer to question 12 for assumptions regarding estimated responses. For purposes of this estimate, insofar as field hearings and video-conference hearings are both scheduled for the Board by VA regional offices, they are herein grouped together.

| Position & Grade | Hourly Rate | Hours | Total |
|---|-----------------------|---|--------------|
| VA Regional Office Assistant Service Center Manager-GS 12/5 | \$37.74 ¹² | 116 (reviewing 695 requests for changes in the dates of field and video-conference hearings and preparing responses at 1/6 hour each) | \$4,378 |
| VA Regional Office Rating Specialist-GS 9/5 | \$26.02 ¹³ | 244 (processing and responding to 1,464 notices of withdrawal of field and video-conference hearing requests at 1/6 hour each) | \$6,349 |
| Board Program | \$34.26 ¹⁴ | 49 (reviewing and | \$1,679 |

¹² *Supra*, note 3.

¹³ *Supra*, note 3.

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| | | | |
|--------------------------------|-----------------------|--|-----------------|
| Analyst-GS 11/5 | | preparing responses to withdrawals of requests for Central Office hearings (144) and date change requests (147), at 1/6 hour each) | |
| Board Veterans Law Judge-AL3/B | \$67.43 ¹⁵ | 384 (reviewing 768 motions for changes in Central Office, field, or video-conference hearing dates and rendering decisions at 1/2 hour each) | \$25,893 |
| Total Costs | | | \$38,299 |

15. Explanation for Program Changes or Adjustments

There have been no program changes. Adjustments reflect changes in the number of hearings requested and provided annually. In this regard, VA notes that the number of hearings held has increased, in part, due to the increased use of video-conference hearings.

16. Tabulation, Statistical Analysis, and Publication Plans

The results of this information collection will not be published for statistical use.

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 VA regulations, 38 C.F.R. §§ 20.702 and 20.704, which display the OMB control number. There is no VA form for submitting this information.

18. Exceptions 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.

¹⁴ *Supra*, note 4.

¹⁵ *Supra*, note 5.

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B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical survey methodology does not apply.

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(D) MOTIONS FOR RECONSIDERATION

A. JUSTIFICATION

1. Necessity

Pursuant to 38 U.S.C. § 7103(a), decisions by the Board are final “unless the Chairman orders reconsideration of the decision” either “on the Chairman’s initiative, or upon motion of a claimant.” The procedures for filing a motion for reconsideration are set forth in 38 C.F.R. § 20.1001.

On February 19, 2015, the 30-day notice was published in the Federal Register. On March 13, 2015, an error in the Federal Register notice was identified. Specifically, the wrong agency was listed. A corrected 30-day notice was published in the Federal Register on May 22, 2015, at 80 FR at 29792-93.

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

The Chairman of the Board, or his designee, uses the information provided to decide whether a motion for reconsideration of a Board decision should be granted.

3. Use of Information Technology

Word-processing equipment may be used to draft the motion; however, a manual signature is desirable to ensure authenticity. The information gathered is unique in each case, and may be provided in the form of a letter; no special printed form or format is required. See 38 C.F.R. § 20.1001(a). As noted above, although the Board’s Information Technology staff has contemplated the use of electronic verification software, the cost to the Federal Government of using such software is prohibitive in light of the small number of responses. Moreover, the applicable regulation requires such motions to be in writing. See 38 C.F.R. § 20.1001(a).

4. Description of Effort to Identify Duplication

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.

5. Description of Methods Used to Minimize Burden on Small Businesses/Entities

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 to identify the applicable records and the grounds upon which reconsideration is sought, the burden on these small entities is considered to be minimal.

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

The information is unique in each case and must be provided to the Board so that the Board is aware of the claimant's desire for reconsideration and the basis of the claimant's request for reconsideration. Failure to obtain this information would deprive claimants of a potential form of relief. The frequency of collection depends solely upon the claimant's desire to obtain reconsideration and, in that sense, is not controlled by VA.

