

**NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.**



**Statement of**

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Executive Director**

**Before the**

**House Committee on Veterans' Affairs  
Subcommittee on Disability Assistance and Memorial Affairs**

**Oversight Hearing**

**“Lost in Translation: How VA’s Disability Claims and Appeals Letters Should  
Be Simplified”**

**March 20, 2024**

Chairman Luttrell, Ranking Member Pappas, and members of the Subcommittee, the National Organization of Veterans' Advocates (NOVA) thanks you for the opportunity to testify today as to whether VA's disability claims and appeals notice letters to veterans, survivors, family members, and caregivers are understandable and contain the information veterans need to effectively navigate the claims process in a timely manner.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents approximately 850 accredited attorneys, agents, and qualified members assisting tens of thousands of our nation's military veterans, families, survivors, and caregivers seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for persons seeking VA benefits.

NOVA members represent veterans before all levels of VA's disability claims process, and handle appeals before the U.S. Court of Appeals for Veterans Claims (CAVC), U.S. Court of Appeals for the Federal Circuit, and the Supreme Court of the United States. As an organization, NOVA advances important cases and files amicus briefs in others. *See, e.g., Henderson v. Shinseki*, 562 U.S. 428 (2011) (amicus); *NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013) (addressing VA's failure to honor its commitment to stop applying an invalid rule); *Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019) (amicus); *NOVA v. Secretary of Veterans Affairs*, 981 F.3d 1360 (Fed. Cir. 2020) (M21-1 rule was interpretive rule of general applicability and agency action subject to judicial review); *Van Dermark v. McDonough*, No. 23-178 (September 25, 2023) (amicus in support of petition for writ of certiorari before U.S. Supreme Court). In 2000, the CAVC recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award.

NOVA also advocates for laws to improve the VA disability claims and appeals process. NOVA participated in the stakeholder meetings that resulted in the development and passage of the Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. 115-55, 131 Stat. 1105 (August 23, 2017) (AMA). As VA has implemented the new system over the last several years, NOVA has provided extensive training to our members on the statute, regulations, and practice under the AMA. We also gather information from our members across the country on their experiences advocating in both the legacy and AMA systems, and many of them have shared their clients' experiences regarding VA letters.

## **Introduction**

VA creates many types of letters to communicate with veterans, survivors, family members, and caregivers. As accredited attorneys and agents, NOVA members most frequently review letters communicating legally significant events that impact due process

rights. The focus of our testimony will be those type of letters; however, our general concerns and suggestions apply to other informational letters VA sends regarding disability claims and appeals as well.

Furthermore, letters that contain legally-required notice, e.g., under 38 U.S.C. § 5103,<sup>1</sup> can be distinguished from decisions and notices of decisions, which also have statutorily-required elements, see 38 U.S.C. 5104.<sup>2</sup> Here, we focus on examples of problematic and confusing notice letters,<sup>3</sup> and not the underlying decisions. A letter informing a veteran of due process rights does not have to be complicated. It must, however, provide the necessary elements so that the claimant knows how to exercise those rights in a timely fashion. As an initial matter, given the importance of the notice letter accompanying a decision, VA should make sure it is clearly labelled as such.

### **VA Needs to Improve the Readability of the Letters Sent to Veterans, Survivors, Family Members, and Caregivers**

Use of plain language to create simple, readable letters is important. The Department of Veterans Affairs, like many other federal agencies, is guided by the Plain Writing Act of 2010. *See* Plain Language, <https://department.va.gov/plain-language/>. We recognize that VA exerts significant effort in messaging on va.gov and other platforms about important

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<sup>1</sup> This provision, “Notice to claimants of required information and evidence,” states in pertinent part: “[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. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.”

<sup>2</sup> This provision, “Decisions and notices of decision,” requires each notice to contain the following information: (1) Identification of the issues adjudicated; (2) A summary of the evidence considered by the Secretary; (3) A summary of the applicable laws and regulations; (4) Identification of findings favorable to the claimant; (5) In the case of a denial, identification of elements not satisfied leading to the denial; (6) An explanation of how to obtain or access evidence used in making the decision; and (7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.

