

## SUPPORTING STATEMENT - PART A

Collection Title – **OMB Control No. 2900-0674**

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

### **Summary of Changes from Previously Approved Collection:**

- Revisions to VA Form 10182:
  - Removal of the requirement to provide a social security number
  - Inclusion of checkboxes to indicate a preferred method of hearing
  - Inclusion of a checkbox to indicate whether the decision for which appeal is being sought was issued by the Veterans Health Administration (VHA)
  - Provision of a list of examples of common issues a claimant may disagree with including service connection, disability evaluation, or and effective date of award
  - Inclusion of a checkbox to request an extension of the deadline to file a Notice of Disagreement
  - Removal of the checkbox used to indicate whether the Notice of Disagreement has been filed in response to a Statement of the Case or Supplemental Statement of the Case issued under the legacy appeals process
  - Replacement of the checkbox for indicating the claimant “is homeless” to indicate whether the claimant is “experiencing homelessness”
  - A clarified description of the window of time within which to submit evidence on the Evidence Submission docket
  - Adding a subpart to Part III for issues the appellant wishes to include in the VA Form 10182 that need to be listed on additional sheets
  
- The information collection for the nonstandard legacy Notice of Disagreement is not requested to be renewed
  
- Decrease in overall respondent burden

1. Need for the Information Collection

***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. Following passage of the Veterans Appeals Improvement and Modernization Act of 2017 (AMA),<sup>1</sup> a Notice of Disagreement form (VA Form 10182) was created for use in the modernized review system, following implementation of the AMA on February 19, 2019. VA Form 10182 is currently in use and was approved in the prior collection of information approved for OMB Control No. 2900-0674. The VA Form 10182 is used to appeal 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 an appeal. Under the modernized review system, the VA Form 10182 is required for claimants who receive notice of a VA decision issued on or after February 19, 2019, and who wish to appeal to the Board. Claimants who receive notice of a VA decision before February 19, 2019, will remain in the legacy appeals system, unless they choose to opt into the modernized review system following the issuance of a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) issued on or after February 19, 2019, in the legacy system. Legacy appellants that do not opt into the modernized review system are required to use a VA Form 9 (or substantive appeal) to complete their appeal to the Board.

Among other changes, the AMA requires that claimants wishing to appeal a VA decision to the Board complete a Notice of Disagreement and submit the completed form directly to the Board. 38 U.S.C. § 7105(a);<sup>2</sup> 38 C.F.R. § 20.202. This new appeals system is referred to as the "modernized review system" or "AMA." 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,<sup>3</sup> identify the specific determination with which the claimant disagrees and indicate if the claimant requests to have a hearing before the Board, an 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 appellant is requesting a hearing before the Board, the Board must notify the appellant as to whether their requested hearing will be

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<sup>1</sup> Pub. L. 115-55 (2017).

<sup>2</sup> 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.

<sup>3</sup> 38 C.F.R. § 20.202 requires the use of a "Notice of Disagreement" form to appeal from a VA decision.

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, an appellant may then choose to request a different method—a request that the Board will grant. 38 U.S.C. § 7107(c); 38 C.F.R. § 20.703(c), (d). Following the March 2020 outbreak of COVID-19 in the United States and passage of the VA Tele-Hearing Modernization Act of 2020,<sup>4</sup> the Board has provided appellants with the option of a virtual tele-hearing using an internet-connected device of the claimant’s choosing and will continue to do so moving forward. 38 U.S.C. § 7107(c); 38 C.F.R. § 20.2.

To effectuate the laws, the Board is requesting to renew OMB Control No. 2900-0674. Control No. 2900-0674 would contain all appeals-related information collections for the legacy and modernized review systems, with the exception of a new legacy appeals form, VA Form 10-307, *Program of Comprehensive Assistance for Family Caregivers Notice of Disagreement*, which will be approved under Control No. 2900 NEW.

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 for legacy appeals by former 38 U.S.C. § 7105(a) and (d)(3) and current 38 C.F.R. § 19.22 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. § 20.902(c).

As legacy appeals continue to draw down, the use of the legacy forms will continue to decrease, particularly as appellants continue to opt in eligible legacy appeals to the modernized review system.

### ***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. §§ 5901–5905. 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). To adequately protect an appellant’s due process rights, both the appellant and the Board must be notified when a representative seeks to withdraw from a case. 38 C.F.R. § 20.6. Moreover, to protect appellants from the adverse consequences of being abandoned by their representative without good cause, representatives are required to file a motion seeking permission from the Board to withdraw representation. 38 C.F.R. § 20.6.

### ***Requests for Changes in Hearing Dates or Methods***

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<sup>4</sup>116 P.L. 137, 134 Stat. 616.

