

SUPPORTING STATEMENT

OMB Control No. 2900-0674

VA Form 10182	Decision Review Request: Board Appeal (Notice of Disagreement) (new)
Nonstandard Form	Notice of Disagreement (legacy)
VA Form 9	Appeal to the Board of Veterans' Appeals (legacy)
Nonstandard Form	Withdrawal of Services by a Representative
Nonstandard Form	Requests for Changes in Hearing Dates or Methods
Nonstandard Form	Motions for Reconsideration

A. JUSTIFICATION

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

VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) and VA Form 9 - Appeal to the Board of Veterans' Appeals

The mission of the Board of Veterans' Appeals (Board) is to hold hearings and issue timely quality decisions on matters that have been appealed to the Board. Recent passage of two laws administered by VA requires the creation of a Notice of Disagreement form which will be used to appeal from decisions by VA, to request a hearing before a Veterans Law Judge (VLJ), and to request the opportunity to submit evidence directly to the Board as part of any appeal. This new form will be required for claimants who receive notice of a VA decision on or after February 19, 2019 and wish to appeal to the Board. Most claimants who receive notice of a VA decision before February 19, 2019 will remain in the legacy system. Legacy appellants are required to use both a Notice of Disagreement and a VA Form 9 to complete their appeal to the Board.

In August 2017, the President signed the Veterans Appeals Improvement and Modernization Act of 2017¹ – making substantial adjustments to VA's benefits claims and appeals system. Among other changes, the legislation requires that claimants wishing to appeal a decision by VA, and seek review by the Board, must complete a Notice of Disagreement and submit the completed form directly to the Board.

As amended by the Veterans Appeals Improvement and Modernization Act of 2017, appellate review of the denial of VA benefits may only be initiated by filing a Notice of Disagreement with the Board. 38 U.S.C. § 7105(a);² 38 C.F.R. § 20.202. 38 C.F.R. § 20.202 also provides claimants an opportunity to clarify a Notice of Disagreement if the form is not complete when initially submitted. To be accepted by the Board as an appeal, the Notice of Disagreement must be in a form prescribed by VA,³ identify the specific determination with which the claimant disagrees, and must indicate if the claimant requests to have a hearing before the Board, an

¹ Pub. L. 115-55 (2017).

² Unless otherwise noted, all citations to Title 38 of the U.S. Code refer to the text of the Code as amended by Pub. L. 115-55.

³ 38 C.F.R. § 20.202 requires the use of a "Notice of Disagreement" form in order to appeal from a VA decision.

opportunity to submit additional evidence, or neither. 38 U.S.C. § 7105(b)(2). The Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016, Pub. L. 114-315, amends 38 U.S.C. § 7107 to establish the Board's authority, upon request for a hearing, to determine what type of hearing it will provide an appellant, while affording the appellant the opportunity to request an alternative type of hearing once the Board makes its initial determination.

If a Notice of Disagreement indicates that the claimant is requesting a hearing before the Board, the Board must notify the claimant whether their requested hearing will be held (1) at the Board's principal location, or (2) by picture and voice transmission (i.e., using video teleconference) from a VA facility with suitable equipment. Once notified of the method that VA will use to satisfy their request, a claimant may then choose to request the other method – a request that the Board will grant. 38 U.S.C. § 7107(c); 38 C.F.R. § 20.703(c), (d).

As discussed below, the estimated average burden response to complete a valid Notice of Disagreement is 30 minutes, which includes any necessary corrections or clarifications. Moreover, claimants may request that their appeal is expedited under certain circumstances, such as advanced age (defined as over 75 years), financial hardship, or serious illness. 38 U.S.C. § 7112; 38 C.F.R. § 20.800(c). Such requests are not common given that VA automatically expedites appeals where the claimant is over 75 years of age. To the extent that respondents submit additional documentation requesting expeditious treatment, this is included in the average burden response time to complete an appeal to the Board, whether by submitting a Notice of Disagreement under the new law, or by submitting a VA Form 9 under the current process.

In order to effectuate the laws, the Board is requesting to renew OMB Control No. 2900-0674, adding four information collections previously approved under OMB Control No. 2900-0085, and one new information collection. Revised Control No. 2900-0674 would contain all appeals-related information collections for the legacy and new systems, with the exception of the Standard Notice of Disagreement approved under Control No, 2900-0791. 2900-0085 will be discontinued upon approval of this request to renew 2900-0674.

