

SUPPORTING STATEMENT A

**PROGRAM OF COMPREHENSIVE ASSISTANCE FOR FAMILY CAREGIVERS (PCAFC)
DECISION APPEAL FORMS**

VA Forms 10-306, 10-307

OMB Control Number: 2900-0894

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 Caregivers and Veterans Omnibus Health Services Act of 2010 (P.L. 111-163) established 38 U.S.C. 1720G, which directed the Department of Veterans Affairs (VA) to establish a Program of Comprehensive Assistance for Family Caregivers (PCAFC) and a Program of General Caregiver Support Services (PGCSS). Both programs are managed by VA's Caregiver Support Program (CSP) Office. On June 06, 2018, the President signed into law the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 or the VA MISSION Act 2018 (P.L. 115-182). The VA MISSION Act of 2018 fundamentally transformed elements of the Department of Veterans Affairs' (VA) healthcare system to include expanding the PCAFC to Family Caregivers of eligible veterans of all eras in a phased approach, established new benefits for Primary Family Caregivers of eligible veterans, and made other changes affecting program eligibility and VA's evaluation of PCAFC applications. The statutory authority for PCAFC and PGCSS is codified at 38 U.S.C. 1720G. VA's regulations implementing PCAFC and PGCSS are in 38 CFR Part 71.

Since program inception, Veterans and caregivers who disagree with a PCAFC decision were afforded the right to appeal through the Veterans Health Administration (VHA) Clinical Appeals Process. A recent Court ruling has changed the appeal and review options now available to individuals who have received a PCAFC decision and disagree with that decision.

On April 19, 2021, in the case of *Jeremy Beaudette & Maya Beaudette v. Denis McDonough, Secretary of Veterans Affairs*, the U.S. Court of Appeals for Veterans Claims ruled in favor of petitioners seeking review by the Board of Veterans' Appeals (BVA or Board) of decisions under the PCAFC. The Court also certified, as a class, claimants who received an adverse benefits decision under PCAFC, exhausted the administrative review process within VHA (the VHA Clinical Appeals Process), and have not been afforded the right to appeal to the Board. As a result of the Court's ruling, BVA review is now available to individuals who have received a decision under the PCAFC since the program began in May 2011.

Consequently, VA has expanded options available to Veterans and caregivers who seek review of or to appeal a PCAFC decision.

On February 19, 2019, VA implemented the Veterans Appeals Improvement and Modernization Act of 2017 (AMA), which significantly changed the VA benefits appeals process. Under AMA, claimants have the choice of three decision review options: Supplemental Claim; Higher-Level Review; and Board Appeal. The Supplemental Claim option allows a claimant to submit new and relevant evidence for review in support of their claim. The Higher-Level Review option allows a claimant, without submitting new evidence, to request a new review of the previous decision by an experienced adjudicator. The Board Appeal option allows a claimant to appeal directly to the Board where a Veterans Law Judge will review the decision. AMA appeal and review processes are available for PCAFC decisions issued on or after February 19, 2019. A separate appeals process (legacy) must be used to appeal to the Board regarding PCAFC decisions issued before February 19, 2019.

As part of VA's operational plan to implement the *Beaudette* decision, including to address appeals of decisions prior to February 19, 2019, VA has developed the two forms in this Information Collection (IC). VA's development of the two forms is explicitly required by a Court-approved joint notice plan in *Beaudette*, which was finalized by the parties and approved by the Court in August 2021. VA Form 10-306, *Request for Information About Program of Comprehensive Assistance for Family Caregivers (PCAFC) Decisions*, is necessary to provide a means for claimants to request information about any PCAFC decision VA issued to them, regardless of when such decision was made. VA Form 10-307, *Program of Comprehensive Assistance for Family Caregivers (PCAFC) Notice of Disagreement (NOD)*, is specific to PCAFC decisions rendered prior to February 19, 2019. Details on the specific purpose of each form are explained below.

VA Form 10-306 - Because individuals now have additional options for appealing and seeking review of previous PCAFC decisions, dating back more than 10 years, VA believes this form will be of significant assistance to Veterans and caregivers who need information about past PCAFC decisions to determine whether they wish to pursue an appeal or request review.

VA Form 10-307 - This form is necessary because VA Form 21-0958, *Notice of Disagreement*, is no longer an approved information collection. VA Form 21-0958 was used to initiate an appeal to the Board of benefits decisions dated before February 19, 2019. Because of the AMA, and the general 1-year deadline to file that form, the form is no longer in use. However, because of the Court's ruling in *Beaudette*, PCAFC decisions dating back to May 2011 are now appealable to the Board, so VA must utilize the legacy appeals process to allow claimants to appeal PCAFC decisions dated before February 19, 2019. Therefore, a new Notice of Disagreement form for legacy appeals of PCAFC decisions is needed. This new form is specific to individuals who wish to appeal a PCAFC decision that was issued prior to February 19, 2019.

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.

This is a request for a regular 3-year PRA clearance to continue the emergency PRA clearance approved by OMB.

VA Form 10-306 - VA will use the information collected within VA Form 10-306 to identify individuals seeking information about PCAFC decisions, conduct searches of relevant systems, and provide a written response to the request for information for past PCAFC decisions. The information requested on this form is solicited in connection with 38 U.S.C. 1720G. The form authorizes release of information to the requester in accordance with the Health Insurance Portability and Accountability Act, 45 CFR 164.524; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332.

