



NATIONAL VETERANS LEGAL SERVICES PROGRAM

February 27, 2023

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Nancy J. Kessinger
Veterans Benefits Administration (20M33)
Department of Veterans Affairs
810 Vermont Avenue NW, Washington, DC 20420

Re: Agency Information Collection Activity: Servicemembers' Group Life Insurance-Traumatic Injury Protection (TSGLI) Application for TSGLI Benefits and TSGLI Appeal Request Form

Dear Ms. Kessinger,

On December 29, 2022, the Veterans Benefits Administration (VBA) announced an opportunity for public comment on the proposed collection of certain information for the Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) application for benefits and appeal request form.¹ The National Veterans Legal Services Program (NVLSP) hereby respectfully submits its written comment on the VBA's proposed information collection activity.

I. BACKGROUND

A. NVLSP

NVLSP is an independent, nonprofit veterans service organization serving active-duty military personnel and veterans. Since 1981, NVLSP has represented servicemembers and veterans free-of-charge to secure disability benefits from the VA and the military service departments.

NVLSP has secured more than \$5.4 billion dollars in benefits to hundreds of thousands of servicemembers, veterans, and survivors. In addition, NVLSP trains pro bono attorneys and other advocates; connects veterans and active-duty personnel seeking disability benefits to pro bono legal assistance; publishes the nation's definitive guide on veteran benefits; and represents and litigates for veterans and their families before the VA, military discharge review agencies, and

¹ 87 Fed. Reg. 80262 (December 29, 2022).

federal courts. As such, NVLSP is uniquely qualified to offer comments on the proposed information collection activity.²

B. Description Of The Proposed Information Collection Activity

Pursuant to Section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), federal agencies are required to publish notice in the Federal Register for each proposed information collection activity and to allow 60 days for public comment in response to the notice.

For this proposed information collection activity, the Application for TSGLI Benefits and the TSGLI Appeal Request Form, the VBA requests comments addressing: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.³

NVLSP appreciates the opportunity provided by the VBA to comment on the proposed information collection activity and submits the following comments for the VBA's consideration:

II. NVLSP'S COMMENTS

A. The Proposed Changes Are Necessary And Practical

NVLSP applauds the VBA's efforts to streamline the TSGLI claims and appeals process through exploring new technologies and identifying areas of improvement. The VBA estimates approximately 758 servicemembers apply for TSGLI benefits annually.⁴ A modernized information collection process will both increase servicemember responsiveness and decrease the administrative burden required to accurately and timely complete the necessary paperwork.

Our servicemembers put their lives and their health on the line for their country daily. In 2021 alone, 1009 active duty servicemembers lost their lives.⁵ In the same year, 317,340 active duty servicemembers were diagnosed with acute traumatic injuries.⁶ Almost 19,000 servicemembers were diagnosed with traumatic brain injuries suffered during service.⁷ To

² More information about NVLSP may be found at <http://www.nvlsp.org>.

³ Available at <https://www.federalregister.gov/documents/2022/12/29/2022-28324/agency-information-collection-activity-servicemembers-group-life-insurance-traumatic-injury>.

⁴ See <https://www.federalregister.gov/documents/2022/12/29/2022-28324/agency-information-collection-activity-servicemembers-group-life-insurance-traumatic-injury>.

⁵ *Active Duty Deaths by Year and Manner*, Defense Casualty Analysis System, <https://dcas.dmdc.osd.mil/dcas/app/summaryData/deaths/byYearManner>.

⁶ DOD Health of the Force 2021, Defense Health Agency at 6 (available at <https://www.health.mil/Reference-Center/Technical-Documents/2022/12/14/DOD-Health-of-the-Force-2021#:~:text=THERE%20WERE%20237%20ACUTE%20AND,13%25%20between%202020%20and%202021.>)

⁷ *DOD TBI Worldwide Numbers*, The Traumatic Brain Injury Center For Excellence, <https://health.mil/Military-Health-Topics/Centers-of-Excellence/Traumatic-Brain-Injury-Center-of-Excellence/DOD-TBI-Worldwide-Numbers>.

protect these servicemembers, Congress enacted 38 U.S.C. § 1980A, providing in part that “a member of the uniformed services who is insured under Servicemembers’ Group Life Insurance shall automatically be insured for traumatic injury.”⁸ While some of these claims may be relatively straightforward, others are much more difficult due to the complex nature of the injury.⁹ In addition, because the immediate costs of necessary medical care can impose a significant financial burden on traumatically injured servicemembers and their families, increasing the ease and the efficiency of the TSGLI claims and appeals processes are absolutely critical.¹⁰