The legacy Notice of Disagreement is required to initiate an appeal. A non-standard Notice of Disagreement may be used for cases in which no form is provided by the agency of original jurisdiction for purpose of initiating an appeal. 38 C.F.R. § 19.21(b). The Notice of Disagreement must be in writing, and must express dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result.

The VA Form 9, "Appeal to Board of Veterans' Appeals," is required to complete a legacy appeal to the Board. 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. § 19.22 in order to complete an appeal to the Board. There will be no changes to the VA Form 9 itself. As discussed above, claimants may also request expeditious treatment of their appeal. 38 U.S.C. § 7112; 38 C.F.R. § 20.900(c). Such requests are included in the average burden response time to complete a VA Form 9.

The new Notice of Disagreement form will only be used by appellants in the new system beginning in February 2019, while legacy appellants would continue to use legacy forms. As legacy appeals continue to draw down, the use of the legacy forms will continue to decrease. As a result, the new information collection does not result in any increase in burden hours to the public. To the contrary, the estimated burden response in the new, streamlined, system is only 30 minutes, while in the old legacy system the burden per response for a perfected appeal to the Board ranged from 90 to 120 minutes. The burden per response for the old legacy “Appeal to the Board of Veterans’ Appeals” form is 60 minutes; the burden per response for the new standardized Notice of Disagreement is 30 minutes; and the burden per response for the old nonstandard form Notice of Disagreement is 60 minutes. VA estimates that respondents will generally require more time to complete the nonstandard Notice of Disagreement than a Notice of Disagreement on a standard form. Respondents for the nonstandard Notice of Disagreement must complete the required elements of a legally adequate Notice of Disagreement without the benefits of instructions or the guidance of required fields contained on a standard form. Accordingly, nonstandard forms often contain either more information than what is necessary, or they do not contain enough information to meet the legal requirements for the Notice of Disagreement, and must be corrected. For both these reasons, respondents often spend more time completing a nonstandard Notice of Disagreement.

Respondents in the legacy system must complete two forms – a Notice of Disagreement and the VA Form 9 in order to perfect an appeal, while respondents in the new system will be required to complete only one form. Moreover, some legacy respondents complete the Notice of Disagreement but decline to perfect their appeal by filing a VA Form 9. This means that, in the legacy system, the total number of respondents is greater than the total number of perfected appeals at the Board. This results in a higher respondent burden in the legacy system than would be expected in the new system. The new appeals system, therefore, will continue to reduce public burden hours as legacy appeals decrease.

Withdrawal of Services by a Representative

Individuals who have received a decision on a claim for VA benefits, and who choose to appeal that decision to the Board, will have the right to be represented. *See* 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* 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. 38 C.F.R. § 20.6. 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. 38 C.F.R. § 20.6. In both instances, VA must be able to receive relevant communications from appellant’s representatives.

Requests for Changes in Hearing Dates or Methods

VA will continue to provide hearings to appellants and their representatives, as required by basic constitutional due process considerations and by 38 U.S.C. § 7107. For appeals under the new system, VA will only accept a request for a hearing when such request is received on a Notice of Disagreement – including by way of a request to amend a previously submitted Notice of Disagreement. 38 C.F.R. § 20.202(c)(2). Once a hearing has been requested by an appellant, the Board will then determine whether the hearing will be held at its principle location, or via video-teleconference from a VA facility other than the Board’s principle location. See 38 U.S.C. § 7107(c)(1).

After an appellant has been notified of how their hearing will be conducted, the Board will grant a request for the alternate hearing method in its place. 38 U.S.C. § 7107(c)(2); 38 C.F.R. § 20.703(a), (d). For example, should the Board initially determine that a hearing is to be conducted via video-teleconference from a VA facility, then an appellant may contact the Board to request that the hearing be conducted instead at the Board’s principle location. *Id.* In addition, from time to time, appellants request changes in hearing dates and/or times and withdraw hearing requests. 38 C.F.R. § 20.704(c), (e). In order to do so, they must contact the Board to inform VA of their intent.

Motions for Reconsideration

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.” In order to challenge the finality of a Board decision without appealing that decision to the United States Court of Appeals for Veterans Claims, appellants may file a motion for reconsideration with the Board. The procedures for filing a motion for reconsideration are set forth in 38 C.F.R. § 20.1002.