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 only accepts a request for a hearing when such request is received on a VA Form 10182 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 principal location, or via video-teleconference from a VA facility other than the Board’s principal location. See 38 U.S.C. § 7107(c)(1). However, as noted above, following the March 2020 outbreak of COVID-19 in the United States, the Board has provided appellants with the option to for a virtual tele-hearing using an internet-connected device of the appellant’s choosing and will continue to do so moving forward. 38 C.F.R. § 20.2.

Although as discussed above, the Board determines the method of a requested hearing, the proposed revisions to the VA Form 10182 gives appellants the option to request one of the hearing methods listed above. However, if after the Board notifies the appellant as to how their hearing will be conducted, the Board receives a request for an alternate hearing in its place, the Board will grant such a request. 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 at the Board’s principal location instead. *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). 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.” 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. Use of the Information

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

The respondents are claimants seeking to appeal a VA decision to the Board. To do so in the modernized review system, they must submit a VA Form 10182. To perfect an appeal in the legacy review system, they may submit a VA Form 9. The VA Form 10182 is included with the notice of a VA decision issued on or after February 19, 2019, and the VA Form 9 is also attached to (SOC) issued for ongoing legacy appeals. Both forms may also be accessed online here: <https://www.va.gov/find-forms/>. Completed VA Forms 10182 may be mailed

to the Board at its address as identified in 38 C.F.R. § 20.203, faxed to the Board, or submitted to VA's centralized mail portal through a "Direct Upload" account. VA Forms 9 are processed by the VA office that issues the SOC, and instructions for submission of the VA Form 9 by mail, fax, or Direct Upload are provided with the SOC. Both VA Forms 10182 and VA Forms 9 are completed and filed by either the claimant or their appointed representative. There are no invitations or other communications sent to the respondent associated with the information collection.

Once returned by the respondent, the information collected will be used by the Board to identify the issues in dispute that 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 VA Form 10182 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 VLJ; (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 VLJ. 38 U.S.C. § 7107(a); 38 C.F.R. § 20.800. Legacy appeals will be assigned to a separate docket. Under the AMA, the VA Form 10182/Notice of Disagreement is the only form that may be used 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***

The respondents are appointed representatives. Because this information is not required on a standard form, there is no specific format for providing this information to the Board. This information can be provided to the Board by mail or fax or may be submitted to VA's centralized mail portal through a "Direct Upload" account. There are no invitations or other communications sent to the respondent associated with the information collection. Once returned by the respondent, the withdrawal of services request is processed by the Board. In processing this information, the Board will determine if withdrawal of services by a representative is appropriate. 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 respondents are appellants who have requested a hearing before the Board and wish to reschedule a hearing or change the method of hearing the Board has selected. Because

this information is not required on a standard form, there is no specific format for providing this information to the Board. This information can be provided to the Board by mail or fax or may be submitted to VA's centralized mail portal through a "Direct Upload" account. There are no invitations or other communications sent to the respondent associated with the information collection. 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 respondents are appellants who have received a final Board decision on their claims with which they disagree and would like the Board to reconsider. Because this information is not required on a standard form, there is no specific format for providing this information to the Board. This information can be provided to the Board by mail or fax or may be submitted to VA's centralized mail portal through a "Direct Upload" account. Although notice of appellate rights is attached to all final Board decisions and these appellate rights provide instructions for filing motions for reconsideration, there are no invitations or other communications sent to the respondent associated with the information collection. 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. Use of Information Technology

VA Form 10182 and VA Form 9 are available at the following web address:  
<https://www.va.gov/find-forms/>.

In addition to accepting all forms contained in this information collection by mail or fax, in 2021, the Board started accepting submission of documents through "Direct Upload" accounts. "Direct Upload" accounts allow appellants and/or their appointed representative to submit documents to VA's centralized mail portal without mailing or faxing. Since beginning to accept "Direct Upload" filings to VA's centralized mail portal, it is estimated that approximately 12% of the responses in this information collection have been submitted to the Board using "Direct Upload"; however, usage of "Direct Upload" has steadily increased and is expected to continue to do so. Because use of "Direct Upload" to file correspondence at the Board is very new, the Board is unable to estimate future increases in "Direct Upload" submissions at this time.

The Board notes that many of the Veterans and other appellants the Board serves are of advanced age or may have limited access to internet services. Therefore, it is in the best interests of the Board in serving appellants to remain flexible by accepting submissions by mail and fax. Moreover, accepting submissions by mail is consistent with regulations that direct appellants to file correspondence at the Board's mailing address. See 38 C.F.R. §§ 20.6, 20.203, 20.1002.

Finally, VA is actively pursuing the development of an electronic claims processing system, which would include launching an online version of the VA Form 10182 on <https://www.va.gov/> and allowing claimants to electronically submit appeals to the Board in the modernized system. Pre-production screenshots of the electronic VA Form 10182 option as it will appear on va.gov are included with this PRA package, and are expected to be finalized before the end of the 2021 calendar year.

