

Supporting Statement for VA Form 21-0788,  
*Information Regarding Apportionment of Beneficiary's Award*

OMB #2900-0666

**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 as requested by VA Form 21-0788, *Information Regarding Apportionment of Beneficiary's Award*, under the authority of 38 U.S.C. 5307, which states that a veteran's or beneficiary's compensation and pension benefits may be apportioned for his/her dependents. Regulatory authority is found in 38 C.F.R. 3.450-3.454 and 3.458-3.461.

Under RIN#2900-AP67, *Apportionment*, VA proposes to amend its regulations to limit the circumstances in which benefits will be apportioned and to stop apportioning certain benefits. Currently, in limited situations, VA may pay a portion of a VA beneficiary's monetary benefits directly to the beneficiary's dependents. This is referred to as apportionment of benefits. Most claims for apportionment involve complex issues of family law, issues that are best suited to the expertise and authority of state courts. VA claims adjudicators have limited ability to analyze these complex and fact-intensive claims, to include both technical expertise as well as an ability to compel participation in necessary accounting measures. When VA awards apportionments, decisions rendered can disturb state court support awards, requiring a state court to expend additional resources to revisit a prior determination. Finally, due to their intricacy, a significant amount of information is needed to properly adjudicate apportionment claims. While this information is typically already available to state courts, VA must attempt to gather this information from the VA beneficiary and beneficiary's dependent, which is unavoidably a time-consuming process and often cannot result in a comprehensive evidentiary picture. The additional time and effort needed to gather this information increases VA workloads and results in the potential for delays of all VA claims processes, to include apportionment awards. Because VA apportionment awards often conflict with the awards of better-situated state family courts and because VA lacks the authority and expertise to make fully informed, accurate, and economically appropriate awards, VA is proposing to amend its regulations to discontinue making apportionment awards in most circumstances and to stop apportioning certain benefits.

VA Form 21-0788 as a part of this proposed rule, is being revised:

- Removal of approximately two (2) pages of the information collection pertaining to income and net worth data; the proposed regulation eliminates the need to collect this data from a claimant/beneficiary. This is a substantive change.
- The burden estimate is decreasing from 30 minutes to 15 minutes.

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- 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 21-0788, associated with the proposed rule RIN#2900-AP67, will be used to determine whether benefits may be apportioned under and, if so, the amount. A veteran's benefits may be paid to his/her spouse and children if the veteran is incarcerated or is deemed incompetent and hospitalized at government expense. This form will be completed to obtain the information needed to determine whether benefits may be apportioned and the amount payable.

- 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 21-0788 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. 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; however, none were found to exist. There is no known Department or Agency which maintains the necessary information, nor is it available from other sources within our Department.

- 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.**

VA Form 21-0788, associated with the proposed rule RIN#2900-AP67, will be used to determine whether benefits may be apportioned under and, if so, the amount. A veteran's benefits may be paid to his/her spouse and children if the veteran is incarcerated or is deemed incompetent and hospitalized at government expense. This

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form will be completed to obtain the information needed to determine whether benefits may be apportioned and the amount payable. Without this collection of information, VA would be unable to properly authorize apportionments of compensation and pension benefits.

- 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.**

There is no special circumstance requiring collection in a manner inconsistent with 5 CFR 1320.6 guidelines.

- 8. If applicable, provide a copy and identify the date and page number of publications 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 October 14, 2021, Volume 86, No. 196, pages 57084 to 57094. No comments were received in response to this notice.

- 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 "Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA (58VA21/22/28)," published at 74 FR 29275 on June 19, 2009, and last amended at 84 FR 4138 (February 14, 2019).

- 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**

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**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 815 per year.
- b. Frequency of Response is one time.
- c. Annual burden hours are 204 hours.
- d. The estimated completion time for each form is 15 minutes.

Note: Due to this proposed rule, the estimate has decreased from 30 minutes to 15 minutes.

- e. The respondent population for VA Form 21-0788 is composed of individuals who are requesting an apportionment of a beneficiary's award amount. 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 hourly wage is \$27.07 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](https://www.bls.gov/oes/current/oes_nat.htm).

Legally, respondents may not pay a person or business for assistance in completing the information collection. Therefore, there are no expected overhead costs for completing the information collection. VBA estimates the total cost to all respondents to be \$5,515.51 (203.75 burden hours x \$27.07 per hour).

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

This submission does not involve any recordkeeping costs.

**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**

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**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:

| Grade                           | Step | Burden Time | Fraction of Hour | Hourly Rate | Cost Per Response | Total Responses | Total               |
|---------------------------------|------|-------------|------------------|-------------|-------------------|-----------------|---------------------|
| 7                               | 3    | 30          | 0.50             | \$19.26     | 9.630             | 815             | \$ 7,848.45         |
| Overhead at 100% Salary         |      |             |                  |             |                   |                 | \$ 7,848.45         |
| 9                               | 3    | 15          | 0.25             | \$23.55     | 5.888             | 815             | \$ 4,798.31         |
| Overhead at 100% Salary         |      |             |                  |             |                   |                 | \$ 4,798.31         |
| 11                              | 3    | 15          | 0.25             | \$28.50     | 7.125             | 815             | \$ 5,806.88         |
| Overhead at 100% Salary         |      |             |                  |             |                   |                 | \$ 5,806.88         |
| Processing / Analyzing Costs    |      |             |                  |             |                   |                 | \$ 36,907.28        |
| Printing and Production Cost    |      |             |                  |             |                   |                 | \$ 410.08           |
| <b>Total Cost to Government</b> |      |             |                  |             |                   |                 | <b>\$ 37,317.36</b> |

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

Printing and production costs approximates the cost of printing this information collection per year. (Processing/Analyzing Cost total divided by \$90).

Note: The hourly wage information above is based on the hourly 2021 General Schedule (Base) Pay ([https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS_h.pdf)). This rate does not include any locality adjustment as applicable.

The processing time estimates above 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 (3) of each employee represents the average experience of employees within each grade.

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

Due to this proposed rule, the estimated burden has decreased from 30 minutes to 15 minutes.

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- 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.

- 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.