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 10182, Decision Review Request: Board Appeal (Notice of Disagreement) and VA Form 9 - Appeal to the Board of Veterans’ Appeals

The information collected will be used by the Board to identify the issues in dispute which the claimant seeks to appeal, and to determine whether the Board has proper jurisdiction over the appeal (i.e., to verify that the Notice of Disagreement was adequately completed and timely filed). Where a claimant presents arguments in his/her Notice of Disagreement or VA Form 9, the Board will consider and weigh these arguments when adjudicating the appeal.

In addition, appeals to the Board will be adjudicated in the order in which they are received, but divided into separate “dockets.” Appeals will be assigned to a docket based on the hearing and evidence submission elections made on the Notice of Disagreement, specifically: (1) appeals in which there is no request for the opportunity to submit additional evidence, or request for a hearing before a Veterans Law Judge; (2) appeals in which there is a request for the opportunity to submit additional evidence, but no request for a hearing; and (3) appeals in which there is a request for both the opportunity to submit additional evidence and a hearing before a Veterans Law Judge. 38 U.S.C. § 7107(a); 38 C.F.R. § 20.800. Legacy appeals will be assigned to a

separate docket. In the new system, the Notice of Disagreement will be an appellant's only opportunity to request a hearing before a Veterans Law Judge, 38 C.F.R. § 20.202(c), and will be used by Board staff to determine the appellant's intent to do so. Legacy appellants may request a hearing on the VA Form 9 or in a separate statement.

Withdrawal of Services by a Representative

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

Requests for Changes in Hearing Dates or Methods

The information provided will be used by the Board to identify hearing requests, schedule hearings to meet those requests, make arrangements to reschedule hearings, and to fulfill requests for an alternative method of hearing.

Motions for Reconsideration

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

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 10182, Decision Review Request: Board Appeal (Notice of Disagreement) and VA Form 9 - Appeal to the Board of Veterans' Appeals

VA Form 10182 and VA Form 9 will be available for filling out and printing, via the Internet, at the following web address: <http://www.va.gov/vaforms/>.

In addition, VA is actively pursuing the development of an electronic claims processing system, which would eventually provide claimants with the option of filing a Notice of Disagreement online. VA's efforts in this regard have been focused initially 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.

Regarding the non-standard forms, word-processing equipment may be used; 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 will be 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, 38 C.F.R. § 19.21(b), and 38 C.F.R. §§ 20.6 and 20.1002(a) require that these communications are in writing, to be mailed to the address specified in the regulation.

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 paragraph 2 above.

The information in these collections is unique to the circumstances and facts of each claim before VA, and specific to each claimant seeking to appeal to the Board. Information that is only “similar,” should it exist, would be irrelevant.

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

Some claimants’ 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 narrowly tailored to be the least required for the protection of a claimant’s rights and the fulfillment of statutory requirements, the burden on these small entities will be minimal.

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.

The right to appeal VA decisions to the Board, and the right to request a hearing before the Board, are established by Congress. In establishing these rights, Congress has also mandated that the use of a Notice of Disagreement “in the form prescribed by the Secretary” is the *only* way in which an individual may appeal a VA decision to the Board or request a hearing before the Board. 38 U.S.C. § 7105(a). This information must be collected in order for the agency to properly process appeals, to include satisfying hearing requests. *See* 38 U.S.C. § 7107(c).

The frequency of collection depends solely upon the desire of VA claimants to appeal VA determinations; a representative’s desire to withdraw from a specific case; the appellant’s desire to modify their hearing; and/or the appellant’s desire to obtain reconsideration. In that sense, the frequency of collection is not controlled by VA.

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.

These collections of information are conducted in a manner consistent with guidelines in 5 C.F.R. § 1320.5(d)(2). There are no special circumstances that would require respondents to prepare or submit the documents outlined above, or respond in fewer than 30 days.

8. 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 C.F.R. § 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.

A 60-day notice for this proposal was published in the Federal Register on August 22, 2018, at 83 FR 42769. VA received four comments.

A commenter expressed a general complaint that Federal Register notices do not contain enough information, and are often not accompanied by supporting documents, including the information collection at issue. The commenter urged VA to attach forms to Federal Register notices. VA notes that the draft form associated with this proposal were available upon request. Moreover, the final version of the Notice of Disagreement is now published in the Federal Register. VA makes no changes based on this comment.

A commenter remarked that VA should not request Veterans' health information without the written consent of the Veteran. VA does not request Veterans' health information without consent. Veterans may securely submit medical evidence and other information to VA in support of their claims. VA makes no changes based on this comment.