4. Non-duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another cleared source.

5. Burden on Small Businesses

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, 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, and the burden on these small entities will be minimal. Therefore, this information collection does not impose a significant economic impact on a substantial number of small businesses or entities.

6. Less Frequent Collection

The frequency of the collection is once. As it is not possible for there to be a frequency less than once, the consequences of collecting at a frequency less than once would be that appellants would be unable to file the forms included in this information collection.

7. Paperwork Reduction Act Guidelines

This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 C.F.R. § 1320.5(d)(2).

8. Consultation and Public Comments

Part A: PUBLIC NOTICE

A 60-Day Federal Register Notice (FRN) for the collection published on Monday, November 15, 2021. The 60-Day FRN citation is 86 FRN 63107.

10 comments were received during the 60-Day Comment Period. They are included below in the order they were received, as well as our Agency's response to the comments. All the comments concern the VA Form 10182 Notice of Disagreement.

## Comment Regarding VA Form 10182, Section 6

The first comment concerns inclusion of the “I am experiencing homelessness” check-box. The commenter suggests that additional check-boxes should be included. Specifically, the commenter suggested that an “I am seriously ill” and an “I am under severe financial hardship” check-box should also be included on the VA Form 10182. The commenter notes that the form’s instructions should include directions to provide additional explanation if either of these proposed additional check-boxes are included in the form. Finally, the commenter also suggests that although it understands the Board automatically prioritizes cases based on advanced age if that is not the case the Board should also add a check-box to indicate advanced age.

The above referenced comment appears to stem from the language of 38 C.F.R. § 20.800(c) (1), which concerns the circumstances under which a case may be “advanced on the docket” for earlier consideration. Under these provisions, an appellant may file a motion requesting that the Board advance their case on the docket.

First, although being seriously ill, being under severe financial hardship, and being of advanced age are three common bases on which advancement on the docket may be requested, they are not an exhaustive list of all the circumstances under which such a motion may be granted. For example, in the past the Board has entertained motions to advance on the docket for appellants who reside in areas that have been affected by weather events and natural disasters. Accordingly, inclusion of check boxes that only cover some of the bases on which advancement on the docket is available may give would-be appellants the inaccurate impression that the Board will only consider motions to advance on the docket on the narrow bases of serious illness, financial hardship, or advanced age.

Additionally, motions to advance on the docket may be filed at any time and are not specifically tied to the filing of or the Board’s acceptance of the VA Form 10182. As such, including a section on the VA Form 10182 for appellants to request advancement on the docket may give the inaccurate impression that advancement on the docket can only be requested with the initial filing of the VA Form 10182. Moreover, documentation of the basis of requesting to be advanced on the docket typically must be in the claims file or otherwise submitted with the motion to advance on the docket. The provision of check-boxes for the purpose of requesting to be advanced on the docket, may lead an appellant to believe that the checking of this box and inclusion of a brief explanation is all that is required to ensure their motion is granted. However, the granting of such a motion is very fact-specific, and in practice, is up to the discretion of the individual Veterans Law Judge considering the motion.

Finally, the purpose of the “I am experiencing homelessness” check-box is not predicated on motions to advance on the docket. Although homelessness could form the basis for the Board to consider a motion to advance on the docket, if an appellant checks the “I am experiencing homelessness” box, it serves as indicator to Board that special care may be needed in the processing of their appeal, particularly regarding sending important notification letters, such as docketing letters, hearing scheduling notices, and notice of

issued decisions. These concerns are very specific in nature to appellants who are experiencing homelessness.

The Board does not seek to cause undue confusion or discourage motions to advance on the docket based on other sufficient cause that may be shown through the claims file or through submission of additional documentation. Accordingly, particularly because the Board is already in the routine practice of including detailed instructions to appellants in docketing notice letters for filing motions to advance on the docket, and for the reasons outlined above, the Board will not be including the additional check-boxes and instructions proposed by this commenter.

#### Comment regarding VA Form 10182, Items 10A, 10B, and 10C

The Board received three comments about 10A, 10B, and 10C. The first comment discusses all three options and suggests that the parenthetical notes about timing should be revised to state that choosing Item 10B or 10C “may” extend the time for the Board to decide the appeal.

Item 10 is the section of the VA Form 10182 that asks the appellant to select a docket; options include Direct Review, Evidence Submission, and Hearing. Because the Direct Review option permits an appellant to have a VA decision directly reviewed by a Veterans Law Judge, it is the fastest docket option under the modernized system. However, because the appeal is sent directly to a Veterans Law Judge to review, the submission of additional evidence on the Direct Review docket is not permitted. In contrast, if an appellant wishes to submit evidence, they may select either the Evidence Submission docket, which permits the submission of evidence with the VA Form 10182 or within 90 days of the filing of the VA Form 10182, or the Hearing docket, which provides an opportunity for the appellant to testify at a hearing and submit additional evidence at or within 90 days of the hearing. Accordingly, the parenthetical information in Item 10B and 10C notes that selection of the Evidence Submission or Hearing docket “will” extend the time it takes for the Board to consider the appeal, while Item 10A, the Direct Review docket notes that Direct Review is the fastest docket option available. See generally 38 C.F.R. §§ 20.301–20.303.

