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38 CFR Parts 3, 19, and 20

Standard Claims and Appeals Forms; Proposed Rule

**DEPARTMENT OF VETERANS
AFFAIRS****38 CFR Parts 3, 19, and 20**

RIN 2900-AO81

Standard Claims and Appeals Forms**AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations and the appeals regulations and rules of practice of the Board of Veterans' Appeals (Board). There are two major components of these proposed changes. The first is to require all claims to be filed on standard forms prescribed by the Secretary, regardless of the type of claim or posture in which the claim arises. The second is to provide that VA would accept an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction (AOJ) as a Notice of Disagreement (NOD) only if it is submitted on a standardized form provided by VA for the purpose of appealing the decision, in cases where such a form is provided. The purpose of these amendments is to improve the quality and timeliness of the processing of veterans' claims for benefits.

DATES: Comments must be received by VA on or before December 30, 2013.

ADDRESSES: Written comments may be submitted through www.regulations.gov; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to "RIN 2900-AO81—Standard Claims and Appeals Forms." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie Caucutt Li, Chief, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:**I. Executive Summary**

This document proposes to amend 38 CFR parts 3, 19, and 20. The proposed amendments would require the use of standard forms to initiate claims for benefits, and to initiate appeals of AOJ decisions on those claims. VA's forms are available on the following Web site: <http://www.va.gov/vaforms/>.

A. Purpose

VA is proposing to amend its adjudication regulations and the appeals regulations and rules of practice of the Board. There are two major components of these proposed changes. The first is to require all claims to be filed on standard forms prescribed by the Secretary, regardless of the type of claim or posture in which the claim arises. The second is to provide that VA would accept an expression of dissatisfaction or disagreement with an adjudicative determination by AOJ as an NOD only if it is submitted on a standardized form provided by VA for the purpose of appealing the decision, in cases where such a form is provided.

These amendments are necessary to improve the quality and timeliness of the processing of veterans' claims for benefits. These changes are intended to modernize the VA system so that all veterans receive more timely and accurate adjudications of their claims and appeals. VA's goal is to process all claims with 98 percent accuracy within 125 days by 2015. VA is experiencing a significant increase in claims volume in the compensation benefit line, which has consequences for the timeliness of decisions on claims for benefits, and appeals of those decisions. As discussed more fully below, these amendments would improve the efficiency of the claims adjudication and appeals process in order to respond to the increasing volume and complexity of compensation claims.

VA has clear authority to make these regulatory changes. VA is granted broad authority to "prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by [VA] and are consistent with those laws," including specifically authority to prescribe "the forms of application by claimants under such laws". 38 U.S.C. 501(a).

B. Summary of Major Provisions

Regulatory change is necessary to promote the submission of claims and appeals in standard formats that are more easily digitalized and processed than non-standard submissions. When a compensation claim is granted, VA pays

a monthly benefit according to the severity of the veteran's disability, beginning from the claim's effective date, which is usually the date the claim was filed. VA's current rules allow a claimant to submit an "informal" claim in a non-standard format that not only may be difficult to distinguish from other routine correspondence but may be incomplete for adjudication. While the current rules are meant to minimize the burden associated with initiating a claim, and allow benefits to be paid from the earliest possible date if the claim is ultimately granted, they also unintentionally incentivize the submission of claims in non-standard formats that frustrate timely, accurate, and orderly claims processing. This rule proposes to eliminate the concept of an "informal" claim, and replace it with a process that would incentivize the submission of claims in a format more amenable to efficient processing, while still allowing veterans to receive favorable effective date treatment similar to that available under the current "informal" claim rule.

In order to achieve the requirement that all claims be filed on a standard form, VA proposes to amend 38 CFR 3.155. Claims filed through an online claims submission tool within a VA Web-based electronic claims application system would be considered filed as of the date of an "incomplete claim" if the claim is ultimately completed within 1 year. This would allow the claimant to preserve an effective date, secure any necessary evidence, and submit the claim to VA in a package that facilitates efficient processing. VA proposes to establish rules for assigning effective dates for claims depending on the format in which they are filed. In particular, paper and other claims would be considered filed as of the date a complete claim is filed. VA further proposes to amend 38 CFR 3.160, to clarify what constitutes a complete claim. VA also proposes to remove 38 CFR 3.157, which generally requires VA to deem various documents other than claims forms to constitute claims. However, VA would seek to preserve many of the features of § 3.157 that are favorable to veterans through an amendment to 38 CFR 3.400, providing that medical records which indicate an increase in disability may be the basis for an effective date of increased compensation provided a complete claim for increase is received within 1 year.

Regulatory change is also necessary to improve the quality and timeliness of VA's processing of appeals. By statute, the first step in the VA appellate process is filing an NOD. VA's current rule

allows an NOD to be filed in any format, so long as it contains a statement that can be “reasonably construed” as seeking appellate review. As explained more fully below, this standard turns the identification of an appeal into a time-intensive and inefficient interpretive exercise, complicated by the fact that an NOD may be embedded within correspondence addressing a variety of other matters. This contributes to delay and error. Requiring appeals to be initiated on a standard form would reduce errors in identifying appeals and reduce the time AOJ personnel must spend clarifying the scope and nature of the disagreement with VA’s initial decision.

Therefore, VA proposes to require that a claimant may initiate an appeal from an adverse decision of the AOJ only by submitting a standard form whenever the AOJ provides a form for that purpose. VA proposes to amend 38 CFR 20.201 to redefine what constitutes an NOD. VA proposes to add a paragraph (a), which would state that VA will accept as an NOD only the form provided by the AOJ for the purpose of initiating an appeal in cases where such a form is provided. In cases where the AOJ provides a form for purposes of initiating an appeal, an NOD would consist of a completed and timely submitted copy of that form. VA also proposes to add a new paragraph (b) to § 20.201, which would retain the current standard for NODs relating to decisions of the AOJ in cases where no such form is provided. This proposed rule is necessary to allow VA to require the use of a standard form and design appeal forms tailored to the specific needs of particular benefit lines rather than a single agency-wide generic form.

VA also proposes to add two new sections to part 19. New § 19.23 would clarify whether the requirements of current 38 CFR 19.26, 19.27, and 19.28, or proposed § 19.24, apply to a case. New § 19.24 would set forth procedures for AOJ processing of NODs governed by proposed § 20.201(a), including procedures governing the treatment of incomplete forms. Additionally, VA proposes to make minor changes to § 3.2600, which discusses review of benefit claims decisions after filing of an NOD, § 20.3(c), which defines “appellant,” and § 20.200, which describes what constitutes an appeal. The specific revisions are explained in further detail below.

These changes generally would preclude claimants from initiating claims and appeals through non-standard means. However, VA believes the benefits of these changes would outweigh any burden of that limitation,

for three primary reasons. First, requiring the use of standard forms would impose minimal if any burden on claimants because the forms are designed to be simple to use and guide the claimant in providing information necessary to substantiate their claim which would otherwise be required to be provided under current procedures. Second, these proposed changes would allow claimants, through use of VA’s electronic applications process, to preserve the same beneficial effective-date treatment they could obtain under current procedures regarding non-standard informal claims. Third, the use of standard forms would enable VA to more quickly process claims and would enhance the efficiency and timeliness of VA’s claims processing and benefit delivery system-wide.

This proposed rule would apply only with respect to claims and appeals filed 30 days after the date this rule is published in the **Federal Register** as a final rule. Claims and appeals pending under the current regulations as of that date would continue to be governed by the current regulations.

II. Background

A. Claims

Claimants must file “a specific claim in the form prescribed by the Secretary” in order for VA to pay benefits. 38 U.S.C. 5101(a)(1). VA is required to notify the claimant of any information or evidence necessary to substantiate the claim (hereinafter “section 5103 notice”). 38 U.S.C. 5103(a)(1). Additionally, VA must make “reasonable efforts to assist a claimant in obtaining evidence necessary” to substantiate the claim, to include assistance in obtaining records and providing medical examinations. 38 U.S.C. 5103A. Since there are no limitations or restrictions on the number of claims a claimant may file, one claimant can have multiple claims pending for adjudication. For instance, a claimant may request benefits for one or multiple issues in one claim, and the same claimant may also submit additional claim(s) for one or multiple issues while the previous claim is still pending for adjudication. In such cases, VA generally must then send the claimant a different 5103 notice for those new claims filed and assist by developing evidence for these added claims. The filing of additional claims while a previous claim is still pending significantly lengthens the overall processing and adjudication of all the claims filed, i.e., the previously filed claim as well as the additional claim(s) filed, because additionally filed

subsequent claims are associated, processed, and adjudicated with the previously filed pending claim. Thus, VA must gather additional evidence for the subsequently filed claim, thereby extending the time the additional claim is pending, and must identify and adjudicate all the issues or contentions claimed on all filed claims which are ready for a determination, while simultaneously continuing to develop the issues or contentions which are not ready for determination. This process will lengthen the overall adjudication time of all claims filed by one claimant, particularly when multiple issues or contentions are raised for every claim filed.

If VA receives an incomplete application, VA will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. 38 CFR 3.159(b)(2). If VA does not receive a complete claim within 1 year of receipt of the incomplete application, VA will not take action on processing or adjudicating the incomplete claim. The date of receipt of the incomplete application or informal claim will be preserved as a date of claim if a completed application is submitted within 1 year of receipt. However, if VA does not receive the completed application or the information or evidence necessary to substantiate the claim within 1 year of submission, the date of receipt of the claim would not be preserved and the claimant would have to submit or resubmit a completed claim, resulting in a different date of claim.

VA receives an enormous volume of non-standard submissions under its current rules. Current 38 CFR 3.155(a) provides that “[a]ny communication or action, indicating an intent to apply for benefits . . . may be considered an informal claim.” If a claimant submits an informal claim, and a claim on a form prescribed by the Secretary is not previously of record, VA will furnish the appropriate application, depending upon the particular benefit sought, for completion and notify the claimant that the date VA received the informal claim will be preserved as the date of claim for effective date purposes if the completed application is filed within 1 year of the date it was sent. If a completed application is not received within the 1-year timeframe, VA will not take further action on the informal claim. 38 CFR 3.151, 3.152, 3.155.

Current 38 CFR 3.155(c) provides that if a claim in the form prescribed by the Secretary is already of record, any informal request for increase or

reopening will be accepted as the claim. In other words, claims for an increase in benefits or to reopen a previous claim do not need to be filed on a form prescribed by the Secretary under VA's current rules. These claims make up a majority of VA's compensation workload. As previously discussed, from April 2009 to April 2013, the total number of initial, original compensation and pension claims (excluding death benefits), i.e., claims which may be initiated informally but for which a standard form is eventually required, received nationally was 1,671,810. By comparison, the total number of claims for increase or to reopen a previously denied claim, i.e., claims for which a standard form is not required, received nationally was 3,184,863. Since VA does not record data on specifically the number of informal claims received, the figures capture both informal and formal claims for original compensation and pension claims (excluding death benefits) and increase in benefits and claims to reopen. Claims for an increase in benefits or to reopen a previously denied claim frequently do not specify the benefits sought. Therefore, VA has to determine what benefit the claimant is seeking by contacting the claimant and/or claimant's authorized representative. Where the claimant submits statements in support of his or her pending claim, VA has to determine whether the statements can be construed as informal claims for other benefits unrelated to the pending claim. Reviewing and clarifying these non-standard submissions is extremely time consuming, and can also lead to claims being overlooked and not adjudicated.

B. Appeals

When the AOJ renders a decision affecting the payment of benefits or the granting of relief, it will provide a claimant with notice of the decision and his or her appellate rights. 38 U.S.C. 5104; 38 CFR 3.103(b)(1). Appellate review by the Board of an AOJ decision is initiated by a timely filed NOD. 38 U.S.C. 7105(a). Upon receipt of an NOD, the AOJ is required to "undertake such development or review action as it deems proper" in an attempt resolve the claim, either through "granting the benefit sought or through withdrawal of the [NOD]." 38 U.S.C. 7105(d)(1). If the disagreement cannot be resolved, an appeal is completed by a timely filed Substantive Appeal after a Statement of the Case (SOC) is furnished. 38 U.S.C. 7105 (a), (d)(1) and (3); 38 CFR 20.200, 20.202. A claimant, or his or her representative, must submit an NOD in writing within 1 year (or 60 days for simultaneously contested claims) from

the date of mailing of the notice of the initial adjudicative determination by the AOJ. 38 U.S.C. 7105(b).