A commenter suggested that the Notice of Disagreement form include information about the filing deadlines for the other AMA review options, the Supplemental Claim and Higher-Level Review. The commenter also suggested that VA emphasize the one-year deadline. When Veterans receive notice of a VA decision, they receive specific information about the available options for review. VA has already emphasized the filing deadline in the instructions for the Notice of Disagreement. VA makes no changes based on this comment.

The commenter expressed concern that the blocks for the claimant's identifying information do not contain sufficient space for hyphenated names or long addresses. The commenter also noted that the current version of the form has limited space for argument. The commenter suggested that VA amend the form to use free-form blocks, and encouraged VA to allow for electronic submission of forms. The commenter further encouraged VA to provide more space or an

additional attachment for argument, particularly since the VA Form 9 is being eliminated. VA agrees with the commenter and has amended the form to use only free-form blocks. Moreover, the form provides instructions for attaching additional pages if more space is needed. The Veteran or representative may check a box on the form to indicate that additional pages have been attached. Veterans may fill out the Notice of Disagreement electronically, but must then print the form to submit it. Currently, the Board does not have technological resources available to accept electronic submission of forms; however, VA will take this comment under consideration and will update any necessary forms, regulations, and procedures should electronic filing become available.

The commenter noted that the form does not account for homeless Veterans, who may have multiple addresses or P.O. Boxes at which they can be reached. VA agrees with the commenter and has amended the form and instructions to account for homeless Veterans. First, VA has added a check box in the Part I – Personal Information section of the form, so that a Veteran may indicate if he or she is homeless. Next, VA added information for homeless Veterans in the instructions, including that Veterans may attach additional sheets to the form.

The same commenter also noted there should be space for multiple current addresses of the Veteran to be listed. VA finds this would be confusing. As explained further below, the Veterans’ representative should be copied on communications. VA makes no changes based on this comment.

The commenter requested that VA clarify the authority for representatives to sign the Notice of Disagreement on behalf of their clients, noting that the form provides a space for the representative to sign, and an additional space for the claimant’s signature, indicating that both are needed. To clarify, representatives may sign on behalf of their clients. VA agrees with the commenter that providing separate fields for the Veteran and the representative will cause confusion as to the representative’s authority to sign. Accordingly, VA amended the form to provide one signature box, which notes that the appellant or appointed representative may sign.

The commenter also requested that the form include the option for claimants to request that their representative be contacted if they cannot be reached, so that the representative can provide updated contact information or clarify the Notice of Disagreement. 38 C.F.R. § 20.202(i) indicates that references to “claimant” in the portions of that section that discuss clarifying unclear Notices of Disagreement (paragraphs (f) through (h)) include reference to both the claimant and his or her representative or fiduciary, if any. As contacting a representative during the clarification process is contemplated by the clarification procedures described in 38 C.F.R. § 20.202, VA does not find it necessary to require claimants to actively select that option on the Notice of Disagreement and makes no changes based on this comment.

The commenter requested clarification of evidence submission options, as well as the procedures for requesting different Board review options for different issues. Part II – Board Review Option explains the evidence submission rules for each option. Moreover, the instructions for Part II note that, “If you wish to request a different review option for one or more issues listed in Part III, you may attach additional sheets to the form, explaining your preference.” As the requested information is already included in the form, VA makes no changes based on this comment.

The commenter questioned the utility of previous VA forms' inclusion of check boxes to indicate the area of disagreement (Service Connection, Effective Date of Award, Evaluation of Disability, and Other), as well as the form's request for "percentage of evaluation sought (if known)." Although some VA forms have included these check boxes in the past, the Notice of Disagreement form associated with this proposal does not. VA agrees with the commenter that the check boxes had limited utility and were generally confusing for Veterans. As the requested change is already included in the form, VA makes no additional changes based on this comment.

The commenter noted that all VA forms must be compliant with Section 508 of the Rehabilitation Act, which requires federal agencies to ensure that all electronic and information technologies provide equal access for people with disabilities. VA agrees that all forms must comply with Section 508. The Notice of Disagreement has been properly formatted to comply with Section 508. VA makes no changes based on this comment.

