

SUPPORTING STATEMENT FOR

OMB CONTROL NO. 2900-0674

NOTICE OF DISAGREEMENT

A. JUSTIFICATION

1. Necessity

Appellate review of the denial of Department of Veterans Affairs (VA) benefits is initiated by a claimant, or his/her representative, filing a Notice of Disagreement. 38 U.S.C.A. §§ 7105(a), (b)(2). A Notice of Disagreement is a written communication that expresses (1) dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction (AOJ) and (2) a desire to contest the result. 38 U.S.C.A. § 7105; 38 C.F.R. § 20.201. No special form or wording is required; however, the Notice of Disagreement must identify the specific determinations with which the claimant disagrees, and must be in terms that can be reasonably construed as disagreement with the AOJ's determination and a desire for appellate review. *Id.* If the AOJ receives a written communication expressing dissatisfaction or disagreement within one year (or 60 days for simultaneously contested claims) of mailing an adverse decision, but cannot clearly identify that communication as expressing an intent to appeal, or cannot identify which claims the claimant wants to appeal, then the AOJ will contact the claimant orally or in writing to request clarification of his/her intent. 38 C.F.R. § 19.26(b).

A claimant, or his or her representative, must file a Notice of Disagreement within one year (or in the case of simultaneously-contested claims, within 60 days) from the date that the AOJ mails the claimant notice of the determination with which he/she disagrees. 38 U.S.C.A. § 7105(b)(1); 38 C.F.R. § 20.302. When a timely Notice of Disagreement is filed, the AOJ must reexamine the claim and determine if additional review or development is warranted. 38 U.S.C.A. § 7105(d)(1); 38 C.F.R. § 19.26(a).

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

The information collected is used by the AOJ to identify the issues in dispute and prepare a Statement of the Case, which (1) summarizes the evidence in the case relating to the issue(s) with which the appellant disagrees, (2) summarizes the applicable laws/regulations and how they affect the determination, and (3) states the AOJ's determination on each issue and the reasons for each determination. 38 U.S.C.A. § 7105(d)(1); 38 C.F.R. § 19.29. The claimant generally has 60 days from the issuance of the Statement of the Case within which to file a Substantive Appeal. 38 U.S.C.A. §§ 7105(b)(1), (d)(3); 38 C.F.R. § 20.302(b). If the claimant subsequently files a timely Substantive Appeal (referred to as "perfecting an appeal"), the claim is certified to the Board of Veterans' Appeals (Board) for adjudication. *See* 38 U.S.C.A. §§ 7105(d)(3)-(5); 38 C.F.R. § 20.202. The information contained in the Notice of Disagreement is then used by the Board to determine whether it has proper jurisdiction over the appeal

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(i.e., to verify that the Notice of Disagreement was timely filed), and to identify the issues on appeal. Additionally, where a claimant has presented arguments in his/her Notice of Disagreement, the Board considers and weighs these arguments when adjudicating the appeal.

3. Use of Information Technology

VA currently uses an electronic claims processing system, which allows for submission of initial claims and the submission of a Notice of Disagreement online. However, the request for clarification of the Notice of Disagreement, which does not involve a form, is not part of the online system. Thus, the current claims processing system requires the request for clarification of the Notice of Disagreement to be in paper form, upon which it may then be scanned and uploaded to the Veterans Benefits Management System (which houses the Veteran's electronic claims file) for electronic viewing.

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.

5. Description of Methods Used to Minimize Burden

Some claimant's representatives, 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 a claimant'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 desire of VA claimants 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.