Currently, VA will accept "[a] written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the [AOJ] and a desire to contest the result" as an NOD. 38 CFR 20.201. If the AOJ receives a timely filed written communication expressing disagreement, but cannot clearly identify that communication as expressing an intent to appeal, or cannot identify which claims the claimant wants to appeal, the AOJ will contact the claimant orally such as by telephone or in person or in writing to request clarification of his or her intent. *Id.* § 19.26(b). If the claimant is contacted orally or in writing, then he or she must respond to the clarification request within the later of 60 days or the remainder of the 1-year period from the date of mailing of the notice of the AOJ decision. *Id.* § 19.26(c). Both VA's current rule and its predecessor make clear that an NOD can be in any format, so long as it is in writing and can be "reasonably construed" as seeking appellate review. *Id.* § 20.201 ("special wording is not required"); *see also* 38 CFR 19.118 (1983).

After a timely NOD is received, the AOJ must undertake any necessary development actions. *Id.* § 19.26(a). If such development does not result in resolving the disagreement in the claimant's favor, then the AOJ must send the claimant an SOC, which provides further information regarding the reasons for the decision and the law and the evidence considered in reaching the decision. 38 U.S.C. 7105(d)(1); 38 CFR 19.29. The claimant has 60 days from the date the SOC is issued or the remainder of the 1-year period from the date of mailing of the notification of the decision being appealed, whichever period ends later, to complete his or her appeal to the Board by filing a Substantive Appeal. 38 U.S.C. 7105(d)(3); 38 CFR 20.302(b).

III. Challenges

VA is facing an unprecedented volume of compensation claims, and is experiencing unacceptable delays at every phase of its process for adjudicating claims and appeals. As of August 24, 2013, the Veterans Benefits Administration (VBA), which processes claims for monetary benefits, had 760,820 compensation and pension claims pending. Four hundred seventy-one thousand, six hundred fifty (471,650) were considered part of the "backlog," meaning they were pending longer than VA's goal of 125 days. This

means that 62 percent of the claims inventory was pending longer than VA's operational goal. VA experienced roughly a 46 percent increase in annual claims receipts from 888,000 in fiscal year (FY) 2008, to 1.3 million in FY 2011. VBA has processed over 1 million compensation claims each of the last 3 fiscal years (FY 2010–FY 2012), but the total volume of claims receipts has outpaced production. Additionally, the number of medical conditions contained in each claim has increased, leading to greater complexity for each claim.

Many factors contribute to the backlog by increasing both the volume and complexity of claims. Some factors external to VA include 10 years of war with increased survival rates, post-conflict downsizing of the military, and a difficult economy. Other factors include greatly increased VA outreach, the decision to afford presumptive service-connection to additional conditions for exposure to herbicides, and special evidentiary rules for Post-traumatic Stress Disorder (PTSD).

However, many features of VA's current claims process also contribute to the backlog, or at a minimum hamper VA's ability to address the backlog. Most inputs into the claims process, such as claimant submissions, are still received in paper format. Further, many submissions, including submissions requiring VA to take action, are not received in a standard format. This increases time spent determining whether a claim has been filed, identifying the benefit claimed, sending letters to the claimant and awaiting a response, and requesting and awaiting receipt of evidence. These steps all significantly delay the adjudication and delivery of benefits to veterans and their families. By placing significant burdens on VA, these informal submissions slow down the adjudication for all veterans, including those who do submit complete claims on standardized forms. By requiring the use of standard forms for all claims, VA would be able to more easily identify issues and contentions associated with claims that are filed, resulting in greater accuracy, efficiency, and speed in the processing and adjudication of claims, which benefits both the individual claimant and all veterans who have filed claims.

Similar challenges exist for appeals. While the Board is responsible for issuing VA's final decision on a benefits claim, much of the appellate processing that takes place between an initial AOJ decision and the Board's disposition of an appeal is performed by VBA. Accordingly, this appellate processing is performed by the same pool of resources

that must be used to process initial claims.

In FY 2011, the average length of time between receipt of an NOD at the AOJ and certification of an appeal to the Board was 883 days. Board of Veterans' Appeals, Department of Veterans Affairs, *Report of the Chairman: Fiscal Year 2011*, at 18 (2012). An average of 257 days of this period resulted from the time elapsed between the date of receipt of the NOD and the date of the AOJ's issuance of an SOC. *Id.* Similarly, in FY 2012, the average appellate processing time at the AOJ from receipt of an NOD to certification of an appeal to the Board was 1,002 days, with 270 days of that period elapsing between receipt of the NOD and issuance of the SOC. Board of Veterans' Appeals, Department of Veterans Affairs, *Report of the Chairman: Fiscal Year 2012*, at 19 (2013).

VA is aggressively pursuing a comprehensive transformation in order to respond to these challenges. VBA must use its limited resources as efficiently as possible, striking the optimal balance between resolution of initial claims and timely appeals processing. To be successful, any effort to quicken processing must assume ongoing workload challenges relative to VA's operating resources, and therefore focus on process improvements and efficiency gains. However, VA must also ensure that efforts to make the process more efficient do not also unduly erode the longstanding informal, non-adversarial, pro-claimant nature of the VA system. See *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 323–24 (1985).

This proposed rule aims to strike an appropriate balance between these interests by increasing the role of standard forms. Use of standard forms greatly facilitates efficient and accurate claims processing. A VBA adjudicator can more readily identify the benefits sought and contentions that are relevant to the claim when inputs are received in a predictable, regularly occurring way rather than in an open-ended narrative format. Further, even if a claimant prefers to interact with VA through paper, submissions received in a standard format can be much more easily scanned and turned into data for purposes of processing a claim within VA's own business applications. In this way, this proposed rule would apply some of the efficiencies previously only enjoyed by particular subsets of claims, such as fully developed claims (FDCs), to the entire claims system. The intent of this proposed rule is to streamline and modernize the VBA claims and appeals process in order to expedite and

maximize the delivery of benefits to veterans and their families.

IV. Modernized Claims Process

VBA has implemented a series of initiatives in eliminating the backlog of claims and has deployed technology solutions to end its reliance on the outmoded paper-intensive processes that thwart timely and accurate claims processing. These solutions consist of several Web-based paperless claims systems. eBenefits is an online benefits account that veterans and their families can use to apply for and manage their VA benefits. Claimants can fill out and submit a fully paperless claim online. The Stakeholder Enterprise Portal (SEP) allows Veterans Service Organizations (VSO) to assist claimants in completing a claim through eBenefits. The Veterans Benefits Management System (VBMS) is an internal VA business application for electronic claims processing, which facilitates streamlined development of electronic claims. VBMS facilitates the evidence-gathering phase of the claims process, and employs evaluation and rules-based decision-support tools to increase the speed and accuracy of rating decisions.

When a claimant files a claim electronically through eBenefits, he or she is guided through a series of interview-style questions that are taken directly from the questions found in VA Form 21–526EZ, *Application for Disability Compensation and Related Compensation Benefits*. eBenefits' interview-style process prompts the claimant to provide pertinent data such as non-evidentiary facts that will be necessary to develop the claim. eBenefits also prompts the claimant to identify the benefits sought. The claimant can select responses to the questions and enter a selection from a list of disabilities provided and can also manually enter disabilities related to the claimed benefit. eBenefits then automatically populates all of the claimant's responses into VA Form 21–526EZ and provides claimant with section 5103 notice for every type of benefit identified in the electronic claims process. The claimant also has the option of uploading evidence into the program by scanning in paper evidence or attaching electronic documents with the application. Once the electronic form is completed, the claimant can file the claim by electronically transmitting the claim with a press of a button. VA will receive the electronic claim within 1 hour.

Since eBenefits provides step-by-step guidance in filling out the online form, it may ease the claimant's burden in filling out the application and provide

a more convenient method of submitting the claim, as the claimant does not have to apply at the VA regional office. The Web-based electronic claims processing system also ensures more accurate responses from the claimant as well as a more consistently completed form. The nature and format of the interview in eBenefits prompts claimants to answer all pertinent questions in order to obtain information necessary to substantiate the claim, checks for errors and missing information, and readdresses any unanswered questions, of all which ensure more accurate claims processing and adjudication, resulting in expedited delivery of benefits to claimants.

Apart from the specific advantages of eBenefits, a paperless system is superior to a paper-bound system for many reasons. First, a paper claims file can only be in a single place at once, making it far more difficult to route different medical issues to specialists around the country for consideration. Electronic claims can be separated by issue and brokered for simultaneous, rather than sequential, consideration by various centers of excellence specializing in specific types of medical issue around the country. Second, paper claims files can be lost, damaged, or destroyed. These risks are far lower for electronic files. Third, paper files must be searched and reviewed page-by-page. This is a significant limitation because many of the claims files handled by VA are of considerable size. An AOJ adjudicator looking for a particular contention or piece of evidence must literally thumb through thousands of pages in each file. For electronic files, robust optical character recognition capabilities make it possible to search thousands of pages in a fraction of the time required to search paper files. Fourth, paper files are heavy and take up enormous amounts of physical space, creating a challenging work environment for AOJ personnel. One of VA's RO's required structural improvements in order to accommodate the sheer weight of paper files. Finally, even if VA's own business processes are fully paperless, paper submissions must be manually scanned into VBMS, adding an extra time-intensive step for paper submissions. A piece of mail must be identified, sorted, sent to a scanning facility, and meta-data must be entered. The nationwide average delay between when a piece of mail is received, and when it can actually be processed by an AOJ adjudicator using VBMS, is 22.6 days. This delay does not exist for submissions that are initially received in an electronic format.

V. Changes to Claims Rules Can Drive Modernization

VA has determined that changes to its rules governing claims are necessary in order to facilitate a transition to a modernized, more efficient process that is less reliant on paper. In order to incentivize the submission of claims in a standard format for more effective and efficient claims processing, VA proposes to replace the terminology “informal claim” with “incomplete claim” and “complete claim” and establish effective date treatment of incomplete claims based on the format used in submission. Generally, a “complete claim” would be a form prescribed by the Secretary for the purposes of initiating a claim that is fully filled out, to include identifying the benefits sought. An “incomplete claim” would generally be a written communication expressing a desire for benefits that falls short of the standards for a complete claim, similar to the current standard for an “informal claim.”

VA has authority to replace the current “informal claim” concept with a different process. No statute envisions or requires VA’s current “informal claims” rule—it is entirely a feature of VA’s regulations. Accordingly, VA has authority to alter the contours of the rule to produce a claims processing system that is better suited to veterans’ current needs.

VA is required to furnish all instructions and forms necessary to apply for a benefit upon request made by any person claiming or applying for, or expressing an intent to claim or apply for, a benefit. 38 U.S.C. 5102(a). While VA will continue to furnish the appropriate forms to claimants, a submission on a prescribed paper form that is not complete, paper statements or electronic mail, whether submitted through eBenefits or otherwise, indicating a desire for benefits would not be considered a claim of any kind, and would not be the basis for an effective date prior to the date of the complete claim. However, claimants who file an incomplete electronic claim within eBenefits would receive up to 1 year to complete the claim.

For purposes of clarification, we would like to explain some terms used in describing the electronic claims process. VA considers an act of “submitting” to encompass the process of entering into the eBenefits system, filling out the online application through the series of interview questions, and electronically saving the application. If the claimant saves the online application, whether completely filled out or not, and does not transmit

the online application for processing, the application will be saved and stored in eBenefits for 1 year. These electronically stored, non-transmitted online application(s) are considered “incomplete” electronic claims. When the claimant transmits the online application for processing and adjudication, VA considers this act of transmitting the application as the final step in “filing” the electronic claim.

If a claimant files a completed electronic claim within 1 year of the initial submission of an incomplete electronic claim, the completed claim will be considered filed as of the date the incomplete electronic claim was electronically saved or stored in eBenefits for effective date purposes. The date the completed claim is transmitted would start the toll on the “age” of the electronic claim. We anticipate that claims filed through VA’s Web-based electronic claims processing system would be processed and adjudicated more expeditiously and efficiently than in the paper-based claims processing and would not contribute to the claims backlog as much as the traditional paper-based processing system.

This electronic claims process aligns claimant incentives with the interests of efficient and effective claims processing. A claimant receives the fastest possible grant of benefits if a claimant submits all evidence the claimant is able to procure in a complete package that facilitates efficient processing. However, claimants understandably are often reluctant to wait until all evidence is assembled before submitting a claim, since it is the submission of the claim which generally establishes the effective date of an award of benefits.¹ See 38 U.S.C. 5110(a). This proposed rule would allow claimants to establish an effective date “placeholder” in VA’s electronic systems, procure all necessary evidence, and submit everything in a single completed claim. When claimants submit claims and evidence in this way, the time VA must spend to clarify, develop, and decide the claim are all minimized. In order to incentivize electronic submissions over paper submissions, VA proposes to make this effective date “placeholder” possible only for electronic incomplete claims. Further, identifying incomplete claims in VA’s eBenefits system is much simpler than the cumbersome task of identifying informal paper claims. Accordingly, this proposed rule would

¹ There are certain exceptions to this rule such as claims received within 1-year of discharge from service. Generally, the date of receipt of claim establishes the effective date of an award.

preserve the beneficial effective-date feature of the current informal claim rule but, by tying that feature to the electronic claims process, would reduce the burdens, uncertainty, and delay associated with the current paper claim process.

