



DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Board of Veterans' Appeals (Board)

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) proposes to modify an existing system of records, "Veterans Appellate Records System—VA" (44VA01). This system is used by the Board of Veterans' Appeals (Board) to process and track appeals, hearing requests, and information related to appeals of benefits decisions issued by the Veterans Benefits Administration (VBA), Veterans Health Administration (VHA), and National Cemetery Administration (NCA).

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the *Federal Register*. If no public comment is received during the period allowed for comment or unless otherwise published in the Federal Register by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the *Federal Register*. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to VA Privacy Service, 810 Vermont Avenue, NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to "Veterans Appellate Records System—VA" (44VA01). Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Kary Charlebois,

Kary.Charlebois@va.gov, Chief, Privacy Act & FOIA, Board of Veterans' Appeals,
Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420,
(202) 382-2906.

SUPPLEMENTARY INFORMATION: The Board proposes to add records from two new IT systems to this system of records:

1. The first new IT system is Caseflow, which is the Board's appeals management system, used to track and process appeals adjudicated under the Veteran Appeals Improvement and Modernization Act of 2017 (AMA), or the modernized system.
2. The second new IT system is the Veterans Benefits Management System (VBMS). The Board utilizes the VBMS eFolder to store files related to appeals from non-VBMS business lines, such as the Veterans Health Administration (VHA). Storing the electronic files in VBMS allows for adjudication of the appeal utilizing Caseflow, which pulls from VBMS.

The Board proposes to add a new routine as routine use #19 which will permit the release of information from this system of records to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

The Board is removing routine use #14 covering disclosure to the Comptroller General.

The Board is also revising the following routine uses:

1. Routine use #1 has been renumbered as routine use #5, to alert law enforcement personnel and security guards to the presence of dangerous persons in VA facilities or at VA activities conducted in non-VA facilities.
2. Routine use #2 has been revised and renumbered as routine use #4 for disclosure of information relevant to a suspected or reasonably imminent violation of law.

3. Routine use #3 has been renumbered as routine use #13 for disclosure for the development of a claimant's claim for VA benefits.
4. Routine use #4 has been revised and renumbered as routine use #1, for disclosure to a congressional office.
5. Routine use #5 has been revised and renumbered as routine use #11, for disclosure to the National Archives and Records Administration.
6. Routine use #6 has been renumbered as routine use #14, for disclosure to a former representative of a beneficiary.
7. Routine use #7 has been renumbered as routine use #15, for disclosure related to the legality or ethical propriety of the conduct of a person or organization prospectively, presently, or formerly representing a person in a matter before VA.
8. Routine use #8 has been renumbered as routine use #16, for disclosure to the VA-appointed representative of an employee.
9. Routine use #9 has been revised and renumbered as routine use #10 for disclosure to the Merit Systems Protection Board.
10. Routine use #10 has been revised and renumbered as routine use #8 for disclosure to the Equal Employment Opportunity Commission.
11. Routine use #11 has been revised and renumbered as routine use #9 for disclosure to the Federal Labor Relations Authority.
12. Routine use #12 has been renumbered as routine use #17 for disclosure to the United States Court of Appeals for Veterans Claims.
13. Routine use #13 has been revised and renumbered as routine use #18, for disclosure to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation.
14. Routine use #15 has been revised and renumbered as routine use #6, for disclosure to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear.
15. Routine use #16 has been revised and renumbered as routine use #7 for disclosure to contractors and others doing work for VA.
16. Routine use #17 has been renumbered as routine use #12 for disclosure to other Federal agencies to assist in preventing and detecting possible fraud or abuse.

17. Routine use 18 has been removed and replaced with routine uses #2 and #3, for VA data breach response and remediation, and for data breach response and remediation for another federal agency.

Signing Authority

The Senior Agency Official for Privacy, 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. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on May 31, 2023 for publication.

Dated: July 6, 2023.

Amy L. Rose,

Government Information Specialist,

VA Privacy Service,

Office of Compliance, Risk and Remediation,

Office of Information and Technology,

Department of Veterans Affairs.

