

**Department of
Veterans Affairs**

Memorandum

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From: Office of the Chief Counsel, Board of Veterans' Appeals

Subj: White Paper, OMB Control Number 2900-0674, Justifications for Proposed Modifications to VA Form 10182

To: Clearance Officer, Office of Enterprise Integration (008)

Summary of Proposed Modifications to VA Form 10182

Consistent with implementation of the Veterans Appeals Improvement and Modernization Act of 2017 (AMA) on February 19, 2019, the VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), was created for claimants to appeal VA decisions in the modernized review system (AMA). As the VA Form 10182 is a new appeals form, the Board of Veterans' Appeals (Board) has received feedback from both internal and external stakeholders regarding how the form can be improved to better serve claimants and their representatives and allow for more efficient AMA appeals processing. Based on this feedback, the Board is proposing several revisions to both the VA Form 10182 and the attached form instructions.

Proposed revisions to the Notice of Disagreement include: (1) removal of the requirement to provide a social security number; (2) inclusion of checkboxes to indicate a preferred method of hearing; (3) inclusion of a checkbox to indicate whether the decision for which appeal is being sought was issued by the Veterans Health Administration (VHA); (4) provision of a list of examples of common issues a claimant may disagree with including service connection, disability evaluation, or effective date of award; (5) inclusion of a checkbox to request an extension of the deadline to file a Notice of Disagreement; (6) removal of the checkbox used to indicate whether the Notice of Disagreement has been filed in response to a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) issued under the legacy appeals process; (7) replacement of the checkbox for indicating the claimant "is homeless" to indicate whether the claimant is "experiencing homelessness"; (8) a clarified description of the window of time within which to submit evidence on the Evidence Submission docket; and (9) adding a subpart to Part III addressing issues the claimant wishes to include in the VA Form 10182 that need to be listed on additional sheets. Consistent with the proposed substantive changes, the instructions accompanying the VA Form 10182 are also being modified to better assist the claimants in completing VA Form 10182 and are also being edited to improve overall readability.

Justifications for Proposed Modifications to the VA Form 10182

1. Removal of the Requirement to Provide a Social Security Number

Removal of the requirement to provide a social security number in Part I, block 2 reduces respondent burden because it reduces the overall number of fields that need to be completed on the Notice of Disagreement. Moreover, this change enables the Board to better comply with the Social Security Number Fraud Prevention Act of 2017,¹ which directs agencies to reduce the risk of identity theft by restricting the requirement for inclusion of a social security number on a document to only those instances where it has been determined that such a requirement is necessary. Additionally, because this change removes a required field from the VA Form 10182, it reduces the overall burden time for completion of the form because claimants no longer need to gather this information.

2. Inclusion of Checkboxes to Indicate a Preferred Hearing Method

Inclusion of checkboxes in Part II, block 10 under the Board hearing review option allows a claimant to indicate what type of hearing they prefer. Inclusion of this option streamlines communications between the Board and the claimant regarding preferred hearing methods. Consistent with 38 U.S.C. § 7107(c) and 38 C.F.R. § 20.703(c), (d), proposed changes to the Notice of Disagreement allow the claimant to indicate a preference for a hearing at the Board's principal location or by picture and voice transmission (i.e., using video teleconference) from a VA facility with suitable equipment, but also adds the option of requesting a virtual telehearing using an internet-connected device of the claimant's choosing. Although the Board selects and determines the method of hearing, inclusion of the checkboxes allows the Board to take claimant preferences into account in a clear and consistent manner and would result in a decreased need for respondent communications on nonstandard forms later in the appeals process. The streamlining of communications between claimants and the Board is particularly advantageous to respondents due to the ongoing nature of the COVID-19 pandemic. Additionally, as the Board has found that the hearing docket is one of the review options most frequently selected by claimants seeking to appeal VA decisions to the Board, and hearing coordinators must work closely with appellants and their representatives to schedule hearings, providing a means to indicate hearing method preference on the VA Form 10182 would allow the Board to more expeditiously schedule hearings and adjudicate appeals on the hearing docket.

