



U.S. Department of Veterans Affairs

Periodic Progress Report on Appeals

P.L. 115-55, § 3

April 2023 Update

Table of Contents

..... 0

Executive Summary 1

I. Requirement for Periodic Progress Reports 2

II. GAO Recommendations on Appeals 2

III. Comprehensive Implementation Plan updates since the August 2022 report..... 4

Section 3(a)(1) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States for the processing of appeals of decisions on Legacy claims that the Secretary considers pending..... 4

Section 3(a)(2) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States for implementing the new appeals system..... 11

Section 3(a)(3) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States regarding the *timely processing of (A) supplemental claims, (B) requests for higher-level review, and (C) appeals on any docket maintained under section 7107 of such title.* 15

Section 3(a)(4) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States regarding monitoring the implementation of the new appeals system, including metrics and goals *to (A) track the progress the implementation; (B) evaluate the efficiency and effectiveness of the implementation; and (C) to identify potential issues relating to the implementation.* 19

IV. Plan element updates since the August 2022 report..... 22

Sections 3(b)(1) & (2) of the AMA requires a delineation of the total resource requirements of the VBA and the Board, disaggregated by resources required to implement and administer the new appeals system and resources required to address the appeals of decisions on Legacy claims. These provisions also require delineation of the personnel requirements of the VBA and the Board, including staffing levels during the (A) period in which the Administration and the Board are concurrently processing appeals of decisions on Legacy claims and appeals of decisions on non-Legacy claims under the new appeals system; and (B) period during which VBA and the Board are no longer processing any Legacy appeals. 22

Section 3(b)(4) of the AMA requires an estimate of the amount of time the VBA and the Board will require to hire additional employees as described in paragraph (3)(A) once funding has been made available for such purpose, including a comparison of such estimate and the historical average time required by the Administration and the Board to hire additional employees. 23

Section 3(b)(5) of the AMA requires a description of the amount of training and experience that will be required of individuals conducting higher-level reviews under section 5104B of title 38, United States Code, as added by section 2(g). 24

Section 3(b)(6) of the AMA requires an estimate of the percentage of higher-level adjudicators who will be employees of the Department of Veterans Affairs who were Decision Review Officers on the day before the new appeals system takes effect or had experience, as of such date, comparable to that of one who was a Decision Review Officer. 24

Section 3(b)(7) of the AMA requires a description of the functions that will be performed after the date on which the new appeals system takes effect by Decision Review Officers who were Decision Review Officers on the day before the date the new appeals system takes effect. 24

Section 3(b)(8) of the AMA requires identification of and a timeline for (A) any training that may be required as a result of hiring new employees to carry out the new appeals system or to process appeals of decisions on Legacy claims; and (B) any retraining of existing employees that may be required to carry out such system or to process such claims..... 24

Section 3(b)(9) of the AMA requires an identification of the costs to VA of the training identified under paragraph (8) and any additional training staff and any additional training facilities that will be required to provide such training. 26

Section 3(b)(10) of the AMA requires a description of the modifications to the information technology systems of the VBA and the Board that they require to carry out the new appeals system, including cost estimates and a timeline for making the modifications..... 26

Section 3(b)(11) of the AMA requires an estimate of the office space VBA and the Board will require during each of the periods described in paragraph (2), including (A) an estimate of the amount of time VBA and the Board will require to acquire any additional office space to carry out processing of appeals of decisions on Legacy claims and processing of appeals under the new appeals system; (B) a comparison of the estimate under subparagraph (A) and the historical average time required by VBA and the Board to acquire new office space; and (C) a plan for using telework to accommodate staff exceeding available office space, including how VBA and the Board will provide training and oversight with respect to such teleworking. 28

Section 3(b)(12) of the AMA requires projections for the productivity of individual employees at VBA and the Board in carrying out tasks relating to the processing of appeals of decisions on Legacy claims and appeals under the new appeals system, taking into account the experience level of new employees and the enhanced notice requirements under section 5104(b) of title 38, United States Code, as amended by section 2(e). 28

Section 3(b)(13) of the AMA requires an outline of the outreach the Secretary expects to conduct to inform Veterans, families of Veterans, survivors of Veterans, Veterans Service Organizations, military service organizations, congressional caseworkers, advocates for Veterans, and such other stakeholders the Secretary considers appropriate about the new appeals system, including (A) a description of the resources required to conduct such outreach; and (B) timelines for conducting such outreach..... 30

Section 3(b)(14) of the AMA requires timelines for updating any policy guidance, Internet Websites, and official forms that may be necessary to carry out the new appeals system, including (A)

identification of which offices and entities will be involved in efforts relating to such updating; and (B) historical information about how long similar update efforts have taken.	31
Section 3(b)(15) of the AMA requires a timeline, including interim milestones, for promulgating such regulations as may be necessary to carry out the new appeals system and a comparison with historical averages for time required to promulgate regulations of similar complexity and scope...	31
Section 3(b)(16) of the AMA requires an outline of the circumstances under which claimants with pending appeals of decisions on Legacy claims would be authorized to have their appeals reviewed under the new appeals system.	32
Section 3(b)(17) of the AMA requires a delineation of the key goals and milestones for reducing the number of pending appeals that are not processed under the new appeals system, including the expected number of appeals, remands, and hearing requests at the Administration and the Board each year, beginning with the one-year period beginning on the date of the enactment of this Act, until there are no longer any appeals pending before the Administration or the Board for a decision on a Legacy claim.	32
Section 3(b)(18) of the AMA requires a <i>description of each risk factor associated with each element of the plan and a contingency plan to minimize each such risk</i>	35
Section 4 of the AMA authorizes the Secretary of Veterans Affairs to carry out such programs as the Secretary considers appropriate to test any assumptions relied upon in developing the comprehensive plan required by section 3(a) and to test the feasibility and advisability of any facet of the new appeals system. Whenever the Secretary determines, based on the conduct of a program under paragraph (1), that legislative changes to the new appeals system are necessary, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives notice of such determination.	43
Appendix A – Update on Board Outreach	43

Executive Summary

This report is the ninth post-implementation report that satisfies section 3 of the Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Modernization Act or AMA), Comprehensive Plan for Processing of Legacy Appeals and Implementing the New Appeals System, paragraph (d), Periodic Progress Reports. The Secretary of Veterans Affairs (VA) is required to submit post-implementation reports every 180 days.

The Board is committed to the Department's core values: Integrity, Commitment, Advocacy, Respect and Excellence (ICARE). These values are integral to fulfilling the Board's statutory mission to fully consider and resolve matters raised by Veterans, their dependents, or their survivors.

This report focuses on updates to elements of the Comprehensive Plan since the August 2022 Update Report.

I. Requirement for Periodic Progress Reports

Section 3(d) of the Veterans Appeals Improvement and Modernization Act of 2017 (AMA), P.L. 115–55, directs the Secretary of Veterans Affairs to submit a report every 180 days for the 7-year period following implementation of the AMA on February 14, 2019, to the appropriate committees of Congress and the Comptroller General regarding the progress of the Secretary in carrying out the Comprehensive Plan for Processing of Legacy Appeals and Implementing New Appeals System, and what steps, if any, the Secretary has taken to address recommendations formulated by the Comptroller General pursuant to subsection (c)(2)(C).

II. GAO Recommendations on Appeals

This report provides an update on findings contained in the General Accounting Office (GAO) reports below. For more information on GAO findings, including the status of the recommendations they contain, please see the hyperlinked websites below.

A. Summary of GAO Reports

Report 1: VA Disability Benefits: Improved Planning Practices Would Better Ensure Successful Appeals Reform, [GAO-18-352](#), published March 22, 2018.

GAO's Findings: "VA's plan for implementing a new disability appeals process while attending to appeals in the current process addresses most, but not all, elements required by the AMA. VA's appeals plan reflects certain sound planning practices, but it could benefit from including important details in several key planning areas."

GAO made four recommendations, two of which remain open:

- Fully address all legally required elements in VA's appeals plan (closed);
- Articulate how VA will monitor and assess the new appeals process compared to the Legacy process (open);
- Augment the master schedule for implementation of VA's appeals plan (closed); and
- Fully address risk associated with appeals reform (open).

The Board of Veterans' Appeals (the Board) released timeliness goals for its AMA Evidence Submission and Hearing dockets in fiscal year (FY) 2021. This satisfied an open GAO High Risk List recommendation (GAO-18-352). The Board has begun monitoring timeliness data and reporting monthly and will capture results through the FY 2022 VA Annual Performance Plan and Review. The Board analyzes Legacy appeal workload, AMA appeal workloads, pending inventory and case distribution trends, hearing trends and new legal authorities to help set strategic goals and priorities, necessary operational changes and resource management strategies. Additionally, the Veterans Benefits Administration (VBA) and the Board embarked on a new initiative to

use an analytical framework to understand and assess any impacts of the AMA process (supplemental claims, higher-level reviews and AMA appeals) on the Legacy appeals process.

With respect to the two remaining open GAO recommendations on (1) monitoring and assessing comparisons between AMA and Legacy systems and (2) addressing risk with fully transitioning to the AMA system, this update will highlight two key updates:

- Recently published trends in Board grants, remands and denials of appealed issues under both the AMA and Legacy systems show consistently higher grant rates and lower remand rates under the AMA system, with denial rates being the same.
- The continued need to further revise the comprehensive Legacy Resolution Plan in Section III of this report highlights the enhanced risk of not being able to fully resolve pending Legacy appeals and fully transition to the AMA system in a manner that meets the original expectations of all interested stakeholders.

Report 2: VA Disability Benefits: Additional Planning Would Enhance Efforts to Improve the Timeliness of Appeals Decisions, [GAO-17-234](#), published March 23, 2017.

GAO's Findings: "VA is taking steps to improve the timeliness of its benefit compensation appeals process, in which Veterans who are dissatisfied with claims decisions by the VBA can appeal first to VBA, and then to the Board of Veterans' Appeals (Board). VA has taken actions related to increasing staff, reforming the process and updating IT, which are consistent with relevant sound planning practices."

GAO made five recommendations, four of which are closed.

- Apply sensitivity analyses when projecting staff needs (closed);
- Develop a more timely and detailed workforce plan (closed);
- Develop a robust plan for monitoring process reform (closed);
- Develop a strategy for assessing process reform (open); and
- Create a schedule for information technology (IT) improvements that takes into account plans for potential process reform (closed).

VA submitted an annual action plan update to GAO in August 2022 for GAO's biennial evaluation of progress towards completing recommendations. A leadership discussion between GAO, Director of Education, Workforce, and Income Security; Senior Advisor for Policy Performing the Delegable Duties of the Under Secretary for Benefits Joshua Jacobs; and the Chairman of the Board of Veterans' Appeals, the Honorable Jaime Areizaga-Soto was held December 20, 2022. VA continues to build a collaborative approach to addressing GAO concerns.

With respect to the one remaining open recommendation for assessing process reform, one key trend discussed further in Section III is worthy of further analysis to determine whether it indicates increased Veteran trust and choice to "appeal first to VBA" before seeking Board appeals under the newer AMA appeals system:

- Increasing numbers of Veterans are choosing VBA appeals under AMA while the number of appeals to the Board has remained fairly consistent at an average of 60-65,000 AMA Board appeals each year.

B. VA's Progress to Address Both GAO Reports

During the past 180 days, VA has addressed AMA implementation concerns raised in the GAO reports as follows:

- Extensive reporting requirements in sections 3 and 5 of the AMA ensured transparency in monitoring and assessing process reform.
- VA expanded quality review and training programs including AMA procedures. Further details on VA's plans for recruiting, hiring and training are addressed in Part III of this report.
- The Board developed detailed plans that reflect an Agile project management method for developing, implementing and integrating functionality envisioned under Caseflow.
- On December 2022, after 2 full years of monitoring AMA quality assurance, the Board set the annual FY 2023 quality assurance goal of 92%, consistent with the Legacy appeals quality assurance goal.