<sup>3</sup> There has been extensive litigation in the U.S. Court of Appeals for Veterans Claims and U.S. Court of Appeals for the Federal Circuit over whether VA, in various situations, has fulfilled its duties under notice statutes and regulations. In this testimony, we do not address potential legal issues related to implementation of notice requirements, but rather focus on whether the letters provided by VA are understandable to veterans, survivors, family members, and caregivers so they can respond appropriately in pursuit of their claims and appeals.

issues such as the PACT Act, suicide prevention, and fraud, to name just a few. These efforts are reflected in VA’s 2023 Plain Writing Act compliance report and we appreciate the important information VA is providing to veterans and their families. Department of Veterans Affairs, *2023 Plain Writing Act Compliance Report*, <https://department.va.gov/wp-content/uploads/2023/11/VA-Plain-Writing-Compliance-Report-2023.pdf>. A review of this document, however, indicates that the primary focus of these “plain language” efforts is public-facing messaging and not individual communications about benefits to the people VA serves.

In its most recent report, VA notes the importance of best practices, to include (1) using common words, short sentences, and short paragraphs; (2) evaluating copy using the Flesch-Kincaid readability scale<sup>4</sup> and adjusting as needed; and (3) using plain language guidelines. Department of Veterans Affairs, *2023 Plain Writing Act Compliance Report* 19, <https://department.va.gov/wp-content/uploads/2023/11/VA-Plain-Writing-Compliance-Report-2023.pdf>. Generally, drafters should be aiming for a reading level of grade 8 to ensure readability by 80% of Americans. However, a review of several passages from recent letters shows that the readability of VA’s individual letters communicating information about disability claims and appeals is too difficult.

**Example 1: Decision Notice Letter.** On page 1 of the March 1, 2024, letter (attached as Exhibit 1), a veteran is informed that their previous denial of service connection is confirmed and continued. The next paragraph, “What You Should Do If You Disagree With Our Decision,” states:

If you do not agree with our decision, you have one year from the date of this letter to select a review option in order to protect your initial filing date for effective date purposes. You must file your request on the required application form for the review option desired. The table below represents the review options and their respective required application form.

According to the Flesch-Kincaid Grade Level tool, this paragraph is written on a grade level of 11.1. Under the Flesch Reading Ease tool, this paragraph scores 52.6, which is consistent with “fairly difficult” to read.

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<sup>4</sup> The Flesch-Kincaid readability tests include the Flesch Reading-Ease and Flesch-Kincaid Grade Level. These formulas were originally developed under a contract with the United States Navy. See Naval Technical Training Command, *Deviation of New Readability Formulas (Automated Readability Index, Fog Count and Flesch Reading Ease Formula for Navy Enlisted Personnel)*, Research Branch Report 8-75 (February 1975). Grade levels are indicated by grade year and month; reading ease scores are based on a scale of 0-100, with lower scores indicating more difficult text.

By contrast, we have rewritten this paragraph to reflect the same information:

If you disagree with our decision, you can file a request for review. You must request the review within one year of the date of this letter. It is important to do it within one year or you could lose your effective date. You must use the required application form for the review option you pick. The options and forms are described in the table below.

This paragraph is rewritten at a grade level of 5.8 and has a Flesch Reading Ease score of 76.8.

**Example 2: Decision Notice Letter.** On page 2 of Exhibit 1, VA describes a series of forms:

The enclosed VA Form 20-0998, *Your Right To Seek Review Of Our Decision*, explains your options in greater detail and provides instructions on how to request further review. You may download a copy of any of the required application forms noted above by visiting [www.va.gov/vaforms/](http://www.va.gov/vaforms/) or you may contact us by telephone at 1-800-827-1000 and we will mail you any form you need.

You can visit [www.va.gov/decision-reviews](http://www.va.gov/decision-reviews) to learn more about how the disagreement process works.

Important: If you have a service-connected condition which you feel has worsened and is no longer accurately reflected by the level of disability assigned, please use VA Form 21-526EZ, *Application for Disability Compensation and Related Compensation Benefits* to request an increased evaluation. However, if you disagree with a decision made within the last year, please refer to the enclosed VA Form 20-0998, *Your Right To Seek Review Of Our Decision*. If you would like us to review a claim that was denied more than one year ago, and you have new and relevant evidence for us to consider, please use VA Form 20-0995, *Decision Review Request: Supplemental Claim*.

If you would like to obtain or access evidence used in making this decision, please contact us by telephone, email, or letter as noted below letting us know what you would like to obtain. Some evidence may be obtained online by visiting [www.va.gov](http://www.va.gov).

Thank you for your service,

**Regional Office Director**

According to the Flesch-Kincaid Grade Level tool, this content is written on a grade level of 12.1. Under the Flesch Reading Ease tool, this content scores 49.1, which is consistent with college level reading.

