

Notice of Disagreement

VA Form 21-0958
OMB #2900-0791

A. JUSTIFICATION:

1. Explain the circumstances that make the collection of information necessary. Identify legal or administrative requirements that necessitate the collection of information.

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).

VA Form 21-0958, *Notice of Disagreement*, has been revised to add a new appeal process election checkbox that will help streamline the appeals process for more accurate and efficient appeals processing. Previously, VA would, upon receipt of a notice of disagreement (NOD) from a claimant, send a letter inquiring as to whether he/she desired the traditional appellate review process or a Decision Review Officer (DRO) review process, also known as a de novo review process. The claimant would have 60 days to respond to VA's letter; no response was interpreted as a desire for traditional appellate review. VA has received multiple stakeholder requests and recommendations to add an appeal process election checkbox to eliminate the 60-day letter process for claimants who are ready to make an election upon filing their NOD. For claimants who do not check/utilize the new appeal process election checkbox, VA will continue to send a letter (per its own regulations at 38 CFR 3.2600).

2. Indicate how, by whom, and for what purposes the information is to be used; indicate actual use the agency has made of the information received from current collection.

VA Form 21-0958, will be used by the Veteran to initiate an appeal by indicating disagreement with a decision issued by a Regional Office (RO). Historically, VBA commenced a pilot program on March 1, 2012 and provided the NOD in all decision and notification letters at the pilot location. VA Form 21-0958, 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. VA will provide VA Form 21-0958 to claimants with the notification letter of the decision in paper form, via hyperlink to VA's website, or through its electronic claims processing system. The use of VA Form 21-0958 is mandatory when claimants want to initiate an appeal from a decision on disability compensation claims dated on or after March 24, 2015.

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- 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.**

VA Form 21-0958 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. 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.**

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. The use of VA Form 21-0958 is mandatory when VA has provided the form and a claimant wants to initiate an appeal on a decision for a disability compensation claim adjudicated on or after March 24, 2015. This form provides the claimant with a prescribed form designed to file a NOD on specific issues of contention. The form also allows VA to process NOD's more efficiently.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The collection of information does not involve small businesses or entities.

- 6. Describe the consequences 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.**

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. Explain any special circumstances that would cause an information collection to be conducted more often than quarterly or require respondents to prepare written responses to a collection of information in fewer than 30 days after receipt of it; submit more than an original and two copies of any document; retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years; in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study and require the use of a statistical data classification that has not been reviewed and approved by OMB.**

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There is no special circumstance requiring collection in a manner inconsistent with 5 CFR 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 sponsor'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 sponsor in responses to these comments. Specifically address comments received on cost and hour burden.**

The Department notice was published in the Federal Register on April 30, 2015, Volume 80, No. 83, pages 24319 and 24320. Two comments were received in response to this notice.

Comment #1:

A comment was received from Mr. William B. Rosenau in association with Waushara County Veterans Service Office stated that the addition of a check boxes, to solicit the choice between the De Novo Review using a "Decision Review Officer" (DRO) or the "traditional appeals process," could greatly enhance the utility of the form, by advising the Veteran of their avenues of redress, and reducing the administrative burden on the Department of Veterans Affairs (further referred to as "the Department") in developing for this choice when no such explicit intent is expressed through the text of the disagreement.

Currently, a claimant in disagreement with a VA decision has to express a decision on how they would like their NOD reviewed, either through the "traditional appeals process, or through a de novo review using a Decision Review Officer (DRO). The current form has no specific instruction to gain this decision, and rather, hinges on the unexpressed expectation that the claimant state their choice in the text of the disagreement. If the claimant fails to explicitly express their intent, the Department must then develop the claim to gain this decision, resulting in a further administrative burden on both the Department and the claimant and in a further delay in processing the claim.

Soliciting this decision up front, with the initial Notice of Disagreement, would greatly benefit the claimant and the Department by immediately reducing the need to further develop the claim to gain this decision, thus eliminating the administrative burden and processing delay imposed by such development.

Response to Comment #1:

VA thanks Mr. Rosenau for his support of our revision to VA Form 21-0958, to include an appellate process selection section that is soliciting the choice between the De Novo Review using the DRO or the "traditional appeals process."

Comment #2:

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A comment was received from Mr. Homer S. Townsend, Jr., in association with Paralyzed Veterans of America, stating that in general, we have concerns about VA's new standardized claims process, which we believe could make it more difficult for claimants to receive the benefits that they have earned. Regarding the NOD form, we have some specific concerns about the information collected and whether or not it actually helps VA to better understand the issues on appeal. We believe that some of the information requested is actually of limited value and in some cases may result in claimants unknowingly harming their claims.

Specific comments:

- Part II: Telephone Contact. We remain concerned about VA's insistence in asking claimants whether they would like to be contacted about their NOD. We believe that collecting information about whether or not a claimant would like to be contacted and when, regardless of whether the claimant is represented, is unlikely to lead to any information that is necessary for the proper performance of the appeals process. Instead, we believe that claimants risk damaging their claim by speaking to VA without the benefit of representation. For example, a claimant may unknowingly waive her rights on some aspect of her claim as a result of talking with VA about the issue(s) on appeal. Furthermore, if a veteran is represented, any questions regarding the NOD are more appropriately directed to the veteran's accredited representative.
- Part III: Specific Issues of Disagreement, Item 10 C. In general, we are concerned that asking Veterans to be too specific may result in their unknowing waiver of appeal rights, and in particular we believe that there is little practical utility to asking claimants to specify their percentage evaluation sought. Most claimants do not have the expertise needed to determine an applicable percentage evaluation for a specific disability. Without guidance, it is likely that the information collected will be of low quality and little to no value to VA. It should be sufficient for VA to know that a claimant disagrees with VA's decision on a particular disability and the broad area of disagreement. Asking a claimant to further specify the specific percentage evaluation sought is unlikely to solicit any additional information that would help VA to adjudicate the appeal and may result in claimants under estimating their percentage of disability.