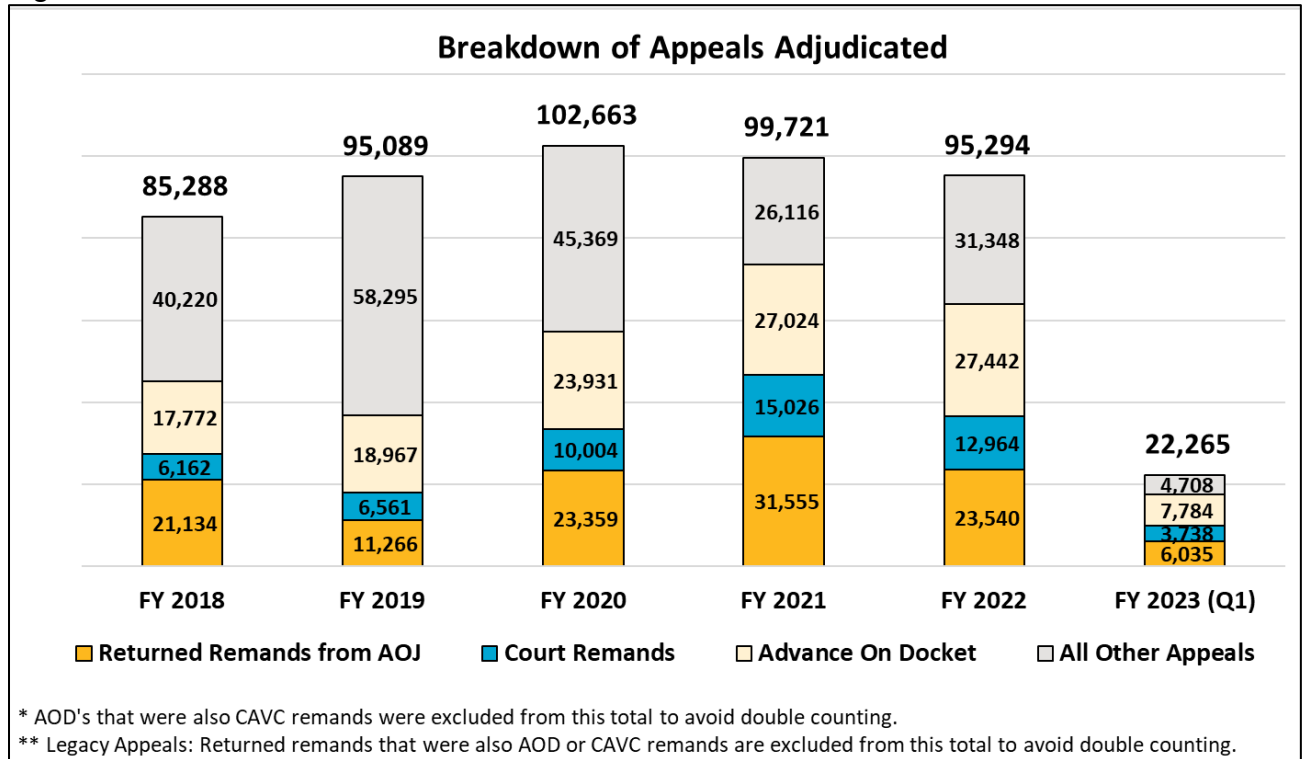
III. Comprehensive Implementation Plan updates since the August 2022 report

Section 3(a)(1) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States for the processing of appeals of decisions on Legacy claims that the Secretary considers pending.

Both VA and the Board remain committed to resolving all Legacy appeals as quickly as possible, especially because Veterans in the Legacy appeals system have generally been waiting the longest for final resolution of their cases. Progress has been made during the previous 180 days, but there is still a higher-than-expected number of original Legacy appeals pending an initial decision by the Board and the number of pending Legacy appeals across VA remains higher than projected last year. This necessitates new projections in the Legacy Inventory Resolution Plan. Adjudication of original Legacy appeals has taken longer than anticipated because of the constraints placed on docket order by including Advance on Docket (AOD) cases (age, financial hardship, serious health conditions), remands from the Court of Appeals for Veterans Claims (Court), and post-remanded appeals with earlier Form 9 dates. As a result, approximately 79% of Legacy appeals adjudicated during the first quarter of FY 2023 were either AOD, Court remands, or post-remand appeals recertified to the Board from VBA, with the remaining 21% being original appeals.

As shown in Figure 1 below, post-remand decisions, Court remands, and AOD cases currently dominate the Board’s workload.

Figure 1: Remands and AOD cases Dominate the Board’s Workload



The Board continues to prioritize resources to address pending Legacy appeal inventories and issued 95,294 decisions during FY 2022, of which approximately 75% (71,765) were Legacy appeals, and helped the Board achieve within 99.9% of the revised annual goal of 95,373 decisions (Legacy and AMA). The Board has achieved more than 90,000 decisions for 4 consecutive years.

As shown in Table 1 on page 6, pending Legacy appeals have been reduced from 99,859 at the end of Quarter 3 (Q3) FY 2022 by approximately 22% to 77,974 at the end of February 2023. VA anticipates the downward trend will continue.

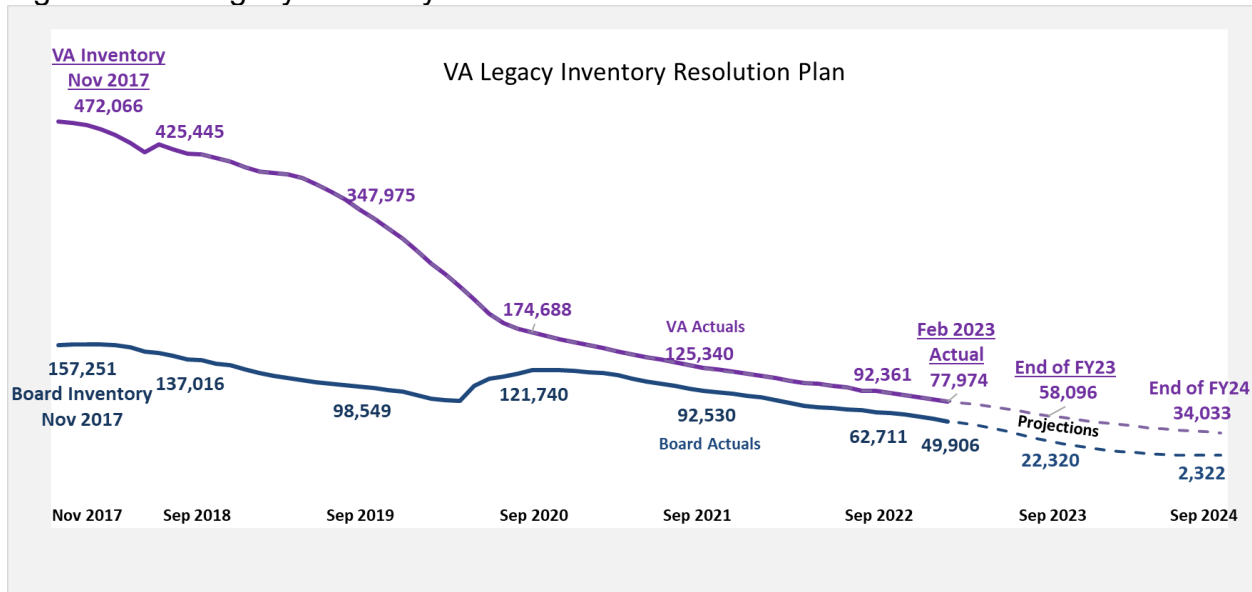
Table 1. Pending Legacy Appeals by VA Office - FY 2021 through February FY 2023

	FY 2021				FY 2022				FY 2023	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Feb
VBA	38,611	32,262	32,043	31,425	29,757	30,197	29,770	27,609	25,098	26,445
VHA	1,888	1,768	1,675	1,444	1,417	1,552	1,668	2,267	2,319	2,145
NCA	8	3	3	10	6	8	0	0	0	0
Board	120,421	114,089	102,825	92,461	85,721	74,974	68,421	62,485	56,646	49,384
Total:	160,928	148,122	136,546	125,340	116,901	106,731	99,859	92,361	84,063	77,974

*Note: There were 347,975 Legacy appeals pending Department-wide at the start of FY 2020, dropping down to 174,688 pending at the start of FY 2021.

Figure 2 below outlines the projected inventory of pending Legacy appeals Department-wide and at the Board. The Board finished 2022 with 209,535 appeals pending adjudication, 62,711 of which were Legacy appeals. The 95,294 decisions in 2022 were slightly lower than earlier estimates for two key reasons: (1) the Board made a conscious decision to have Veterans Law Judges (VLJs) conduct more hearings. This decision resulted in a historical number of 30,089 hearings held (27% over FY 2021) because pending hearings dramatically increased as a result of COVID-related shutdowns; and (2) budgetary constraints during the first six months of FY 2022 delayed the Board’s hiring efforts.

Figure 2. VA Legacy Inventory Resolution Plan



Legacy appeals have been reduced from a Department-wide high of 472,066 in November 2017 to 92,361 pending at the end of 2022. Despite the significant 83% reduction, VA’s pending inventory is higher than originally projected. The initial drawdown plan was developed prior to COVID and was shared on October 29, 2019.

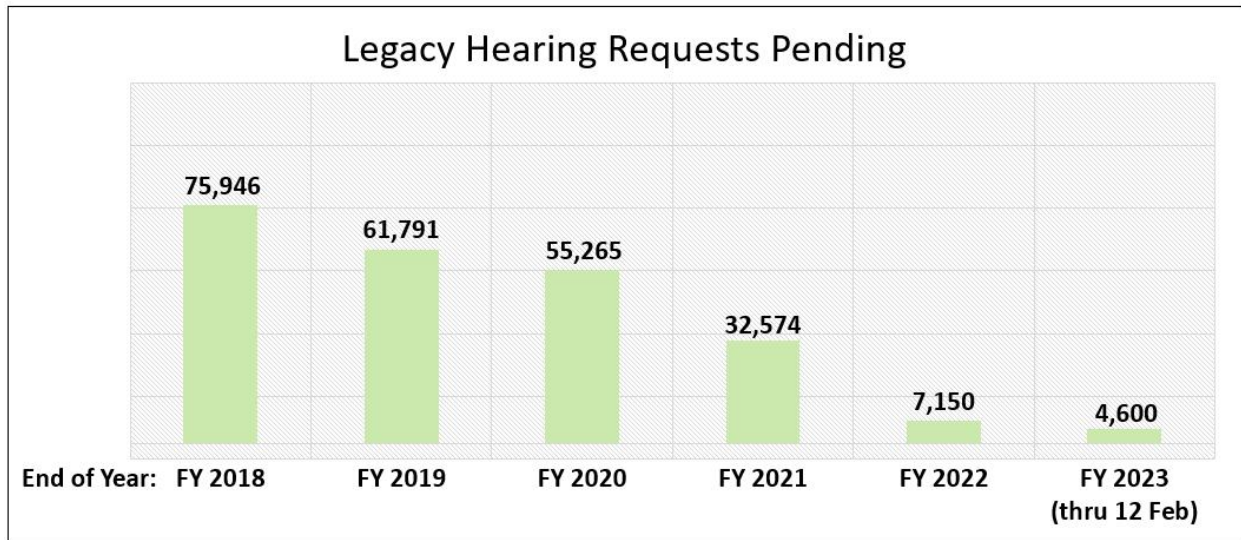
The resolution plan has been updated several times and each iteration incorporates historical actuals and updated assumptions to include the changing environment, workload projections, Board resources, hiring plans and various other factors that influence outcomes. For example, approximately 20-25% of pending Legacy appeals have private attorney/agent representation in stark contrast with the 165,000 pending AMA appeals where only 0.5% have private attorney/agent representation. Based on the relative age of appeals pending in both the Legacy and AMA, the Board estimates approximately 75% of its workload in 2023 will be adjudication of Legacy appeals. The Board is anticipating that the number of AMA decisions will be roughly equal to Legacy decisions by FY 2024.

As stated, the Board held a record 30,089 hearings in FY 2022 and drove a steady increase in the number of hearings held per month, from 869 in October 2020 to an average of 2,500 hearings held per month in FY 2022. These initiatives include expanded virtual tele-hearing capacity and enhanced Caseflow hearing capabilities such as more flexible daily dockets and the ability to quickly convert any previously scheduled hearing type to a virtual tele-hearing; enabling hearing email reminders; restructuring the Board's hearing operations; and supporting increased coordination with (Veteran Service Organizations) VSOs and private representatives. These improvements allowed the Board to provide hearings to Veterans in the comfort of their own home or other chosen location despite the public health restrictions imposed by the COVID-19 pandemic.

Additional initiatives included communications with Veterans through multiple streams regarding their hearing options, specifically virtual tele-hearings and how to opt into them.

The Board has made significant progress in reducing the number of pending Legacy Veteran requested hearings. The number of pending Legacy Veteran requested hearings decreased by 93% from 75,946 at the end of FY 2018 to 4,600 on February 12, 2023 as shown in Figure 3 on page 8.

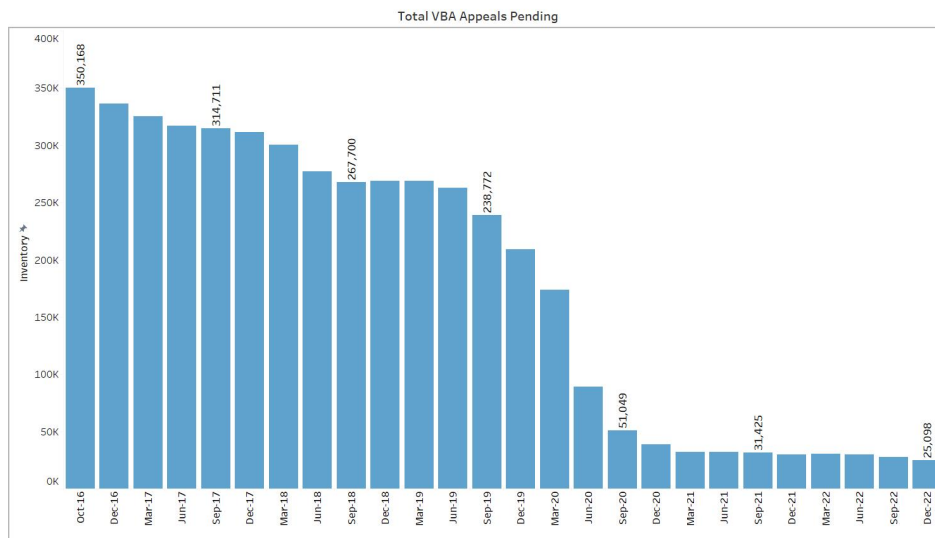
Figure 3: Progress in Reducing Pending Legacy Hearings



VBA continues to utilize several strategies to resolve the remaining inventory of Legacy compensation appeals. These strategies continue to include workload redistribution, increased oversight and accountability, leveraging technology for increased efficiencies and the opportunity for claimants to opt in from the Legacy system to the modernized system. Between October 2016 and the end of December 2022, total VBA Legacy appeals inventory has decreased by approximately 92.8%, as depicted in Figure 4 on page 9.