Although there may be some circumstances under which an appeal docketed on the Evidence Submission or Hearing dockets will be processed faster than usual because, for example, the remainder of the 90-day evidence window has been waived or a hearing request has been withdrawn, in the vast majority of cases selection of the Direct Review docket will result in the Board issuing a decision on the appeal most quickly, while selection of the Evidence Submission docket will most often result in the appeal being held for 90 days, and selection of the Hearing docket will most often result in the appeal being held for an even longer period of time to allow for scheduling of a hearing. Accordingly, use of the word “will” is a helpful description that assists appellants in determining what docket option is best for them and the issues they are appealing. In contrast, use of the word “may,” while possibly applicable to a very small set of appeals for which a waiver of the evidentiary submission window or a hearing request withdrawal is submitted at the same time or close in time to the VA Form 10182, does not accurately set expectations for

the vast majority of appellants who are considering what docket is best for them as individuals. Accordingly, no changes to the parenthetical language regarding timing in 10B or 10C is warranted.

The other two comments the Board received concern only 10B. One comment suggests that “I have additional evidence in support of my appeal that I will submit” should be revised to “I want to submit additional evidence in support of my appeal” on the basis that there is no legal requirement that the appellant already “have” the additional evidence to submit when the appellant files the Form 10182. However, this suggestion does not take into account the full description of evidence window for the Evidence Submission docket as described in 10B which reads 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.” The full sentence makes clear that the appellant can **either** submit the evidence they have with the VA Form 10182 **or** submit additional evidence within 90 days of the Board’s receipt of the VA Form 10182, and therefore does not imply that there is a legal requirement that the appellant “have” the evidence when they submit the VA Form 10182. Rather the full sentence simply makes clear that the appellant can submit any evidence they already have with their VA Form 10182 if they wish do so. This description is consistent with the legal requirements that apply to the Evidence Submission docket. Accordingly, no changes to the evidence window description for the Evidence Submission docket as outlined in 10B are warranted.

Finally, the last comment with respect to 10B suggests that it should include a check box for the appellant to waive the 90 days if he or she is submitting evidence with the form and additional time is not needed. However, inclusion of such a check box may be confusing for appellants who are not sure that they have all the evidence they want to submit at the time they file a VA Form 10182. Additionally, any appellant who wishes to waive the remainder of the 90 day window, may make this request in correspondence that is included when the additional evidence is submitted. Accordingly, inclusion of the suggested check box under item 10B is not warranted.

#### Comments Regarding VA Form 10182, Items 11, 11B., and 11C.

The Board received three comments regarding Item 11 and its subparts. The first of these comments stated that “[t]he opt-in check box needs to be reinstated” on the basis that Statements of the Case or Supplemental Statements of the Case remain outstanding in a significant number of legacy appeals and that eliminating the opt-in check box is premature.

Appellants that are participating in the legacy appeals system may, as correctly pointed out by the commenter, opt into the modernized system by filing a VA Form 10182 after the issuance of a Statement of the Case or Supplemental Statement of the Case that is issued on or after February 19, 2019. While the Board agrees that several legacy appeals are outstanding, it is not premature to eliminate this check-box as there is no regulatory requirement that an appellant affirmatively indicate they are opting in from the legacy system when they file a VA Form 10182. Rather, VA regulations provide that the filing of a

VA Form 10182 itself serves as the election into the modernized system. 38 C.F.R. § 19.2(d) (2). Moreover, the Board does not reject VA Form 10182 opt-ins when the opt-in box is not checked. Accordingly, as checking the opt-in box does not affect whether the VA Form 10182 is accepted by the Board and there is no regulatory requirement for the appellant to indicate they are opting in from legacy, inclusion of an opt-in box for an appellant to indicate whether they are opting into legacy is superfluous and unnecessary. Additionally, historically, the opt-in box has not consistently been checked by appellants who are opting into the modernized system from legacy. Accordingly, no additional changes to Item 11 to reinstate a check-box for appellants to indicate that they are opting in from the legacy system are warranted.