7. Special Circumstances

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

8. Consultation Outside the Agency

Comments were solicited in compliance with 5 C.F.R. § 1320.8(d). *See* 79 Fed. Reg. 71506 (December 2, 2014). No comments were received.

9. Payments or Gifts to Respondents

None.

10. Description of Confidentiality

Under 38 U.S.C. § 5701(a), VA has statutory authority to protect the confidentiality of all files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents.

VA also complies with the Privacy Act of 1974 (5 U.S.C. § 552a).

11. Sensitive Questions

None of the information solicited for this collection is considered to be of a sensitive nature.

12. Estimation of Respondent's Reporting Burden

Based on the number of responses to motions for reconsideration issued in fiscal year 2013, VA estimates that 642 responses will be filed annually. The time spent in the preparation and filing of a motion for reconsideration varies depending on the level of detail that the moving party wishes to present and the amount of legal research, etc., which the party wishes to perform. However, VA estimates that the average amount of time spent is one hour. In light of the fact that some of the motions will be drafted by non-lawyers, and others will be drafted by attorneys, VA considers \$37 to be a fair average hourly rate.¹⁶

¹⁶ *Supra*, note 6.

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| No. of Responses | Hours per Response | Total Hours | Cost per hour | Total Cost |
|-------------------------|---------------------------|--------------------|----------------------|-------------------|
| 642 | 1 | 642 | \$37.00 | \$23,754 |

13. Estimate of Annual Cost Burden to Respondent's or Recordkeepers from Collection of Information

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.

14. Annual Cost to the Federal Government

As noted above, VA estimates that 642 responses to motions for reconsideration will be filed annually. Responses involve approximately two hours of review by a Board paralegal/general attorney, who proposes a disposition on the motion for reconsideration. Additionally, approximately five percent (5%) of responses require legal research and a corresponding legal memorandum, which is generally prepared by a GS 14/7 attorney and requires an average of eight hours to complete. Once the foregoing has been completed, the motion is then reviewed by a Deputy Vice Chairman (DVC) of the Board, who renders a decision on the motion on behalf of the Chairman. *See* 38 C.F.R. §§ 20.102(b) and 20.1001(c). VA estimates the average review time of a DVC to be one hour. In this regard, VA notes that a DVC may spend more time on complex dispositions and less time on less complex dispositions, and as such, one hour is a good estimate of the average time spent.

| Position & Grade | Hourly Rate | Hours | Total |
|--|-----------------------|---|--------------|
| Board Paralegal/General Attorney- GS 9/5 | \$28.32 ¹⁷ | 1,284 (reviewing 642 motions at 2 hours each) | \$36,363 |
| Board Attorney-GS 14/7 | \$61.10 ¹⁸ | 256 (reviewing 32 motions at 8 hours each) | \$15,642 |

¹⁷ *Supra*, note 4.

¹⁸ *Supra*, note 4.

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| | | | |
|------------------------------------|-----------------------|--|------------------|
| Board Deputy Vice Chairman-AL-2 | \$80.29 ¹⁹ | 642 (reviewing 642 motions at 1 hour each) | \$51,546 |
| Total Costs | | | \$103,551 |

15. Explanation for Program Changes or Adjustments

There are no program changes. Adjustments reflect a change in the number of responses filed annually.

16. Tabulation, Statistical Analysis, and Publication Plans

The results of this information collection will not be published for statistical use.

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. § 20.1001. Although the control number was left off of the regulation due to an unintentional technical error, VA has initiated steps to publish the control number as a technical amendment to the regulation. There is no VA form for submitting this information.

18. Exceptions 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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical survey methodology does not apply.

¹⁹ This figure is equal to the annual rate paid to an Administrative Law Judge in DC-MD-VA-WV at the AL-2 level of \$167,000 divided by 2,080 hours. Office of Personnel Management, *2014 Locality Rates of Pay for Administrative Law Judges for the Locality Pay Area of Washington-Baltimore, DC-MD-VA-WV, 2014*, available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/ALJ_LOC.pdf.