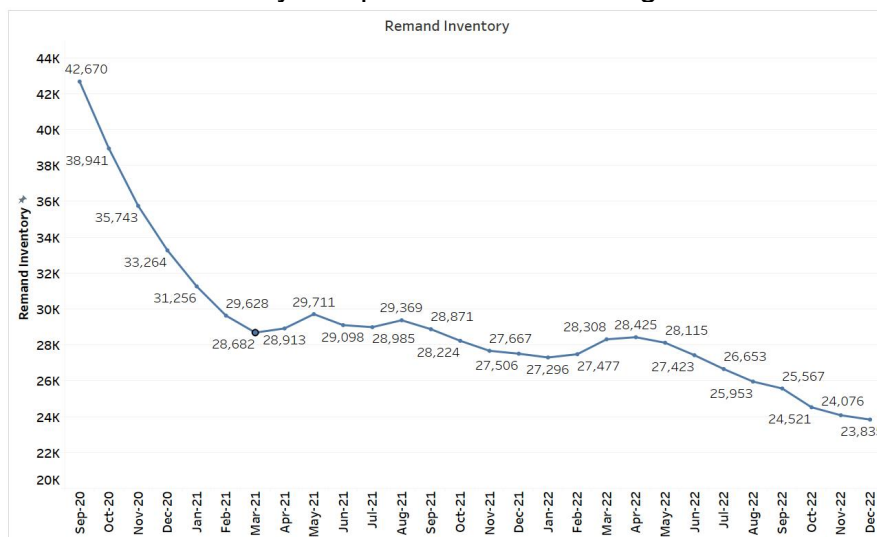
In May 2022, VBA's Office of Administrative Review (OAR) reviewed 3,806 pending VA Form 9s identified in response to a U.S. Court of Appeals for Veterans Claims order in *Freund v. McDonough*, 35 Vet. App. 466 (2022), regarding legacy appeals that may have been prematurely or erroneously closed. Any such appeals that cannot be resolved by VBA will be certified and transferred to the Board, resulting in a corresponding increase in Legacy appeals inventory.

Figure 4. VBA Legacy Appeals Pending – October 2016 through December 2022



As of December 31, 2022, VBA reduced remand inventory by approximately 44% since the start of FY 2021 (Figure 5 below). The ability to complete Legacy appeals was significantly slowed between April 2020 and June 2022 due to the COVID-19 pandemic. The slowdown was the result of the reduced ability to schedule and complete examinations and obtain Federal records needed to adjudicate Legacy appeal remands, which may result in extending the Legacy appeals reduction through Q2 FY 2025.

Figure 5. VBA Remand Inventory - September 2020 through December 2022



However, it is important to note that many of these returns were certified to the Board and are now pending Legacy appeals with the Board. Thus, they are still part of the overall Department-wide inventory of Legacy appeals.

VBA will continue in FY 2023 to assess resources depending on workload. VBA balances resources to manage and administer decisions in both processes—(i) AMA (higher-level reviews (HLR) and duty-to-assist error corrections or Difference of Opinion dispositions identified under the HLR and the Board lanes) and (ii) Legacy appeals.

VBA eliminated the majority of its Legacy inventory in the notice of disagreement (NOD) and substantive appeal (Form 9) stages. Due to appeals processing interruptions caused by the COVID-19 pandemic (for example, inability to conduct in-person compensation examinations and request Federal records from external organizations), VBA retained a small inventory in the NOD and Form 9 stages, which VBA continues to complete.

VBA will continue in FY 2023 to achieve a working Legacy remand inventory. VBA defines this as an inventory of Legacy remands that are currently “in process.” Annual VBA Legacy remand output should closely equal the number of remands received annually from the Board.

VBA’s other benefit offices provide the following status reports on Legacy appeals processing as of December 31, 2022:

- Pension program had 181 Legacy appeals pending with VBA. There were 2 in the NOD stage, 6 in the Form 9 stage and 173 in the remand stage.
- Fiduciary program had one Legacy appeal pending with VBA in the NOD stage.
- Insurance Service had seven Legacy appeals pending within VBA; one in the NOD stage, one in the Form 9 stage and five in the remand stage.
- Education Service had 14 Legacy appeals pending within VBA; 4 in the Form 9 stage and 10 in the remand stage.
- Veteran Readiness and Employment Service (VR&E) had 53 Legacy appeals pending within VBA, with one in the Form 9 stage and 49 in the remand stage.
- Loan Guaranty Service (LGY) had seven Legacy appeals pending within VBA, all in the remand stage.

The Veterans Health Administration (VHA) continues to collaborate with the Board and fellow Administrations to address Legacy appeals inventory. VHA business lines realigned resources towards eliminating Legacy appeals inventory while continuing to process claims in a timely manner. All Legacy appeals are being tracked through the Veteran Appeals and Control Locator System by stage and business line. VHA continued progress on drawing down Legacy appeals inventory, reducing it to 2,319 cases as of December 31, 2022.

VHA’s progress has been impacted by the ruling in *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), which held that Program of Comprehensive Assistance for Family Caregivers (PCAFC) decisions rendered by VHA’s Caregiver Support Program (CSP) are appealable to the Board. Consequently, VA has worked to notify all individuals who had received a previous PCAFC decision dating back to May 2011 (over 400,000 individuals) of their right to appeal to the Board. Many of these decisions were issued

prior to February 19, 2019, and would therefore be governed by the Legacy appeal process if a NOD appealing the decision is received. Prior to the *Beaudette* ruling, individuals who disagreed with a PCAFC decision could only utilize the VHA Clinical Review Process. Through close collaboration with VHA, VBA and Board partners, CSP worked diligently to garner the resources to develop and implement new workflows, processes and procedures required to support the right of Veterans and caregivers to pursue an appeal in the Legacy review system. Since these are new processes for CSP, timelines for completion of NODs are not yet known. CSP will monitor timeliness as well as track the number of new NODs being received and develop strategies as needed to balance workload and resource availability. VHA remains committed to reducing the inventory of Legacy appeals.

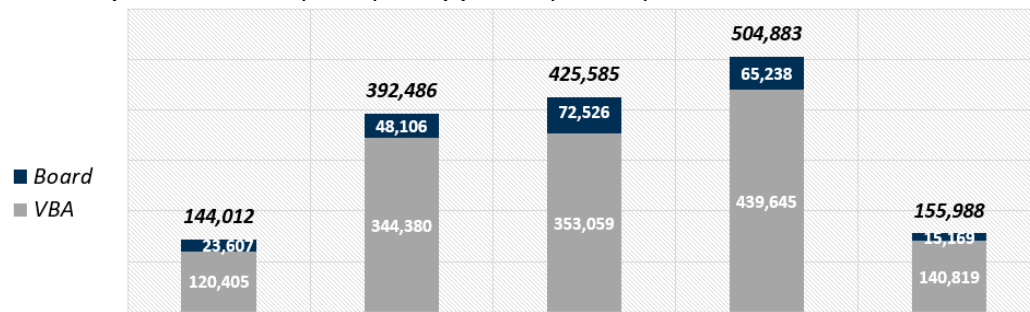
The National Cemetery Administration (NCA) completed all Legacy appeals.

Section 3(a)(2) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States for implementing the new appeals system.

VA successfully implemented the AMA on February 19, 2019.

The vast majority of Veterans continue to choose VBA lanes for another review after their initial VBA decision. Figure 6 on page 12 shows that since AMA implementation FY 2019 through the end of FY 2022, the Board has received a total of approximately 209,500 (14%) appeals, compared to a total of approximately 1,257,500 (86%) AMA reviews filed by Veterans choosing either the HLR or Supplemental Claim options at VBA during the same period. Although the number of VBA's AMA appeals in HLR and supplemental claims has increased during the past 4 years, the average number of docketed AMA appeals at the Board has remained fairly constant during this same period. Initial projections after passage of the PACT Act (P.L. 117-168) indicate the Board could receive as many as 78,000 additional AMA appeals in FY 2023 and nearly 86,000 in FY 2024.

Figure 6: AMA Receipts – Claims (VBA) & Appeals (Board)



Appeal Receipts		FY 2019	FY 2020	FY 2021	FY 2022	FY 2023 (1 st Q)
VBA	HLR	21,395 (15%)	82,598 (21%)	102,757 (24%)	124,612 (25%)	40,744 (26%)
	Supplemental	99,010 (70%)	261,782 (67%)	251,422 (59%)	315,033 (62%)	100,045 (64%)
Board	Direct	7,802 (6%)	17,753 (5%)	27,856 (7%)	27,988 (6%)	6,556 (4%)
	Evidence	2,725 (2%)	8,593 (2%)	14,981 (4%)	12,706 (3%)	2,500 (2%)
	Hearing	10,482 (7%)	22,495 (6%)	30,087 (7%)	26,010 (5%)	6,113 (4%)

*Receipts based on date docketed and excludes appeals later cancelled or in a pre-docket status.

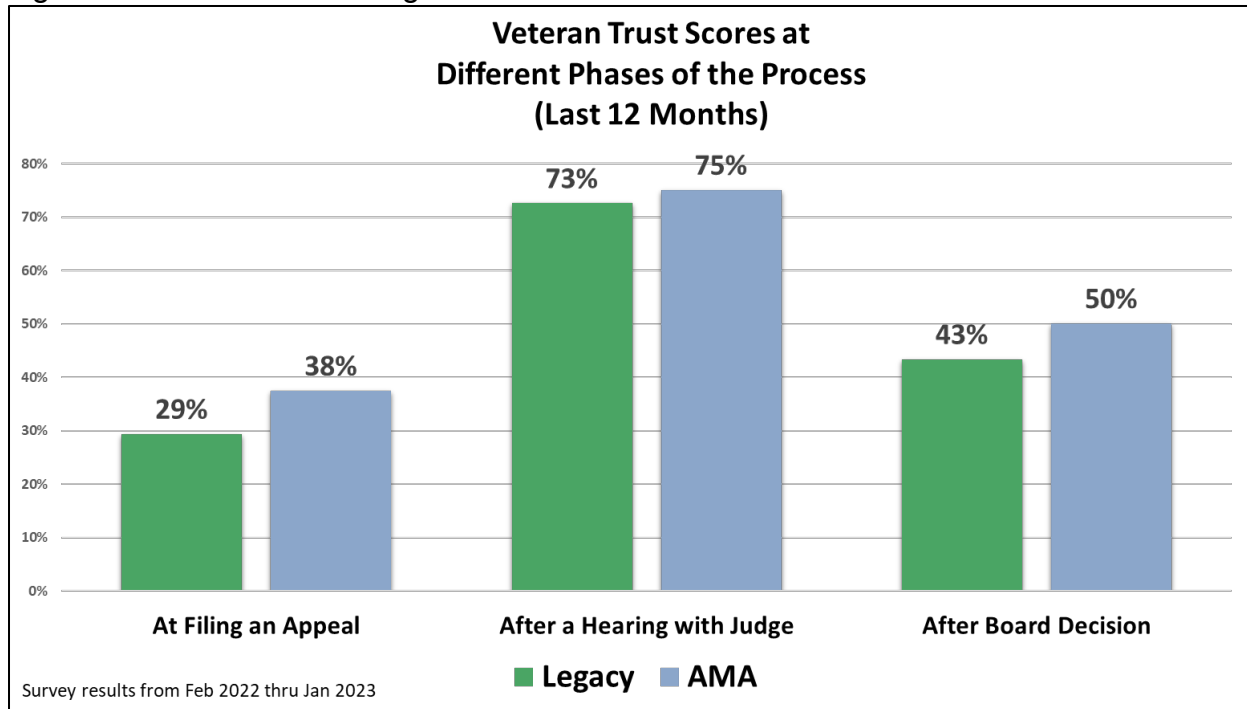
As the Board continues resolution of Department-wide pending Legacy appeals, a gradual increase in resources available to adjudicate AMA appeals is expected. While only about 26,000 AMA decisions are anticipated in 2023, it is estimated another 64,000 AMA decisions will be issued in 2024. The Board anticipates 2024 to be the first year in which the number of AMA decisions will be roughly equal to the number of Legacy decisions. As the Board is able to adjudicate a higher proportion and number of AMA appeals, this will likely result in completion of those AMA appeals that have been pending the longest and for a period of time will likely increase the average days to complete appeals to levels that exceed the stated timeliness goals.

In addition, the Board collaborates with the Veterans Experience Office (VEO) to administer Veterans Signals (VSignals), a customer experience survey to Veterans who have an active appeal at the Board. These surveys provide valuable insight into Veteran experiences at various stages of the appeals process in both the Legacy and AMA systems. The Board uses the survey data to measure understanding and improve the hearing experience, as well as revise its letters and decisions to provide better information and clarity to Veterans. Figure 7 on page 13 shows that Veteran trust in the Board continues to increase throughout the lifecycle of their appeal at the Board. In late 2020, the Board partnered with VEO to include more Board-specific questions in the survey to improve the accuracy of data, enhance service recovery and improve communications.

The survey data demonstrates that the Veteran experience during the appeal process is generally positive, with overall trust scores rising approximately 20 percentage points from the time they first file with the Board until after they receive the Board’s decision. As shown below, Veteran trust in VA’s commitment to them is fairly low when they file their appeals. That’s unsurprising considering they are appealing a “no” decision from VA with respect to their claim for benefits and services. However, that score goes up dramatically after a hearing with a Board Veterans Law Judge, which is the first

opportunity for many Veterans to hear a first-hand explanation from the judge about why the initial claim was denied and what evidence is needed to support the benefits or services sought.