Another commenter suggested that VA provide more specific information on the Notice of Disagreement as to which form should be submitted, given that Veterans may submit two different Notice of Disagreement forms for a period of time – VA Form 0958 is for legacy appeals, while VA Form 10182 is for the modernized system. The commenter further stated that VA should create a policy to notify a Veteran when the wrong form is used, so that the Veteran may file the correct form before the filing deadline has passed. The commenter suggested that VA more clearly explain its procedures for clarification of an incomplete Notice of Disagreement in the instructions for the form. VA agrees with the commenter and has amended the "Note" in the instructions which describes when the new Notice of Disagreement should be used. Regarding the suggested policy, VA already has procedures, as required by regulation (*see* 38 C.F.R. § 20.202(f), (g), and (h)), for notifying Veterans and representatives when an incomplete Notice of Disagreement is filed. VA Form 0958 does not contain a field for Veterans to indicate their choice of Board review option; therefore, a VA Form 0958 that is filed with the Board and expresses disagreement with a decision to which AMA is applicable would be incomplete and thus subject to clarification procedures. The Notice of Disagreement form provides instructions for a Veteran to properly fill out the form. When a Veteran files an incomplete form, VA will notify him or her that clarification is needed. The clarification procedures contained in § 20.202 favor the Veteran. In particular, § 20.202(g) provides that the Veteran must respond to VA's request for clarification by the later of 60 days after the clarification request or one year after the notice of the decision on appeal. This places the burden on VA to discover and provide notice of the incomplete Notice of Disagreement. Therefore, VA does not find it necessary to include additional information about clarification procedures on the form itself.

The commenter noted that Veterans may request different Board review options for different issues, and requested that VA clarify the procedures for making such a request. The commenter suggested that VA amend the form to include a column for review option next to each issue being appealed. The form already provides instructions for selecting different review options for different issues. The Veteran may attach additional sheets to explain this choice. VA determined that adding a column for review option, as the commenter suggests, would cause confusion and inadvertently force the Veteran to make a choice for each issue. VA expects that most Veterans

will choose the same review option for all issues. Therefore, requiring most Veterans to check the same review option box for each issue would place an unnecessary burden on them. Therefore, VA makes no changes based on this comment.

The commenter requested clarification on instructions for modifying or cancelling the Notice of Disagreement, noting that the instructions do not contain information about cancelling. The commenter also suggested that VA create a standard form for modification of a Notice of Disagreement. VA agrees that the language referring to cancellation of a Notice of Disagreement was confusing, and has removed that language. VA also agrees with the commenter that a standard form for modification should be used. Accordingly, VA has updated the form, as well as 38 C.F.R. § 20.202(c), to reflect that requests to modify a Notice of Disagreement must be made by completing a new Notice of Disagreement form.

Regarding the form itself, the commenter noted that the Veteran is not always the appellant, and requested that VA amend the form to include the ability to provide specific identifying information for the appellant, if he or she is not the Veteran. VA agrees with the commenter, and has updated Part I – Personal Information to account for situations in which the appellant is not the Veteran.

The commenter noted that the form instructs the Veteran to list the issues he or she wishes to appeal, and to refer to the decision notice(s) for a list of adjudicated issues. The commenter questioned whether providing this information would be sufficient to comply with the statutory requirement for identification of the specific determination with which the claimant disagrees. To clarify, a proper and complete Notice of Disagreement will comply with the statutory requirements. The Notice of Disagreement needs to contain sufficient information for VA to determine the issue and adjudication with which the Veteran disagrees. The design of the new Notice of Disagreement form prompts the Veteran to provide the issue and the date of decision with which the Veteran is disagreeing. However, § 20.202 notes that “the Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal.” This language protects the rights of a Veteran who, for example, incorrectly identifies the date of the agency of original jurisdiction decision, but does provide enough information that VA is able to identify the issue and decision on appeal. VA makes no changes based on this comment.

Finally, the commenter requested that VA add a statement indicating that a representative may sign on behalf of the individual he or she is representing. As noted above, VA agrees with this comment, and has amended the form to provide one signature box, which notes that the appellant or appointed representative may sign.

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 these collections 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.

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. 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.

No question on these forms is considered to be of a sensitive nature.

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

Over the last four fiscal years for which data is available, an average of 152,237 Notices of Disagreement have been received by VA field offices, with an average of 58,474 appeals perfected to the Board each year.⁴ Historically, appellants who have already filed a Notice of Disagreement and received a Statement of the Case from the agency of original jurisdiction have subsequently needed to perfect their appeal to the Board using VA Form 9.