Further, depending on the type of traumatic injury, a servicemember may have physical and/or mental challenges when attempting to locate and compile records or completing the application and/or appeal request form by hand. Modernizing the application and appeals information collection processes could permit wounded servicemembers to use digital systems and computer-aided technology to assist them in correctly filing their claims and appeals. Making such capabilities available to servicemembers directly furthers President Biden’s executive order to implement human-centered design in order to expand access to veterans’ benefits and care.¹¹

Therefore, it is critical to modernize and to apply current technologies to collecting and processing TSGLI claims and appeals, both to reduce the time needed to file and process these claims and appeals, and to provide access to modern technologies to assist servicemembers in doing so.

B. The VA’s Estimate Of The Administrative Burden To The Servicemember Should Be Updated

In the VBA’s notice for public comment, the agency states that the average time burden to complete TSGLI forms is 15 minutes.¹² This vastly underestimates the administrative burden placed on servicemembers applying for or submitting appeals to TSGLI.

The VBA’s estimate should take into account the time a servicemember must spend identifying and compiling medical records, meeting with a medical professional to review and certify their claim, and collecting other evidence required to be submitted. Further, the VA’s estimate should also consider the additional time burden servicemembers with serious injuries may incur due to the nature of those injuries.

⁸ 38 U.S.C. § 1980A(a)(1).

⁹ *Traumatic Brain Injury- Better DOD and VA Oversight Can Help Ensure More Accurate, Consistent, and Timely Decisions for the Traumatic Injury Insurance Program*, Report to the Ranking Member, Committee on Oversight and Government Reform, House of Representatives, Government Accountability Office (GAO) (January 2009), available at <https://www.gao.gov/products/gao-09-108>.

¹⁰ *Id.*

¹¹ Executive Order 13985, VA Final Equity Action Plan (“Leveraging human centered design (HCD) and industry best practices will enable VA to proactively customize VA’s benefits, care and services to improve access and advance outcomes for underserved Veterans”), available at https://www.va.gov/ORMDI/docs/EO13985-VA_Final_Equity_Action_Plan.pdf.

¹² Available at <https://www.regulations.gov/document/VA-2022-VACO-0001-0256>.

Even if the VA's estimated time burden of 15 minutes were accurate for the SGLV-8600 form to submit a TSGLI claim, the VA should recognize that the estimated time burden should not be the same and should be increased for the SGLV-8600A to the extent a servicemember is required to appeal the decision by the VA to disapprove a TSGLI claim. We recommend that the VA clarify whether the count of 758 servicemembers who applied in one year includes only those who filed initial applications or also includes appeals.

i. Completing Form SGLV-8600

Servicemembers seeking benefits under TSGLI must complete form SGLV-8600, a 15-page application used by the VA to adjudicate claims.¹³ SGLV-8600 Part A (pages 1-7) asks for the servicemember's identifying information as well as a description of the time, date, and nature of the qualifying injury. In addition, the servicemember is required to submit relevant medical records and other evidence in support of this claim.¹⁴

SGLV-8600 Part B (pages 8-15) must be completed by a licensed medical professional. Part B is significantly more extensive than Part A, requiring the medical professional to both review the patient's medical records and to indicate both the qualifying loss(es) and the date(s) of occurrence of said loss(es). If the servicemember is claiming a qualifying loss for the inability to independently perform at least two Activities of Daily Living (ADLs), the medical professional must both list the dates for which the servicemember was unable to perform and describe the assistance needed by the servicemember for each ADL. The time burden on such medical professionals is not addressed in the "Affected Public" which the VA identifies as only individuals and households.

A servicemember cannot even read the *form itself* in 15 minutes much less complete and submit it, as this estimate would require both the servicemember and a medical professional to spend approximately one minute per page on an application asking for detailed medical history and open-ended narrative responses.¹⁵ NVLSP estimates that the time it takes to read the application, complete Part A, consult with a medical professional, and submit the application takes approximately three hours without accounting for the time needed to review and compile supporting evidence.

ii. Compiling relevant medical records and lay evidence

Servicemembers seeking TSGLI benefits must submit medical records as evidence to support their claims. Depending on the nature of the injury, a servicemember may have to compile records from several different medical providers, including but not limited to emergency room care, surgeons, specialists, primary care physicians, physical therapists, and other post-injury care providers. In addition, a servicemember may no longer live where the injury occurred or suffered the injury while deployed or during a training exercise, requiring that servicemember to compile records from medical providers across the country or the world.