Figure 7: Trust Scores Rising



Since AMA implementation, VBA continues to assess the claims system and make process improvements to ensure the effectiveness and efficiency of the program.

VBA continues to administer VSignals surveys to measure satisfaction and understanding of the AMA decision review processes that occur within VBA, the HLR and the supplemental claim. VA deploys the initial survey to the Veteran upon receipt of a decision review request and sends either an HLR or a supplemental claim survey at the completion of the selected decision review process.

VHA worked closely with VA's Office of General Counsel (OGC) and the Board to implement the AMA. VHA program offices created process models and developed the guidance necessary to implement the three review options available to claimants under the modernized system. During FY 2020, VHA stood up a Claims and Appeals Modernization Office (CAMO) inside VHA Central Office and an executive-level Appeals Governance Council (AGC), comprised of VHA leaders whose areas are affected by appeals modernization.

VHA published its Appeals Modernization Regulation AQ44, which sunsets VHA Legacy reconsideration processes, in July 2022 (See 87 Federal Register 43,746, Jul. 22, 2022).

VHA adapted VBA and Board explanatory and training materials to address the unique needs of each VHA workstream. VHA is working to update VHA Directive 1032, Health Benefits Appeals Processing, and published VHA Notice 2021-01, The Appeals Modernization Act in the Veterans Health Administration, on January 4, 2021, to provide interim guidance while Directive 1032 is updated. VHA published a revised notice, VHA Notice 2022-05, on April 27, 2022. VHA also published Directive 1041, Appeal of VHA Clinical Decisions, on September 28, 2020.

VHA and the Board have partnered with VBA and the Office of Information and Technology (OIT) to improve the preparation and transfer of electronic claims files for review on appeal. VHA is leveraging VA's Centralized Mail Portal to route documents. The Board, OIT and VHA have coordinated the creation of a Caseflow "Pre-Docket Queue" to manage VHA appeals and the required file production. The Board's Intake team places VHA appeals in the Caseflow pre-docket queue, which prompts VHA to transfer to the Board the records relevant to that appeal. Work is continuing in this effort to further ensure timely communication and document transfer, including future enhancements to both the Centralized Mail Portal and Caseflow. VHA has taken initial steps toward implementation of centralized VHA appeals management, designed to improve the quality and timeliness of VHA decision reviews. VHA is also working with the Board and OIT on enhancements to Caseflow to allow VHA to actively manage its HLR and supplemental claim workload.

In response to the holding in *Beaudette*, PCAFC decisions include notice of the right to seek further review, including Higher-Level Review, Supplemental Claim and Board appeal. VHA worked closely with the Board and OIT to establish the necessary functionality and processes to transfer PCAFC evidence files to the Board, enabling the Board to process and adjudicate appeals of PCAFC decisions. CSP has developed new workflows to support AMA review options and has provided training to field-based CSP staff, VHA patient advocates, and others on expanded PCAFC review and appeal options post-*Beaudette*.

NCA dedicated personnel to triage and process supplemental claims and HLRs. NCA manages the workload with a SharePoint list for three business lines' software programs, Time of Need (Burial Operations Support System), Memorial Products (Automated Monument Application System) and Pre-Need (Eligibility Office Automation System). The three systems will be integrated into the Memorial Benefits Management System by FY 2026. NCA also uses Caseflow with the exception of some Pre-World War I cases.

This report does not consider any potential future impact of the PACT Act.

Section 3(a)(3) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States regarding the *timely processing of (A) supplemental claims, (B) requests for higher-level review, and (C) appeals on any docket maintained under section 7107 of such title.*

The Board is concurrently managing appeals in several dockets:

- Legacy appeals docket;
- AMA appeals on the Direct Review docket;
- AMA appeals on the Evidence Submission docket; and
- AMA appeals on the Hearing docket.

The separate “dockets” for AMA are to ensure appropriate tracking and processing regarding the different evidentiary procedures for each type of AMA appeal and also to track timeliness goals set for each of those types. However, with the exception of AMA appeals that require certain expedited treatment, all AMA appeals are currently assigned to judges in docket order regardless of the particular evidentiary record before the Board under 38 U.S.C. §7113. Appeals that have been granted advanced on the docket (AOD) status or remanded to the Board by the United States Court of Appeals for Veterans Claims (CAVC) are prioritized for distribution, as required by statute. After AOD cases and CAVC remands, appeals are distributed based on the order in which the VA Form 9 (in Legacy appeals) or VA Form 10182 (in AMA appeal) was received. See 38 U.S.C. § 7107(a)(4); 38 C.F.R. §§ 20.800, 20.902 (As a general matter, each case before the Board will be decided in regular order according to its respective place on the docket to which it is assigned by the Board).

The AMA affords Veterans greater choice in their appeal options by offering either a Higher-Level Review or Supplemental Claim option at VBA, or by direct appeal to the Board. Since AMA implementation through the end of FY 2022, approximately 30% of Veterans have requested review of their initial claims decisions, of which, 86% have chosen to file a supplemental claim or request for higher-level review at VBA for a quicker resolution, and 14% have filed an appeal to the Board. It was also intended that passage of the AMA would reduce the Board’s remand rate. In FY 2021, 43.1% of the Board’s Legacy appeals issues were remanded compared to 32.3% of AMA appeals issues. In FY 2022, 46.7% of Legacy appeals issues were remanded versus 32.9% of AMA appeals issues.

The Board continues to meet its 365-day average timeliness goal for processing Direct Review docket appeals. The Board completed 10,291 Direct Review docket appeals in FY 2022, with an average days-to-complete (ADC) of 363 days. The Board shared strategic goals in the FY 2022 President’s Budget for the Evidence Submission (550 days) and Hearing (730 days) dockets in response to GAO recommendations. Due to prioritization of Legacy and AOD appeals, the Direct Review docket comprised approximately 11% of the Board’s FY 2022 decisions. The Board’s inventory of pending

Direct Review docket cases has increased approximately 65%, from 26,849 pending at the start of FY 2022, to 44,179 pending at the end of FY 2022.

ADC goals for all dockets in FY 2023 continue to be met in large part due to the significant proportion of dispatched appeals granted priority processing (AOD and CAVC remands), which are heard outside of docket order. Table 2 below shows that through February of FY 2023, 77% of Direct Review, 86% of Evidence Submission and 84% of Hearing docket decisions dispatched qualified for priority processing. Of the Direct Review docket appeals adjudicated by the Board in FY 2022, approximately 54% of those appeals were completed under 365 days.

The Department anticipates a gradual increase in resources available to adjudicate AMA appeals as the Board continues resolution of Legacy appeals. Initial projections show a little more than 25,000 AMA decisions are anticipated in FY 2023, followed by another 57,500 in FY 2024. Please note that as the Board is able to adjudicate a higher proportion and number of AMA appeals, the Board will likely complete the longest pending AMA appeals, which in turn will likely increase the average days to complete appeals to levels that exceed the prescribed timeliness goals. This trend will likely continue until resource levels and annual decision output exceeds the number of new appeals to the Board and inventory levels are reduced.

Table 2. Board AMA Docket Timeliness – FY 2023 through February 2023

	Direct Review	Evidence Submission	Hearing
ADC AMA Decision from NOD in FY 2023 through February	326	388	670
Percentage of Decisions that are Priority Appeals (AOD or CAVC remands)	77%	86%	84%

As of the end of February FY 2023, the average days pending (ADP) for an appeal in the AMA Direct Review docket was 465 days; the ADP for the Evidence Submission docket was 600 days; and the ADP for the AMA Hearing docket was 658 days. The ADP for all AMA appeals is currently affected by the Legacy Appeals Resolution Plan as well as completion of AMA appeals that qualify to be adjudicated out of docket order. The Board continues to inform the VSO community of current ADP and ADC for each Board docket and also provides the data for other stakeholders on its external website to help explain the average wait time trends and what the Board is doing about it, <https://www.bva.va.gov/decision-wait-times.asp>.

As previously reported in the February 2022 report, VBA has two distinct Compensation and Pension (C&P) workloads post-AMA implementation—Legacy appeals (mostly

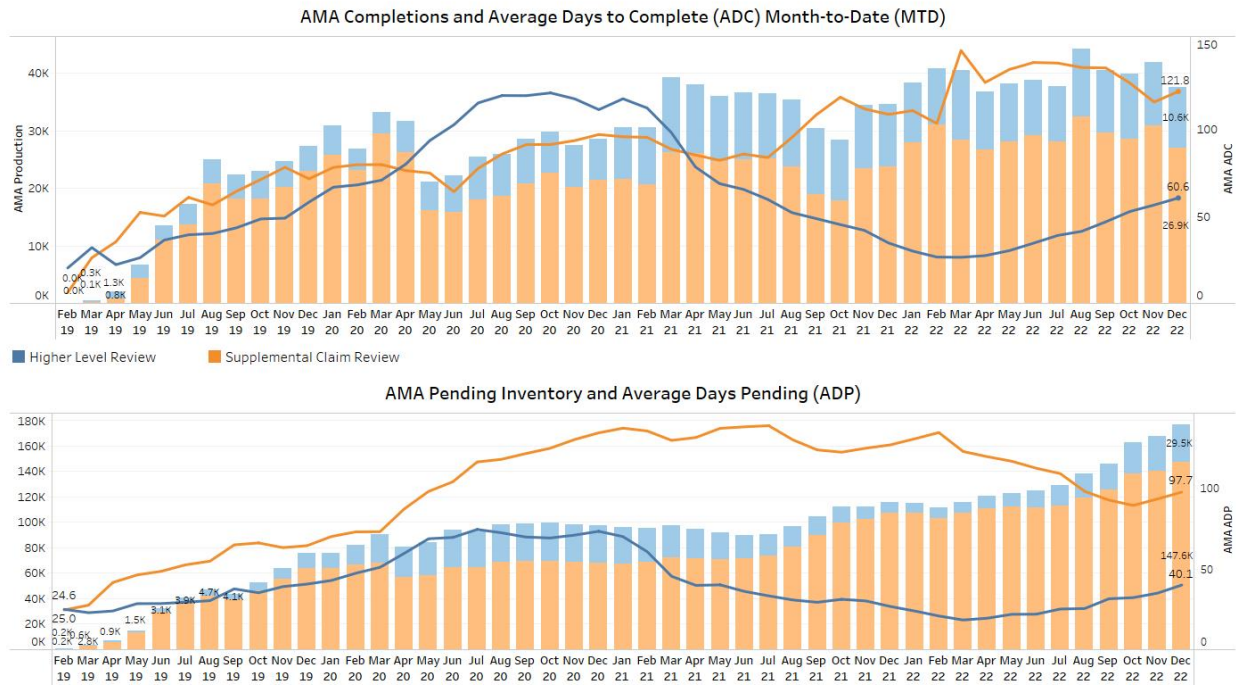
remands) and AMA decision reviews. VBA's current goal is to reduce the C&P Legacy remand inventory to a working inventory, as defined above.

VBA projects it currently requires a total of approximately 1,250 dedicated full-time equivalent employees (FTE) to reduce the pending VBA Legacy remand inventory to a working inventory level while maintaining timeliness goals in its HLR and related AMA lanes under Decision Review Operation Center (DROC) control. As of November 30, 2022, the DROCs at St. Petersburg and Seattle are authorized a total of 807 full-time equivalent (FTE) employees to process compensation and pension HLR requests, duty-to-assist error corrections (returned due to errors in assisting claimants with obtaining evidence needed to support their claims), difference of opinion clarifications, Board AMA full grants and Board AMA remands. The remaining appeals production employees in DC DROC (totaling approximately 373 FTE) are allocated toward the managing and processing of Legacy appeals. All remaining FTE include staff support and management. In recent months, VBA has begun receiving an increased volume of HLR requests compared to previous months. Reasons behind the increase may be attributed to the signing of the PACT Act on August 10, 2022, as well as increased volumes in rating claims completed in VBA since Q3 FY 2022. VBA anticipates adjusting staffing accordingly in light of the recent increase in HLR receipts and projected HLRs associated with claims filed under the PACT Act.

VBA's goal is to maintain processing timeliness of an average of 125 days to complete AMA workload (that is, HLRs and supplemental claims). Overall average timeliness for completing AMA workload at VBA from AMA implementation on February 19, 2019, through December 31, 2022, was approximately 89.8 days, which measures below the 125 day goal for ADC.

For the same period, ADC for HLRs was approximately 63.1 days with 366,148 completions. ADP for HLRs was 40.1 days for a pending inventory of 29,476 claims. For supplemental claims, to include associated HLR returns, ADC was 99.5 days with 1,012,175 completions and ADP was 97.7 days for a pending inventory of 147,564. The "AMA Completions and ADC Month-to-Date" graph in Figure 8 on page 18 provides the monthly breakdown for completions and ADC for HLRs and supplemental claims. The "AMA Pending Inventory and ADP" graph in Figure 8 provides the monthly breakdown for pending inventory levels and ADP for HLRs and supplemental claims.

Figure 8. VBA Monthly AMA Completions and Inventory – February 2019 through December 2022



During FY 2022, overall average timeliness for completed AMA work was 100.9 days. ADC for HLRs was 35.5 days with 126,631 completions. For supplemental claims, to include HLR-associated returns, ADC was 126.3 days with 326,131 completions. In FY 2023 as of December 31, 2022, overall average timeliness for completed AMA work was 103.4 days. ADC for HLRs was 56.6 days with 32,897 completions. ADC for supplemental claims, including HLR associated returns, was 121.2 days with 86,224 completions.