Under the Veterans Appeals Improvement and Modernization Act of 2017, claimants wishing to perfect an appeal of one or more issues to the Board will no longer use the VA Form 9 as they do under current law, instead relying only on the new Notice of Disagreement, VA Form 10182. Additionally, while claimants who disagree with a VA decision have previously only had the single option of appealing to the Board, the new framework permits claimants other avenues for disagreement by submitting to their local VA office a supplemental claim or request for higher-level review. 38 U.S.C. §§ 5104B, 5108. VA is seeking approval of VA Form 20-0996 and VA Form 20-0995 under a separate Control Number, 2900-NEW. Therefore, the higher-level review and supplemental claim forms are not discussed in this statement.

In total, it is estimated that an average of approximately 86,000 appeals will be filed to the Board each year. Veterans who receive notice of a VA decision on or after February 14, 2019 and wish to appeal to the Board will do so by filing VA Form 10182. However, Veterans who receive notice of a VA decision prior to February 14, 2019 and wish to appeal to the Board

⁴ These figures are equal to the average number of Notices of Disagreement and Substantive Appeals filed at an Agency of Original Jurisdiction (AOJ) in Fiscal Years 2014, 2015, 2016 and 2017. *Board of Veterans' Appeals, Report of the Chairman, Fiscal Year 2017*, at 24 and 28.

must do so using the legacy forms, unless they choose to opt into the new system. Legacy appellants may choose to opt into the new system in lieu of filing a VA Form 9 upon receipt of a Statement of the Case or Supplemental Statement of the Case. As Veterans have one year to file a Notice of Disagreement, VA will accept legacy Notices of Disagreement until February 13, 2020 – the date that is one year from the last day on which notice of a VA decision subject to the legacy system could be received. Therefore, VA estimates that approximately 144,000 legacy Notices of Disagreement will be filed in fiscal year 2019, while approximately 36,000 legacy Notices of Disagreement will be filed in fiscal year 2020, as the number of claimants who are able to file a timely legacy Notice of Disagreement draws down. Accordingly, VA estimates that an average of approximately 60,000 legacy Notices of Disagreement will be filed over the next three years.

Moreover, Veterans with legacy Notices of Disagreement pending on February 14, 2019 will still be able to perfect their legacy appeals by filing a VA Form 9. Thus, VA estimates that, over the next three years, an average of approximately 64,500 appeals will be filed using the legacy Notice of Disagreement and VA Form 9, while an average of approximately 40,000 appeals will be filed using the new system Notice of Disagreement.

Note: Veterans who are eligible to file a legacy Notice of Disagreement may either file the Notice of Disagreement currently approved under OMB Control Number 2900-0674, or the Standard Notice of Disagreement currently approved under OMB Control Number 2900-0791.

- a. Number of respondents is estimated at 168,800 per year.
 - i. Decision Review Request: Board Appeal (Notice of Disagreement) (New) = 40,000*
 - ii. Notice of Disagreement (Legacy) = 60,000
 - iii. VA Form 9 (Legacy) = 64,500
 - iv. Withdrawal of Services by Representative = 500
 - v. Requests for Change to Hearing Dates or Methods = 2,800
 - vi. Motions for Reconsideration = 1,000

* This is an estimated average over the review period. Responses are expected to increase to 43,000 in FY 2020.

- b. Frequency of response is once.
- c. The estimated completion time for each form is as follows:
 - i. Decision Review Request: Board Appeal (Notice of Disagreement) (New) = 30
 - ii. Notice of Disagreement (Legacy) = 60
 - iii. VA Form 9 (Legacy) = 60
 - iv. Withdrawal of Services by Representative = 20

- v. Requests for Change to Hearing Dates or Methods = 15
 - vi. Motions for Reconsideration = 60
- d. The average annual burden hours are 146,365 hours:
- i. Decision Review Request: Board Appeal (Notice of Disagreement) (New) = 20,000 (0.5 hour x 40,000 responses)
 - ii. Notice of Disagreement (Legacy) = 60,000 (1 hour x 60,000 responses)
 - iii. VA Form 9 (Legacy) = 64,500 (1 hour x 64,500 responses)
 - iv. Withdrawal of Services by Representative = 165 (0.33 hours x 500)
 - v. Requests for Change to Hearing Dates or Methods = 700 (0.25 hour x 2,800)
 - vi. Motions for Reconsideration = 1,000 (1 hour x 1,000 responses)
- e. The respondent population for these information collections is composed of individual appellants or their representative. 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. VA cannot make further assumptions about the population of respondents because of the variability of factors such as the educational background and wage potential of respondents. Therefore, VBA used general wage data to estimate the respondents' costs associated with completing the information collection.