The Board also received a comment regarding Item 11B, suggesting that this item should be retitled from “Date of Decision” to “Date of Decision Notice.” While the Board agrees that it is common for some VA decision drafts to be uploaded to the claims file at an earlier date than when notice of a decision is issued to the claimant, an appellant filing out a VA Form 10182 only needs to provide enough information in Item 11A “Specific Issue(s)” and Item 11B “Date of Decision” such that the Board can reasonably identify the particular decision notice and issues the appellant wishes to appeal. Additionally, timeliness of submission of the VA Form 10182 is calculated based only on the date of the decision notice to the appellant. Accordingly, “date of decision” is a more flexible title for appellants who may be reviewing decision documents that contain slightly different dates.

Finally, the Board received a comment regarding Item 11C, suggesting that this item should be renumbered to Item 12 and retitled from “Additional Issue(s)” to “Additional Sheet(s),” to make clear that the “Additional Sheet(s)” may pertain to matters other than merely listing additional issues. The commenter also suggested that a line should also be added to this item for the appellant to indicate how many pages have been added.

The Board revised this item on the VA Form 10182 to add a subsection after the “Issue(s)” and “Date of Decision” subparts because appellants were not using additional sheets to list issues they could not fit on the VA Form 10182 using the space provided. Instead, appellants who ran out of space were frequently submitting multiple VA Forms 10182, which the Board frequently docketed separately as individual appeals, depending on how the mail containing the VA Form 10182s is submitted. As a result, appellants have sometimes received two VA decisions from two different Veterans Law Judges at different times, when it would have been more efficient and beneficial for them to receive one Board decision for all issues they appealed. Additionally, Item 11 is the only section included under “Part III – Specific Issue(s) to be Appealed to a Veterans Law Judge at the Board.” Accordingly, eliminating Item 11C or retitling it to “Additional Sheet(s)” would not make it clear to the appellant that they may attach additional sheets to list additional issues instead of submitting a second VA Form 10182. Although appellants may also include additional sheets with their VA Form 10182 for other reasons just as they may submit additional evidence or other correspondence, the purpose of Item 11C and the check-box is to make it easier for the appellant to have all the issues they are appealing docketed at the same time, and to clearly indicate to Board staff docketing the appeal that there are other issues listed

on additional sheets so that no issues are missed at the time of docketing. Accordingly, no changes to Item 11C are warranted.

The Board further notes that prompting appellants to indicate how many additional sheets are attached may cause undue confusion and processing errors if the appellants incorrectly indicate how many additional sheets are attached. Accordingly, as the included check-box provides Board personnel docketing the appeal with the additional information they need regarding the contents of the mail “packet” submitted with the VA Form 10182, inclusion of an additional box to indicate how many additional sheets are being attached is unnecessary, as it will not assist the appellant or the Board in processing the submitted VA Form 10182.

#### Comments regarding VA Form 10182 Instructions

The Board received three comments regarding the instructions section of the VA Form 10182. The first comment suggested that the first paragraph on page 2 of the form should not state that a VA Form 10182 should be used “ONLY if the VA decision is dated on or after February 19, 2019.” The commenter further noted that this instruction should perhaps include a qualification distinguishing between a VA Form 10182 and VA Form 9 and the role of an opt-in.

However, the instruction that a VA Form 10182 should be filed if the VA decision is dated on or after February 19, 2019, is accurate, as this deadline also applies to legacy Statements of the Case and Supplemental Statements of the Case issued on or after February 19, 2019, from which an appellant may opt into the modernized system. Moreover, the specific filing deadline requirements that apply to opt-ins to the modernized system following the issuance of an eligible legacy Statement of the Case or Supplemental Statement of the Case are discussed in paragraph 4 on page 2 of the VA Form 10182.

Additionally, detailed instructions for how to opt into the modernized system are separately provided to legacy appellants with all Statements of the Case and Supplemental Statements of the Case issued on or after February 19, 2019; therefore, it is likely confusing to exhaustively outline the opt-in process in the instructions for the VA Form 10182, which is also used by appellants to challenge initial decisions issued in the modernized system. Moreover, including a discussion and description of the VA Form 9 would be confusing to appellants as it is not relevant to the opt-in process and is not a modernized system document.

Another comment the Board received suggests that Item 8 on the VA Form 10182 titled “My Preferred E-mail Address” should include a clarification that completion of this item is optional “unless the appellant selects Hearing Review with a Virtual Telehearing.” The commenter explained that including this suggested addition would “clarify that there is no legal basis for the Board to reject a VA Form 10182 if the appellant does not use email or does not desire to do so for communicating with the Board.” The commenter further added that the form should also indicate there is no travel reimbursement for claimants who choose to appear in Washington, D.C. or at the regional office.

However, addressing Item 8, there is no indication on the VA Form 10182 itself or the instructions that an appellant must provide their preferred email address. Additionally, as hearing preferences may change after the VA Form 10182 is filed, it is not accurate to state that provision of an email address is only required if an appellant selects the hearing docket and elects to have a virtual hearing on the VA Form 10182. Moreover, the Board needs to communicate to a variety of appellants through various methods regarding their appeal based on the contact information the appellant provides. As such, it is important that the Board request contact information to include current preferred mailing address, current preferred phone number, and current preferred email address. Accordingly, the suggested clarification is not warranted.