3. Inclusion of a Checkbox to Indicate Whether the Decision for Which Appeal is Being Sought was Issued by VHA

Inclusion of a checkbox under Part III, block 11, allows the claimant to indicate whether they are appealing a denial of benefits by VHA. This proposed change is necessary because the provision of this information to the Board will allow our intake specialists to more efficiently determine whether a file should be requested from VHA. Additionally, because checking a box is time

¹ See generally 115 Pub. L. No. 59, 131 Stat. 1152 (2017).

efficient and only a small percentage of the appeals the Board adjudicates on an annual basis stem from VHA decisions,² inclusion of this checkbox has minimal to no impact on respondent burden for completion of the VA Form 10182.

Unlike claims filed with the Veterans Benefits Administration (VBA), VHA claims are not managed in an electronic system readily accessible to the Board and use of the checkbox by a claimant will signal to Board intake specialists that VHA file request procedures should be initiated. Moreover, because claimants sometimes phrase the issue for which they are seeking appeal in a broad manner, provision of an optional checkbox helps claimants seeking to appeal VHA decisions identify the issue on appeal more clearly, resulting in reduced respondent burden to clarify a Notice of Disagreement upon the Board's request.

4. Provision of a List of Examples of Common Issues a Claimant May Disagree with Including Service connection, Disability Evaluation, or Effective Date of Award

Provision of a list of examples of common “areas of disagreement” with VA decisions under Part III is helpful to claimants who may struggle with articulating the specific reason they disagree with a decision.

Service connection, disability evaluation, and effective date of award are three of the most common areas of disagreement with VA decisions that are appealed to the Board. However, the Board has found that claimants often list the issue with which they disagree in broad terms, for example writing “sleep apnea” when the underlying decision assigned an initial disability evaluation and an effective date for a grant of service connection for sleep apnea, and therefore adjudicated both the initial disability evaluation for sleep apnea and the appropriate effective date for the award of service connection. In this example, the Veteran may disagree with only the initial disability evaluation, only the effective date assigned for the award of service connection, or both. Accordingly, providing claimants with examples of specific areas of disagreement is expected to clarify their intent regarding submitted VA Forms 10182, and reduce the need for the Board to issue clarifying correspondence or for Veterans Law Judges (VLJs) to clarify intent during pre-hearing conferences, if applicable.

As the included language is a list of examples, it adds no additional time to respondent burden, and to the extent that it reduces the need for subsequent clarification, likely slightly reduces respondent burden.

5. Inclusion of a Checkbox to Request an Extension of the Deadline to file a Notice of Disagreement

Inclusion of a checkbox to request an extension of the deadline to file a Notice of Disagreement under Part III, block 11 of the VA Form 10182 allows claimants to efficiently request an extension of the time to file the VA Form 10182.

² *Department of Veterans Affairs, Board of Veterans' Appeals, Annual Report, Fiscal Year 2020*, at 11 available at: https://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2020AR.pdf.

Under 38 C.F.R. § 20.203(c), for an AMA appeal, a claimant may request an extension of the period for filing a Notice of Disagreement due to good cause. Requests for extension of the time to file a Notice of Disagreement are ruled on by a VLJ. Providing the option to request a time extension on the VA Form 10182 is efficient because it creates “one stop” for the claimant to file an extension request, and attach additional sheets explaining why there is good cause for the time extension to be granted. It also allows the Board to increase appeals processing efficiency and provide a better customer experience to appellants because it signals to the Board intake-specialist to direct the extension request to the Office of the Clerk of the Board for a ruling from a VLJ. In processing extension requests for VA Forms 10182, the Board has found that when extension requests for good cause are submitted separately from a VA Form 10182, or only after the Board rejects a VA Form 10182 due to a timeliness issue, it adds considerable length to processing time and can be a confusing for appellants. Additionally, as the process of selecting a checkbox is time efficient, and the vast majority of VA Forms 10182 filed at the Board do not present timeliness issues, there will be minimal to no impact on respondent burden by inclusion of this checkbox.

6. Removal of the Checkbox used to Indicate Whether the Notice of Disagreement has been Filed in Response to a SOC or SSOC Issued Under the Legacy Appeals Process