Here is a rewritten version of this information:

We enclosed VA Form 20-0998, Your Right To Seek Review Of Our Decision. This form describes options and provides instructions on how to ask for review. You can visit [www.va.gov/decision-reviews](http://www.va.gov/decision-reviews) to learn more about how you can disagree with our decision.

**Important:**

- Do you think your service-connected condition is worse? Please use VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, to ask for a higher rating.
- Do you disagree with a decision made within the last year? Please refer to the enclosed VA Form 20-0998, Your Right To Seek Review Of Our Decision.
- Do you disagree with a decision made more than a year ago? Please use VA Form 20-0995, Decision Review Request: Supplemental Claim. You will need to submit new and relevant evidence with this form.

**Need a Form?**

- You can download any required application form by visiting [www.va.gov/vaforms/](http://www.va.gov/vaforms/).
- You can call us at 1-800-827-1000 and we will mail you any form you need.

**Want the evidence we used in making your decision?**

- You can call us, email us, or send us a letter if you want to access the evidence we used to decide your claim. Tell us what information you want to receive. Some evidence is available by visiting [www.va.gov](http://www.va.gov).

Thank you for your service,

**Regional Office Director**

This version scores a 6.3 on the Flesch-Kincaid Grade Level tool and a 68.2 on the Flesch Reading Ease tool.

**Example 3: Notice of Docketing Letter.** This letter, attached as Exhibit 2, was sent from the Board of Veterans' Appeals (Board) to a veteran and informed him that his appeal request had been docketed. The following information, found on page 1, was included under the heading: "What happens next?"

Please keep in mind that by selecting the Direct Review option, the Board can only consider evidence of record at the time of the agency of original jurisdiction decision being appealed.

You submitted additional documents and/or statements on or with your February 21, 2024, VA Form 10182. Please note that because you selected the Direct Review option, any additional evidence you submitted on or with your VA Form 10182 cannot be legally considered by the Board. If you want the Board to consider any additional evidence for the issue(s) listed on your February 21, 2024, VA Form 10182, you must change your Board appeal request by switching AMA dockets (to Evidence Submission or Hearing), as explained below. If your request is approved, you will then have the opportunity to submit any additional evidence you want the Board to consider.

According to the Flesch-Kincaid Grade Level tool, this passage is written on a grade level of 14.9. Under the Flesch Reading Ease tool, this passage scores 36.3. These scores are consistent with college level reading.

By contrast, we have rewritten this passage to reflect the same information:

You selected the Direct Review option ("docket"). In that docket, the Board can only consider evidence already in your file when VA decided your claim(s).

You submitted additional evidence with your February 21, 2024, VA Form 10182. We can only consider that evidence if you change dockets. We can consider evidence in two dockets: Evidence Submission or Hearing. We explain how you can ask us to change your docket below. If we say yes to your request to change dockets, the Board will consider any additional evidence you give us.

This paragraph is rewritten at a grade level of 8.7 and has a Flesch Reading Ease score of 55.2.

To reach all veterans, survivors, family members, and caregivers, VA must improve the readability of its letters. VA should follow the guidance as provided in its 2023

*Compliance Report* and ensure it is using available readability tools to provide clearer information in individual letters to veterans.

VA should also consider whether the Internal Revenue Service’s (IRS) Simple Notice Initiative has features worth replicating. Like VA, the IRS sends millions of letters annually. The IRS has started to review, redesign, and pilot various notices in a process that will continue through 2026. *See* IRS launches Simple Notice Initiative redesign effort, IR-2024-19, Jan. 23, 2024, <https://www.irs.gov/newsroom/irs-launches-simple-notice-initiative-redesign-effort>. The IRS notes it “will be actively engaging with taxpayers and the tax professional community to gather feedback on how these notices should be redesigned.” *Id.* We would likewise encourage VA to solicit input from veterans, survivors, family members, and caregivers, as well as from the accredited advocate community, to ensure letters are clear and understandable.

Simpler, clearer notice not only benefits veterans, it benefits VA. One goal of the IRS initiative is to reduce calls to the agency. To attain this goal, the IRS is working on reducing the length of notice, improving readability, and adding visual enhancements to include “headers, icons, and step-by-step instructions.” *Id.* According to the IRS, for one redesigned notice it piloted, it reduced by 16% the number of calls and increased the number of taxpayers who used an online option by 6%.

All efforts by VA to improve letters should also include a pilot phase to assess whether the improvements are effective.