SYSTEM NAME AND NUMBER: Veterans Appellate Records System—VA (44VA01)

SECURITY CLASSIFICATION: Unclassified

SYSTEM LOCATION: Board of Veterans' Appeals (Board), Department of Veterans Affairs (VA), 810 Vermont Avenue NW., Washington, DC 20420, at the Wilkes-Barre VA facility, 1127 East End Boulevard, Building 42, Wilkes-Barre, PA 18702, and with the Board's contractor, Promisel & Korn, Inc., 3228 Amberley Lane, Fairfax, VA 22031, and in the VA Enterprise Cloud (VAEC) AWS GovCloud region in Oregon.

SYSTEM MANAGER(S): Chairman (01), and Eric Hickam, Eric.Hickam@va.gov, 512-375-2520, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: Title 38 U.S.C. chapter 71, § 5904.

PURPOSE(S) OF THE SYSTEM: Initial decisions on claims for Federal Veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board of Veterans' Appeals. See 38 U.S.C. Chapter 71. The Board gathers or creates the records in this system in order to carry out its appellate function, to statistically evaluate the appellate process, and to evaluate employee performance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Veterans and other individuals who have sought to appeal a decision by the Secretary under a law that affects the provision of benefits by the Secretary to Veterans or the dependents or survivors of Veterans as described in 38 U.S.C. 511(a); Veterans Law Judges; Board employees; representatives of individuals covered by the system; personal and medical information of non-Veteran appellants and other parties to the appeal, including dependents; applicants and participants in the caregiver programs described in 38 U.S.C. 1720G; contesting claimants; and representatives.

CATEGORIES OF RECORDS IN THE SYSTEM: The record may include military service and active duty separation information (e.g., name, service number, date of birth, rank, sex, total amount of active service, branch of service, character of service, pay grade, assigned separation reason, service period, whether Veteran was discharged with a disability, reenlisted, received a Purple Heart or other military decoration); payment information (e.g., Veteran payee name, address, dollar amount of readjustment service pay, amount of disability or pension payments, number of nonpay days, any amount of indebtedness (accounts receivable) arising from title 38 U.S.C. benefits and which are owed to the VA); medical information (e.g., medical and dental treatment in the Armed Forces including type of service-connected disability, medical facilities, or medical or dental treatment by VA health care personnel or received from private hospitals and health care personnel relating to a claim for VA disability benefits or medical or dental treatment); personal information (e.g., marital status, name and address of dependents, internet protocol addresses, occupation, amount of education of a Veteran or a dependent, dependent's relationship to Veteran); education benefit information (e.g., information arising from utilization of training benefits such as a Veteran trainee's induction, reentrance or dismissal from a program or progress and attendance in an education or training program); applications for compensation, pension, education and employment benefits and training which may contain identifying information, military service and active duty separation information, payment information, medical and dental information, personal and education benefit information relating to a Veteran or beneficiary's incarceration in a penal institution (e.g., name of incarcerated Veteran or beneficiary, claims file number, name and address of penal institution, date of commitment, type of offense, scheduled release date, Veteran's date of birth, beneficiary relationship to Veteran and whether Veteran or beneficiary is in a work release or half-way house program, on parole or has been released from

incarceration); case notes from the e-VA application created from email and text message correspondence through the application; degree audits and copies of grades for Veterans and dependents enrolled in school; training records for Veterans and dependents participating in training programs.

The record, or information contained in the record, may also include copies of VA decisions and adjudications; transcripts of hearings; powers of attorney and attorney fee agreements; information on and dates of procedural steps taken in claims and appeals; records of and electronic copies of correspondence concerning appeals; diary entries, notations of mail received, information requests; tracking information as to file location; docket type and number; queue workflow information (e.g., type of review; appeal number; status; Caseflow task action); certification information (e.g., representative name, type, and certification ID number); Board hearing information (e.g., type of hearing; status; participants; hearing notes); dispatch information; and employee productivity information.