VA Form 10-307 - VA will use the information collected within VA Form 10-307 to identify individuals who disagree with a PCAFC decision made prior to February 19, 2019 and express a desire for appellate review, and the specific decision(s) with which they disagree so that VA may process their appeal.

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.

Improved information technology will not decrease the burden on the public.

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.

VA Form 10-306 - The purpose of this form is to provide an individual the means to make a written request for a copy of their information maintained by the Department of Veterans Affairs (VA) in accordance with 38 CFR 1.577. The information requested on this form is solicited in connection with 38 U.S.C. 1720G. The form

authorizes release of information to the requester in accordance with the Health Insurance Portability and Accountability Act, 45 CFR 164.524; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332. Such authorization for information about PCAFC decisions does not otherwise exist.

VA Form 10-307 - This new form will allow individuals to appeal a PCAFC decision that was issued prior to February 19, 2019 through the legacy appeals process. No other information collection currently exists which meets this purpose.

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

Because these concern applications for individual benefits, no small businesses or other small entities are impacted by the information collection.

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 10-306 - VA would not be responsive to the needs of the Veteran or caregiver requesting information and to the legal requirement to release information upon request if this information collection is not available.

VA Form 10-307- VA would not be responsive to the needs of individuals wishing to appeal a PCAFC decision issued prior to February 19, 2019 nor to the legal requirement of the legacy appeals process under 38 CFR Part 19 if this information collection is not available.

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 are no such special circumstances.

8. a. 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 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 notice of Proposed Information Collection Activity was published in the Federal Register on March 3, 2022 (Vol. 87, No. 42, pages 12223-12224). VA received three comments in response to this notice.

The 30-day notice of Agency Information Collection Activity Under OMB review was published in the Federal Register on May 10, 2022 (Vol. 87, No. 90, pages 28104-28105).

b. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure or reporting format, and on the data elements to be recorded, disclosed or reported. Explain any circumstances which preclude consultation every three years with representatives of those from whom information is to be obtained.

Outside consultation is conducted with the public through the 60- and 30-day Federal Register notices.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift is provided to respondents.

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.

Respondents are informed that the information collected in these forms is solicited in connection with decisions under 38 U.S.C. 1720G. These forms are part of the system of records identified in the Privacy Act system of records notice 197VA10 – “Caregiver Support Program – Caregiver Record Management Application (CARMA)” and in accordance with the Notice of Privacy Practices.

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.

There are no questions of a sensitive nature.

12. Estimate of the hour burden of the collection of information: Total Hours = 88,270 hours

a. The number of respondents, frequency of responses, annual hour burden, and explanation for each form is reported as follows:

VA Form	No. of respondents	x No. of responses	x No. of minutes	÷ by 60 =	Number of Hours
VA Form 10-306	182,000	1	15		45,500

VA Form	No. of respondents	x No. of responses	x No. of minutes	÷ by 60 =	Number of Hours
VA Form 10-307	85,540	1	30		42,770

TOTALS	No. of respondents	x No. of responses	x No. of minutes	÷ by 60 =	Number of Hours
VA Forms 10-306 and 10-307	267,540	1	—		88,270 hours

b. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.

See chart in subparagraph 12a above

c. Provide estimates of annual cost to respondents for the hour burdens for collections of information. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

VA Form 10-306 - The respondent population for VA Form 10-306 is composed of individuals who have received one or more decisions about their application for and/or participation in VA’s PCAFC and are requesting information about these decisions.

VA Form 10-307 - The respondent population for VA Form 10-307 is composed of individuals who received one or more decisions about PCAFC issued prior to February 19, 2019 and wish to initiate an appeal.

VA cannot make assumptions about the population of respondents because of the variability of factors, such as the educational background and wages potential of respondents. Therefore, VHA 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 \$28.01 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.

There are no expected overhead costs for completing the information collection, however agents and attorneys may charge a fee for representation under certain circumstances (which may include assistance in completing the information collection in VA Form 10-306, if in connection with an initial decision issued on or after the effective date of the AMA).

VHA estimates the total annual cost to all respondents to be \$2,472,442.70

VA Form 10-306 - (45,500 burden hours x \$28.01 per hour) = \$1,274,455.00
 VA Form 10-307 - (42,770 burden hours x \$28.01 per hour) = \$1,197,987.70

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).

- a. There are no capital, start-up, operation, or maintenance costs.
- b. Cost estimates are not expected to vary widely. The only cost is that for the time of the respondent.
- c. There is no anticipated recordkeeping burden beyond that which is considered usual and customary.

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 estimated annual cost of VA Forms 10-306 and 10-307 to the Federal Government is **\$15,476,495**

Printing/mailing	\$ 350,000
Staffing Resources to review, assign and respond to VA Form 10-306	\$2,162,371
Staffing Resources to review and assign VA Form 10-307	\$1,108,748
Staffing resources to process and respond to VA Form 10-307	\$5,653,000
VA Administrative Support	\$6,202,376
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Total Cost	\$15,476,495

15. Explain the reason for any burden hour changes or adjustments reported in items 13 or 14.

This is a new information collection, and all burden hours are considered a program increase.

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.

Overall counts of the number of VA Form 10-306 and VA Form 10-307 submitted to VA may be made publicly available and/or included in reports that may be shared with Congress and other entities as part of VA's commitment to program oversight, ongoing quality improvement, and transparent communication. Aggregated statistics related to PCAFC Decision Review and Appeal data may also be made available.

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 will include the expiration date on all forms.

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

There are no exceptions.