### **VA Needs To Ensure Letters Are Accurate, Legally Sound, and Do Not Contain Conflicting Information**

Improvements to readability alone are insufficient. A letter can be clearly written at an appropriate level but still be inaccurate and misleading. NOVA members report numerous instances of letters that sow confusion and result in veterans missing deadlines that can adversely impact their claims, appeals, and compensation.

**Example 1: Notice of Recharacterization of Discharge; Reduction or Severance of Benefits; Overpayment.** One instance of unclear information – that directly results in a loss of due process rights – is found in the notice VA provides for recharacterizations of discharge, reductions, severances, and overpayments. In these situations, a veteran has two deadlines to consider: a 30-day deadline to request a predetermination hearing and a general 60-day deadline to respond. The right to a predetermination hearing is found at 38 C.F.R. § 3.105(i) and, if the request is made within 30 days, the veteran’s benefit “shall be continued at the previously established level pending a final determination concerning the proposed action.” If a veteran misses this deadline, they will still be able to dispute the action, but VA can reduce their compensation while it considers the request.



Unfortunately, VA places the information regarding a predetermination hearing on page 4 of its notice, underneath a heading that states, “60 DAY DEADLINE TO RESPOND.” In the words of one NOVA member, “we have way too many clients miss their opportunity to a hearing and basic due process because the due process notice is positively buried.” Given the highly prejudicial nature of this notice, VA should immediately amend it.

**Example 2: Notice of Form Submission.** Another example of confusing and misleading letters is when VA responds to submission of a “wrong” form, e.g., the veteran submitted a *VA Form 526-EZ* instead of a *VA Form 20-0995*. As demonstrated in Exhibits 3 and 4, a veteran (here the veteran was represented) submitted a supplemental claim form and VA responded to instruct the use of a *VA Form 526-EZ*. See Exhibit 3. When the veteran submitted the *VA Form 526-EZ*, VA responded by telling the veteran to submit a supplemental claim form. See Exhibit 4. This practice is unacceptable.

In other instances, VA just sends a generic letter indicating its belief that the veteran was trying to file a claim – without specifying what they think the veteran was trying to file – and further, that all claims now need to be filed on the “correct form,” without specifying which form they mean.

Accredited VSOs, attorneys, and agents can deduce what VA means, e.g., by researching the end-product (EP) codes input into VBMS, but a veteran cannot derive that information from the notice itself. A veteran not only loses time while trying to figure out what VA wants; some veterans are bound to give up and abandon their claim or appeal. In addition to simplifying forms, VA must improve any notice informing a veteran that they must “fix” something with clear information about what needs to be fixed and clear instructions for doing so.

**Example 3: Notice of Erroneous Docketing.** In this letter, attached as Exhibit 5, the Board of Veterans’ Appeals informs the appellant, **four years after he submitted his *VA Form 10182***, that he was not eligible to submit the appeal. The letter was, in fact, erroneous. In addition to the egregious length of time it took for the Board to provide this information to the veteran, it failed to provide notice of due process rights for how to dispute this decision. Through the advocacy of the accredited attorney, the Board reversed its action and docketed the appeal. However, an unrepresented veteran would have been unlikely to understand their options, one of which was to ask for “a good cause extension request” for delay **caused by the Board**. This option would have sent the veteran back to the Regional Office to pursue this relief. The Board issues far too many letters that are actual decisions. The veteran should have received due process notice in this instance so they could pursue options for relief at the Board.

The Board should also provide more than just the general VA call center line as a place for appellants to get information. As the appellate arm of the agency, and with the recent

institution of the Office of the Clerk of the Board, the Board should provide specific emails and a phone line to the Clerk's office so specific information can be provided.

### **VA Letters Need To Be Better Organized**

The letter accompanying the veteran's decision in Exhibit 6 contains 11 pages of text. Some of the information is repetitious, e.g., discussion of life insurance on page 2 that is repeated at page 9. It is important that veterans be aware of other earned benefits that might be triggered by receipt of disability compensation. This information, however, could stay in the list of other benefits at page 9. VA should examine these letters to determine what is the legally required, necessary information to be upfront and then provide a table of contents to other information contained in the letter.

We appreciate VA's dilemma; not all veterans have access to, or agility with, the platforms through which some of this ancillary information is available. But providing a well-organized written document can help veterans and other claimants access the information they need to insure they receive all earned benefits without potentially obscuring the most important information.

### **Conclusion**

NOVA remains committed to working with Congress, VA, and fellow stakeholders to improve the letters VA provides as part of the disability claims and appeals process. Thank you again for allowing us to present our views on this important topic. If you have questions or would like to request additional information, please feel contact:

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