We note that standard forms such as the 21–526EZ contain section 5103 notice. Similarly, eBenefits provides the section 5103 notice to claimants as part of the submission process. Increased use of the electronic claims process and standard forms such as the 526EZ therefore implies that more claimants will receive their section 5103 notice some way other than in a separate notice letter.

In Public Law 112–154, Congress made clear that VA is authorized to provide section 5103 notice to claimants through the use of standard forms. VA believes Congress’ intent was to make the section 5103 notice process less sequential in order to expedite the processing of claims. Congress deleted “[u]pon receipt of a complete or substantially complete application” from the first sentence of 38 U.S.C. 5103. The first sentence of that section now reads, “[t]he Secretary shall provide to the claimant and the claimant’s representative, if any, by the most effective means available, including electronic communication or notification in writing, notice of any information, and any medical or lay evidence not previously provided to the Secretary that is necessary to substantiate the claim.” VA interprets this statutory change as clear authority to satisfy notice requirements in the most efficient way possible, without altering the important substantive role that notice plays in the claims process.

A House Committee Report discussing proposed bill language that was ultimately incorporated in Public Law 112–154 makes clear that VA’s interpretation is consistent with Congress’ intent in amending section 5103. Congress recognized the crucial role that Veterans Claims Assistance Act (VCAA) notice plays in the claims process, but also noted “unintended consequences, including court interpretations, of VCAA that have resulted in delays in claims processing . . . the Committee believes that sensible modifications can be made to VCAA, while also expediting the claims process.” H.R. Rep. 112–241 at 9. Clearly the intent of the statutory change was to “remove the requirement that the VCAA notice be sent only after receipt of a claim,” and the framers of this legislation explicitly envisioned that VA would implement these

statutory changes by putting notice on “new claims forms, as is currently done with the Department’s 526–EZ form for Fully Developed Claims (FDC).” *Id.*

While notice on claims forms would necessarily result in notice relating generally to the type of benefit claim being submitted rather than notice concerning specific circumstances of the individual claimant, such notice is all section 5103 requires. *Wilson v. Mansfield*, 506 F.3d 1055, 1059–60 (Fed. Cir. 2007). Nothing in Public Law 112–154 alters this conclusion. The decision by the United States Court of Appeals for the Federal Circuit in *Wilson* was based on the statutory language requiring that VA provide notice “of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim.” 38 U.S.C. 5103 (2012). This operative language has not been amended.

To the extent there is any inconsistency between VA’s current notice and assistance rules and the current statute as amended by Public Law 112–154, the statute clearly governs. VA is examining whether 38 CFR 3.159 should be amended to account for the new statute, but believes the statute is clear authority for the changes affecting how VA provides notice that we propose here.

VI. Mechanics—Proposed Changes to Part 3, Subpart A

We propose the following changes to 38 CFR part 3, subpart A in order to execute this modernization of VA’s claims process.

In proposed § 3.1(p), we would define “Claim” to mean “a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs.” This definition would replace the current definition of “Claim—Application” which is defined as “a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit” in current paragraph (p). The current definition is confusing and does not make clear the difference between a “claim” and an “application.” Therefore, we would clarify the current definition by eliminating the words “Application,” “formal,” and “informal” in our proposed definition in order to conform with the proposed amendments to the adjudication regulations.

Currently, VA does not require that claims for entitlement under 38 U.S.C. 1151, which provides disability

compensation and death benefits for a qualifying disability or death of a veteran from VA treatment, examination, or vocational rehabilitation, be submitted or filed on a standard form or application. 38 U.S.C. 1151 (2006); 38 CFR 3.150(c), 3.154, 3.361. Since we are amending VA’s adjudication regulations to require that all claims be filed on standard forms prescribed by the Secretary, we propose to revise § 3.150 by removing paragraph (c), which provides that when disability or death is due to VA hospital treatment, training, medical or surgical treatment, or examination, a specific application for benefits will not be initiated. We also propose revising § 3.154, which provides that “VA may accept as a claim for benefits under 38 U.S.C. 1151 . . . any communication in writing indicating an intent to file a claim for disability compensation or dependency and indemnity compensation,” to require claimants to file or submit a complete paper or electronic claim in order to apply for benefits under 38 U.S.C. 1151 and § 3.361, the regulation governing the criteria of entitlement to 38 U.S.C. 1151 benefits. 38 U.S.C. 1151; 38 CFR 3.150 and 3.154.

VA’s intent is to modernize the claims processing system by standardizing the format in which all disability claims would be received. In order for AOJ personnel to readily identify claims and process them efficiently, it is imperative that all claims appear in easily identifiable formats, using a standardized form. Claims explicitly encouraged to be submitted in non-standard ways are inconsistent with that model and would undermine the predictability that will make standardization successful. Accordingly, VA proposes to require that even claims based on disability or death due to VA hospital care, medical or surgical treatment, examination, training and rehabilitation services or compensated work therapy program under be initiated by completing and filing a standard form. VA believes that using a standard form is a minimal burden to place on claimants, even those who may be due compensation as a result of VA’s own errors in providing medical treatment.

In proposed § 3.155, we would replace the current concept of “informal claims” with the modernized process we describe in parts IV and V of this notice.

In this rule, we propose to establish claims and effective date rules that would govern the VA system after this proposed rule becomes final. We would clarify that this process would apply to

all claims governed by part 3 of title 38 in the Code of Federal Regulations.

In paragraph (a), we propose to make clear that a complete non-electronic claim is considered filed as of the date it was received by VA. Paper or other communications, including electronic communications received outside a claims submission tool within a VA Web-based electronic claims application system that fall short of the standards of a complete claim would not constitute claims of any kind, incomplete or otherwise, and could not be the basis of an effective date prior to the date the complete claim was submitted. Accordingly, there is no “incomplete claim” standard that is applicable to this paragraph. We propose to make clear, in conjunction with proposed § 3.160(a), that this rule applies regardless of the reason a given submission falls short of the standards of a complete claim, i.e., whether because it is received in a non-standard format, or because the form prescribed by the Secretary is not fully filled out, i.e., lacks sufficient information for VA to adjudicate the claim.

In paragraph (b), we propose to create a standard for incomplete claims that affords the possibility of favorable effective date treatment. Any communication submitted through or action taking place in a claims submission tool within a VA Web-based electronic claims application system that indicates an intent to apply for one or more benefits administered by VA that does not meet the standards of a complete claim may be considered an incomplete claim. If a complete electronic claim is filed within 1 year of the submission of the incomplete electronic claim, the electronic claim would be considered filed as of the date of submission of the incomplete electronic claim.

The limitation that the communication must take place within an online benefits account is necessary to prevent open-ended narrative format submissions, such as unsolicited emails, from constituting incomplete claims. The further limitation that the communication must be submitted through a claims submission tool within VA’s Web-based electronic application system is to ensure that non-standard communications, such as emails within the eBenefits system, do not constitute incomplete claims merely because they took place within eBenefits. VA must be careful to define incomplete claims in a way that channels claimant submissions through a predictable, standardized process.

In proposed paragraph (c), we would specify that certain communications or

actions do not constitute claims of any kind, and are considered a request for an application for benefits under 38 CFR 3.150(a). We would clarify this rule with greater particularity in the three scenarios where we expect this issue to arise. We would place the three scenarios in paragraphs (c)(1) through (c)(3). Paragraph (c)(1) references non-standardized communications or actions, paragraph (c)(2) references a form prescribed by the Secretary that is not complete, and paragraph (c)(3) references an email sent to VA, whether to a general mailbox or through VA's electronic benefits portal. By using the phrase "without limitation" we would make clear that paragraphs (c)(1) through (c)(3) are explanations of how the general rule enunciated in the main text of paragraphs (a) and (b) applies in certain scenarios. A communication or action governed by paragraph (a) or (b) that does not perfectly mirror one of the scenarios addressed in paragraphs (c)(1) through (c)(3), but still falls short of the standards of a complete claim, would not be the basis for an effective date prior to the date the complete claim was submitted, unless it meets the requirements for processing under paragraph (b).

Most incomplete electronic claims will likely be incomplete on purpose, in order to serve as effective date "placeholders" until all evidence is gathered. However, VA acknowledges the possibility that a claimant would submit the claim believing it to be complete, but VA would later determine the claim is incomplete. In this situation, VA will tell the claimant what information is necessary to complete the claim as required by 38 U.S.C. 5102.

We also propose to make clear that only one complete electronic claim may be associated with each incomplete electronic claim for purposes of this special effective date rule. In other words, if a claimant files one incomplete electronic claim, and then files two or more successive complete electronic claims within 1 year, only issues contained within the first complete electronic claim would relate back to the incomplete electronic claim for effective date purposes. For example, if VA receives an incomplete claim on January 1, 2014, and then receives two successive complete claims on August 1, 2014, and on November 1, 2014, VA would assign an effective date of January 1, 2014, i.e., the date the incomplete claim was received, for the issues contained within the first complete claim received on August 1, 2014. For the issues contained in the complete claim received on November 1, 2014, VA would assign an effective

date of November 1, 2014, the date the second complete claim was filed or received by the VA. However, there would be no limit on the number of issues or conditions that could be contained in each complete claim. Accordingly, it would be in claimants' best interest to claim all potential issues in one comprehensive package.

VA believes this proposed rule is less apt to cause confusion than the alternative, which would allow claimants to submit several claims over the course of a year while still relating back to the earliest effective date. This alternative rule would encourage fragmented presentation of claims, which may complicate and delay the development and disposition of already pending claims by causing duplicative VA processing actions or creating confusion regarding the development actions that must be taken for each claim.

Although claimants may submit new claims at any time, it is far more efficient to submit all issues in a single unified claim. In proposed § 3.160, we would define certain types of claims in a way that is meant to complement the structure we would create in proposed § 3.155.

In proposed § 3.160(a), we would define a complete claim as "[a] submission on a paper or electronic form prescribed by the Secretary that is fully filled out and provides all requested information." In paragraphs (a)(1) through (a)(4), we would then enumerate certain requirements that we view as embedded within this general rule. In paragraph (a)(1), we would make clear that a complete claim must be signed whether electronically or manually by the claimant or a person legally authorized to sign for the claimant. In paragraph (a)(2), we would make clear that a complete claim must identify the benefit sought.

In paragraph (a)(3), we would clarify that for compensation claims, a description of symptoms and specific medical conditions on which the benefit is to be based must be provided to whatever extent the form prescribed by the Secretary so requires, or else the form may not be considered complete. Similarly, in paragraph (a)(4), we would clarify that for nonservice-connected disability or death pension and parents' dependency and indemnity compensation claims, a statement of income must be provided to the extent the form prescribed by the Secretary so requires in order for the claim to be considered complete. Our intent is to make as clear as possible that information solicited by a form prescribed by the Secretary must be

provided, and incomplete forms do not constitute claims. However, it is not VA's intent to reject forms for minor ministerial or formalistic deficiencies. A form prescribed by the Secretary would only be deemed incomplete if it is missing information necessary to the efficient, fair, and orderly adjudication of the claim.

In proposed paragraph (b), we would refer back to proposed § 3.155 for the definition of an incomplete claim, since the contours of what constitutes an incomplete claim would vary according to paper or electronic format as already discussed.

In proposed paragraph (c), we would define an original claim as the initial complete claim for one or more benefits on a form prescribed by the Secretary, and make clear that all subsequent claims are new and supplemental claims, which we would define in paragraph (d). In proposed paragraph (d), we would identify certain kinds of claims which constitute new and supplemental claims. These paragraphs are not meant to affect the substantive entitlement to the benefits discussed. However, paragraphs (c) and (d), together with operation of proposed § 3.155, would make clear that claims for these benefits must be initiated on standard forms.

In proposed paragraph (e), we would update the existing definition of "pending claim," which is currently defined as "an application, formal or informal, which has not been finally adjudicated" by replacing the phrase "an application, formal or informal" with the word "claim." In proposed paragraph (f), we would update the existing definition of "finally adjudicated claim," currently defined as "an application, formal or informal, which has been allowed or disallowed . . ." by replacing the phrase "an application, formal or informal" with the word "claim." Since VA proposes to eliminate the term "informal claim," we would remove references to the phrase or words, "informal" and "formal" for consistency in the existing definitions to reflect the proposed change to eliminate "informal claims." These subsections are not meant to alter the law of finality in the VA benefits system. See *Cook v. Principi*, 318 F.3d 1334, 1339–41 (Fed. Cir. 2002) (*en banc*).

In proposed paragraph (g), we would continue the definition of "reopened claim" that appears in current § 3.160(e) with slight modifications to insert "new and material evidence" as clarification of VA's existing criteria for reopening a previously denied claim.