¹³ Available at <https://www.benefits.va.gov/insurance/forms/SGLV-8600.pdf>.

¹⁴ SGLV-8600.

¹⁵ *Id.*

Further, servicemembers claiming loss of ADLs generally also provide lay evidence in the form of written testimony from caregivers and witnesses. These open-ended narratives describe how the servicemember is unable to perform certain ADLs and how the servicemember's daily life is affected accordingly.

The VA should acknowledge and accommodate the reality that a servicemember might spend hours identifying, locating, and requesting all medical records for a complex injury or one that occurred away from the servicemember's home. In addition, the servicemember may need to identify and request testimony from lay witnesses. The VA should adjust its estimate of the burden on servicemembers to reflect compiling this evidence, since it is a required part of the claims and appeals processes. NVLSP estimates that the time it takes to read the application, complete Part A, review and compile supporting evidence, consult with a medical professional, and submit the application takes approximately ten hours.

iii. Accounting for seriously injured servicemembers

Servicemembers may claim TSGLI benefits for serious injuries, including but not limited to limb amputation, paralysis, coma, loss of vision, loss of hearing, loss of speech, facial reconstruction, and traumatic brain injury. As a result of these injuries, servicemembers may suffer from cognitive or physical losses requiring them to seek assistance to complete the application and to compile the medical records. In addition, a servicemember suffering from a cognitive injury may have trouble identifying the location or scope of the relevant medical records or struggle to write a narrative explaining the injury. A servicemember's burden may be greatly affected by the nature of his/her injury, and the estimate should reflect these special challenges. This is particularly true when a servicemember is claiming scheduled losses that impose additional procedural requirements. For example, a servicemember claiming a limb salvage loss is required to obtain additional certification from a surgeon in addition to the required Part B certification, as well as obtain and submit every operative report in their course of limb salvage treatment.¹⁶

Furthermore, while the VA acknowledges that other members of the servicemember's household may be assisting the servicemember to complete the claim or appeals forms, the VA does not appear to have included the time burden on such additional individuals that may be assisting the servicemember.

iv. Accounting for time spent in the appeals process

Servicemembers may appeal a denial of TSGLI benefits three times; they may also bring their case before a federal court at any point in the appeal process. For each appeal, the servicemember must complete and submit a new form, SGLV-8600A.¹⁷ For appeals more than one year from the date of denial, the servicemember is required to compile and submit "new and material evidence" with the completed SGLV-8600A.¹⁸ Even for appeals within the one-year deadline where submitting new and material evidence is not a procedural requirement, doing so

¹⁶ SGLV-8600 at 10.

¹⁷ SGLV-8600A.

¹⁸ *Id.*

is a practical necessity, as we have observed that an appeal is unlikely to succeed without additional information to rebut the denial. NVLSP estimates that the process of gathering new and material evidence, alongside completing and submitting form SGLV-8600A, would take a traumatically injured servicemember approximately twenty hours.

C. The VBA Should Clarify the Rules and Information Surrounding Supporting Document Collection and Appeals to Improve the Quality, Utility, and Clarity of the Information Collected

NVLSP believes that servicemembers may be improperly denied TSGLI benefits after their initial application, because the SGLV-8600 form is not sufficiently clear or instructive. Additionally, SGLV-8600A, the form used to appeal TSGLI denials, does not sufficiently inform applicants of the necessary appeals process or requirements.¹⁹ As such, NVLSP recommends modifying SGLV-8600 and SGLV-8600A in the following ways to improve the quality, utility, and clarity of the information provided by TSGLI-eligible servicemembers.

- i. Amend the application to indicate that medical records are required on the first page*

Servicemembers must include medical records of the qualifying injury alongside SGLV-8600 to have their claim approved. However, this crucial requirement *only* appears in small text in the middle of a clause on page four.²⁰ As a result of this inconspicuous placement, many servicemembers submit the form without the requisite medical records and subsequently have their claims denied. This obscure placement of a necessary requirement is particularly challenging for servicemembers suffering from a traumatic injury as they may be completing the form with physical and/or cognitive limitations.

NVLSP recommends clearly stating the medical records requirement on the first page of SGLV-8600, or, if the agency is unable to place it on page one, in a clearly marked section of the form with a separate, conspicuous header. Additionally, the VA may consider listing examples of acceptable medical documents to assist the servicemember in compiling the necessary records. The Army Human Resources Command TSGLI Frequently Asked Questions website provides an example of such a list that could be expanded upon for inclusion in SGLV-8600.²¹

Emphasizing the medical records requirement will greatly reduce the number of incomplete applications and provide necessary guidance to traumatically injured servicemembers.

