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Director, Regulation Policy and Management (00REG)

Department of Veterans Affairs
810 Vermont Avenue NW, Room 1063B
Washington, DC 20420

RE: Public Comment, OMB Control No. 2900-0877 – Agency Information Collection Activity.

We appreciate the opportunity to comment on the proposed changes to Department of Veterans Affairs Form 20-10206. The following comments are submitted on behalf of The Legal Aid Society of Columbus, Ohio. LASC is a direct legal services organization that provides civil legal assistance to veterans living at or below 200% of the federal poverty line.

The VA treatment and military service records on file at the VA are the single most helpful resource for veterans seeking VA benefits. A veteran must be able to inspect these records to make sure they are accurate, and the VA did not overlook any evidence material to their claim. In our own advocacy, we have identified material evidence like a buddy statement, VA treatment record, or handwritten note from service that the VA adjudicator missed because the file was so large. Thus, transparent, easy access to these records is critical to ensuring accurate administration of benefits and fostering trust between the VA and veterans.

For vulnerable veterans, this access is time sensitive. Many of the veterans we serve are unable to work due to disability, face risk of eviction, experience food insecurity, and incur high healthcare costs while waiting for a benefits claim. Quick access to a DD 214 or claims file could mean avoiding an eviction, utility shut off, or food insecurity. In our practice, we often wait up to nine (9) months, and in some circumstances more than a year to receive VA records from the VA Records Management Center (RMC). Thus, the ease of timely access to records is particularly important to vulnerable veterans.

LASC applauds the VA's commitment to standardizing the processes for records requests. However, we want to ensure this new form (21-10206) maintains transparency and is user friendly. We ask the VA to refine its explanation of fee waivers and separate the option to request expedited processing. We believe these changes will facilitate a requester's ability to exercise their rights.

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I. Please clarify whether VA Form 21-10206 will replace VA Form 3288.

LASC regularly uses Form 3288, release of information to third parties, to request evidence in support of a veteran's claims. This form is very easy to use and has a very minimal respondent burden. This form is especially helpful when a veteran does not have a fixed address because then the information can come directly to our office.

It is less clear in Form 21-10206 how a veteran would make a privacy request and release the information to a third party. It does not fit the form's third-party request section, because the veteran is actually the person requesting the information. They are just releasing the requested information to a third party, rather than themselves.

If the VA intends to replace Form 3288 with Form 21-10206, please clarify how an veteran may use this form to request a release of information to a third party. Otherwise, the VA may receive varied approaches. This would only further confuse and slow down the VA's records processing, rather than streamlining it.

II. Add eligibility categories to Section V, Fee Waivers.

Additional check boxes identifying the categories of fee waivers will help veterans and third parties better understand their right to a fee waiver. Veterans have a right to access their claims folder for free. 38 C.F.R. § 1.526(i)(2); 38 C.F.R. § 1.577(f).** Also, the VA cannot charge fees for a FOIA request if it does not comply with the statutorily mandated 20 days. OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524 § 6(b)(1)(A)(viii) (amending the provision in the FOIA addressing fees at 5 U.S.C. § 552 (a)(4)(A)). Many veterans are not aware of these rights. The current language on Form 20-10206 does not clearly identify this right. This omission may confuse and mislead veterans unfamiliar with their rights.

Thus, we propose the VA amend Form 20-10206's fee waiver section to include checkboxes with each fee waiver category and an "other" category for any unusual circumstances. This change will allow requesters to quickly identify whether they qualify for a fee waiver. Thus, it will improve the respondent burden to complete the form and increase transparency of the right to a fee waiver.

**note: LASC understands the VA also has an informal policy of waiving fees for veterans' other records requests like medical records and updated versions of claims files. This practice fosters trust and goodwill between the VA and veterans. We hope that the addition of the fee waiver section on this form does not signal a change to that policy.