In proposed paragraph (h), we would explain that a claim for an increase in

currently awarded benefits may consist of a claim for an increased evaluation for a specific disability, or an increase in benefits based on supplemental benefits such as aid and attendance, housebound, special monthly compensation, and certain special allowances. Also within this category are claims for increased ratings based on total disability based on individual unemployability (TDIU), unless that contention is being made in an original claim. It is VA's intent that a request for an increase accompanied by evidence of unemployability continue to constitute a claim for TDIU, but the claim for increase itself must be filed on a standard form. VA believes this would simplify and clarify the processing of TDIU claims, without affecting the substantive law governing TDIU. A request for resumption of payments previously discontinued would also be considered a claim for increase and accordingly would have to be filed on a standard form.

We propose to remove current § 3.157, which generally provides that reports of examination or hospitalization can constitute informal claims, including claims to increase or reopen. In implementing one consistent standard for the claims process, we propose to eliminate informal claims for increase or to reopen based on receipt of VA treatment, examination, or hospitalization reports, private physician medical reports, or state, county, municipal, or other government medical facilities to establish a retroactive effective date as provided in current §§ 3.155(c) and 3.157. The idea that certain records or statements themselves constitute constructive claims is simply inconsistent with the standardization and efficiency VA intends to accomplish with this proposed rule.

However, VA fully appreciates that while a veteran is hospitalized or receiving crucial medical treatment, a veteran may be more focused on his or her health than on pursuing a claim for compensation. VA has no desire to preclude veterans from receiving benefits for periods of hospitalization or medical treatment—VA only wishes to receive inputs in a standard format in order to serve veterans as efficiently as possible.

Therefore, in place of current §§ 3.155(c) and 3.157, VA proposes to amend § 3.400(o)(2) to explain that a retroactive effective date may be granted, when warranted by the facts found, based on date of treatment, examination, or hospitalization from any medical facility, if the claimant files a complete claim for increase within 1 year of such

medical care. The proposed amendment preserves the favorable substantive features of the current treatment of reports of examination or hospitalization under § 3.157, but requires claimants to file a complete claim for increase within 1 year after medical care was received.

Current § 3.400(o)(2) provides that the effective date of an increase in disability compensation will be the earliest date on which it is factually ascertainable that an increase in disability had occurred if a claim is received within 1 year from such date. Otherwise, the increase will be effective as of the date of receipt of the claim. The proposed amendment would make clear that medical records from any source, indicating an increase in disability, may provide a basis for such retroactive effective date if a complete claim is received within 1 year of the date of the medical treatment, examination, or hospitalization.

Finally, we propose minor amendments to § 3.812 governing a special allowance under Public Law 97-377. We would replace the terminology “formal” and “informal” claims with “complete” and “incomplete” claims, as appropriate, to ensure consistency with the rest of the proposed rule.

VII. Appeals: Working Group and Houston Pilot

In October 2011, recognizing that VA needed to decrease appellate processing times to ensure that claimants receive more timely decisions on their appeals, VA created an intradepartmental working group to address the overall timeliness and quality of appellate processing.

After analyzing VA's appellate process, the working group determined that different changes would be needed to address different phases of the VA appellate process. One of the periods addressed was the time it takes the AOJ to issue an SOC after receipt of an NOD. The working group identified two factors within VA's control that affect this time period: (1) The NOD control time, which is how long it takes AOJ staff to identify a document submitted by a claimant or representative as an NOD and route it to the appropriate personnel for processing, and (2) the time it takes the AOJ to understand and clarify the nature of the veteran's disagreement.

The working group found that lengthy control times are in large part the result of the non-standardized way in which NODs are submitted. VA's practice of requiring only that an NOD be “in terms which can be reasonably construed as disagreement . . . and a desire for

appellate review,” 38 CFR 20.201, has led to substantial variation in the statements that claimants submit to express disagreement with an AOJ's initial adjudication or an intent to appeal. AOJ personnel are required to read through the enormous volume of documents that VA receives from claimants every day in order to determine whether a statement embedded in any of these documents may “be reasonably construed” as constituting an NOD. Therefore, the working group recognized that even identifying a given document as an NOD, or potentially containing a statement that might constitute an NOD, is a time-consuming process, lacking clear standards. Moreover, where a claimant expresses his or her disagreement with an AOJ decision, the claimant may not clearly identify the issue or issues with which he or she disagrees. As a result, AOJ personnel have to delay processing of the submission in order to contact the claimant orally or in writing to clarify his or her intent. *Id.* § 19.26(b). The working group concluded that this situation causes delay and error as AOJ personnel may have difficulty identifying issues in ambiguous communication or incomplete NODs buried within correspondence, i.e., not on a standard form.

Errors in identifying NODs can complicate otherwise straightforward claims. If AOJ personnel do not identify an NOD upon receipt, they will not route the document and claims file to the correct adjudicatory personnel to begin the appeal process. Thus, the document may not be identified as an NOD until a much later time, such as when an appeal of another issue reaches the Board and a Veterans Law Judge (VLJ) concludes that a document is an NOD and remands the case to the AOJ for issuance of an SOC. 38 CFR 19.9(c); *see Manlincon v. West*, 12 Vet. App. 238, 240 (1999) (holding that the proper remedy when the Board finds that a timely NOD was filed, but an SOC was not issued, is for the Board to remand the case to the AOJ to issue an SOC). In FY 2011, the Board remanded 2,582 issues to the AOJ because the Board identified a timely filed NOD where the AOJ had not issued an SOC. Similarly, in FY 2012, the Board remanded 3,008 issues for the same reason. These statistics demonstrate that NODs are often not being identified by AOJ personnel, a problem that can be traced to the broad and unclear requirements of current § 20.201. When NODs are not initially identified as such, the length of the appellate process could extend for

years if it is the Board that initially identifies a document as an NOD. In June 2012, the Houston Regional Office (RO) took an average of 456 days to issue an SOC after receipt of an NOD in a traditional format. This statistic takes into account the number of cases that were remanded by the Board for issuance of an SOC pursuant to § 19.9(c) and was undoubtedly lengthened significantly by the presence of these cases.

The working group concluded that creating a standardized form that claimants could submit as an NOD would make NODs easier for AOJ personnel to identify, thus helping to decrease the NOD control time, including the processing time necessary to clarify whether a document is an NOD under § 19.26. The working group also concluded that a standardized form would have the added advantage of providing a minimal identification of the issue regarding which the veteran seeks appellate review, enabling AOJ personnel to more rapidly identify and conduct any needed development before either granting the benefit sought or issuing an SOC.

Based on the working group's analysis, in March 2012, VA began a pilot program at the Houston RO to test the use of standard NOD forms. Pursuant to this program, when the RO sent out an initial decision, it included a standard NOD form with the notification letter, providing the claimant with the option of submitting the completed form if he or she disagreed with the decision. The form provided the claimant with the opportunity to specify the issues he or she was contesting and to identify the relief he or she was seeking. From the inception of this program, VA saw a significant decrease in the NOD control time for appeals initiated using the standard NOD form. For example, from March 1, 2012 to January 31, 2013, the Houston RO's control time for a standard NOD was approximately 7 days. In contrast, from March 1, 2012 to January 31, 2013, this RO's control time for pending NODs submitted in a traditional format averaged 88 days. These statistics show a markedly decreased control time at the Houston RO of approximately 81 days averaging from March 1, 2012 to January 31, 2013. This analysis shows that by using the standard form for initiating an appeal, VA can process appeals more expeditiously, as requiring specificity concerning the appellant's contentions avoids confusion and the need to seek clarification from the appellant. By requiring the use of a standard NOD form, individual claimants as well as all

appellants in the appeals process would benefit from shortened processing time and from increased accuracy in identifying contentions claimed.

The working group also proposed other process and workflow improvements that were tested during the pilot. However, only the standardized NOD was designed to directly address NOD control time. VA believes that the dramatic improvements in control time discussed above are primarily due to the use of standardized NODs. Standardized NODs are also designed to work in conjunction with the working group's other suggested workflow improvements that do not themselves require regulatory change.

Use of the standardized NOD enables AOJ personnel to more quickly conduct targeted development and consideration of a veteran's appeal. The clarity provided by standardized inputs can be expected to speed all phases of the appellate process. However, even assuming the standardized form only improves the early stages of the appellate process, VA believes that this is clearly a sufficient basis to mandate the use of a standard form for an NOD. Requiring claimants to submit their initial disagreement with an adjudicative determination of the AOJ on a standard form would clarify what actions claimants need to take to initiate an appeal of an AOJ determination. This in turn would improve VA's ability to identify NODs when they are received and would eliminate the need to contact claimants to clarify whether they intended to submit an NOD. This would help speed up the early steps of the appellate process, which can also prevent prolonged delays and speed up completion of the entire appeal. Additionally, requiring submission of a standard NOD form would promote more uniform treatment of NODs across all AOJ offices. VA believes the quality of the decisions made in appeals would also improve since the claimant would be able to clearly identify on the form the issues with which he or she disagrees.

VIII. Mandatory Standard NOD Forms

VA, therefore, proposes to make the filing of a standard VA form the only way to submit an NOD in cases where the AOJ provides a form to the claimant for the purpose of initiating an appeal. VA fully appreciates that this proposal alters the current practice of accepting almost any statement of disagreement with an AOJ decision as an NOD. However, VA believes this step would be highly beneficial to veterans in light of lengthening appellate processing

times, the dramatic increase in volume and complexity of compensation claims being received by VA, and the demonstrated improvement in appellate workflow in pilot testing of the standardized NOD.

Mandating a standard form, rather than simply encouraging its use, is necessary to ensure the efficiency gains that standard forms make possible will be realized. The pilot program at the Houston RO has demonstrated that when provided with the option of submitting a standard NOD form, a substantial number of claimants choose to submit an NOD in another format. For example, in May 2012, approximately 52 percent of the 479 NODs received at the Houston RO were submitted in a format other than the standard form, while in August 2012, approximately 40 percent of the 590 NODs submitted were filed in a format other than the standard form. Given these statistics, VA believes that continuing to allow the submission of NODs in any form a claimant chooses would not maximize the desired result of decreasing appellate processing time for all claimants.

Further, if VA does not make the form mandatory, its positive impact would be greatly diluted even if veterans and their representatives made use of the form in the majority of appeals of AOJ decisions. If VA continues to accept NODs in any format, AOJ personnel would still be required to scour all claimant submissions and engage in the time-intensive interpretive exercise of determining whether a given document could "be reasonably construed" as an NOD. Rather than having certainty that a communication must be on a standard form, in order to constitute an NOD, AOJ personnel would thus still have to engage in much of the time-consuming clarification required by the current rule.

Governing statutes permit VA to require that a claimant submit an NOD on a particular form. The applicable statutes require only that an NOD must be in writing and filed by the claimant or his or her representative with the VA activity that rendered the determination. 38 U.S.C. 7105. Congress has specifically authorized VA to issue rules concerning "the forms of application," 38 U.S.C. 501(a)(2), and has characterized a request for Board review as an "[a]pplication for review on appeal." 38 U.S.C. 7106, 7108. The United States Court of Appeals for the Federal Circuit has recognized that the term "notice of disagreement" does not have a complete and unambiguous meaning in the statute. *Gallegos v. Principi*, 283 F.3d 1309, 1313 (Fed. Cir. 2002). The statute does not define

“notice of disagreement” or “suggest sufficient expressions to make a writing an NOD.” *Id.* VA interprets the lack of detail in section 7105 regarding the requirements for an NOD, combined with the Secretary’s clear authority in 38 U.S.C. 501(a) to promulgate “all rules and regulations which are necessary or appropriate to carry out the laws administered by [VA],” to represent a sufficient delegation of authority to VA to require that NODs be filed on a standardized form. Accordingly, specifying the form of such applications is within VA’s specific delegated rule-making authority.

IX. Mechanics—Appeals

Based on the foregoing, VA proposes to revise § 20.201 to incorporate a standardized NOD requirement. In new paragraph (a), VA proposes to outline the requirements for appeals relating to cases in which the AOJ provides a standard form for the purpose of initiating an appeal. In paragraph (a)(1), entitled “Format,” VA proposes to state that, for every case in which the AOJ provides, in connection with its decision, a form identified as being for the purpose of initiating an appeal, an NOD would consist of a completed and timely submitted copy of that form. VA would not accept as an NOD any other submission expressing disagreement with an adjudicative determination by the AOJ.

VA has chosen a flexible standard rather than identifying a particular form number or control number in the rule text in order to ensure the rule functions for all of VA’s diverse operations. The standard for what constitutes an NOD applies to all VBA benefit lines, as well as the rest of VA. The form that VBA tested during the Houston RO pilot was designed for compensation claims. One of the key features of the form’s design was that it solicited particular pieces of information relevant to a compensation claim. Requiring appeals of other benefits, such as home loan guaranty or education benefits, to be submitted using this form would likely be confusing to veterans. At the same time, the overwhelming majority of the VA appellate workload concerns appeals of AOJ decisions on claims for compensation. Board of Veterans’ Appeals, Department of Veterans Affairs, *Report of the Chairman: Fiscal Year 2012*, at 22 (2013) (96.1 percent of Board dispositions in FY 2012 were for compensation claims). VA is concerned that making the NOD form so generic as to accommodate appeals of all benefits VA-wide would dilute much of the efficiency gain VA expects from mandating the use of standardized

forms, and in particular the immediate efficiencies that might be realized in the compensation claims and appellate workload.