- ii. Amend the application to explain and clarify the need for and use of supporting and corroborating evidence*

¹⁹ Available at <https://www.benefits.va.gov/insurance/forms/SGLV-8600A.pdf>.

²⁰ *Id.* at 4.

²¹ Available at <https://www.hrc.army.mil/content/TSGLI%20Frequently%20Asked%20Questions%20FAQ>.

Servicemembers may include lay evidence in support of their claims. However, SGLV-8600 does not inform servicemembers of this right, nor does it list the types of lay evidence accepted to adjudicate TSGLI claims.

The VBA has long known that medical records presented in isolation can create the appearance of an inconsistent claim.²² Since the first year of the TSGLI program, administrators have recommended supplementing medical records with supporting evidence from a range of sources, including medical professionals, family members, friends, and Branch of Service systems.²³ In fact, as part of the Summary of Recommendations for the TSGLI Year-Ten Review (TSGLI YTR), the VBA recommended that the SGLV-8600 application form:

(1) “Codify the current practice of requesting both the medical professional’s statement on Part B of the TSGLI claim form and his/her supporting evidence. This supporting evidence may include: medical treatment records, information provided by the claimant or others involved in his/her care, reports of examination by the signing medical professional, and/or lay statements.”

However, the current SGLV-8600 form does not implement this recommendation. Instead, applicants are told only that they must submit medical records and are not informed that they may include other forms of supporting evidence as well. Further, the form does not explain the types of acceptable supporting evidence, forcing servicemembers to file one or several appeals in an attempt to meet this unclear evidentiary standard.

In accordance with the VBA’s *own* recommendations in the TSGLI YTR, NVLSP recommends the following changes to SGLV-8600 in order to both inform servicemembers that they may submit supporting evidence and to provide guidance as to the acceptable types of supporting evidence.

a. Provide an appendix listing types of acceptable evidence

Servicemembers would benefit greatly from a SGLV-8600 appendix listing types of acceptable evidence (both medical and supporting lay evidence) for their TSGLI claims. Such a list would include, for example, testimony from non-medical care workers demonstrating the long-term effects of injuries sustained, the loss of activity of the servicemember, or the difference in mental capacity or personality changes resulting from a traumatic injury. Additionally, affidavits from friends, family, and fellow servicemembers are often necessary to fill in the gaps created by medical records alone. Guidance in the form of an appendix will reduce uncertainty and improve the quality of evidence provided by servicemembers.

b. Provide guidance on how to describe the injury to support the claim with evidence

²² *Servicemembers’ Group Life Insurance Traumatic Injury (TSGLI) Protection Program: Year-Ten Review*, Veterans Benefits Administration 16 (Jan. 2018), available at https://www.benefits.va.gov/INSURANCE/docs/TSGLI_YTR.pdf.

²³ *Id.*

The VBA should provide guidance to servicemembers on how best to describe the qualifying injury in order to support the claim with evidence. Form SGLV-8600 does not provide any directions or guidance for servicemembers to describe their qualifying injury, stating only “tell us about your traumatic injury.”²⁴ This information is important to clarify for the servicemember, friends, family, or fellow servicemembers interested in gathering evidence to assist with the claim as detailed by the proposed appendix above, and this information can also assist the medical professional in providing medical paperwork that appropriately details the claimed injury. As detailed in the TSGLI YTR, medical professionals may not have the time to fully review the TSGLI criteria before completing Part B of the TSGLI claim form.²⁵ As a result, without a detailed description of the necessary evidence, the form will lack the necessary information and may be incorrectly denied. Guidance on how to describe the injury would provide increased quality, utility, and clarity in the form to accomplish the agency’s goals.

c. Provide guidance on how TSGLI offices weigh the evidence and make their decisions

The VBA should provide guidance on how TSGLI offices weigh supporting evidence. Each claim is adjudicated by a totality of evidence standard subject to 38 U.S.C. § 5107(b), as outlined by the TSGLI Procedures Guide.²⁶ In the TSGLI Procedural Guide, the medical professional statement in Part 6 makes no mention of the content required, just as in form SGLV-8600.²⁷ Additionally, the only discussion of evidence of the claim in the Procedural Guide beyond the medical professional statements goes to the appeals process in part 8.²⁸ While the Guide does inform servicemembers that appeals require new and material evidence, the examples do not describe how the agency gives weight to new and material evidence.