Material in this system that is not maintained in Veterans Appeals Control and Locator System (VACOLS) includes verbatim digital recordings of hearings that are maintained indefinitely, microfiche decision locator tables and indices to decisions from 1983 to 1994, and microfiche reels with texts of decisions from 1977 to 1989.

RECORD SOURCE CATEGORIES: Information in this system is provided by Veterans, Servicemembers, Reservists, spouses, surviving spouses, dependents and other beneficiaries of the Veteran, applicants for caregiver benefits described in 38 U.S.C. 1720G, accredited service organizations and other VA-approved representatives of the Veteran, VA-supervised fiduciaries (e.g., VA Federal fiduciaries, court-appointed fiduciaries), military service departments, VA medical facilities and physicians, private medical facilities and physicians, education and rehabilitation training establishments, State and local agencies, other Federal agencies including the Department of Defense

(DoD), Social Security Administration (SSA); U.S. Treasury Department, State, local, and county courts and clerks, Federal, State, and local penal institutions and correctional facilities, other third parties and other VA records, Office of Servicemembers' Group Life Insurance (OSGLI); commercial insurance companies; undertakers; lending institutions holding a Veteran's or uniformed services member's mortgage; VA Loan Guaranty records; contractors remodeling or enlarging or adding construction to existing homes; relatives and other interested persons; Westlaw and InfoUSA; Inquiry Routing & Information System (IRIS) (maintained under System of Records "151VA005OP6" by the Office of Information & Technology), brokers and builder/sellers, credit and financial reporting agencies, an applicant's credit sources, depository institutions and employers, independent auditors and accountants, hazard insurance companies, taxing authorities, title companies, fee personnel, business and professional organizations, the general public, and other parties of interest involving VA-guaranteed, insured, vendee or direct loans or specially adapted housing; Veterans Benefits Management System (VBMS) (maintained under System of Records "58VA21/22/28" by the Veterans Benefits Administration); VA Fiduciary beneficiaries, VA beneficiaries' dependents, VA-appointed fiduciaries, individuals who were previously VA-appointed fiduciaries, individuals who VA considered for service as a VA-appointed fiduciary but did not select, field examiners, legal instrument examiners, fiduciary program personnel, third parties, other Federal, State, and local agencies, and VA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
3. To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.
4. To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.
5. To law enforcement personnel and security guards may be made in order to alert them to the presence of dangerous persons in VA facilities or at VA activities conducted in non-VA facilities.

6. To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:
 - a. VA or any component thereof;
 - b. Any VA employee in his or her official capacity;
 - c. Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or
 - d. The United States, where VA determines that litigation is likely to affect the agency or any of its componentsis a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.
7. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.
8. To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.
9. To the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. To the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.
11. To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.
12. To other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.
13. To a Veteran, claimant or a third party claimant (e.g., a Veteran's survivors or dependents) to the extent necessary for the development of that claimant's claim for VA benefits.
14. A record from this system (other than the address of the beneficiary) may be disclosed to a former representative of a beneficiary to the extent necessary to develop and adjudicate a claim for payment of attorney fees to such representative from past due benefits under 38 U.S.C. 5904(d).
15. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization prospectively, presently or formerly representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities; (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization prospectively, presently or formerly representing a person in a matter before VA;

(3) to other Federal and State agencies and to Federal courts when such information may be relevant to the individual's or organization's provision of representational services before such agency or court. Names and home addresses of Veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

16. To the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for duty) examination procedures or Department-filed disability retirement procedures.
17. To the United States Court of Appeals for Veterans Claims when requested by the Court to further the performance of its duties as delineated in Chapter 72 of Title 38 of the United States Code Annotated with respect to any action brought under that chapter.
18. To accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA upon the request of the claimant and provided that the disclosure is limited to information relevant to a claim, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information.
19. To the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

Note: Any record maintained in this system of records, which may include information relating to drug abuse, alcoholism or drug abuse, infection with the human

immunodeficiency virus, or sickle cell anemia will be disclosed pursuant to an applicable routine use for the system only when permitted by 38 U.S.C. 7332.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: Information is kept in a computer database entitled VACOLS and backed up on database backup server.

