

**Department of
Veterans Affairs**

Memorandum

Date: September 25, 2018

From: Chief Consultant, Women's Health Services, Patient Care Services, Veterans Health Administration, Department of Veterans Affairs

Subj: Request for OMB review and consideration of emergency clearance for the "Reimbursement of Adoption Expenses for Certain Veterans." data collection.

To: Neomi Rao,
Administrator, Office of Information and Regulatory Affairs (OIRA)

Cc: VA Desk Officer, Stephanie Tatham,
Office of Management and Budget (OMB)

The Department of Veterans Affairs (VA) requests emergency clearance of an information collection under the Paperwork Reduction Act (PRA) pursuant to 5 CFR 1320.13. The title of this information collection is "Reimbursement of Adoption Expenses for Certain Veterans."

Section 260 of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (Public Law 114-223) states that VA may use appropriated funds available to VA for the Medical Services account to provide fertility counseling and treatment using assisted reproductive technology (ART) to a covered veteran or the spouse of a covered veteran, or adoption reimbursement to a covered veteran. On January 19, 2017, VA published an interim final rule at 82 FR 6275 addressing fertility counseling and treatment using ART for both covered veterans and spouses. On March 5, 2018, VA published an interim final rule (RIN 2900-AQ01) to implement our authority to provide adoption reimbursement to a covered veteran. See 83 Federal Register (FR) 9208.

Per the statute, veterans with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment are authorized to receive reimbursement for certain adoption-related expenses for an adoption that is finalized after September 29, 2016 (the date the law was enacted) under the same terms as apply under the adoption reimbursement program of DoD, as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in that DoD policy. DoD Instruction 1341.09, "DoD Adoption Reimbursement Policy" (July 5, 2016) establishes policy, assigns responsibilities within DoD, and provides procedures for the reimbursement of qualifying adoption expenses incurred by members of the Military Services (including document submission requirements) pursuant to 10 U.S.C. 1052.

Information collection associated with this interim final rule focuses on submission of documentation and information needed by VA to determine eligibility for reimbursement of qualifying adoption expenses, and to facilitate reimbursement of those qualifying expenses by VA. The DoD policy establishes information collection requirements for service members. Consistent with that DoD policy, to receive reimbursement for qualifying adoption expenses a covered veteran must provide various types of document including a VA determination that the applicant is a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment; a copy of the final adoption decree; certificate or court order granting the adoption; proof of citizenship of the adopted child in the case of a foreign adoption; documentation that the adoption was handled by a qualified adoption agency; and documentation to substantiate reasonable and necessary expenses paid by the covered veteran. In addition, the covered veteran must submit a full English translation of any foreign language document, to include the translator's certification that he or she is competent to translate the foreign language to English and that his or her translation is complete and correct. Finally, the covered veteran may be asked to provide information to facilitate electronic transfer of funds to effectuate the reimbursement. This information collection is consistent with DoD requirements imposed on a service member seeking reimbursement of qualifying adoption expenses.

The data collection is needed prior to the expiration of time periods established in 5 CFR part 1320. As discussed below, Congress authorized VA to provide reimbursement of qualifying adoption expenses incurred by covered veterans. This is a new benefit which was originally funded only through Fiscal Year 2018, but has been renewed and extended. The benefit is currently subject to the funding period covered by section 236 of Division J, Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018, Public Law 115-141 (March 23, 2018) and the availability of appropriations. VA would be unable to provide this new benefit to covered veterans to the extent intended by Congress in the absence of an emergency clearance given the length of time associated with the approval of a normal rulemaking-related information collection (proposed rule, public comment period, final rule publication with a delayed effective date). Following the typical time periods established in 5 CFR part 1320 would more likely than not result in VA being authorized to collect information and administer this benefit for only a limited period prior to expiration of our statutory authority. Therefore, VA has elected to pursue interim final rulemaking and emergency clearance under 5 CFR 1320.13.

This information collection is essential to the mission of the agency. VA's mission is to fulfill President Lincoln's promise "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's veterans. To accomplish this mission VA must ensure that VA benefits authorized by law are made available to eligible veterans in a timely manner and, when such benefit is authorized and funded for only a limited timeframe, that the maximum number of eligible veterans have access to that benefit prior to expiration of the authority. In this case, the adoption reimbursement benefit is available to veterans with a significant disability (i.e., a service-connected disability resulting in the inability of the veteran to procreate without the use of fertility treatment), only through the funding period covered by Public Law 115-141 and the availability of appropriations. Quick approval of this information collection is essential for VA to maximize the beneficial effect of this statutory authority.

Per 5 CFR 1320.13(a)(2), an executive agency may request emergency processing of an information collection when the agency cannot reasonably comply with the normal clearance procedures under that part because: public harm is reasonably likely to result if normal clearance procedures are followed; an unanticipated event has occurred; or the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

In this case, the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed. Public Law 114-223 section 260 provides that VA may use appropriated funds available to VA for the Medical Services account to provide fertility counseling and treatment using assisted reproductive technology to a covered veteran or the spouse of a covered veteran, or adoption reimbursement to a covered veteran. This information collection is related to reimbursement of qualifying adoption expenses incurred by a covered veteran. Originally, VA had authority to provide such reimbursement only through the end of FY18, but this was renewed and extended under Public Law 115-141, section 236. Under this most recent authority, VA's adoption expense reimbursement program remains subject to the funding period covered by P. Law 115-141 and the availability of appropriations. VA must implement this authority through rulemaking. Obtaining approval for this information collection through the normal PRA process (a PRA notice via proposed rulemaking and then OMB approval of the information collection when the final rulemaking is published) would mean that the benefit could more likely than not be implemented prior to expiration of the funding authority. As mentioned, VA pursued an interim final rule, effective on March 5, 2018. VA must be able to collection information related to reimbursement of qualifying adoption expenses. Failure to do so may result in a limited ability of VA to provide the benefit to the extent intended by congress.

VA requests emergency processing of this information collection **no later than September 28, 2018**. VA has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information. VA is required to administer this benefit under the same terms as apply under the adoption reimbursement program of DoD, as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in that DoD policy. VA has reviewed the policy and consulted with DoD to ensure consistency in the two programs, and to minimize the information collection to that required of service members utilizing the DoD program.

Any questions may be addressed to Patricia M. Hayes, Ph.D. Chief Consultant, Women's Health Services, Patient Care Services, Veterans Health Administration, via phone at (202) 461-0373 or via email at patricia.hayes@va.gov. Thank you for your consideration of this matter.



Patricia M. Hayes, Ph.D.
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Enclosures:
Paperwork Reduction Act Justification
DRAFT VA Form 10-10152