Addressing the comment that the form should indicate there is no travel reimbursement for claimants who chose to appear in Washington, D.C. or at the regional office, the Board notes that VA rules regarding travel reimbursement may be subject to change over time, including as due to funding and legislation passed by Congress. Accordingly, if rules regarding reimbursement were to be expanded or changed after approval of this form, the information on this form would be outdated. Moreover, if an appellant were to choose a non-virtual hearing option but change their mind due to travel reimbursement concerns, they may subsequently request to switch to a virtual hearing option. Therefore, no changes to the VA Form 10182 are warranted based on the above discussed suggestion.

Additionally, the Board received two comments regarding the instructions for the review options contained in boxes located under paragraph 6 on page 2 of the VA Form 10182. The first comment suggested that in the block for Evidence Submission, the sentence “[a]fter 90 days, any additional evidence added to your claim will not be considered by the Board” should be clarified. However, the commenter did not specify what needed to be clarified about this sentence. Accordingly, as this sentence accurately describes the closing of the evidence window on the Evidence Submission docket after the 90 day period that starts with the Board’s receipt of the VA Form 10182 has run, and is consistent with 38 C.F.R. § 20.303, no changes to the above indicated sentence are warranted.

Finally, the last comment regarding the instructions for review options contained in boxes located under paragraph 6 on page 2 of the VA Form 10182, suggests that the sentences in the blocks for Evidence Submission and Hearing dockets stating selection of one of these options “will extend the time” for a decision should be edited to “may extend the time.” However, as extensively noted above regarding the comments submitted for items 10B and 10C, because “will” is accurate for the vast majority of appellants, it provides more useful information to appellants than “may” would provide. Accordingly, no changes are warranted.

## Part B: CONSULTATION

The Board sought consultation with veterans service organizations on all proposed changes to the VA Form 10182 Notice of Disagreement. As no changes are being proposed to all other forms covered by this information collection, no additional consultation beyond public comment has been sought.

9. Gifts or Payment

No payments or gifts are being offered to respondents as an incentive to participate in the collection.

10. Confidentiality

A Privacy Act Statement is included in the instructions section of the VA Form 9 and the VA Form 10182.

A system of Record Notice (SORN) for the Veterans Benefits Management System (VBMS) is currently published here: [2019-02315.pdf \(govinfo.gov\)](#). Additionally, information that appears in VBMS is also maintained in Caseflow, a web-based application that tracks both legacy and AMA appeals. However, VBMS is the system of record for any documents submitted through information collection.

A Privacy Impact Assessment (PIA) for VBMS is currently published here: [FY19VeteransBenefitsManagementSystemAWSCloudPIA.pdf \(va.gov\)](#). As reflected in the SORN for VBMS listed above, VA waits three years after the final adjudication of any claim or appeal before destroying the paper duplicate copies that have been scanned into the VBMS eFolder. The electronic image of the paper document is retained indefinitely as a permanent record either by VA or the National Archives and Records Administration (NARA).

Caseflow also has a PIA, which is published here: [FY19CaseflowPIA.pdf \(va.gov\)](#). For any data pulled from other VA systems, Caseflow relies on the retention schedules of those systems.

11. Sensitive Questions

No questions considered sensitive are being asked in this collection.

12. Respondent Burden and its Labor Costs

Part A: ESTIMATION OF RESPONDENT BURDEN

- 1) Collection Instruments: VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (AMA); VA Form 9, Appeal to the Board of Veterans' Appeals (legacy); Withdrawal of Services by a Representative (Nonstandard Form); Requests for Change to Hearing Dates or Methods (Nonstandard Form); Motions for Reconsideration (Nonstandard Form)

**VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (AMA):**

- a) Number of Respondents (annually): 117,000
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 117,000

- d) Response Time: 30 minutes (.5. hours)
- e) Respondent Burden Hours: 58,500

**VA Form 9, Appeal to the Board of Veterans' Appeals (legacy):**

- a) Number of Respondents (annually): 3,800
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 3,800
- d) Response Time: 60 minutes (1 hour)
- e) Respondent Burden Hours (3,800 x 1): 3,800

**Withdrawal of Services by a Representative (Nonstandard Form):**

- a) Number of Respondents (annually): 1,000
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 1,000
- d) Response Time: 20 minutes (.33 hours)
- e) Respondent Burden Hours (1000 x .33): 330

**Requests for Change to Hearing Dates or Methods (Nonstandard Form):**

- a) Number of Respondents (annually): 2,700
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 2,700
- d) Response Time: 15 minutes (.25 hours)
- e) Respondent Burden Hours (2700 x .25): 675