Archived records that were created prior to expansion of the Board's electronic storage capability may be stored in filing folders or cabinets, microfiche, computer disks, or computer tape. Hearings before the Board are digitally recorded and stored indefinitely. Where a facility must use audio tape to record hearings, the recording is maintained for one year after which period it is destroyed. A transcript is made for each hearing held and is electronically attached to the record in VACOLS and/or VBMS. Digital recordings of hearings are maintained on a back-up server. Under the Vital Records Schedule, electronic back-up tapes are updated quarterly.

Caseflow information is stored in a database on the AWS GovCloud. The database is backed up in near real time data for failovers and recovery. Caseflow digitally stores all information on the AWS GovCloud. Virtual hearing audio files are digitally recorded and stored in the Cloud indefinitely. A digital transcript is made for each hearing held and it is electronically stored in VBMS eFolder. VBMS eFolder is the official copy of record for adjudicating claims for VA.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: VACOLS records in this system may be retrieved by any searchable field in the VACOLS database. This system notice covers only information retrieved by an individual's name or other identifier. Archived material from this system that is not in VACOLS may be retrieved by Veteran's name, VA file number, or Board archive citation number.

Caseflow records stored in the database are retrieved by any searchable field in the Caseflow application. This system covers information retrieved by an individual's name or other identifier. Caseflow application access is controlled by Common Security

Employee Manager (CSEM) and roles define the level of access within the Caseflow application. Caseflow is an internal VA application.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system, in VACOLS, and those collected prior to VACOLS' use as a repository are retained indefinitely as Category B Vital Records unless otherwise specifically noted. Under the Vital Records Schedule, electronic backups are destroyed by erasure upon receipt of the next quarterly electronic back up set. Recordings of hearings will be made as described in Rule 714, 38 CFR 20.714, and transcriptions of recordings of hearings will be attached electronically in VACOLS and/or VBMS.

Electronic recordings of hearings will be retained for at least one year from the date of the hearing, giving the hearing subject the opportunity to challenge the accuracy of the transcript. Records in the Caseflow system are stored and backed up in AWS GovCloud and the electronic recordings of hearings will be retained indefinitely as archive in AWS GovCloud.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: Files are under custody of designated VA employees, including employees of the Board and its contractor, all of whom have a need to know the contents of the system of records in order to perform their duties. Access to VACOLS is strictly limited to reflect the need individual employees have for the different records in the system. Where a Veterans Service Organization office is located in a VA facility and has access to VACOLS through the Wide Area Network, that access is strictly limited to viewing records of current clients of the organization. No personal identifiers are used in statistical and management reports, and personal identifiers are removed from all archived Board decisions and other records in this system before VA makes them available to the public. Files kept by the contractor are in a locked safe in locked rooms in a secured

building. Caseflow is a cloud application and the Cloud data center physical security begins at the Perimeter Layer restricting physical access.

RECORD ACCESS PROCEDURES: Individuals seeking information regarding access to information contained in this system of records may write or call the Board of Veterans' Appeals Freedom of Information Act Officer, whose address and telephone number are as follows: Freedom of Information Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420; (202) 382-2906.

CONTESTING RECORD PROCEDURES: (See notification procedures above.)

NOTIFICATION PROCEDURES: An individual desiring to know whether this system of records contains a record pertaining to him or her, how she or he may gain access to such a record, and how she or he may contest the content of such a record may write to the following address: Privacy Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. The following information, or as much as is available, should be furnished in order to identify the record: Name of Veteran, name of appellant other than the Veteran (if any), and Department of Veterans Affairs file number. For information about hearing transcripts or tape recordings, also furnish the date, or the approximate date, of the hearing.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: None.

HISTORY: November 16, 2013, at 78 FR 66803.

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