The Bureau of Labor Statistics (BLS) gathers information on full-time wage and salary workers. According to the latest available BLS data, the mean weekly earnings of full-time wage and salary workers are \$973.60. Assuming a forty (40) hour work week, the mean hourly wage is \$24.34 based on the BLS wage code – "00-0000 All Occupations." This information was taken from the following website: (https://www.bls.gov/oes/current/oes_nat.htm, May 2017).

VA estimates the total cost to all respondents to be \$3,562,524.

- i. Decision Review Request: Board Appeal (Notice of Disagreement) (New) = \$486,800 (20,000 burden hours x \$24.34 per hour)
- ii. Notice of Disagreement (Legacy) = \$1,460,400 (60,000 burden hours x \$24.34 per hour)
- iii. VA Form 9 (Legacy) = \$1,569,930 (64,500 burden hours x \$24.34 per hour)
- iv. Withdrawal of Services by Representative = \$4,016 (165 burden hours x \$24.34 per hour)
- v. Requests for Change to Hearing Dates or Methods = \$17,038 (700 burden hours x \$24.34 per hour)
- vi. Motions for Reconsideration = \$24,340 (1,000 burden hours x \$24.34 per hour)

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).

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. 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.

The costs to the Federal Government for the information collections included in this submission are summarized below:

Items in this Information Collection	Total Cost to Federal Government
(A) Decision Review Request: Board Appeal (Notice of Disagreement) and VA Form 9 - Appeal to the Board of Veterans' Appeals	\$ 9,634,395.48
(B) Withdrawal of Services by a Representative	\$ 46,677.94
(C) Requests for Changes in Hearing Dates or Methods	\$ 27,197.54
(D) Motions for Reconsideration	\$ 300,208.92
Overall Cost to Federal Government	\$ 10,008,479.88

Overhead costs are 100% of salary and are the same as the wage listed below and the amounts are included in the total.

Note: The hourly wage information above is based on the hourly 2018 General Schedule (Base) Pay (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/GS_h.pdf). This rate does not include any locality adjustment as applicable.

The processing time estimates below are based on the actual amount of time employees of each grade level spend to process to completion a claim received on this form. The within-grade step of each employee represents the average experience of employees within each grade.

VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) and VA Form 9 - Appeal to the Board of Veterans' Appeals

Legacy notices of disagreement are filed with the AOJ, and are reviewed by a VA Regional Office Rating Specialist. As noted, it is estimated that approximately 115,000 legacy notices of disagreement will be filed annually. Perfected legacy appeals and new notices of disagreement to the Board will be reviewed by intake specialists to determine whether the appellant has requested to have a hearing before a VLJ. For appeals in which a hearing has been requested, a hearing specialist will review the Notice of Disagreement or VA Form 9 to

verify the hearing selection before scheduling the appellant for a hearing. Notices of Disagreement and VA Form 9s are also reviewed by Board attorneys and VLJs during the course of reviewing a claims file and adjudicating the appeal. For legacy appeals, Board attorneys and VLJs must review both a legacy Notice of Disagreement and a VA Form 9.

Estimated Costs to the Federal Government:

Grade	Step	Burden Time	Fraction of Hour	Hourly Rate	Cost Per Response	Total Responses	Total
12	3	15	0.25	\$32.51	8.128	60,000	\$ 487,650.00
Overhead at 100% Salary							\$ 487,650.00
9	5	15	0.25	\$23.82	5.955	41,800	\$ 248,919.00
Overhead at 100% Salary							\$ 248,919.00
13	3	15	0.25	\$38.65	9.663	169,000	\$ 1,632,962.50
Overhead at 100% Salary							\$ 1,632,962.50
AL3	B	15	0.25	\$56.68	14.170	169,000	\$ 2,394,730.00
Overhead at 100% Salary							\$ 2,394,730.00
Processing / Analyzing Costs							\$ 9,528,523.00
Printing and Production Cost							\$ 105,872.48
Total Cost to Government							\$ 9,634,395.48

Withdrawal of Services by a Representative

Responses will be reviewed by Board attorneys, who will prepare a recommended disposition on each motion for a Board Veterans Law Judge. A Board Veterans Law Judge will then review the response and render a decision regarding the motion to withdraw. Responses will be maintained in preexisting VA claims files.