Accordingly, the standard reflected in proposed § 20.201(a)(1) was designed to produce a single rule that can function flexibly VA-wide while allowing for the creation of forms that are functional for each VA benefits line. Additionally, § 20.201(b) provides a “fallback” standard for benefits where standardized appellate processing is not as pressing a need as it is with compensation claims. This approach allows for standard forms in VA benefits lines where the volume, complexity, and frequency of appeal call for standardization, without disrupting the administration of other benefits that are infrequently appealed. Under proposed § 20.201(b), if VA does not provide a standard appeal form for a particular type of claim, the claim is governed by the current standard for what constitutes an NOD. As of the publication of this proposed rule, VA only expects regularly to provide a standard appeal form for compensation claims and similar monetary benefits claims. However, VA may choose to provide standard forms with AOJ decisions for other benefits lines as the volume and dynamics of VA’s workload continue to evolve. Additionally, if VA fails to provide a standard appeal form to the claimant due to a case-specific error, the claimant would still be able to initiate an appeal under the current standard for an NOD where a written communication expressing dissatisfaction or disagreement and a desire to contest the result will constitute an NOD. See proposed § 20.201(b).

The second sentence would make clear that if the AOJ provides a standard form with its decision, triggering the applicability of § 20.201(a), VA will not accept a document or communication in any other format as an NOD. VA believes this rule is necessary to make use of the standard form mandatory and maximize improvement and efficiency in the appellate process. Additionally, VA proposes to clarify that submitting a different VA form does not meet the standard for an NOD in cases governed by § 20.201(a). Many VA forms, such as VA Form 21–4138, *Statement in Support of Claim*, are so generic that they would not yield the clarity and standardization this proposed rule change is designed to achieve.

In the future, different standard forms may be developed for different benefit lines. Under this proposed rule, the particular version provided with the AOJ decision must be used. For

example, if a claimant received an AOJ decision relating to a compensation claim and received a compensation-focused form (such as VA Form 21–0958, *Notice of Disagreement*) from the AOJ, the claimant could not initiate an appeal by returning a different form developed for the purpose of initiating appeals of AOJ decisions relating to home loan guaranty.

In proposed § 20.201(a)(2), we would make clear that VA may “provide” the form to the claimant electronically or in paper format. VA proposes that if a claimant has an online benefits account such as eBenefits, notifications within the system that provide a link to a standard appeal form would be considered sufficient for the AOJ to have “provided” the form to the claimant and trigger the applicability of § 20.201(a). Similarly, if a claimant has provided VA with an email address for the purpose of receiving communications from VA, emailing either a copy of the form itself or a hyperlink where that form may be accessed is sufficient. The email should identify that the hyperlink is to a required VA appeal form.

Finally, if a claimant has chosen to interact with VA through paper, VA would provide a paper version of the standard form in connection with its decision. The specific piece of paper that is sent to the claimant need not be returned in order to constitute an NOD, but the same form must be returned. In other words, if a claimant is sent a copy of a particular form, he or she must return a completed copy of that form, but not necessarily the same piece of paper that was mailed to the claimant.

In § 20.201(a)(3), we would make clear that any indication whatsoever in the claimant’s claims file or benefits account of provision of a form would be sufficient to presume the form was provided, triggering the applicability of § 20.201(a) rather than § 20.201(b). Under this rule, an indication as minimal as a statement in a decision notification letter such as “Attached: VA Form 21–0958” would be sufficient to trigger the presumption that the form was provided and § 20.201(a) governs. See *Butler v. Principi*, 244 F.3d 1337, 1339–41 (Fed. Cir. 2001) (presumption of regularity applies to the administration of veterans benefits). This would reflect existing law and VA practice. To avoid unnecessary record retention, when VA sends a standard form to a claimant, it ordinarily does not place a copy of that blank form in the claims file. However, other documents in the file may indicate that the form was sent. Courts have held that such indications support a presumption that

the form was in fact sent to the claimant. We believe it would be helpful to note this general principle in this rule.

In § 20.201(a)(4), we would make clear that, if a standard VA form requires some degree of specificity from the claimant as to which issues the claimant seeks to appeal, the claimant must indeed provide the information the form requests in order for the submission to constitute an NOD. Part of the rationale for requiring standard VA forms, particularly for the appeals of compensation claims, is that they enable VA to identify the substance of an appeal as early as possible in the process. Additionally, inputs from the claimant in a standardized format are much more easily turned into data that can be used in evaluating and processing a claim or appeal. Accordingly, when a form requests a specific contention from the claimant as to the issues appealed, we propose that the claimant be required to provide it. For example, the form used in the Houston RO pilot provided separate boxes allowing claimants to identify those issues with which they were expressing disagreement. VA believes it would be helpful to the process to have this requirement in the governing regulation.

In § 20.201(a)(5), we would make clear that the filing of an alternate form or other communication does not extend, toll, or otherwise delay the time limit for filing an NOD. We would make clear that returning the incorrect VA form, including a form designed to appeal a different benefit, would not extend the deadline for filing an NOD. VA believes enforcing this policy is necessary in order to bring efficiency to appeals processing.

In proposed § 20.201(c), we would make clear that we do not propose to require a standardized form for simultaneously contested claims, which are claims in which the award of benefits to one person may result in the disallowance or reduction of benefits to another person. 38 CFR 20.3(p). Such claims arise only rarely and, irrespective of the nature of the benefit sought, they commonly present unique issues involving marital or other relationships of different individuals claiming entitlement to the same or similar benefits based on their relationship to the same veteran. Further, in 38 U.S.C. 7105A, Congress has prescribed a 60-day time limit for filing NODs in simultaneously contested claims. In view of these claims unique features, we do not propose to alter the governing standards. Moreover, because simultaneously contested claims

constitute a very small portion of VA's appellate caseload, excluding those claims from the requirement to use standardized forms will not significantly affect the objectives of this rule. We, therefore, propose to state in new paragraph (c) of § 20.201 that the provisions of § 20.201(b) apply to simultaneously contested claims. However, claimants in simultaneously contested claims could use a standard VA form, when feasible, even though they would not be required to do so.

X. Procedure for Standard NOD Forms

VA proposes the creation of two new sections in part 19. New § 19.23 would generally clarify which procedures apply to appeals governed by proposed § 20.201(a), and which apply to appeals governed by proposed § 20.201(b). New § 19.23(b) would clarify that current procedures in §§ 19.26 through 19.28 would continue to apply to appeals of benefits decisions governed by § 20.201(b), and new § 19.23(a) would make clear that these procedures would apply only to those cases. In other words, the provisions of §§ 19.26 through 19.28 would apply only to appeals of AOJ decisions relating to cases in which no standard form was provided by the AOJ for the purpose of initiating an appeal. New § 19.23(a) would clarify that the procedures in new § 19.24 would apply to appeals of AOJ decisions for cases in which the AOJ provides a form for the purpose of initiating an appeal, which are governed by § 20.201(a). By creating this new clarifying section, VA hopes to eliminate any confusion potentially caused by the fact that §§ 19.26 through 19.28 would no longer apply to the overwhelming majority of VA's appellate caseload, but must be retained for processing NODs relating to other benefits for which no standardized NOD form is provided.

In paragraph (a) of proposed new § 19.24, we would make clear that VA's practice of reexamining a claim whenever an NOD is received and determining if additional review or development is warranted would also apply to NODs submitted on standardized forms.

In paragraph (b) of proposed new § 19.24, we would outline procedures for when a claimant submits the correct form timely but incomplete. VA believes that the authority to require a claimant to use a particular form necessarily implies the authority to require that the form be completed, to include identifying each specific issue on which review of the AOJ decision is desired. VA strongly believes that, if veterans provide all information requested on the

standardized VA form, this will lead to the fastest possible result for that individual veteran and the VA appellate system will work more efficiently for all veterans. Accordingly, if VA determines a form is incomplete, VA may require the claimant to timely file a completed version of the form.

In § 19.24(b)(1), we would describe the standard by which VA would determine whether or not a form to initiate an appeal is complete, both in general and for compensation claims in particular. In general, a claimant must provide all information the form requests in order for that form to be considered complete. In compensation claims, a form would be considered incomplete if it does not enumerate the issues or conditions for which appellate review is sought, and identify, in general terms, the nature of the disagreement. With respect to the nature of disagreement, the form used in the Houston RO pilot-directed claimants to indicate, for each appealed condition, whether they disagree with the AOJ's decision on the question of service connection, disability evaluation, effective date, and/or any other question. This information enables VA to more efficiently process appeals and avoid expending time and other resources on matters the claimant does not contest. We would also make clear that if a form enumerates some, but not all, of the issues or conditions which were the subject of the AOJ decision, the form would be considered complete with respect to the issues on appeal, and any issues or medical conditions not enumerated would not be considered appealed on the basis of the filing of that form. Of course, there is nothing to prevent a claimant from later filing a subsequent form initiating appeals of other issues within the AOJ decision, provided such an action is still timely.

We wish to clarify that it is not VA's intention to be overly technical in determining whether claimants have completed a form. The purpose of this rule is the orderly and efficient processing of veterans' claims and appeals, not the exclusion of legitimate appeals, and VA's decision to deem a form incomplete and request completion will be guided by this principle. See *Robinson v. Shinseki*, 557 F.3d 1355, 1361 (Fed. Cir. 2009) (“[i]n direct appeals, all filings must be read ‘in a liberal manner’ whether or not the veteran is represented”). VA does intend to require use of the correct form, and does intend to require that information requested by that form be provided, because VA believes those requirements are crucial to the standardization of inputs this rule hopes

to achieve. VA does not intend to deem a form incomplete and request further completion unless that is a reasonable course to facilitate orderly processing and consideration of the appeal.

In § 19.24(b)(2), we would make clear that incomplete forms must be completed within 60 days from the date of VA's request for clarification, or the remainder of the period in which to initiate an appeal of the AOJ decision, whichever is later. VA proposes to provide this 60-day grace period in order to protect the claimant's rights in the event the statutory deadline has passed when VA determines the claimant has filed an incomplete form. Given that submission of the correct form would clearly identify to AOJ personnel that a claimant wishes to pursue an appeal, VA would accept the incomplete form for purposes of determining whether a claimant has met the statutory deadline. However, the claimant must complete the form within the 60-day timeframe. This time requirement would correspond to the 60-day period provided in 38 CFR 19.26(c) for clarification of an ambiguous NOD filed under the traditional process.

In § 19.24(b)(3), we would state that if the completed form arrives within the timeframe established in paragraph (b)(2), VA would treat the completed form as the NOD. This proposed rule would make clear that no action would be taken on the basis of the incomplete form. In particular, if the incomplete form does not enumerate specific issues on which the claimant wishes to initiate an appeal, and the completed form does, only those issues that are enumerated on the completed form would be considered as having been appealed. Any conditions or issues not identified on the completed form would not be considered appealed on the basis of the filing of the incomplete form.

In § 19.24(b)(4), we would state that if no completed form is received within the timeframe established in paragraph (b)(2), the decision of the AOJ shall become final. VA believes the policy embodied in proposed paragraphs (b)(3) and (b)(4) is necessary to keep incomplete forms from becoming a significant exception to the standardization this rule is intended to achieve.

In proposed § 19.24(b)(5), we would make clear that if a form is so incomplete that the claimant to whom it pertains is unidentifiable, no action would be taken on the basis of the submission of that form and the form would be discarded. VA will always attempt to discern the claimant to whom the form pertains based on any

statements or other information provided before discarding the form.

To ensure other regulatory sections that discuss NODs are consistent with these proposed changes, VA also proposes to make minor revisions to a few other sections. Specifically, VA proposes to revise § 3.2600, which discusses optional de novo review procedures at the AOJ after an NOD is filed, to cross reference the format and timeliness requirements of § 20.201, and either § 20.302(a) or § 20.501(a), as applicable, in the first sentence of paragraph (a). We also propose to revise § 20.3(c), which currently defines an appellant as "a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 7105." Since 38 U.S.C. 7105 only requires that an NOD be submitted in writing, VA proposes to revise 38 CFR 20.3(c) to cross reference the proposed format requirements in § 20.201, and the timeliness requirements of either § 20.302(a) or § 20.501(a), as applicable. VA believes this revision would ensure that there is no confusion regarding what requirements a claimant must follow to submit a valid NOD. Similarly, § 20.200 currently provides, in part, that an appeal includes "a timely filed Notice of Disagreement in writing." VA proposes to revise § 20.200 to replace "in writing" with cross references to § 20.201, and either § 20.302(a) or § 20.501(a), as applicable.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3521) that require approval by OMB.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 or emailed to *OIRA_Submission@omb.eop.gov*, with copies sent by mail or hand delivery to the Director,

Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or submitted through *www.Regulations.gov*. Comments should indicate that they are submitted in response to "RIN 2900-AO81—Standard Claims and Appeals Forms."