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8. Consultation Outside the Agency

In compliance with 5 C.F.R. § 1320.8(d), VA solicited comments from members of the public and affected agencies concerning the proposed Renewal of Information Collection Request for the Clarification of a Notice of Disagreement. See 80 Fed. Reg. 8764-65 (Feb. 18, 2015). Specifically, VA requested comments on (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology. *Id.*

VA received one comment from an affected agency. Of note, no comments were received regarding cost and/or hour burden. The comment addressed VA's new standardized Notice of Disagreement, VA Form 21-0958, which does not fall under this notice. The comment appears to pertain to OMB Control No. 2900-0791, Notice of Disagreement, which was published in the Federal Register on April 30, 2015, at 80 Fed. Reg. 24319-20 (Apr. 30, 2015). In light of the foregoing, no further action will be taken with regard to the Renewal of Information Collection Request for the Clarification of a Notice of Disagreement in response to the comment received.

9. Payments 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" (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

The Notice of Disagreement includes no question of a sensitive nature.

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12. Estimation of Respondent’s Reporting Burden

Approximately 122,487 Notices of Disagreement are filed each year.¹ Notices of Disagreement may be completed by an individual claimant 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 \$31.96 as the estimated hourly cost of completing the Notice of Disagreement.²

Respondents have wide discretion in the amount of time spent preparing a Notice of Disagreement. A majority of respondents (or their representatives) simply identify the issue(s) with which they are in disagreement and furnish a few sentences explaining the basis of their disagreement. Alternatively, some respondents (or their representatives) choose to write several pages explaining the basis of their disagreement with the denial of VA benefits. With this in mind, VA’s best estimate is that an average of one hour is spent preparing the Notice of Disagreement.

Based on the foregoing, VA estimates that the annual cost burden to respondents for completing a Notice of Disagreement is as follows:

No. of Responses	Hours per Response	Total Hours	Cost per hour	Total Cost
122,487	1	122,487	\$31.96	\$3,914,685

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

¹ This figure is equal to the average number of new Notices of Disagreement received in the field (*i.e.*, at the various Regional Offices throughout the United States) in Fiscal Years 2012, 2013, and 2014.

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 14-1673, September 10, 2014, *available at* http://www.bls.gov/news.release/archives/ecec_09102014.pdf

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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. As noted above, approximately 122,487 Notices of Disagreement are filed at Regional Offices nationwide per year.³ Additionally, if a respondent subsequently perfects his/her appeal, the case is certified to the Board, where the Notice of Disagreement is reviewed by both a Board attorney and a Veterans Law Judge during the course of the appeals adjudication process. In fiscal year 2014, the Board issued 55,532 decisions, indicating that 55,532 Notices of Disagreement were reviewed by Board attorneys and judges.

As discussed in the answer to question 12, most Notices of Disagreement are no longer than a few sentences; however, some Notices of Disagreement are several pages long. As such, VA estimates that the average time required to review each Notice of Disagreement is 15 minutes. Responses are maintained in preexisting VA claims files.

Based on the foregoing, VA estimates that the annual cost burden to the Federal Government is as follows:

Position & Grade	Hourly Rate	Hours	Other Cost	Total
VA Regional Office Rating Specialist-GS 12/3	\$35.52 ⁴	30,621.75 (reviewing 122,487 responses at 1/4 hour each)		\$1,087,685
Board Attorney/Adviser -GS 13/3	\$45.96 ⁵	13,883 (reviewing 55,532 responses at 1/4 hour each)		\$638,063

³ *Supra*, note 1.

⁴ U.S. Office of Personnel Management, *Salary Table 2014-RUS 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.

⁵ U.S. Office of Personnel Management, *Salary Table 2014-DCB 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.

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Position & Grade	Hourly Rate	Hours	Other Cost	Total
Board Member-AL3/B	\$67.43 ⁶	13,883 (reviewing 55,532 responses at 1/4 hour each)		\$936,131
Total Costs (includes prior page)				\$2,661,879

15. Explanation for Program Changes or Adjustments

There are no program changes. Adjustments since 2007 reflect an increase in the number of Notices of Disagreement filed annually by respondents.

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

VA understands that display is not required. This collection is contained in a regulation, 38 C.F.R. § 19.26, 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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical survey methodology does not apply.

⁶ 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 http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/ALJ_LOC.pdf.