**Motions for Reconsideration (Nonstandard Form):**

- a) Number of Respondents (annually): 1,500
- b) Number of Responses Per Respondent: 1
- c) Number of Total Annual Responses: 1,500
- d) Response Time: 60 minutes (1 hour)
- e) Respondent Burden Hours (1500 x 1): 1500

- 2) Total Submission Burden (Summation or average based on collection)
  - a) Total Number of Respondents (annually): 126,000
  - b) Total Number of Annual Responses: 126,000
  - c) Total Respondent Burden Hours: 64,805

**Part B: LABOR COST OF RESPONDENT BURDEN**

- 1) Collection Instruments: VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (AMA); VA Form 9, Appeal to the Board of Veterans' Appeals (legacy); Withdrawal of Services by a Representative (Nonstandard Form);

Requests for Change to Hearing Dates or Methods (Nonstandard Form); Motions for Reconsideration (Nonstandard Form)

**VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (AMA):**

- a) Number of Total Annual Responses: 117,000
- b) Response Time: 30 minutes (.5 hours)
- c) Respondent Hourly Wage: \$27.07<sup>5</sup>
- d) Labor Burden per Response (.5 x \$27.07): \$13.54
- e) Total Labor Burden (58,500 x \$27.07): \$1,583,595

**VA Form 9, Appeal to the Board of Veterans' Appeals (legacy):**

- a) Number of Total Annual Responses: 3,800
- b) Response Time: 60 minutes (1 hour)
- c) Respondent Hourly Wage: \$27.07
- d) Labor Burden per Response (1 x \$27.07): \$27.07
- e) Total Labor Burden (3,800 x \$27.07): \$102,866

**Withdrawal of Services by a Representative (Nonstandard Form):**

- a) Number of Total Annual Responses: 1,000
- b) Response Time: 20 minutes (.33 hours)
- c) Respondent Hourly Wage: \$27.07
- d) Labor Burden per Response (.33 x \$27.07): \$8.90
- e) Total Labor Burden (330 x \$27.07): \$8,933

**Requests for Change to Hearing Dates or Methods (Nonstandard Form):**

- a) Number of Total Annual Responses: 2,700
- b) Response Time: 15 minutes (.25 hours)
- c) Respondent Hourly Wage: \$27.07
- d) Labor Burden per Response (.25 x \$27.07): \$6.77
- e) Total Labor Burden (675 x \$27.07): \$18,272

**Motions for Reconsideration (Nonstandard Form):**

- a) Number of Total Annual Responses: 1,500
- b) Response Time: 60 minutes (1 hour)
- c) Respondent Hourly Wage: \$27.07
- d) Labor Burden per Response (1 x \$27.07): \$27.07

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<sup>5</sup>The Bureau of Labor Statistics (BLS) gathers information on full-time wage and salary workers. Assuming a forty (40) hour work week, 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/2020/may/oes\\_nat.htm](https://www.bls.gov/oes/2020/may/oes_nat.htm)).

e) Total Labor Burden (1,500 x \$27.07): \$40,605

2) Overall Labor Burden

a) Total Number of Annual Responses: 126,000

b) Total Labor Burden: \$1,754,271

13. Respondent Costs Other Than Burden Hour Costs

There are no annualized costs to respondents other than the labor burden costs addressed in Section 12 of this document to complete this collection.

14. Cost to the Federal Government

Part A: LABOR COST TO THE FEDERAL GOVERNMENT

- 1) VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (AMA); VA Form 9, Appeal to the Board of Veterans' Appeals (legacy); Withdrawal of Services by a Representative (Nonstandard Form); Requests for Change to Hearing Dates or Methods (Nonstandard Form); Motions for Reconsideration (Nonstandard Form)

**VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement) (AMA); VA Form 9, Appeal to the Board of Veterans' Appeals (legacy)**

a) Number of Total Annual Responses: 120,800

b) Processing Time per Response: 60 minutes (1 hour)

- Intake Specialist (GS 9, Step 5): 15 minutes (.25 hours)
- Hearing Specialist (GS 12, Step 3): 15 minutes (.25 hours)
- Attorney Advisor (GS 13, Step 3): 15 minutes (.25 hours)
- Veterans Law Judge (AL-3 A-F average): 15 minutes (.25 hours)

c) Hourly Wage of Workers Processing Responses:<sup>6</sup>

- Intake Specialist (GS 9, Step 5): \$25.11
- Hearing Specialist (GS 12, Step 3): \$34.27
- Attorney Advisor (GS 13, Step 3): \$40.75

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<sup>6</sup>Hourly wages are based on the 2021 General Schedule (Base Pay) available here: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS.pdf>. This rate does not include any locality adjustment as applicable. The within grade step used to calculate hourly wage represents the average experience of employees within each grade. For Veterans Law Judges, the rate of basic pay (excluding locality adjustments is calculated based on the average basic pay as reflected here: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/ALJ.pdf>.