The Department considers comments by the public on proposed collections of information in:

- Evaluation whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information contained in 38 CFR 3.154, 3.155, 3.812, and 20.201 are described immediately following this paragraph, under their respective titles.

Title: Standard Claims and Appeals Forms.

Summary of 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. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. The amended collection of information in proposed 38 CFR 3.154, 3.155, 3.812, and 20.201 would require claimants to submit VA prescribed applications in either paper or electronic submission of responses, where applicable, in order to initiate the claims or appeals process for all VA benefits, to include but not limited to: entitlement under 38 U.S.C. 1151, which governs disability compensation and death benefits for a qualifying disability or death of a veteran from VA treatment, examination or vocational

rehabilitation; disability compensation; non-service connected pension; and dependency and indemnity compensation (DIC), death pension, and accrued benefits. In addition, under this rulemaking, we propose to require claimants to submit a standard form to initiate an appeal. Information is requested by this form under the authority of 38 U.S.C. 7105.

Description of need for information and proposed use of information: There is no substantive change in the need for information and proposed use of information collected for the following affected OMB-approved Control Numbers:

- 2900-0791 (VA Form 21-0958)—This form will be used by claimants to indicate a disagreement with a decision issued by a Regional Office to initiate an appeal.

- 2900-0001 (VA Form 21-526 and 21-526b)—These forms are used to gather the necessary information to determine a veteran's eligibility, dependency, and income, as applicable, for the compensation and/or pension benefit sought without which information would prevent a determination of entitlement;

- 2900-0743 (VA Form 21-526c)—This form is used to gather necessary information from service members filing claims under the Benefits Delivery at Discharge or Quick Start programs under Title 38 U.S.C. 5101(a) used in a joint effort between VA and Department of Defense (DoD) for the expeditious process of determining entitlement to compensation disability benefits;

- 2900-0002 (VA Form 21-527)—This form is used to gather the necessary information to determine a veteran's eligibility and dependency, as applicable, for disability pension sought without which information would prevent a determination of entitlement;

- 2900-0004 (VA Form 21-534)—This form is used to gather necessary information to determine the eligibility of surviving spouses and children for dependency and indemnity compensation (DIC), death pension, accrued benefits and death compensation;

- 2900-0004 (VA Form 21-534a)—This form is used to gather necessary information to determine the eligibility of surviving spouses and children of veterans who died while on active duty service for DIC, death pension, accrued benefits, and death compensation;

- 2900-0005 (VA Form 21-535)—This form is used to gather necessary information to determine a parent's eligibility, dependency and income, as applicable, for the death benefit sought; and

- 2900-0747 (VA Forms 21-526EZ, 21-527EZ, and 21-534EZ)—These forms are used to gather the necessary information to determine a veteran's eligibility, dependency, and income, as applicable, for the compensation and/or pension and disability pension and to determine the eligibility of surviving spouses, children and parents for dependency and indemnity compensation (DIC), death pension, accrued benefits and death compensation as well as other benefits.

- 2900-0572 (VA Form 21-0304)—This form is used to gather the necessary information to determine eligibility for the monetary allowance and the appropriate level of payment for a child with spina bifida who is the natural child of a veteran who served in the Republic of Vietnam during the Vietnam era and for a child with certain birth defects who is the natural child of a female veteran who served in the Republic of Vietnam during the Vietnam era.

- 2900-0721 (VA Form 21-2680)—This form is used to gather the necessary information to determine eligibility for the aid and attendance and/or household benefit.

- 2900-0067 (VA Form 21-4502)—This form is used to gather the necessary information to determine if a veteran or serviceperson is entitled to an automobile allowance and adaptive equipment.

- 2900-0390 (VA Form 21-8924)—This form is used to gather the necessary information to determine if the application meets the Restored Entitlement Program for Survivors (REPS) program which pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

- 2900-0404 (VA Form 21-8940)—This form is used to gather the necessary information to determine whether individual unemployment benefits may be paid to a veteran who has a service-connected disability(ies) which result in an inability to secure or follow substantially gainful occupation.

- 2900-0132 (VA Form 26-4555)—This form is used to gather the necessary information to determine the eligibility for the Specially Adapted Housing (SAH) or Special Housing Adaptations (SHA) benefits for disabled veterans or servicemembers.

Description of likely respondents: There is no substantive change in the description of likely respondents for the following affected OMB-approved Control Numbers:

- 2900-0791 (VA Form 21-0958)—Veterans or claimants who indicate disagreement with a decision issued by a Regional Office (RO) will use VA Form 21-0958 in order to initiate the appeals process. The veteran or claimant may or may not continue with an appeal to the Board of Veterans Appeals (BVA). If the veteran or claimant opts to continue to BVA for an appeal, this form will be included in the claim folder as evidence.

- 2900-0001 (VA Form 21-526 and 21-526b)—Veterans or claimants who express an intent to file for disability compensation and/or pension benefit may continue to use VA Form 21-526. Veterans or claimants who express an intent to file for disability compensation for an increased evaluation, service connection for a new disability, reopening of a previously denied disability, or for a disability secondary to an existing service connected disability or for other ancillary benefits such as aid and attendance, automobile allowance, spousal aid and attendance, or other benefit may continue to use VA Form 21-526b.

- 2900-0743 (VA Form 21-526c)—Service members filing claims under the Benefits Delivery at Discharge or Quick Start programs under Title 38 U.S.C. 5101(a) may continue to use VA Form 21-526c for disability compensation benefits.

- 2900-0002 (VA Form 21-527)—Veterans who are reapplying for VA pension benefits or previously applied for VA compensation benefits and are now applying for VA pension benefits may continue to use VA Form 21-527.

- 2900-0004 (VA Form 21-534 and 21-534a)—Claimants such as surviving spouses and children filing for dependency and indemnity compensation (DIC), death pension, accrued benefits, and death compensation claims may continue to use VA Form 21-534. Military Casualty Assistance Officers who are assisting surviving spouses and children in filing claims for death benefits may continue to use VA Form 21-534a.

- 2900-0005 (VA Form 21-535)—Claimants who are filing for benefits subsequent to the death of the veteran may continue to use VA Form 21-535.

- 2900-0747 (VA Forms 21-526EZ, 21-527EZ, and 21-534EZ)—Veterans or claimants who are filing for disability compensation, pension, dependency and indemnity compensation, death pension, accrued benefits and death compensation claims and other benefits such as ancillary benefit claims and entitlement to 38 U.S.C. 1151 benefits that filed for processing in both the traditional claims system or in the

expedited claims processing system known as the Fully Developed Claims program may continue to use VA Form 21-526EZ for disability compensation; VA Form 21-527EZ for non-service connected pension benefits; and VA Form 21-534EZ for dependency and indemnity compensation, death pension, and/or accrued benefits.

- 2900-0572 (VA Form 21-0304)—Claimants who are filing for the monetary allowance and payment for a child with spina bifida who is the natural child of a veteran who served in the Republic of Vietnam during the Vietnam era and for a child with certain birth defects who is the natural child of a female veteran who served in the Republic of Vietnam during the Vietnam era may continue to use VA Form 21-0304.

- 2900-0721 (VA Form 21-2680)—Claimants who are filing for eligibility for the aid and attendance and/or household benefit may continue to use VA Form 21-2680.

- 2900-0067 (VA Form 21-4502)—Veterans or servicepersons who are filing for entitlement to an automobile allowance and adaptive equipment may continue to use VA Form 21-4502.

- 2900-0390 (VA Form 21-8924)—Certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981 under the Restored Entitlement Program for Survivors (REPS) program may continue to use VA Form 21-8924.

- 2900-0404 (VA Form 21-8940)—Claimants who file for individual unemployability benefits for service-connected disability(ies) which result in an inability to secure or follow substantially gainful occupation may continue to use VA Form 21-8940.

- 2900-0132 (VA Form 26-4555)—Disabled veterans or servicemembers who file for Specially Adapted Housing (SAH) or Special Housing Adaptations (SHA) benefits may continue to use VA Form 26-4555.

Estimated frequency of responses:

- 2900-0791 (VA Form 21-0958)—One time for most claimants; however, the frequency of responses is also dependent on the number of appeals submitted on this form by the claimant as VA does not limit the number of appeals that a claimant can submit.

- 2900-0001 (VA Form 21-526 and 21-526b)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

- 2900-0743 (VA Form 21-526c)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

- 2900-0002 (VA Form 21-527)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

- 2900-0004 (VA Form 21-534 and 21-534a)—One time for most beneficiaries.

- 2900-0005 (VA Form 21-535)—One time for most beneficiaries.

- 2900-0747 (VA Forms 21-526EZ, 21-527EZ, and 21-534EZ)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

- 2900-0572 (VA Form 21-0304)—One time for most beneficiaries.

- 2900-0721 (VA Form 21-2680)—One time for most beneficiaries.

- 2900-0067 (VA Form 21-4502)—One time for most beneficiaries.

- 2900-0390 (VA Form 21-8924)—One time for most beneficiaries.

- 2900-0404 (VA Form 21-8940)—One time for most beneficiaries.

- 2900-0132 (VA Form 26-4555)—One time for most beneficiaries.

Estimated average burden per response: There is no substantive change in the estimated average burden per response for the following affected OMB-approved Control Numbers:

- 2900-0791 (VA Form 21-0958)—30 minutes.

- 2900-0001 (VA Form 21-526 and 21-526b)—VA Form 21-526—1 hour; and VA Form 21-526b—15 minutes; and VA Form 21-4142—5 minutes.

- 2900-0743 (VA Form 21-526c)—15 minutes.

- 2900-0002 (VA Form 21-527)—1 hour.

- 2900-0004 (VA Form 21-534 and 21-534a)—VA Form 21-534—1 hour and 15 minutes and VA Form 534a—15 minutes.

- 2900-0005 (VA Form 21-535)—1 hour and 12 minutes.

- 2900-0747 (VA Forms 21-526EZ, 21-527EZ, and 21-534EZ)—VA Form 21-526EZ—25 minutes; VA Form 21-527EZ—25 minutes; and VA Form 21-534EZ—25 minutes.

- 2900-0572 (VA Form 21-0304)—10 minutes.

- 2900-0721 (VA Form 21-2680)—30 minutes.

- 2900-0067 (VA Form 21-4502)—15 minutes.

- 2900-0390 (VA Form 21-8924)—20 minutes.

- 2900-0404 (VA Form 21-8940)—45 minutes.

- 2900-0132 (VA Form 26-4555)—10 minutes.

Estimated number of respondents: VA anticipates the annual estimated numbers of respondents for each of the OMB-approved forms as follows:

- 2900-0791 (VA Form 21-0958)—144,000 per year as previously estimated in ICR Reference No. 201206-2900-001 and as published in the **Federal Register**, 77 FR 42556 on July 19, 2012 and 77 FR 60027 on October 1, 2012.

- 2900-0001 (VA Form 21-526 and 21-526b)—304,325 per year, based on 5-year estimated average of formal and informal initial compensation and pension claims received annually at 83,855 and formal and informal new or reopened compensation claims received annually at 217,178, in addition to the historically reported annual estimated number of responses for VA Form 21-4142 at 3,292.

- 2900-0743 (VA Form 21-526c)—161,000 per year as previously estimated in ICR Reference No. 201209-2900-010 and as published in the **Federal Register**, 77 FR 190, on October 1, 2012 and 77 FR 240 on December 13, 2012.

- 2900-0002 (VA Form 21-527)—17,111 per year, based on a 5-year estimated average of 12,253 reopened pension claims received on VA Form 21-527 in addition to an estimated number of 4,858 expected to be received for informal reopened pension claims.

- 2900-0004 (VA Form 21-534 and 21-534a)—33,864 per year, based on a 5-year estimated average of 32,438 formal and informal death benefits claims filed by surviving spouses/child in addition to a 5-year estimated number of 1,426 formal and informal death benefits claims filed by surviving spouses/child for in-service death.

- 2900-0005 (VA Form 21-535)—1,783 per year, based on a 5-year estimated average of 1,046 formal death benefits filed by parents in addition to an expected estimated number of informal death benefit claims at 737.

- 2900-0747 (VA Forms 21-526EZ, 21-527EZ, and 21-534EZ)—1,048,652 per year, based on: (a) An estimated number of both formal and informal—initial, new, reopened compensation claims at 835,910; plus (b) an estimated number of both formal and informal pension claims at 101,086; (c) an estimated number of both formal and

informal death benefit claims at 111,656, all of which total 1,048,652.