III. Separate the option to request expedited processing for "compelling needs."

As discussed above, many VA benefits claims are time sensitive. To expedite a benefits claim, the veteran must also expedite access to their claims file. Also, homeless and low-income veterans often need to show proof of service/veteran status through a DD-214 or other form in order to receive federal, state, or county benefits. Any veteran with a "compelling need" has a right to expedited processing. 38 C.F.R. § 1556(d). We have found that many vulnerable veterans are unaware of their right to expedited processing. Thus, we suggest a separate check box for any vulnerable veteran to request expedited processing due to a "compelling need."

One can easily overlook the option to request expedited review in Form 20-10206's current format. It utilizes the same checkbox to request both a fee waiver "or" expedited processing. The language "or" also indicates that the requester can only request a fee waiver "or" expedited processing, not both. Finally, the

heading of that section "Willingness to Pay Fees" gives no indication the section includes the option to request expedited processing.

Expedited processing is invaluable to vulnerable veterans seeking access to the verification documents contained in their VA records. However, due to health, literacy, access to technology, etc. many veterans find the demands of locating and completing multiple forms burdensome. Eliminating another layer of bureaucratic hurdle to allow vulnerable veterans to get quick and easy access to their records improves quality of life and fulfills the VA's mission.

II. Recommended changes.

The suggested changes below are grounded in the VA's commitment to transparency and to facilitate easy access to benefits for veterans. We encourage the VA to consider these proposed changes in order to clarify veterans' rights.

1) Section V of Form 20-10206 provides:

SECTION V: WILLINGNESS TO PAY FEES

> **IMPORTANT**: For the purpose of fees only, FOIA divides requesters into three categories: (1) commercial requesters may be charged fees for searching for records, reviewing the records, and photocopying them; (2) educational, non-commercial scientific institutions, and representatives of the news media are charged for photocopying after the first 100 pages; (3) all other requesters (requesters who do not fall into any of the other two categories) are charged for photocopying after the first 100 pages and for time spent searching for records in excess of two hours. VA charges $0.15 per single-sided page of photocopying. Actual costs are charged for a format other than paper copies.
>
> An agency may grant fee waivers if the requester successfully demonstrates that the disclosure of information is in the public[']s interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.
>
> (1) I am willing to pay the applicable fees up to the amount of $_____; and (2) If you believe you are entitled to a fee waiver or expedited processing, indicate here: _____.

The language of this section is misleading because it does not inform veterans of their right to one free copy of their VA benefits claims file. Veterans reading this section might incorrectly believe that they must pay for a copy of their record. Our recommended revision notifies veterans of their right and provides a space to indicate compelling needs for expediting processing. It also removed the explanation of FOIA categories because it is wordy and hard to follow. For readability, our recommendation moves the relevant waiver areas to check boxes.

Recommended revision:

Change the title of Section (V) to "**SECTION V: WILLINGNESS TO PAY FEES AND EXPEDITED PROCESSING**."

Change the explanatory language in the first two paragraphs to "VA charges $0.15 per single-sided page of photocopying. Actual costs are charged for a format other than paper copies. There are several circumstances where a requester has a right to a total or partial fee waiver."

Add the following checkboxes to allow requesters to choose their applicable fee waiver category with a preceding sentence "I request a fee waiver because:"

- "I am a veteran requesting a complete set of my claims files;"
- "My request is in the public interest (ie. Likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester);"
- "I am an educational, non-commercial scientific institution, or representative of the news media and should not be charged for the first 100 pages;"
- "I am entitled to a fee waiver because I have previously submitted a request and the VA has not responded within the 20-day statutory period;"
- "Other: _____."

Remove: If you believe you are entitled to a fee waiver or expedited processing, indicate here: _____.

Add "I request expedited processing because I am homeless, experiencing severe financial hardship, seriously ill, or experiencing another 'compelling need.

III. Conclusion

Amending Form 20-10206 to include a more explicit statement of the requesters' rights will facilitate transparency and ease for veterans and third parties. It will also reduce the respondent burden. Thus, these changes will ultimately ease the VA's own burden of responding to records requests.

We appreciate your careful consideration of these comments and look forward to your response.

Sincerely,

Karin Nordstrom, Esq.
The Legal Aid Society of Columbus