Estimated Costs to the Federal Government:

Grade	Step	Burden Time	Fraction of Hour	Hourly Rate	Cost Per Response	Total Responses	Total
13	3	30	0.50	\$35.65	17.825	500	\$ 8,912.50
Overhead at 100% Salary							\$ 8,912.50
AL3	B	30	0.50	\$56.68	28.340	500	\$ 14,170.00
Overhead at 100% Salary							\$ 14,170.00
Processing / Analyzing Costs							\$ 46,165.00
Printing and Production Cost							\$ 512.94

Total Cost to Government	\$ 46,677.94
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Requests for Changes in Hearing Dates or Methods

Responses will be reviewed by a program analyst, who will prepare responses to withdrawals of requests for hearings, date changes requests, and hearing method change requests.

Estimated Costs to the Federal Government:

Grade	Step	Burden Time	Fraction of Hour	Hourly Rate	Cost Per Response	Total Responses	Total
11	5	10	0.17	\$28.82	4.803	2,800	\$ 13,449.33
Overhead at 100% Salary							\$ 13,449.33
Processing / Analyzing Costs							\$ 26,898.67
Printing and Production Cost							\$ 298.87
Total Cost to Government							\$ 27,197.54

Motions for Reconsideration

As noted above, VA estimates that 1,000 responses to motions for reconsideration will be filed annually. Responses will involve approximately two hours of review by a Board paralegal/general attorney, who will propose a disposition on the motion for reconsideration. Additionally, approximately five percent (5%) of responses will require legal research and a corresponding legal memorandum, which will generally be prepared by a GS 14/7 attorney and require an average of eight hours to complete. Once the foregoing has been completed, the motion will then be reviewed by a Deputy Vice Chairman (DVC) of the Board, who will render a decision on the motion on behalf of the Chairman. 38 C.F.R. §§ 20.109, 20.1002(c). VA estimates the average review time of a DVC will 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.

Estimated Costs to the Federal Government:

Grade	Step	Burden Time	Fraction of Hour	Hourly Rate	Cost Per Response	Total Responses	Total
9	5	120	2.00	\$23.82	47.640	1,000	\$ 47,640.00
Overhead at 100% Salary							\$ 47,640.00
14	7	480	8.00	\$51.39	411.120	58	\$ 23,844.96
Overhead at 100% Salary							\$ 23,844.96
AL	2	60	1.00	\$76.97	76.970	1,000	\$ 76,970.00
Overhead at 100% Salary							\$ 76,970.00
Processing / Analyzing Costs							\$ 296,909.92

Printing and Production Cost	\$ 3,299.00
Total Cost to Government	\$ 300,208.92

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

The change in burden hours is due to a variety of factors. Most notably, this submission proposes bundling all appeals-related information collections for the Board of Veterans' Appeals. Additional changes in burden hours are due to an increase in decisions on claims, which results in an increase in claimants who appeal those decisions to the Board. Due to the more efficient, streamlined procedures of the new system, a net decrease in burden hours is expected over the next several years. As more Veterans are able to take advantage of the new system, the total number of burden hours will continue to decrease.

Note: This control number previously contained one information collection. The Board is requesting to renew OMB Control No. 2900-0674, adding four information collections previously approved under OMB Control No. 2900-0085, and one new information collection. Revised Control No. 2900-0674 would contain all appeals-related information collections for the legacy and new systems, with the exception of the Standard Notice of Disagreement approved under Control No, 2900-0791. 2900-0085 will be discontinued upon approval of this request to renew 2900-0674.

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.

Regarding the Notice of Disagreement and VA Form 9, final Board decisions are made available on websites accessible through the internet to assist in complying with 5 U.S.C. § 552(a)(2). While VA will present some data on publicly accessible internet websites relating to processing times for appeals and the level of appellate evidentiary development requested, the specific information gathered in the information collections described herein will not be published. The results of the other information collections will not be published for statistical 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.

VA is not seeking approval to omit the expiration date for OMB approval of the Notice of Disagreement or VA Form 9. Regarding the other information collections, VA understands that display is not required. These collections will be contained in 38 C.F.R. §§ 20.6, 20.703, 20.704, and 20.1002 which will display the OMB control number. There will not be a VA form for submitting this information.

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

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

No statistical methods are used in any part of this data collection.