The currently approved version of the VA Form 10182 contains a checkbox under Part III, block 12 asking claimants to indicate if any issue is being withdrawn from the legacy appeals process following issuance of an SOC or SSOC issued on or after February 19, 2019. *See* 38 C.F.R. §§ 19.30–31. Removal of this checkbox is proposed because the Board has found that the information provided by the checkbox does not assist the Board in more efficiently or effectively processing the VA Form 10182; therefore, continuing to include this checkbox is unnecessary. Moreover, because there is no regulatory requirement that a claimant inform VA that they are “opting-in” from the legacy system, failure to check this box does not prevent the appeal from being docketed. This is particularly notable to the extent that the instructions provided with the currently approved VA Form 10182 indicate on page 3, Part III, paragraph 2, specify that the claimant “must” provide VA notice of the decision to leave the legacy system. As the Board has not been enforcing the requirement as written in the instructions, it is not necessary to continue requiring claimants to notify the Board that they are leaving the legacy system, as the act of filing the VA Form 10182 serves this purpose. Finally, even if continued inclusion of this checkbox requirement served some efficiency purpose for docketing AMA appeals, as legacy appeals continue to wind-down, the utility of requiring claimants to provide the Board notice of leaving the legacy system is substantially reduced.

7. Replacement of the Checkbox for Indicating the Claimant is Homeless to Indicate Whether the Claimant is Experiencing Homelessness

The currently approved version of the VA Form 10182 contained an optional checkbox for the claimant to indicate “I am homeless” in Part I, block 7 in lieu of providing a preferred mailing address. In addition to providing an option for claimants who may not be able to identify a mailing address at the time of filing a VA Form 10182, the inclusion of this checkbox may signal grounds for granting a motion for advancement on the docket consistent with 38 C.F.R. § 20.800.

This language is proposed to be updated to “I am experiencing homelessness.” This change is proposed because it more accurately identifies homelessness as a temporary circumstance that may be experienced by the claimant, rather than a characteristic that defines the claimant experiencing it. The proposed language will improve the claimant experience by referring to the circumstances of homelessness with greater sensitivity to how homelessness is experienced by claimants. As experiencing homelessness is a temporary circumstance that is common within the Veteran community, it is important to accurately characterize homelessness as a temporary experience rather than an individual characteristic to ensure claimants feel as comfortable as possible with sharing this information with the Board when they cannot provide a preferred mailing address, and so that their case can be appropriately prioritized.

8. A Clarified Description of the Window of Time Within Which to Submit Evidence on the Evidence Submission Docket

In Part II, block 10, the currently approved version of the VA Form 10182 directs claimants to select the Evidence Submission docket in the following circumstances: “I have additional evidence in support of my appeal that I will provide within the next 90 days, but I do not want a Board hearing.” This language is proposed to be clarified as follows: “I have additional evidence in support of my appeal that I will submit to the Board with my VA Form 10182 or within 90 days of the Board’s receipt of my VA Form 10182.”

38 C.F.R. § 20.303 provides that a claimant may submit evidence with the Notice of Disagreement or within 90 days of submitting the Notice of Disagreement. The proposed change to the description of the evidence window is consistent with the language of 38 C.F.R. § 20.303. The Board has found that the current description of the evidence window for the Evidence Submission docket has been confusing for claimants who select the Evidence Submission docket. This is problematic because if a claimant does not submit evidence during the appropriate evidence window, it cannot be considered by the Board when the Board adjudicates on the merits. Moreover, the current description as written does not make clear that claimants can submit evidence with their VA Form 10182, and that they should not wait until their appeal has been docketed by the Board to submit evidence. This proposed change does not increase respondent burden.

9. Adding a Subpart to Part III for Issues the Claimant Wishes to Include on the VA Form 10182 that Need to be Listed on Additional Sheets

Part III on the currently approved version of VA Form 10182 is used by claimants to specify which issues they would like to appeal and the date of the VA decision they would like to appeal. The proposed addition of subpart C to Part III of the Notice of Disagreement notifies claimants that they may identify issues that do not fit in subpart A and B by attachment of additional sheets.

Although the currently approved VA Form 10182 provided a checkbox for the attachment of additional sheets, it is placed above subpart A. The Board has found that claimants often miss this checkbox, because they do not have to specify what issues they are appealing until they fill in Part III subparts A and B and run out of space. The Board has also found that instead of

attaching additional sheets listing the issues that will not fit under subpart III, claimants often submit multiple VA Forms 10182; this practice can lead to the Board docketing multiple appeals instead of one appeal with all the issues the claimant would like the Board to review. This negatively impacts the appellant experience because claimants must wait for multiple Board decisions to issue, or for multiple hearings to be scheduled. Moreover, docketing multiple VA Forms 10182 when the claimant may have intended to submit only one appeal does not serve the interests of judicial economy. As the proposed change simply moves a checkbox that is on the current version of the VA Form 10182 to a different location, it has no impact on respondent burden.