VBA continues to review data, manage risks and model multiple scenarios to allocate resources to timely process claims under the modernized decision review process. Additionally, VBA’s Compensation Service and Pension and Fiduciary Service, along with OAR, collaborate to ensure claims processors have the necessary guidance, training materials and systems functionality to process claims in an efficient manner that aligns with the 125-day ADC timeliness goal.

The following are specific to the other VBA benefit programs:

- From July 1, 2022, through December 31, 2022, Insurance Service completed 8 supplemental claims with an average of 22.3 days. From July 1, 2022, through December 31, 2022, Insurance Service completed 3 HLRs with an average of 18.7 days.

- From July 1, 2022, through December 31, 2022, Education Service completed 464 HLRs with an average of 13.5 days and completed 4,104 supplemental claims with an average of 10.8 days.
- From July 1, 2022, through December 31, 2022, VR&E Service completed 146 HLRs with an average of 68.2 days and completed 87 supplemental claims with an average of 78.6 days.
- Current system limitations measure timeliness by the date the Veteran submitted the appeal, not by the date the appeal was received by LGY. From July 1, 2022, through December 31, 2022, LGY completed 17 HLRs with an average of 18.3 business days from the date received and 21 supplemental claims with an average of 29.2 business days from the date of submission.
- VHA continues to track appeals volume, inventory and timeliness. VHA is now utilizing VA's Centralized Mail Portal to receive and route some HLRs, supplemental claims and other documents. VHA is also working internally and with VBA partners to examine the potential for directing all VHA HLRs and supplemental claims through the Centralized Mail Portal. This is already the case for VHA's CSP who has established a dedicated mailing address and queues within the Centralized Mail Portal for routing of correspondence related to PCAFC decisions, including requests for HLRs and Supplemental Claims. Expanding this practice throughout VHA business lines would facilitate better tracking of the AMA review work. Recent technological enhancements have created a more efficient process for the Board to request files for AMA appeals of VHA decisions. VHA is examining staffing needed and is considering expanded use of detailees and contracted support.
- NCA tracks timeliness with a SharePoint list. NCA is adequately staffed to handle the new appeals system claims volume.

Section 3(a)(4) of the AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States regarding monitoring the implementation of the new appeals system, including metrics and goals to (A) track the progress the implementation; (B) evaluate the efficiency and effectiveness of the implementation; and (C) to identify potential issues relating to the implementation.

The Board and VBA continue to closely monitor and analyze receipts of AMA appeals for trends to identify potential issues and lessons learned during implementation since FY 2019. As depicted previously in Figure 6 on page 12, ever-increasing numbers of Veterans are choosing VBA appeals under AMA. Further analysis is warranted to determine whether this key trend is evidence of increased Veteran trust and choice to "appeal first to VBA" before seeking Board appeals under the newer AMA appeals system. While VBA's AMA appeal receipts in the Supplemental Claim and HLR lanes

are steadily climbing, the number of appeals to the Board has remained fairly consistent at an average of 60-65,000 AMA Board appeals each year.

As noted earlier in this report, several recent initiatives allowed the Board to hold a record 30,089 hearings in FY 2022. That push also allowed the Board to significantly reduce the number of hearings still pending in the Legacy appeals system as was shown previously in Figure 3 on page 8. The Board continues to monitor and assess the number of cases with a pending hearing request and has noted a continuing drop in the number of Veterans choosing hearings under the AMA. In part, this may be due to higher grant rates under AMA.

The Board continues to closely monitor and analyze resolution rate trends under both the Legacy system and the AMA during the past five years so stakeholders can better compare the two systems and overall merits and effectiveness of the AMA system and the Legacy system in providing more timely and effective final resolution for Veterans. Figures 9A below and 9B on page 21 show that remand rates under the Legacy appeals system have remained relatively stable with 58 percent of all appeal decisions being remanded while remand rates under the AMA system consistently have been much lower—17 to 19% better than Veterans experience under the Legacy system.

Figure 9A: Legacy Appeals Resolution Rates: 5-Year Trend

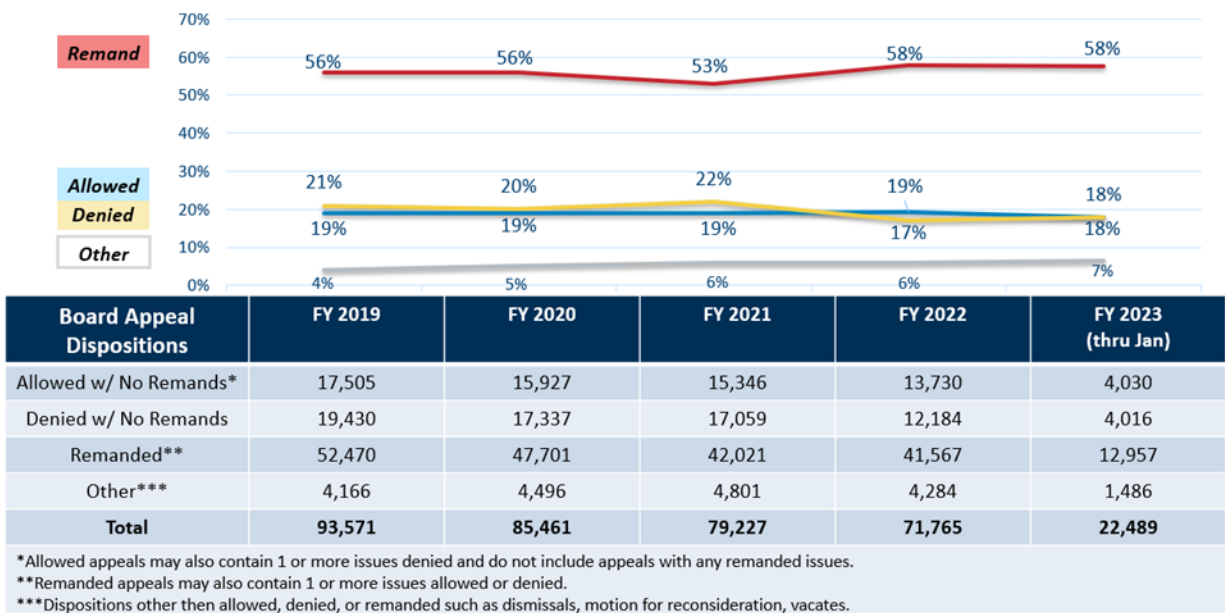
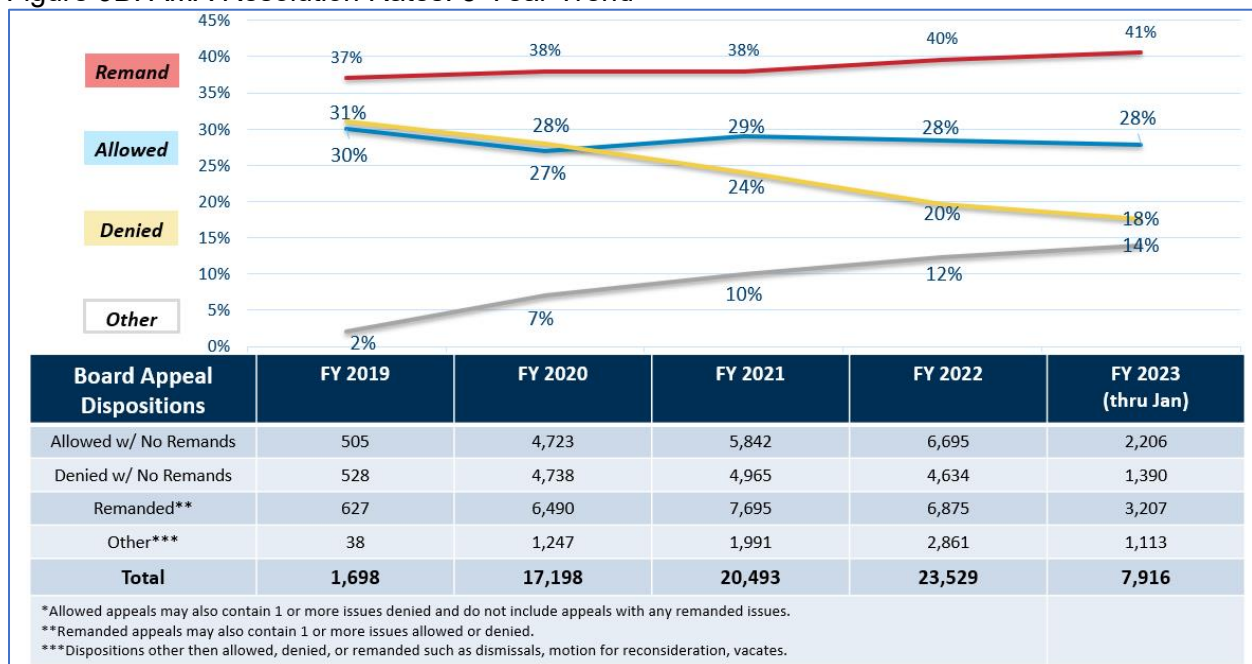


Figure 9B: AMA Resolution Rates: 5-Year Trend



It is important to reiterate how Veteran trust scores have been impacted under both the Legacy appeals system and AMA system as was shown previously in Figure 7 on page 13, especially when a Veteran receives a Board final decision. While only about half of Veterans agree they “trust” the Board after getting their final decisions, that is far higher than the percentage of those same Veterans who received a “grant” on one or more issues in their appeals, which is about a third of Veterans receiving a decision on their appeal. Under both the Legacy and AMA appeal systems, Veteran trust scores increase 12-14% from the time they initially file an appeal through the time when they receive a decision (see Figure 7 on page 13). The Board attributes this to increased Veteran understanding based on their experiences with Board Veterans Law Judges during hearings and based on the clarity of the Board decisions, especially in explaining why certain issues cannot be granted. Interestingly, Veteran trust scores are higher at each stage of the appeal process under the AMA than in the Legacy system.

The Board set the annual FY 2023 quality assurance goal of 92% for AMA appeals, which is the same goal for Legacy appeals. The Board did so after carefully monitoring an even higher number of AMA appeals versus Legacy appeals for the past 2 years as part of the Board’s quality assurance program.

VHA established CAMO, a small, centralized office within VHA Central Office, as well as an executive AGC, to oversee claims and appeals modernization. VHA CAMO is working with the AGC, affected program offices, other VHA stakeholders, the Board, VBA, OIT and OGC to create and enhance systems and processes to monitor quality and efficiency of modern appeal operations and VHA adherence to claim processing revisions made as a result of the AMA. Recent enhancements include adoption of VA’s

Centralized Mail Portal for receiving and routing some AMA mail and creation of a pre-docket capability to better manage VHA appeals in Caseflow.

Each respective program office in VHA continues to manage its internal processes, oversight, accountability, and data. CAMO is working with VHA offices to aggregate VHA data to establish adequate metrics and revise current goals for the new system.

Post-AMA, the total number of requests for NCA supplemental claims and HLRs is only about 1% of total denials.

IV. Plan element updates since the August 2022 report.

Sections 3(b)(1) & (2) of the AMA requires a delineation of the total resource requirements of the VBA and the Board, disaggregated by resources required to implement and administer the new appeals system and resources required to address the appeals of decisions on Legacy claims. These provisions also require delineation of the personnel requirements of the VBA and the Board, including staffing levels during the (A) period in which the Administration and the Board are concurrently processing appeals of decisions on Legacy claims and appeals of decisions on non-Legacy claims under the new appeals system; and (B) period during which VBA and the Board are no longer processing any Legacy appeals.

The Board continues to evaluate the impact of the AMA workload and the resolution of Legacy appeals on pending inventory levels, timeliness of appeals decisions and pending Veteran-requested hearings to help drive the Board's gap analysis and inform future resource requirements.

The Board finished 2022 with 1,182 cumulative FTE and 1,200 FTE on-board at the end of September 2022. Budgetary constraints imposed by a continuing resolution during the first six months of 2022 delayed the Board's hiring efforts. As a result, the Board was not able to achieve the original goal of 484 new staff (including backfills for attrition) and only hired 148 new staff. Thus, the Board started FY 2023 with fewer FTE on-board than originally planned. The Board revised its cumulative FTE goal for FY 2023 to 1,341. To meet this goal in FY 2023, the Board started an aggressive hiring plan to recruit and train approximately 300 new staff and the pool of roughly 1,700 applicants currently being evaluated is a strong indication that the goal will be achieved. The Board's successful recruitment strategies also resulted in 31 new VLJs approved by President Biden and onboarding since June 2022. This brings the Board's total VLJ staffing level to 130, nearly a 30% increase since the new AMA system went into effect.

In Q2 FY 2022, VHA's CAMO began bringing on detailees to assist with the processing and routing of the current volume of appeals mail and is continuing to recruit and onboard these resources. The Board provided CAMO with a detailed attorney liaison who is still coordinating complicated, cross-cutting issues that affect both VHA and the Board.

As a result of *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), VHA CSP updated its organizational model and established a dedicated PCAFC Review and Appeal Workstream to support AMA and Legacy appeals, including quality management. When fully established, the workstream will be staffed by 32 FTE.

VHA's Office of Payment Operations Management, which is responsible for most VHA appeals, consolidated appeals processing at select sites and dedicated staff to appeals processing. VHA will use current and future appeals data and execute time studies to better determine the number of FTE needed to manage appeals under both the Legacy and new systems.

VHA's CAMO partners with other VHA business lines to establish more streamlined appeals processes in their functional areas, as well as increased transparency and accountability.

NCA delineated personnel to complete Legacy appeals, AMA supplemental claims and HLRs, and other workloads.