VA expanded a modified version of a pilot study, known as the Express Claim Program, for which VA Forms 21-526EZ and 21-527EZ were used. Therefore, the number of claimants expected to respond was estimated at 104,440. These EZ forms contain the section 5103 notification for disability, pension, and now death benefits in paper and electronic format. The electronic application uses the EZ form in its question prompts and generates this form upon completion of the interview process. Because this rule is structured to incentivize the electronic claims process, VA expects a substantial increase in the number of respondents for this particular Control Number.

- 2900-0572 (VA Form 21-0304)—430 per year.
- 2900-0721 (VA Form 21-2680)—14,000 per year.
- 2900-0067 (VA Form 21-4502)—1,552 per year.
- 2900-0390 (VA Form 21-8924)—1,800 per year.
- 2900-0404 (VA Form 21-8940)—24,000 per year.
- 2900-0132 (VA Form 26-4555)—4,158 per year.

OMB Control Numbers 2900-0572, 2900-0721, 2900-0067, 2900-0390, 2900-0404, and 2900-0132 are collections of information for particular benefits such as automobile allowance, housing adaptation, individual unemployability, etc., which are currently required by the VA in order for these claims to be processed and adjudicated. Since VA requires these forms to be submitted for filing of a particular benefit, VA does not expect an increase in the annual likely number of respondents. In addition, VA is not changing the substance of the collection of information on these OMB-approved collections of information nor is it increasing the respondent burden. We are including these collections of information in this rulemaking because it is relevant to the rulemaking but is not directly altered by it.

Estimated total annual reporting and recordkeeping burden:

- 2900-0791 (VA Form 21-0958)—Annual burden continues to be 72,000 hours. The total estimated cost to respondents continues to be \$1,080,000 (72,000 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0001 (VA Form 21-526 and 21-526b)—For VA Form 21-526, the annual burden is 83,855 hours. The total estimated cost to respondents is \$1,257,825 (83,855 hours × \$15/hour). This submission does not involve any

recordkeeping costs. For VA Form 21-526b, the annual burden is 54,295 hours. The total estimated cost to respondents is \$81,443 (54,295 hours × \$15/hour). This submission does not involve any recordkeeping costs. For VA Form 21-4142, the annual burden is 263 hours. The total estimated cost to respondents is \$330 (263 hours × \$15/hour). This submission does not involve any recordkeeping costs.

- 2900-0743 (VA Form 21-526c)—Annual burden continues to be 40,250 hours. The total estimated cost to respondents continues to be \$603,750 (40,250 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0002 (VA Form 21-527)—Annual burden is 17,111 hours. The total estimated cost to respondents is \$256,665 (17,111 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0004 (VA Form 21-534 and 21-534a)—For VA Form 21-534, the annual burden is 40,548 hours. The total estimated cost to respondents is \$608,220 (40,548 hours × \$15/hour). This submission does not involve any recordkeeping costs. For VA Form 21-534a, the annual burden is 357 hours. The total estimated cost to respondents is \$5,355 (3,57 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0005 (VA Form 21-535)—Annual burden is 2,140 hours. The total estimated cost to respondents is \$32,100 (2,140 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0747 (VA Forms 21-526EZ, 21-527EZ, and 21-534EZ)—For VA Form 21-526EZ, the annual burden is 348,296 hours. The total estimated cost to respondents is \$55,224,440 (348,296 hours × \$15/hour). This submission does not involve any recordkeeping costs. For VA Form 21-527EZ, the annual burden is 42,119 hours. The total estimated cost to respondents is \$631,785 (42,119 hours × \$15/hour). This submission does not involve any recordkeeping costs. For VA Form 21-534EZ, the annual burden is 46,523 hours. The total estimated cost to respondents is \$697,845 (46,523 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0572 (VA Form 21-0304)—Annual burden continues to be 72 hours. The total estimated cost to respondents continues to be \$1,080 (72 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0721 (VA Form 21-2680)—Annual burden continues to be 7,000

hours. The total estimated cost to respondents continues to be \$105,000 (7,000 hours × \$15/hour). This submission does not involve any recordkeeping costs.

- 2900-0067 (VA Form 21-4502)—Annual burden continues to be 388 hours. The total estimated cost to respondents continues to be \$5,820 (388 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0390 (VA Form 21-8924)—Annual burden continues to be 600 hours. The total estimated cost to respondents to be \$9,000 (600 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0404 (VA Form 21-8940)—Annual burden continues to be 18,000 hours. The total estimated cost to respondents continues to be \$270,000 (18,000 hours × \$15/hour). This submission does not involve any recordkeeping costs.
- 2900-0132 (VA Form 26-4555)—Annual burden continues to be 693 hours. The total estimated cost to respondents continues to be \$10,395 (693 hours × \$15/hour). This submission does not involve any recordkeeping costs.

This rulemaking is proposing to mandate the use of existing VA forms in the processing and adjudication of claims and appeals. The proposed amendments to §§ 3.154, 3.155, 3.812, and 20.201 affect the estimated annual number of respondents and consequently, the estimated total annual reporting and recordkeeping burden but do not otherwise affect the existing collections of information that have already been approved by the Office of Management and Budget (OMB). The proposed use of information, description of likely respondents, estimated frequency of responses, estimated average burden per response will remain unchanged for these forms. While there is no substantive change in the aforementioned collection of information for these proposed amendments, VA foresees a change in the quantity of information collected and the total annual reporting for certain currently approved OMB control numbers on account of this rulemaking.

VA's Collection of Data

Other than for original claims and certain ancillary benefits, VA historically and currently accepts claims for benefits in any format submitted, whether on a prescribed form or not. VA has never standardized the use of forms

for claims or appeals processing.² VA maintains a record of the number of types of benefit claims received annually based on claim types such as original claims, claims for increase or to reopen a previously denied claim, claims for ancillary benefits, pension, and death benefits which have been submitted on the appropriate prescribed form. However, reliance on claim types based on the form submitted may not accurately capture the number of claims received. For instance, one claim type can be filed using more than one prescribed form and a claimant can file two types of claim such as a claim for increase and a claim to reopen on one prescribed VA form which will be categorized as one claim type received, i.e., recorded as either a claim for increase or a claim to reopen. For informal claims, VA has not quantified the number of informal claims received, but it quantifies the particular claim type filed in the informal claim such as original, increase, new, reopen, etc. As a result of this proposed rulemaking requiring the use of prescribed forms for all claims for benefits, VA will be able to gather and collect the data quantifying the number of prescribed forms in the future which will provide VA with a more accurate account of how many respondents will respond on various VA prescribed forms.

Electronic Claims

Due to the fact that there is no current data enumerating the total number of different types of VA forms received annually, we have projected the annual number of respondents for the forms based on the estimated number of types of claims received annually over a 5-year period. We have also approximated the number of electronic claims received for compensation, pension, and death claims. Currently, VA's electronic claims processing system, i.e., eBenefits and Veterans Online Applications (VONAPP), uses VA Form 21-526EZ for disability compensation claims submitted electronically. VA is also in the process of adding other VA forms to VONAPP such as VA Form 21-527EZ and 21-534EZ (hereinafter "EZ forms"

will be used to refer to VA Forms 21-526EZ, 21-527EZ, and 21-534EZ, collectively). VA also provides these EZ forms to claimants who wish to submit their claims on paper because these forms expedite the claims process by: (a) offering the claimant a choice for either the expedited process of "Fully Developed Claims" or the traditional claims process; (b) listing more detailed questions for a variety of benefits sought in order to capture thoroughly the specifics of a claim; and (c) providing claimants with the required notice of VA's duty to assist the claimant pursuant to 38 U.S.C. 5103, which is issued at the time the claimant files a claim instead of when the VA receives the claim. The use of these EZ forms ultimately speeds up the claims process and ensures faster delivery of benefits to claimants; therefore, VA has encouraged, directed, and provided these EZ forms to claimants who wish to file benefit claims.

VA proposes to eliminate "informal claims" and require the submission of either a complete or incomplete electronic claim in proposed, revised § 3.155(b) as a placeholder for a potential earlier effective date. Only electronic claims will receive the possible earlier effective date for any awards granted; complete paper claims will receive the effective date based on the date of receipt by the VA. By incentivizing electronic claims processing through the authorization of a potential earlier effective date by this proposed rulemaking, VA expects the number of electronic claims to increase. Because eBenefits and VONAPP uses (and will continue to use) the EZ forms, we anticipate that the total number of annual responses received on the EZ forms electronically for all benefits will increase by at least 29 percent while the total number of annual response received on VA Forms 21-526, 21-526b, 21-527, 21-534, 21-534a, and 21-535 ("traditional forms") will decrease. Based on data from Fiscal Year (FY) October 2010 through September 2011, the number of compensation disability claims received electronically was 142,899 and the number of total compensation disability and dependency claims received electronically was 496,851. Thus, the percentage of compensation disability electronic claims received was 29 percent. With VA's outreach and efforts to promote the electronic claims processing system and with future implementation of pension, death, and appeals electronic claims processing, VA estimates an increase of the submission of electronic claims by at

least 29 percent based upon the FY 2010 through 2011 data. Since the trend is to direct claimants to submit claims on EZ forms both electronically and on paper, we approximate that 70 percent of claims will be submitted on the EZ form while 30 percent will be submitted on the traditional forms.

Informal Claims

The data used in formulating the estimated number of annual responses to the various affected prescribed forms was extrapolated from data recorded for the number of types of claims received annually for FY April 2009 through April 2013. This data is not sufficiently granular to provide the number of informal claims received given that the data only depicts the number of initial, new or reopened compensation and pension claims received and the number of initial death benefit claims received. Since informal claims may or may not be submitted on a prescribed form, there is no method for accurately recording or quantifying the total number of informal claims received or inferred annually. Therefore, we approximate that for compensation, pension, and death benefits, 50 percent of each of these benefits are informal claims. Thus, based on the data of an average of claims received over a 5-year period, we expect that the total number of informal claims for compensation, pension, and death benefits that will be submitted on a prescribed form will increase by at least 50 percent.

Notices of Disagreement

Previously, VA estimated that the annual number of respondents submitting the currently approved collection instrument, VA Form 21-0958, *Notice of Disagreement*, (OMB Control Number 2900-0791) would be 144,000, based on VA historically receiving 12 Notices of Disagreement per 100 completed VBA decisions, with more than 1.2 million VBA decisions in FY 2012. According to data for FY 2009 to FY 2012, the average number of Notices of Disagreement received annually was 129,539. For FY 2013, it is projected that VA will receive 126,735 Notices of Disagreement. The estimate associated with the currently approved collection was based upon the assumption that all notices of disagreement would be submitted on this collection instrument, though that is not necessarily the case under current rules. As a result of this rulemaking, however, the overwhelming majority of notices of disagreement would in fact be submitted on this collection instrument, since this rulemaking proposes to require that all notices of disagreement

² Currently, VA accepts any claim filed subsequent to the original, initial compensation/pension claim that is submitted in any form, i.e., informal claim to initiate the claims process. For example, a claim for increase or reopen, which currently is not required to be submitted on a prescribed form, can be established using different VA forms such as VA Form 21-526 *Veteran's Application for Compensation and/or Pension*; VA Form 21-526EZ, *Application for Disability Compensation or Related Compensation*; VA Form 21-526b, *Veteran's Supplemental Claim for Compensation*; or VA Form 21-4138, *Statement in Support of Claim*.

be submitted on VA Form 21–0958 in cases where that form is provided. Accordingly, while VA does expect to receive many more completed Forms 21–0958, there is no expected increase in the annual number of respondents nor an increased burden on respondents from that reflected in currently approved collections.

Methodology for Estimated Annual Number of Respondents for Affected Forms

We have formulated the estimated total of annual responses for compensation, pension, and death benefit claims by increasing the expected number of total claims submitted on paper by 50 percent from data extrapolated for claims received annually over a 5-year period. We project that 30 percent of compensation, pension, and death benefit claims will be submitted on traditional forms whereas 70 percent will be submitted on EZ forms. Accordingly, VA expects a decrease in the total estimated number of annual responses for VA Forms 21–526, 21–527, 21–534, 21–534a, and 21–535 whereas the total estimated number of annual responses for VA Forms 21–526EZ, 21–527EZ, and 21–534EZ have increased substantially. The projected numbers for each affected form are provided in further detail in the above section, “Estimated number of respondents,” according to each OMB Control Number.

Regulatory Flexibility Act

The Secretary hereby certifies that these proposed regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these proposed amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review)

emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by OMB, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866, as it raises novel legal or policy issues arising out of legal mandates.

VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102,

Compensation for Service-Connected Deaths for Veterans’ Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116, Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans’ Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans’ Children with Spina Bifida or Other Covered Birth Defects.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on July 8, 2013, for publication.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 8, 2013.