- Veterans Law Judge (AL-3 A-F average): \$66.01
- d) Cost to Process Each Response: \$41.54
- Intake Specialist (.25 X \$25.11): \$6.28
  - Hearing Specialist (.25 X \$34.27): \$8.57
  - Attorney Advisor (.25 x \$40.75): \$10.19
  - Veterans Law Judge (.25 x \$66.01): \$16.50
  - o Total: \$41.54
- e) Total Cost to Process Responses: \$5,018,032

**Withdrawal of Services by a Representative (Nonstandard Form):**

- a) Number of Total Annual Responses: 1,000
- b) Processing Time per Response: 60 minutes (1 hour)
- Attorney Advisor: 30 minutes (.5 hours)
  - Veterans Law Judge (AL-3 A-F average): 30 minutes (.5 hours)
- c) Hourly Wage of Workers Processing Responses:
- Attorney Advisor (GS 13, Step 3): \$40.75
  - Veterans Law Judge (AL-3 A-F average): \$66.01
- d) Cost to Process Each Response: \$53.43
- Attorney Advisor (.5 x \$40.75): \$20.38
  - Veterans Law Judge (.5 x \$66.01): \$33.05
  - o Total: \$53.43
- e) Total Cost to Process Responses: \$53,430

**Requests for Change to Hearing Dates or Methods (Nonstandard Form):**

- a) Number of Total Annual Responses: 1,500
- b) Processing Time per Response: 10 minutes (.17 hours)
- c) Hourly Wage of Workers Processing Responses: (GS 11, Step 5): \$30.38
- d) Cost to Process Each Response: \$5.16
- e) Total Cost to Process Responses: \$7,740

### **Motions for Reconsideration:**

- a) Number of Total Annual Responses: 1,500
  - b) Processing Time per Response: 660 minutes (11 hours)
    - General Attorney (GS 11, Step 5): 120 minutes (2 hours)
    - Attorney Advisor (GS 14, Step 7): 480 minutes (8 hours)<sup>7</sup>
    - Veterans Law Judge (AL-3 A-F average): 60 minutes (1 hour)
  - c) Hourly Wage of Workers Processing Responses:
    - General Attorney (GS 11, Step 5): \$30.38
    - Attorney Advisor (GS 14, Step 7): \$54.18
    - Veterans Law Judge (AL-3 A-F average): \$66.01
  - d) Cost to Process Each Response: \$560.21
    - General Attorney (2 x \$30.38): \$60.76
    - Attorney Advisor (8 x \$54.18): \$433.44
    - Veterans Law Judge (1 x \$66.01): \$66.01
    - o Total: \$560.21
  - e) Total Cost to Process Responses: \$840,315
- 2) Overall Labor Burden to the Federal Government
- a) Total Number of Annual Responses: 126,000
  - b) Total Labor Burden: \$5,919,517

### **Part B: OPERATIONAL AND MAINTENANCE COSTS**

- 1) Cost Categories:
  - a) Equipment: \$0
  - b) Printing: \$0
  - c) Postage: \$0
  - d) Software Purchases: \$0
  - e) Licensing Costs: \$0
  - f) Other: \$0
- 2) Total Operational and Maintenance Cost: \$0

### **Part C: TOTAL COST TO THE FEDERAL GOVERNMENT**

- 1) Total Labor Cost to the Federal Government: \$5,919,517

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<sup>7</sup>Review by an attorney advisor is only required if the motion for reconsideration requires legal research and a corresponding legal memorandum.

2) Total Operational and Maintenance Costs: \$0

3) Total Cost to the Federal Government (P: Add 1 and 2 in this section): \$5,919,517

15. Reasons for Change in Burden

The burden has decreased since the previous approval due to a variety of factors. Most notably, the prior submission included the nonstandard legacy Notice of Disagreement while this submission does not. Consistent with the implementation of the AMA on February 19, 2019, and the continuing wind-down of legacy appeals, the Board does not seek to renew the prior nonstandard legacy Notice of Disagreement in this information collection.

Likewise, additional changes in burden hours are consistent with the wind-down of legacy appeals following implementation of the AMA. A growing majority of appeals are submitted to the Board through filing a VA Form 10182 (an AMA form), which takes less time to complete than the VA Form 9, a legacy appeals form.

16. Publication of Results

Regarding the VA Form 10182 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. Non-Display of OMB Expiration Date

The Board is not seeking approval to omit the display of the expiration date of the OMB approval on the collection instrument.

18. Exceptions to “Certification for Paperwork Reduction Submissions”

The Board is not requesting any exemptions to the provisions stated in 5 C.F.R. § 1320.9.