Section 3(b)(3) of the AMA requires identification of the legal authorities under which the VBA or the Board may (A) hire additional employees to conduct the concurrent processing described in paragraph (2)(A); and (B) remove employees who are no longer required by the VBA or the Board once the Administration and the Board are no longer processing any appeals of decisions on Legacy claims.

The Board and VBA have no substantive updates to prior reports. Both VBA and the Board will continue to monitor resource requirements and adjust plans as necessary pursuant to applicable legal authorities as originally provided.

VHA and NCA have no substantive updates to prior reports.

Section 3(b)(4) of the AMA requires an estimate of the amount of time the VBA and the Board will require to hire additional employees as described in paragraph (3)(A) once funding has been made available for such purpose, including a comparison of such estimate and the historical average time required by the Administration and the Board to hire additional employees.

The Board finished 2022 with 1,182 cumulative FTE and 1,200 FTE on-board at the end of September 2022. Budgetary constraints imposed by a continuing resolution during the first six months of 2022 delayed the Board's hiring efforts. As a result, the Board was not able to achieve the original goal of 484 new staff (including backfills for attrition) and only hired 148 new staff. Thus, the Board started FY 2023 with fewer FTE on-board than originally planned. The Board revised its cumulative FTE goal for FY 2023 to 1,341. To meet this goal in FY 2023, the Board started an aggressive hiring plan to recruit and

train approximately 300 new staff and the pool of roughly 1,700 applicants currently being evaluated is a strong indication that goal will be achieved. The Board's successful recruitment strategies also resulted in 31 new VLJs approved by President Biden and onboarding since June 2022. This brings the Board's total VLJ staffing level to 130, nearly a 30% increase since the new AMA system went into effect.

As previously noted, VBA reduced its workforce from 2,100 to approximately 1,250 FTE before the end of FY 2021, in conjunction with VBA's Legacy appeals inventory reduction and the resulting reduced need for processing manpower. In furtherance of this effort, VBA allocated resources from appeals processing to other VBA priorities.

VHA has no substantive updates to prior reports.

The NCA Appeals Team is properly sized.

Section 3(b)(5) of the AMA requires a description of the amount of training and experience that will be required of individuals conducting higher-level reviews under section 5104B of title 38, United States Code, as added by section 2(g).

VHA's CSP has leveraged expertise of VHA and VBA subject matter experts to develop training and procedural guidance for HLRs, including guidance on how to conduct informal conferences.

NCA and VBA have no substantive updates to prior reports.

Section 3(b)(6) of the AMA requires an estimate of the percentage of higher-level adjudicators who will be employees of the Department of Veterans Affairs who were Decision Review Officers on the day before the new appeals system takes effect or had experience, as of such date, comparable to that of one who was a Decision Review Officer.

VBA, VHA, and NCA have no substantive updates to prior reports.

Section 3(b)(7) of the AMA requires a description of the functions that will be performed after the date on which the new appeals system takes effect by Decision Review Officers who were Decision Review Officers on the day before the date the new appeals system takes effect.

VBA, VHA, and NCA have no substantive updates to prior reports.

Section 3(b)(8) of the AMA requires identification of and a timeline for (A) any training that may be required as a result of hiring new employees to carry out the new appeals system or to process appeals of decisions on Legacy claims; and (B) any retraining of existing employees that may be required to carry out such system or to process such claims.

Launched in May 2022, the Board's New Attorney Training Program (NATP) is a highly interactive and intensive 20-week training program in substantive and procedural law for both the Legacy and AMA systems. The program includes multiple levels of feedback and support, including large-group information sessions; small group discussion sessions; evidentiary review practice, and decision drafting. New attorneys are paired with an acting VLJ experienced in adjudicating appeals under both the Legacy and modernized systems. As of December 7, 2022, 44 attorneys have completed the NATP, and 32 attorneys are currently enrolled in NATP.

With regard to other legal training programs for new hires, in October 2022, the Board's Professional Development Division (PDD) facilitated a 3-week training program for a cohort of 15 new VLJs, which included training on the AMA, and in December 2022, PDD began facilitating the training of an additional cohort of 5 new VLJs. PDD also regularly presents Board-wide trainings on various substantive Veterans' law topics. In November 2022, PDD presented a Board-wide training on CAVC and Federal Circuit trends with respect to the scope of benefits claims and the impact of those trends on AMA appeals.

PDD continues to hold Open Door Hours where experienced attorneys field substantive and procedural questions in support of VLJs and attorneys. PDD also provided an August 2022 training on increased rating eye claims; an October 2022 training on clothing allowance claims; a November 2022 training on PCAFC appeals; and a December 2022 training on VHA medical reimbursement claims to VLJs. (The Board closely monitors error trends identified by its Office of Assessment and Improvement and uses the data to target focused Board-wide training and guidance.)

As previously reported, each of VHA's appeals processing program offices adapted and disseminated VBA's and the Board's explanatory and training materials to the unique needs of their workforce. As noted above, VHA established CAMO inside VHA Central Office, as well as an executive AGC, to oversee claims and appeals modernization. CAMO is working with the AGC and affected program offices to identify policy, process, training and other needs required to bring VHA claim and appeal processes in line with the AMA and other requirements. To assist and provide accessible knowledgeable resources to VHA, the Board has detailed a VLJ and an attorney to VHA to assist with implementation of the AMA for the various program offices within VHA. VHA also secured the assistance of a LeadershipVA project team, who worked with the field to better understand AMA knowledge gaps and design training targeting those gaps. VHA is now working both internally and with other VA offices to put that training into production.

VHA initiated a year-long AMA Awareness Campaign intended to provide targeted VHA staff with resources and information to assist in the efficient and accurate processing and adjudication of claims and modern reviews.

CAMO recently developed high-level Caseflow training for affected program offices and led several live sessions. Sessions were recorded to serve as ongoing resources.

CAMO is also working with VA's Employee Education Service to put an AMA training module in VA's online Talent Management System.

VHA's CSP initiated the following AMA-related training and education efforts:

- Development of a 101 PCAFC Review and Appeal training for VHA staff who may receive questions from Veterans and caregivers (This is a web-based training that is in its final stages of completion);
- CSP collaborated with VBA partners to share updates with VBA staff on PCAFC Review and Appeal Options, including information on how to route any requests for HLR of PCAFC decisions or Supplemental Claims to VHA CSP;
- Development and implementation of a training and orientation plan for all staff onboarded to the PCAFC Review and Appeal Team;
- Written guidance for VHA Patient Advocates and CSP field-based staff covering certain documentation requirements within systems used by these offices; and
- A comprehensive PCAFC Review and Appeal Instructional Manual is in development.

NCA and VBA have no substantive updates to prior reports.

Section 3(b)(9) of the AMA requires an identification of the costs to VA of the training identified under paragraph (8) and any additional training staff and any additional training facilities that will be required to provide such training.

The Board and VBA have no substantive updates to this section and will no longer provide updates to this section of the report because the reporting requirements have been met.

VHA and NCA have no substantive updates to prior reports.

Section 3(b)(10) of the AMA requires a description of the modifications to the information technology systems of the VBA and the Board that they require to carry out the new appeals system, including cost estimates and a timeline for making the modifications.

Technical teams for Caseflow and the Veterans Benefits Management System continue to work very closely together, in conjunction with business teams from the Board, to develop a fully integrated, enterprise-wide solution to meet post-AMA implementation requirements.

Throughout FY 2022, OIT worked with the Board to continue to release important new AMA functionality while maintaining progress on the Board's Caseflow operational priorities. Caseflow development has continued with the successful release of new capabilities and functionality that directly support processing AMA appeals while allowing the Board to increasingly focus on drawing down the Legacy appeals inventory. Throughout FY 2022, OIT worked with the Board to continue to release important new

AMA functionality while maintaining progress on the Board's Caseflow operational priorities. Such enhancements include implementing the Board's business requirements to streamline automatic case distribution; ability to upload documents to eFolder with Interactive Decision Template (IDT) Application Programming Interface (API) where there is no appeal; fixing Caseflow/IDT API to give suffixes of appellants; Reader user experience improvements; VA Notify enhancement for notification page in user interface and quarterly notifications; ability to split Appeal streams; Caseflow integration with Master Person Index for Notice Of Death; adding PACT Act Option to Special Issue Selection; and Board Intake enhancements. These functionalities are vitally important to the Board's mission and increasingly allow for Veterans' appeals to be adjudicated more quickly. OIT continues to solicit enterprise-wide needs for functional capabilities and integration to support appeals processing and is developing operational functionalities to address these needs across the Department.

OIT collaborated with Board leadership and staff to deliver the Board's request to utilize existing tele-health technology to make virtual tele-hearings a reality, allowing for Nation-wide access to technology in conjunction with the Caseflow Hearing scheduler. Hearing confirmation emails are sent to the appellants and their representatives immediately upon scheduling a virtual tele-hearing. This functionality provides a one-click solution for recording virtual tele-hearings, automated email notices, creation of a virtual tele-hearing queue and a separate video conferencing domain for virtual tele-hearings. Caseflow hearing improvements enable a VSO user or authorized representative to convert any requested or scheduled hearing type to a virtual tele-hearing, allowing more hearings to be held virtually and better supporting Veterans in the hearing process; creating a hearing-link for each hearing day to simplify starting the software used to record hearings from the hearing docket thereby improving efficiencies in the hearing process; and standardizing hearing confirmation and reminder emails for all hearing types to ensure accurate and consistent information while minimizing extra content that was confusing to Veterans. The virtual tele-hearing technology provides greater access for Veterans who previously had to drive hours to attend a hearing, as well as those who are more comfortable having their hearing at a location of their choice. Use of virtual tele-hearing technology benefits VLJs by reducing travel time, which allows VLJs more time to focus on adjudicating and resolving appeals to benefit Veterans. Virtual tele-hearings are unaffected by inclement weather; previously the Board canceled 6 to 10 days' worth of Nation-wide dockets annually due to inclement weather and closed facilities. Additionally, virtual tele-hearing transcripts have an inaudible rate typically under 0.5%, compared to other traditional hearings and recording methods that can average 1.5 to 3%. Veterans participate from locations worldwide. These virtual tele-hearing improvements allow the Board to increase flexibility for hearings and improve the Veteran's experience. This technology also allows the Board to assess its annual capacity for Veteran-requested hearings on availability of VLJ and staff resources and representative capacity rather than the physical number of hearing rooms at the Board or regional offices.

Section 3(b)(11) of the AMA requires an estimate of the office space VBA and the Board will require during each of the periods described in paragraph (2), including (A) an estimate of the amount of time VBA and the Board will require to acquire any additional office space to carry out processing of appeals of decisions on Legacy claims and processing of appeals under the new appeals system; (B) a comparison of the estimate under subparagraph (A) and the historical average time required by VBA and the Board to acquire new office space; and (C) a plan for using telework to accommodate staff exceeding available office space, including how VBA and the Board will provide training and oversight with respect to such teleworking.

Under the new hybrid work environment, the Board has more than enough physical office space to meet its mission and maintain operations for its workforce. As noted in prior reports, the Board's robust telework program allowed it to maintain its physical footprint despite almost doubling FTE over the last 5 years. Prior to COVID-19, the Board adopted several space management efficiencies, including: (1) sharing office space for Board personnel who work remotely 50% or more of the time; (2) converting underutilized space to workspace; (3) using memoranda of understanding to secure additional space within the building; and (4) implementing flexible telework and remote work programs.

After transitioning away from remote operations, the Board fully implemented a new hybrid work environment in Q3 of FY 2022 with more than 75% of its staff leveraging remote work. As a result, the Board reduced its physical footprint by 48,278 rentable square feet (RSF) of leased office space in FY 2021 and returned an additional 40,543 RSF at the end of FY 2022, achieving a 45% reduction in physical space requirements. These reductions have saved taxpayer dollars. Expected savings associated with rent reductions are realized in FY 2023 and will be reallocated to payroll needs in FY 2024. The Board will continue to operate under the hybrid work environment and does not anticipate any additional office space needs in support of AMA.

VBA has no substantive updates related to office space and has a robust telework program and offers both virtual and remote workplace opportunities.

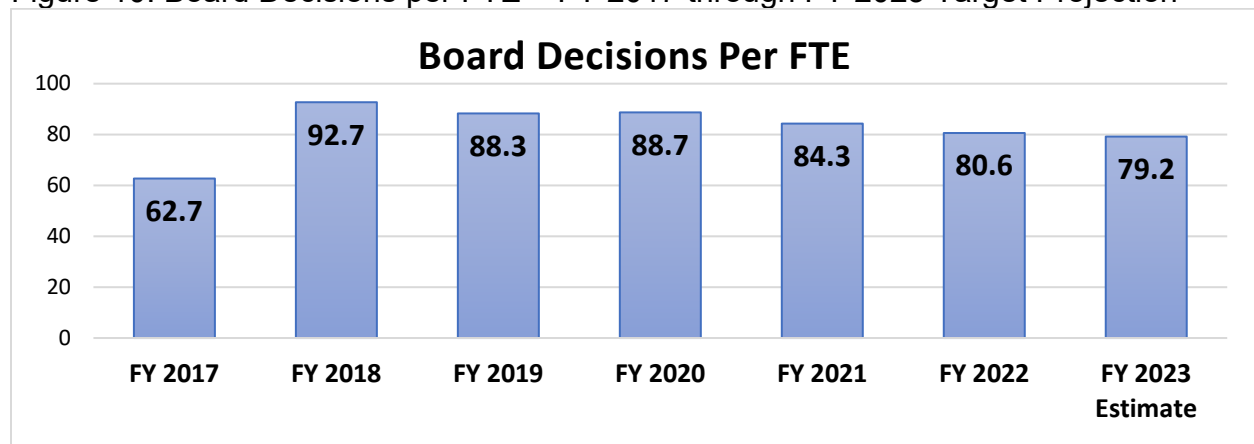
VHA does not anticipate additional office space requirements. If necessary, VHA has a robust telework and virtual work program to meet any additional demands.