This information is inconsistent with the recommendations from the TSGLI YTR in which the VBA recommended that form SGLV-8600 “Clarify that adjudicators must continue to consider and weigh the totality of medical and lay evidence when making decisions.”²⁹ Without clarity about how such evidence can be used or any description as to the weight, servicemembers may opt to forgo collecting such supporting evidence under the false impression that only evidence from a medical professional is permissible under the form. This incorrect assumption may lead to improperly rejected applications and prevent servicemembers from receiving the benefits they both need and deserve. Providing such information will increase the quality, utility, and clarity of all applications.

iii. Amend the application to clarify the appeals process

The current SGLV-8600A does not clearly explain the appeals process. Currently, the form does not explain the timeframe required to submit first and second level appeals, and on what

²⁴ SGLV-8600 at 4.

²⁵ *Id.*

²⁶ Traumatic Injury Protection Under Servicemember’s Group Life Insurance (TSGLI) Version 2.49 (November 2021).

²⁷ *Year-Ten Review*, *supra* note 17, at 66.

²⁸ *Id.* at 68.

²⁹ *Id.* at 16.

basis new evidence changes this timeline. Additionally, the forms do not point to or leverage existing forms or documents relevant to the appeals process. NVLSP recommends three changes to the current SGLV-8600 and SGLV-8600A necessary to correct this critical oversight:

- First, the agency should include a plain-language statement that first and second level appeals must be submitted within one year from the date of denial, but they can be submitted at any time if the appeals include new and material evidence;
- Second, the agency should add a plain-language statement that third-level appeals have three years from the date of denial which can be waived in the interests of justice, must be submitted using a form DD-149, and direct servicemembers at the third level to read Appendix A of SGLV-8600A; and
- Third, the agency should provide a new Appendix A of 8600A that provides information about obtaining a form DD-149 and a Board for Correction of Military Records (BCMR) contact information for each service branch.

NVLSP believes that these changes to the forms will more widely increase the quality, utility, and clarity of all applications and appeals.

D. The VBA Should Minimize The Burden Of Information Collection On Servicemembers By Notifying Applicants That They May Be Eligible For Assistance From DOD Recovery Care Coordinators (RCCs).

Traumatically injured servicemembers face numerous barriers to accessing TSGLI benefits due to the nature of their injuries. One such barrier, as noted by the Government Accountability Office, is that traumatically injured servicemembers may experience difficulty with the claims process and gathering supporting evidence.³⁰ Many of these servicemembers could benefit from the DOD Recovery Care Program, which offers RCCs to provide non-medical assistance to traumatically injured servicemembers.³¹

The VBA should amend SGLV-8600 and SGLV-8600A to include a statement notifying TSGLI applicants that they may be eligible for RCC assistance, as well as providing a point of contact for applicants to self-refer to an RCC. Similar information is included in forms for other VBA benefit programs, such as the VA disability compensation program.³² The assistance of the RCCs could significantly reduce the burden of the TSGLI claims process on servicemembers who may not otherwise be aware that assistance is available.

E. NVLSP Requests More Information Regarding The VA's Automated Data Collection Purposes

NVLSP applauds efforts to minimize the burden on servicemembers through the use of automated collection techniques or the use of other forms of information technology. For example, automating information sharing among the VA, Department of Defense, military

³⁰ Government Accountability Office, *supra* note 8.

³¹ *Warrior Care Recovery Coordination Program*, Defense Health Agency (available at <https://warriorcare.dodlive.mil/Care-Coordination/recovery-coordination/>).

³² See VA Form 21-526EZ at 1 (notifying applicants of ability to seek assistance from veterans' service organizations).

branches, and other governmental entities would greatly reduce the burden on servicemembers that are otherwise manually compiling records.

However, NVLSP also seeks clarification regarding any proposed use of automated data collection in TSGLI claims. While NVLSP supports the VA's efforts to minimize the burden of the collection of information on respondents and to expedite the adjudication process, it is concerned about the improper use of automation in any decision making related to claims or appeals.

NVLSP recommends that the VA explicitly state any proposed use of automation for TSGLI adjudication and develop any automated system in careful consultation with veterans, veterans service organizations, and all relevant stakeholders.

III. CONCLUSION

NVLSP appreciates the opportunity to comment on the proposed information collection activity. We look forward to continuing to work with the VA to adopt and implement a TSGLI application and appeals process that promotes access to the benefits that our country's veterans deserve.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Wright", with a large, sweeping flourish extending from the end of the signature.

Paul Wright, Executive Director
Rochelle Bobroff, Director of Lawyers Serving Warriors®
Zachary Outzen, Equal Justice Works Fellow

CC: Troutman Pepper Hamilton Sanders, LLP
Kim Phan, Partner
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