Robert C. McFetridge,

Director, Office of Regulation Policy & Management, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR parts 3, 19, and 20 as follows:

PART 3—ADJUDICATION**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

- 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

- 2. In § 3.1, revise paragraph (p) to read as follows:

§ 3.1 Definitions.

* * * * *

(p) *Claim* means a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs.

* * * * *

§ 3.150 [Amended]

- 3. Amend § 3.150 by removing paragraph (c).
 ■ 4. Revise § 3.154 to read as follows:

§ 3.154 Injury due to hospital treatment, etc.

Claimants must file a complete claim on the appropriate paper or electronic form prescribed by the Secretary when applying for benefits under 38 U.S.C. 1151 and 38 CFR 3.361. See §§ 3.151 and 3.400(i) concerning effective dates of awards.

Authority: 38 U.S.C. 501 and 1151.

- 5. Revise § 3.155 to read as follows:

§ 3.155 Claims.

The provisions of this section are applicable to all claims governed by part 3 of this chapter.

(a) *Non-electronic claims.* This paragraph applies to all claims which do not qualify for processing under paragraph (b) of this section. A complete non-electronic claim will be considered filed as of the date it was received by VA for an evaluation or award of benefits under the laws administered by the Department of Veterans Affairs.

(b) *Electronic claims.* This paragraph applies to requests for benefits under the laws administered by the Department of Veterans Affairs submitted through a claims submission tool within a VA web-based electronic claims application system. A claim submitted by a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not of full age or capacity that does not meet the standards of a complete claim may be considered an incomplete claim. If a complete electronic claim is filed within

1 year of the incomplete electronic claim, the electronic claim will be considered filed as of the date of the incomplete electronic claim for an evaluation or award of benefits under the laws administered by the Department of Veterans Affairs. Only one complete claim may be associated with each incomplete claim, though multiple issues may be contained within a complete claim. In the event multiple complete claims are filed within 1 year of an incomplete claim, only the first may be associated with the incomplete claim.

(c) *Request for an application for benefits.* Without limitation, the following types of communications or actions do not constitute a claim of any kind and are considered a request for an application for benefits under § 3.150(a) of this part. Upon receipt of such a communication or action, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application.

(1) Any communication or action indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not of full age or capacity that does not meet the standards of a complete claim;

(2) A communication indicating a belief in entitlement to benefits submitted on a paper form prescribed by the Secretary that is not complete; or

(3) An electronic mail, transmitted through VA's electronic portal or otherwise, that indicates an intent to apply for one or more benefits or a belief in entitlement to benefits under the laws administered by the Department of Veterans Affairs from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not of full age or capacity, that does not meet the standards of a complete claim. Cross Reference: Effective dates. See § 3.400.

§ 3.157 [Removed]

- 6. Remove § 3.157.
 ■ 7. Revise § 3.160 to read as follows:

§ 3.160 Types of claims.

(a) *Complete claim.* A submission on a paper or electronic form prescribed by the Secretary that is fully filled out and provides all requested information. This includes, but is not limited to, meeting the following requirements:

(1) A complete claim must be signed by the claimant or a person legally authorized to sign for the claimant.

(2) A complete claim must identify the benefit sought.

(3) For compensation claims, a description of any symptom(s) or medical condition(s) on which the benefit is based must be provided to the extent the form prescribed by the Secretary so requires.

(4) For a nonservice-connected disability or death pension and parents' dependency and indemnity compensation claims, a statement of income must be provided to the extent the form prescribed by the Secretary so requires.

(b) *Incomplete claim.* See § 3.155(b) of this part.

(c) *Original claim.* The initial complete claim for one or more benefits on an application or form prescribed by the Secretary.

(d) *New or supplemental claim.* An application filed subsequent to the original claim which may consist of the following:

(1) A claim for a new benefit unrelated to a currently awarded benefit such as service connection for a new or different disability from one for which service connection has already been awarded;

(2) A claim for a new or additional benefit directly related to a currently awarded benefit including, but not limited to, a request for entitlement of benefits based upon secondary service connection; or claims for aid and attendance, housebound, special monthly compensation or pension, special monthly dependency and indemnity compensation, death compensation, pension, spousal aid and attendance or housebound benefits, dependents benefits such as helpless child, specially adapted housing, special home adaptation, clothing allowance, or automobile allowance;

(3) Claims of clear and unmistakable error.

(e) *Pending claim.* A claim which has not been finally adjudicated.

(f) *Finally adjudicated claim.* A claim that is adjudicated by the Department of Veterans Affairs as either allowed or disallowed is considered finally adjudicated by whichever of the following occurs first:

(1) The expiration of the period in which to file a notice of disagreement, pursuant to the provisions of § 20.302(a) or § 20.501(a) of this chapter, as applicable; or

(2) Submission on appellate review.

(g) *Reopened claim.* An application for a benefit received after final disallowance of an earlier claim that is

subject to readjudication on the merits based on receipt of new and material evidence related to the finally adjudicated claim, or any claim based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans' Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 20.1304(b)(1) of this chapter.

(h) *Claim for increase.* An application for an increase in a currently awarded benefit(s) which may consist of any of the following:

- (1) An increased evaluation for a specific disability(ies);
- (2) A claim for supplemental benefits such as aid and attendance, housebound, or special monthly compensation;
- (3) A claim for an increased rating based on total disability based on individual unemployability, when not contained in the original claim.
- (4) An increased evaluation for a specific service-connected disability(ies) which is/are based on a claim for temporary total disability due to hospitalization of more than 21 days or due to surgical or other treatment requiring convalescence of at least one month;
- (5) Request for resumption of payments previously discontinued.

■ 8. Amend § 3.400 by revising paragraph (o)(2) and adding an authority citation to read as follows:

§ 3.400 General.

* * * * *

(o) * * *

(2) *Disability compensation.* Earliest date as of which it is factually ascertainable that an increase in disability had occurred if a complete claim is received within 1 year from such date, otherwise, date of receipt of claim. When medical records indicate an increase in a disability, receipt of such medical records may be used to establish effective date(s) for retroactive benefits based on facts found of an increase in a disability only if a complete claim for an increase is received within 1 year of the date of the report of examination, hospitalization, or medical treatment. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established.

(Authority: 38 U.S.C. 510, 5101)

* * * * *

■ 9. Amend § 3.812 by revising paragraphs (e) and (f) to read as follows:

§ 3.812 Special allowance payable under section 156 of Pub. L. 97-377.

* * * * *

(e) *Claims—complete and incomplete.* Claimants must file or submit a complete claim on a paper or electronic form prescribed by the Secretary in order for VA to pay this special allowance. When incomplete claims or inquiries as to eligibility are received, the procedures outlined in § 3.155 of this part will be followed. The date of receipt of the complete claim will be accepted as the date of claim for this special allowance. See §§ 3.150, 3.151, 3.155, 3.400 of this part.

(f) *Retroactivity and effective dates.* There is no time limit for filing a claim for this special allowance. Upon the filing of a complete claim, benefits shall be payable for all periods of eligibility beginning on or after the first day of the month in which the claimant first became eligible for this special allowance, except that no payment may be made for any period prior to January 1, 1983.

* * * * *

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

■ 10. The authority citation for part 3, subpart D, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 11. In § 3.2600, amend paragraph (a) by revising the first sentence to read as follows:

§ 3.2600 Review of benefit claims decisions.

(a) A claimant who has filed a Notice of Disagreement submitted in accordance with the provisions of § 20.201 of this chapter, and either § 20.302(a) or § 20.501(a) of this chapter, as applicable, with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. * * *

* * * * *

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

■ 12. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart B—Appeals Processing by Agency of Original Jurisdiction

■ 13. Add §§ 19.23 and 19.24 to read as follows:

§ 19.23 Applicability of provisions concerning Notice of Disagreement

(a) Appeals governed by § 20.201(a) of this chapter shall be processed in accordance with § 19.24 of this part. Sections 19.26, 19.27 and 19.28 of this part shall not apply to appeals governed by § 20.201(a) of this chapter.

(b) Appeals governed by § 20.201(b) of this chapter shall be processed in accordance with §§ 19.26, 19.27, and 19.28 of this part.

§ 19.24 Action by agency of original jurisdiction on Notice of Disagreement required to be filed on a standardized form.

(a) *Initial action.* When a timely Notice of Disagreement in accordance with the requirements of § 20.201(a) of this chapter is filed, the agency of original jurisdiction may reexamine the claim and determine whether additional review or development is warranted.

(b) *Incomplete appeal forms.* In cases governed by paragraph (a) of § 20.201 of this chapter, if VA determines a form filed by the claimant is incomplete and requests verification, the claimant must timely file a completed version of the correct form in order to initiate an appeal.

(1) *Completeness.* In general, a form may be considered incomplete if any of the information requested is not provided, including without limitation the claimant's signature, information to identify the claimant and the claim to which the form pertains, and any information necessary to identify the specific nature of the disagreement if the form so requires. For compensation claims, a form will be considered incomplete if it does not enumerate the issues or conditions for which appellate review is sought, or does not provide other information required on the form to identify the claimant, the date of the VA action the claimant seeks to appeal, and the nature of the disagreement (such as disagreement with disability rating, effective date, or denial of service connection). If a form enumerates some but not all of the issues or conditions which were the subject of the decision of the agency of original jurisdiction, the form will be considered complete with respect to the issues on appeal, and any issues or conditions not enumerated will not be considered appealed on the basis of the filing of that form.

(2) *Timeframe to complete correct form.* If VA requests clarification of an incomplete form, a complete form must be received within 60 days from the

date of the request, or the remainder of the period in which to initiate an appeal of the decision of the agency of original jurisdiction, whichever is later.

(3) *Form timely completed.* If a completed form is received within the timeframe set forth in paragraph (b)(2) of this section, VA will treat the completed form as the Notice of Disagreement, and no action will be taken on the basis of the incomplete form. Any decisions on conditions or issues not identified on the completed form will not be treated as appealed and will accordingly become final.

(4) *Form not timely completed.* If no completed form is received within this timeframe set forth in paragraph (b)(2) of this section, the decision of the agency of original jurisdiction will become final.

(5) *Claimant unidentifiable.* If VA cannot identify the claimant to whom a particular form pertains, the form will be discarded and no action will be taken on the basis of the submission of that form.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 14. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart A—General

■ 15. In § 20.3, revise paragraph (c) to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(c) *Appellant* means a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a timely Notice of Disagreement pursuant to the provisions of § 20.201, and either § 20.302(a) or § 20.501(a) of this part, as applicable.

* * * * *

Subpart C—Commencement and Perfection of Appeal

■ 16. Revise § 20.200 to read as follows:

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement submitted in accordance with the provisions of § 20.201, and either § 20.302(a) or § 20.501(a) of this part, as applicable and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

■ 17. Revise § 20.201 to read as follows:

§ 20.201 Rule 201. Notice of Disagreement.

(a) Cases in which a form is provided by the agency of original jurisdiction for purpose of initiating an appeal.

(1) *Format.* For every case in which the agency of original jurisdiction (AOJ) provides, in connection with its decision, a form for the purpose of initiating an appeal, a Notice of Disagreement consists of a completed and timely submitted copy of that form. VA will not accept as a notice of disagreement an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result that is submitted in any other format, including on a different VA form.

(2) *Provision of form to the claimant.* If a claimant has established an online benefits account with VA, or has designated an email address for the purpose of receiving communications from VA, VA may provide an appeal form pursuant to paragraph (a)(1) of this section electronically, whether by email, hyperlink, or other direction to the appropriate form within the claimant's online benefits account. VA may also provide a form pursuant to paragraph (a)(1) of this section in paper format.

(3) *Presumption form was provided.* This paragraph (a) applies if there is any indication whatsoever in the claimant's file or electronic account that a form was sent pursuant to paragraph (a)(1) of this section.

(4) *Specificity required by form.* If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be

identified to the extent a form provided pursuant to paragraph (a)(1) of this section so requires. If the claimant wishes to appeal all of the issues decided by the agency of original jurisdiction, the form must clearly indicate that intent. Issues not identified on the form will not be considered appealed.

(5) *Alternate form or other communication.* The filing of an alternate form or other communication will not extend, toll, or otherwise delay the time limit for filing a Notice of Disagreement, as provided in § 20.302(a) of this part. In particular, returning the incorrect VA form, including a form designed to appeal a different benefit does not extend, toll, or otherwise delay the time limit for filing the correct form.

(b) *Cases in which no form is provided by the agency of original jurisdiction for purpose of initiating an appeal.* A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement relating to a claim for benefits in any case in which the agency of original jurisdiction does not provide a form identified as being for the purpose of initiating an appeal. The Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified.

(c) *Simultaneously contested claims.* The provisions of paragraph (b) of this section shall apply to appeals in simultaneously contested claims under §§ 20.500 and 20.501 of this part, regardless of whether a standardized form was provided with the decision of the agency of original jurisdiction.

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