NCA has no substantive updates to prior reports.

Section 3(b)(12) of the AMA requires projections for the productivity of individual employees at VBA and the Board in carrying out tasks relating to the processing of appeals of decisions on Legacy claims and appeals under the new appeals system, taking into account the experience level of new employees and the enhanced notice requirements under section 5104(b) of title 38, United States Code, as amended by section 2(e).

During FY 2022, the Board continued to focus on: (1) resolving Legacy appeals; (2) holding a higher percentage of scheduled Veteran-requested hearings, including virtual tele-hearings; (3) maintaining or improving the quality of both Legacy and AMA decisions; (4) establishing the right balance of virtual, traditional office and hybrid work environments that best meet operational goals and supports employees; (5) working all three dockets of AMA cases in a timely manner; and (6) adjudicating and tracking PCAFC appeals. With emphasis and resources being applied to conducting Veteran-requested hearings, the Board had a slight decrease in the average number of decisions per FTE in FY 2022 (80.6), as shown below in Figure 10.

Figure 10. Board Decisions per FTE – FY 2017 through FY 2023 Target Projection



Board leadership continually monitors output relative to the production goals and the impact of changes in the environment to make decisions as to individual employee productivity goals. Individual output goals relate to the Board’s overall organizational goals for appeals and/or issues decided and are set to ensure organizational goals can be achieved. Veterans, Congress and the public expect that the Board will use the resources it is provided to accurately and efficiently adjudicate as many appeals as possible. The Board’s current attorney production standard is 3 decisions or 9.5 issues per week. These standards are prorated for leave, training, travel, administrative requirements, lost work time due to IT stoppages and other good causes as determined by management.

In FY 2022, VBA decision makers completed an average of 1.9 Legacy appeals per day, 2.3 HLR decisions per day, .9 HLR returns, AMA remands and AMA Board grants per day. The data provided is derived by the FY 2022 completions divided by respective average number of decision makers allocated to that work type. Individual employee standards consider multiple factors such as claim complexity, number of issues rated on a case/claim, employee position, employee experience level and number of available hours spent processing claims (time is excluded for activities such as leave, training, IT work stoppages, administrative duties such as renewing PIV cards or other good cause). In FY 2023, VBA projects completing 48,311 Legacy appeals (including Legacy full grants), 117,000 HLRs, 57,000 HLR returns, AMA remands, and AMA full grants.

Education Service, Insurance Service, VR&E and LGY did not have any substantive updates to report.

VHA has not ascertained any change in individual employee productivity as a result of AMA rollout but will continue to monitor the matter. As noted in earlier sections of this report, each respective program office within VHA manages its own internal processes, oversight and accountability. Processing of appeals on PCAFC decisions under the Legacy process as well as AMA are new workflows for VHA and will be managed by a new workstream within the VHA CSP. Additional time will be needed before timelines for issuance of decisions under these processes will be known, to inform productivity projections.

NCA updated employee performance standards with an emphasis on timeliness.

Section 3(b)(13) of the AMA requires an outline of the outreach the Secretary expects to conduct to inform Veterans, families of Veterans, survivors of Veterans, Veterans Service Organizations, military service organizations, congressional caseworkers, advocates for Veterans, and such other stakeholders the Secretary considers appropriate about the new appeals system, including (A) a description of the resources required to conduct such outreach; and (B) timelines for conducting such outreach.

The Board's Chairman continues to promote, educate, train and inform Veterans and stakeholders about the AMA, focused on choice, control and clarity for the Veteran. In September 2022 the Board launched a refresh of its public facing website with a particular focus on educating external stakeholders about the length of time it takes to resolve appeals pending at the Board and what the Board is doing about it. The available information includes helpful graphics and data relating to both Legacy and new AMA appeals systems. More recently, the Chairman and Vice Chairman have attended and spoken in person at VSO conferences, educating hundreds of representatives on best practices to advise Veterans about their choices under the AMA. Additional information regarding their outreach activities is available in Appendix A.

As previously noted, the Board uses the VSignals customer experience survey with Veterans who have an active appeal at the Board. Based on responses received from the Board's VSignals survey during FY 2022, over 95% of respondents felt "the VLJ explained things to me in a way that was easy to understand." This consistent trend is one of the main reasons Veteran trust levels rise during the lifecycle of their appeals at the Board.

VBA uses a real-time dashboard to track survey distribution, response rates, demographics and other pertinent information. Data from the dashboard shows that as of November 23, 2022, between July 1, 2020, and November 18, 2022, there were 353,081 surveys sent and 77,695 responses received for the filing survey; 10,068

responses received for the HLR survey and 34,282 responses received for the supplemental claim survey.

The dashboard provides insights into several categories of survey data, providing a tool to analyze the survey responses by drilling down through filters to look at specific data. VBA uses the dashboard to understand individual score responses and scores mapped over time. VBA also looks at the types of assistance received, the methods survey respondents used to file their decision review and the types of support survey respondents received.

VHA partnered with the Board to solicit VSOs' views regarding VHA implementation of AMA and is considering that input as VHA continues to assess the claims system and make process improvements to maintain the effectiveness and efficiency under the AMA.

NCA has no substantive update to prior reports.

Section 3(b)(14) of the AMA requires timelines for updating any policy guidance, Internet Websites, and official forms that may be necessary to carry out the new appeals system, including (A) identification of which offices and entities will be involved in efforts relating to such updating; and (B) historical information about how long similar update efforts have taken.

Improvements to the Board's external website, www.bva.va.gov are ongoing and focused on transparency to ensure Veterans, family members and representatives have access to clear, concise and useful information including monthly metrics and information about AMA. The website also includes a link to the appeals status tracker on VA.gov, which may be found at <https://www.va.gov/claim-or-appeal-status/>.

VHA's AGC and CAMO continue to work with affected VHA program offices, the Board and OGC to revise internal policies and directives, as needed. VHA continues to work on an updated version of VHA Directive 1032, Health Benefits Appeals Processing, and has published VHA Notice 2021-01, The Appeals Modernization Act in the Veterans Health Administration, to provide interim guidance while Directive 1032 is updated. VHA published a revised notice, VHA Notice 2022-05, on April 27, 2022. VHA published Directive 1041, Appeal of VHA Clinical Decisions, on September 28, 2020.

NCA and VBA have no substantive updates to prior reports.

Section 3(b)(15) of the AMA requires a timeline, including interim milestones, for promulgating such regulations as may be necessary to carry out the new appeals system and a comparison with historical averages for time required to promulgate regulations of similar complexity and scope.

VBA's regulations took effect on February 19, 2019 (See 84 Federal Register 138, Jan. 18, 2019). VBA regularly reviews regulations for necessary updates for process improvements.

VHA published Appeals Modernization regulation AQ44, which sunsets Legacy reconsideration processes, in July 2022 (See 87 Federal Register 43,746 Jul. 22, 2022). VHA is considering the potential scope for further regulation of post-decision review processes but does not have a timeline.

NCA has no substantive updates to prior reports.

Section 3(b)(16) of the AMA requires an outline of the circumstances under which claimants with pending appeals of decisions on Legacy claims would be authorized to have their appeals reviewed under the new appeals system.

The Board continues to process opt-in requests consistent with statutory and regulatory requirements. VBA, VHA and NCA have no substantive updates to prior reports.

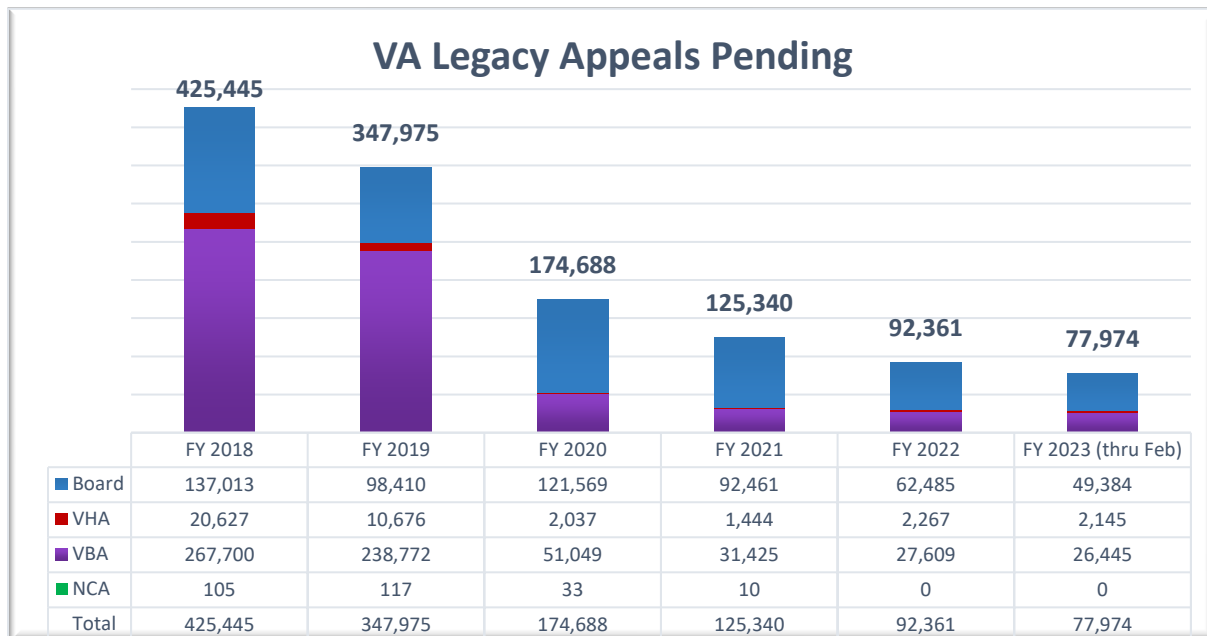
Caseflow has an integration dependency on VHA implementing a case management system and platform for uploading and handling supporting documentation. VA is conducting research for intake to support the possible influx of VHA Appeals to the Board due to the CAVC decision pertaining to PCAFC appeals.

Section 3(b)(17) of the AMA requires a delineation of the key goals and milestones for reducing the number of pending appeals that are not processed under the new appeals system, including the expected number of appeals, remands, and hearing requests at the Administration and the Board each year, beginning with the one-year period beginning on the date of the enactment of this Act, until there are no longer any appeals pending before the Administration or the Board for a decision on a Legacy claim.

VA's Legacy Appeals Resolution Plan includes a prioritized reduction of Legacy appeals, informed by continuous Veteran and stakeholder engagement as well as sound project management practices. The plan continues to result in a marked reduction in the number of Legacy appeals pending in the Department before the Board and in all three Administrations: VBA, VHA, and NCA. The plan demonstrated significant progress by reducing the number of pending Legacy appeals by 76%, from 347,975 pending at the start of FY 2020, to 84,063 pending at the end of Q1 FY 2023.

The Department's goal was to resolve Legacy appeals by the end of CY 2022. However, the COVID-19 pandemic significantly impacted the ability to schedule and complete in-person examinations and obtain Federal records, delaying the completion of the development necessary to adjudicate the Legacy appeal remands. The goal was also impacted by longer-lasting effects of COVID-19 such as the reduced ability to conduct in-person hearings at the ROs, as well as hiring delays and reluctance to opt into virtual tele-hearings. See Figure 11 below.

Figure 11. VA Legacy Appeals Pending – FY 2019 through February FY 2023



Approximately 20-25 % of pending Legacy appeals have private attorney/agent representation in stark contrast with the 165,000 pending AMA appeals where only 0.5% have private attorney/agent representation. Based on the relative age of appeals pending in both the Legacy and AMA, the Board estimates approximately 75% of its workload in 2023 will be adjudication of Legacy appeals, with 2024 anticipated to be the first year in which the number of AMA decisions will be roughly equal to the number of Legacy decisions.

Progress has been made but there is still a higher-than-expected number of original Legacy appeals pending an initial decision by the Board. Adjudication of these original appeals has taken longer than anticipated because of the constraints placed on docket order by including AOD cases (age, financial hardship, serious health conditions), Court remands and post-remanded appeals with earlier Form 9 dates. As a result, approximately 79% of Legacy appeals adjudicated during the first quarter of FY 2023 were either AOD, Court remands or post-remand appeals with the remaining 21% being original appeals.

With continued high levels (greater than 55%) of decisions being remanded to the agency of original jurisdiction, combined with appeal remands received from the CAVC, it is likely the Board could experience another 37,500 previously adjudicated Legacy appeals returned in 2024 due to remands. As such, approximately 50% of the workload is estimated to be Legacy appeals in 2024 with a potential of finishing the year with less than 5,000 pending depending on the rate of recertification of remanded appeals pending from VBA to the Board.

Under the law, the Board generally must adjudicate post-remand Legacy appeals (e.g., Legacy remands that are returned to the Board following necessary development), in

addition to new appeals received, both Legacy and AMA, relative to their respective place on the docket to which they are assigned. Aside from appeals remanded by CAVC and those granted AOD for good cause, by statute, the Board generally considers such appeals, within each respective docket, under a first-in, first-out method. The Board's remand rate for Legacy appeals has ranged from approximately 38.8% to 46.04% between FY 2016 and February 2023, as reflected in Table 3 below.

Since February 2020, 1 year after the last initial rating decision was issued under the Legacy system, no new Legacy appeals have been received by VBA.