We appreciate the opportunity to comment on this notice.

Response to Comment #2:

For ease of comprehension, VA will take each of the commenter's concerns in order, beginning with the commenter's general concerns. VA Form 21-0958, is designed to capture the minimum information required to fully and orderly address a Veteran's NOD. In the event that information on the completed form is ambiguous or vague, VA has provided additional items on the form which, when completed correctly, would allow VA to more fully understand the claimant's NOD or request clarification in an effort to provide the Veteran with a more timely and accurate decision.

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The commenter expressed specific concern regarding VA contacting claimants by telephone about their NODs, specifically that “claimants risk damaging their claim by speaking to VA without the benefit of representation.” The purpose of the optional telephone box, as stated on the form itself, is “to help VA process NODs quicker by requesting clarification of any ambiguous information on the form.” The ability for VA to request clarifying information by telephone enables VA to more efficiently process appeals and avoid expending time and other resources on matters that the claimant does not contest. VA notes that this box is not required to begin processing a claimant’s NOD under 38 CFR 19.24; however, the ability for VA to contact the Veteran by telephone provides the opportunity for a faster resolution for the claimant and more efficient processing of appeals by VA. This box does not alter VA’s notification requirement to a Veteran’s authorized representative. VA will continue to work with a Veteran’s authorized representative in matters that may affect the Veteran’s appeal.

The commenter also expressed concern that asking Veterans to be too specific on the issues of disagreement may result in their unknowingly waiving appeal rights. As stated, VA Form 21-0958 is designed to capture the minimum information required to address a claimant’s NOD; however, if the claimant can provide clarifying information upon submission of the NOD, VA will be able to address the claimant’s NOD, rather than developing for additional information. VA will continue to accept forms that are complete per the requirements set forth in 38 CFR 19.24 and will develop for additional information, as required, to address a claimant’s NOD. VA notes that those NODs with vague or ambiguous information may require additional development, and, therefore, may not be resolved as expeditiously as those where the information is readily available for review or clarification.

The optional item in box 10C in Part III of VA Form 21-0958, provides the Veteran with an opportunity to state what percentage evaluation he or she believes the evidence warrants. When VA adjudicates a Veteran’s claim, the Veteran is provided with the current disability evaluation, and the next higher evaluation level for each rated disability. The ability for VA to know what evaluation a Veteran expects allows VA to know whether the Veteran’s appeal may be satisfied upon further review of the appeal. In the event that the Veteran denotes a percentage evaluation that is lower than what the evidence of record would warrant, VA will adhere to the guidance found in 38 CFR 4.7, which states, in part “the higher evaluation will be assigned if the disability picture more approximates the criteria required for that rating. Otherwise, the lower rating will be assigned.”

- b. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure or reporting format, and on the data elements to be recorded, disclosed or reported. Explain any circumstances which preclude consultation every three years with representatives of those from whom information is to be obtained.**

This submission does not involve any recordkeeping costs.

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

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

10. Describe any assurance of privacy to the extent permitted by law provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

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. Provide additional justification for any questions of a sensitive nature (Information that, with a reasonable degree of medical certainty, is likely to have a serious adverse effect on an individual's mental or physical health if revealed to him or her), such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private; include specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

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

- a. Number of Respondents is estimated at 144,000 annually.
- b. The time estimate to complete the form is 30 minutes.
- c. The annual hour burden is estimated at 72,000 hours.
- d. **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB 83-I.**

Frequency of Response is one time for each form.

- e. **Provide estimates of annual cost to respondents for the hour burdens for collections of information. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14 of the OMB 83-I.**

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 \$1,728,000 (72,000 hours x \$24/hour).

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

- a. There is no capital, start-up, operation or maintenance costs.
- b. Cost estimates are not expected to vary widely. The only cost is that for the time of the respondent.
- c. There are no anticipated capital start-up cost components or requests to provide information.

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.

Estimated Costs to the Federal Government:

a. Processing/Analyzing costs	\$ 7,216,560
$(GS-13/5 @ \$48.35 \times 144,000 \times 30/60 \text{ minutes} = \$3,481,200)$	
$(GS-11/5 @ \$33.92 \times 144,000 \times 30/60 \text{ minutes} = \$2,442,240)$	
$(GS-5/5 @ \$17.96 \times 144,000 \times 30/60 \text{ minutes} = \$1,293,120)$	
b. Printing and production cost (\$90 per thousand)	\$80,184
c. Total cost to government	\$7,296,744

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

No burden change. The form includes an expiration date placeholder per OMB's guidance.

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.

The information collection is not for publication or tabulation use.

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

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

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

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

B. Collection of Information Employing Statistical Methods

No statistical methods are used in this data collection.