

*OMB #2900-0791, VA Form 21-0958, Notice of Disagreement,  
Comments/Responses*

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**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:**

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.

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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.

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

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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."