Table 3. Board Legacy Dispositions – FY 2016 through February FY 2023

Board Legacy Decisions*					
FY	Decisions	Allowed	Remanded	Denied	Other
2016	52,011	31.8%	46.0%	18.0%	4.2%
2017	52,661	29.9%	43.5%	21.6%	5.0%
2018	85,288	35.8%	38.8%	20.9%	4.6%
2019	93,571	35.8%	39.0%	20.8%	4.5%
2020	85,461	33.8%	40.6%	20.3%	5.3%
2021	79,227	32.0%	40.4%	21.5%	6.1%
2022	71,765	34.7%	42.3%	17.0%	6.0%
2023 (thru Feb)	28,608	31.8%	43.7%	17.9%	6.6%

*The historical reporting system for Board decisions with multiple issues identifies the disposition of an appeal based on the following hierarchy: allowance, remand, denial or other (e.g., dismissals). When there is more than one disposition involved in a multiple issue appeal, the "reported disposition" for Board Statistical Reports will be categorized based on the disposition hierarchy noted above.

As noted in Section 3(a)(1), VBA eliminated much of its Legacy inventory in the NOD and Form 9 stages in FY 2020 and significantly reduced its remand inventory in FYs 2020 and 2021. As of November 30, 2022, VBA has 805 FTE that are dedicated to managing and administering decisions in the AMA system—specifically HLRs and duty-to-assist error corrections identified under the HLR and the Board lanes. The remaining appeals production employees (totaling approximately 373 FTE) manage and process Legacy appeals. All remaining FTE include staff support and management.

As of February 19, 2019, within 60 days of the issuance of a statement of the case or supplemental statement of the case, Veterans may elect to opt into an AMA Decision Review Lane, rather than remain in the Legacy appeals process. From implementation through December 31, 2022, appellants have opted 16,186 Legacy appeals into AMA through this avenue. In FY 2023, opt-ins from the Legacy process decreased at a rate

of 68 per month as compared to 80 per month in FY 2022. 204 opt-ins have been received in FY 2023 through December 31, 2022.

Specific to other VBA benefit programs:

As previously stated, as of December 31, 2022, there is one Legacy fiduciary appeal pending at fiduciary hubs and 181 Legacy appeals with one or more pension-related issues. There are 173 remands, 6 in the Form 9 stage and 2 in the NOD stage.

As of December 31, 2022, Insurance Service has seven Legacy remand appeals pending in insurance-related issues. There are five remands, one each in the NOD and Form 9 stages.

VR&E Service started a systematic review and action plan on Legacy appeals in February 2018. VR&E Service regularly issued instructions for processing targeted Legacy appeals quarterly to ensure VR&E's role in the Legacy appeals system is completed in a timely manner. VR&E has 53 Legacy appeals pending as of December 31, 2022. Of these, 49 are in the remand stage, 1 is in the Form 9 stage, and 3 are in the NOD stage.

LGY processed all remaining Legacy appeals in the NOD and Form 9 stages under the Legacy system. As of December 31, 2022, seven remand decisions from the Board remain pending.

VHA has made progress drawing down Legacy appeal inventory, reducing it to 2,319 by October 31, 2022. VHA continues to reassess resource requirements and streamline processes with the goal of eliminating Legacy appeals inventory as quickly as possible. As noted above, this plan may be impacted by the holding in *Beaudette*, which held that PCAFC decisions are appealable to the Board, including those issued prior to February 19, 2019.

NCA completed all Legacy appeals.

Section 3(b)(18) of the AMA requires a description of each risk factor associated with each element of the plan and a contingency plan to minimize each such risk.

Updates are provided to risks as necessary; however, where there are none, no updates are provided. The Department has identified the following risks and mitigation strategies:

1. Resource Requirements (Section 3(b)(1))

Risk: As previously reported, a modernized IT solution for VHA claims processing and management is currently not available. VHA adjudication records are maintained in different repositories, in different formats, are not always accessible to authorized individuals who may have a business need, are not easily accessed by Veterans and

other claimants and add barriers to the intake of VHA appeals. If a modernized IT solution for VHA claims processing and management remains unfunded and undeveloped, there will be a negative impact on timely resolution for Veterans and other claimants.

Mitigation: VHA will continue to use current IT capabilities until necessary processes and modifications are complete. VHA will work with OIT to develop new IT capabilities to enable the intake and management of appeals through the use of Caseflow, the Centralized Mail Portal and eventual integration with a new VHA Case Management System.

Risk: Passage of the PACT Act will result in a surge of PACT-related claims and eventual appeals to the Board. This will likely impact inventory and timeliness levels, and delay resolution of Legacy appeals as AMA PACT appeals may qualify to be advanced on the docket ahead and decided sooner.

Mitigation: Mitigation strategies include advocating for increased resources as necessary to increase appeal decision rates resulting in lower inventory levels and quick appeal resolution. This will require increased hiring and training needs as well as IT support in order to properly identify and report PACT-related decisions.

2-3. Personnel (Section 3(b)(2)-(3))

Risk: The Board may not have sufficient personnel resources to administer the Legacy and modernized processes. VLJs are a finite resource and are responsible for holding Veteran-requested hearings and signing appellate decisions for Veterans.

Mitigation: The Board continues to evaluate and monitor appeal receipt and pending inventory levels and adjust its resource needs so that it may work towards meeting the established timeliness goals under AMA while also prioritizing resolution of Legacy appeals. Further, the Board has a workforce capital strategy that properly balances the number of decision-writing attorneys, VLJs, and administrative support staff to maximize efficiency in support of the mission to conduct hearings and decide appeals in a timely manner.

Risk: The Board may experience a decline in its workforce through attrition.

Mitigation: The Board will continue enhanced recruitment activity to include recruitment, retention and promotion of Veterans and military spouses. The Board's robust telework and remote programs positively impacted the recruitment of a diverse workforce, retention of employees and positioned the Board as an employer of choice as we continue to use the voice of our employees and VA policies in support of workplace flexibility.

The Board is also committed to continuously improving its organizational culture and work climate. This past year, the Board strengthened employee engagement through weekly informational emails, mentor/mentee programs, monthly newsletters, virtual and

in-person suggestion boxes, implementation of employee-driven suggestions, virtual roundtables, coffees and town halls with Board and VA leadership. In FY 2022, the Board hired an Ombudsman to serve as the lead principal advisor and designated neutral party for promoting a healthy workplace climate and culture at the Board. The Ombudsman established the Employee Engagement Executive Committee, supported by the Employee Engagement Advisory Committee, to solicit, assess and implement employee ideas for change and innovation within the Board. The Board also implemented a program to reimburse attorneys and VLJs up to \$300 in bar dues for one jurisdiction. Due to these initiatives, the Board attrition rate has decreased in the past 2 years.

Risk: Current statutes may constrain VBA's ability to scale its workforce to address reduced workload once the inventory of Legacy appeals, including approximately 24,000 pending Legacy appeal remand decisions, has been exhausted.

Mitigation: VBA will use any appropriate, applicable legal authority to remove employees only as a last resort. VA anticipates using more routine workforce management methods, such as employee attrition or reassignment, to address staffing changes resulting from the elimination of Legacy appeals. The residual risk is low.

Risk: VHA may not be able to provide timely responses to requests for claims files from the Board at its current staffing levels.

Mitigation: VHA will continue to monitor claim and appeal volume and staffing and adjust staffing and other resources as needed. VHA brought on detailees to address the increased volume of AMA decision review requests.

Risk: Staffing changes at NCA may be required to address claimant demand and post-AMA process changes.

Mitigation: NCA will continue to assess if personnel changes are necessary.

Risk: The AMA claims receipts due to the PACT Act may outpace VBA's capacity to complete HLRs timely.

Mitigation: VBA anticipates adjusting staffing accordingly in light of the recent increase in HLR receipts and projected HLRs associated with claims filed under the PACT Act.

4. Estimated Time for Hiring Employees (Section 3(b)(4))

The Board has no updates to prior reports.

Risk: The Board's hiring actions may be delayed due to human resources (HR) support levels.

Mitigation: As of February 28, 2023, the Board has 1,248 FTE employees on board. The Board must rely on Department HR support and strives to maximize the available support to complete any hiring actions. The Board increased staffing in its internal HR Liaisons office to support hiring and onboarding and is close to receiving authorization to hire its own HR specialists; this mitigation effort would help ensure this area is no longer considered a risk necessary for inclusion in future updates to this report.

Risk: VBA's hiring actions during the PACT Act may be delayed due to HR support levels resulting in increased time to process HLRs.

Mitigation: VBA will continue to monitor AMA timeliness and review resource allocations to mitigate any potential risk due to hiring delays, should such delays occur.

5. Training and Experience Required of Higher-Level Adjudicators (Section 3(b)(5))

Risk: HLR caseload may exceed VHA anticipation.

Mitigation: VHA will continue to monitor incoming claims and reviews under the modernized system and will either expand the universe of HLR adjudicators beyond team leads and first-level supervisors or hire additional staff, if necessary.

Risk: At NCA, HLR adjudicators may be specialized in other areas.

Mitigation: NCA will cross-train, as necessary.

6. Estimated Percentage of Higher-level Adjudicators who were Decision Review Officers (Section 3(b)(6))

VBA has no updates to prior reports.

7. Decision Review Officer Functions in new System (Section 3(b)(7))

VBA has no updates to prior reports.

8. Training Timeline (Section 3(b)(8))

Risk: At the Board, formal training may not be available to some administrative staff in their workplace.

Mitigation: The Board's PDD continues to develop targeted training modules for the Board's administrative units to ensure that all employees receive necessary AMA training. The Board is also increasing availability of training opportunities and details.

9. Costs of Training (Section 3(b)(9))

The Board has no updates to prior reports.

10. Information Technology (Section 3(b)(10))

Risk: Ongoing resource constraints may impact Department-wide Caseload development.

Mitigation: Although the Board has a separate budget, OIT resources fall under the Department budget. VA works in close collaboration within the Department to ensure optimum resource allocation and prioritization of Caseload requirements.

Risk: A recently identified Caseload system issue caused malfunctions of end product establishment for Duty to Assist corrective actions based on incompatibility with certain VBA system automation enhancements. End products are VBA's internal control for pending claims and this issue adversely impacts inventory levels and timeliness goals.

Mitigation: VBA is actively engaging with VA's OIT and the Board to develop and implement a short-term and long-term fix to this issue. VBA will provide status updates of this risk and mitigation on future reports.

11. Estimate of Office Space by Phase (Section 3(b)(11))

The Board has no additional updates.

Risk: VHA may require more office space than can be made available.

Mitigation: VHA will rely on telework and virtual workspace.

12. Projections for the Productivity of Individual Employees (Section 3(b)(12))

Risk: There could be an unanticipated decrease in Board output leading to a risk of not meeting performance goals and decreased service to Veterans.

Mitigation: The Board closely monitors and assesses decision output and Veteran-requested hearing scheduling and adjusts to reallocate resources where needed to meet performance goals while utilizing best practices for efficiency. The Board works closely with bargaining unit representatives for employees to ensure that it is meeting the output expectations and managing employee performance for success. For example, the Board reduced hearings output during FY 2023 to focus on increased decision output.

Risk: Prolonged closures at Regional Offices and subsequent postponement of Veteran's hearings due to the COVID-19 pandemic could impact the Board's inventory of workable cases, eventually impacting overall productivity.

Mitigation: The Board is closely monitoring COVID-19 impacts and implemented a robust plan to increase hearing output through several courses of action, including expanded virtual tele-hearing capacity and other IT solutions, restructuring the Board's hearing operations and increased coordination with VSO partners. These efforts were designed to reduce the number of pending Veteran-requested hearings by expanding remote access for rural Veterans, broadening Veteran options and accessibility and improving the overall Veteran experience. With the full implementation of email reminders for hearings, the Board also expects fewer hearing cancellations and no-shows.

With the signing of the VA Tele-Hearing Modernization Act on April 10, 2020, the Board fully implemented a virtual tele-hearing option, allowing Veterans and their representatives to participate in hearings before the Board via voice and video transmission over the internet using non-VA cell phones, tablets and computers. This technology also provides greater access and flexibility to Veterans in rural locations.

Risk: VHA may underestimate or overestimate employee output in terms of processing benefits in the modernized system.

Mitigation: VHA will adjust staffing as needed.

Risk: NCA software systems severely impact adjudication speed.

Mitigation: OIT is working to implement new software.

Risk: VHA adjudication records are currently maintained in many VHA-centric systems that are currently not architected to integrate with the Caseflow system. This is currently adding barriers to the intaking of VHA appeals. If a modernized IT solution for VHA claims processing and management remains unfunded and undeveloped, then VHA appeals will be handled through work arounds that will negatively impact a timely resolution for Veterans and other claimants.

Mitigation: VHA will continue to work with OIT to develop new IT capabilities to enable the intake and management of modernized appeals through the use of Caseflow, the Centralized Mail Portal and eventual integration with a new VHA Case Management System.

13. Outreach Plan (Section 3(b)(13))

Risk: Veterans may not receive enough information about the AMA, or they may be confused by the information they do receive.

Mitigation: The Chairman of the Board participates in multiple stakeholder events and conferences to provide training and information to stakeholders and Veterans about the AMA process. Outreach efforts by both the Board and VBA explained and clarified the AMA system so that representatives and other stakeholders better understand the new law and related implications. The Board revamped its public-facing website in September 2022 to include “story boards” with graphics and data trend information to better inform Veteran choice and these web pages receive more than half of all visits to the Board’s public website. Additionally, throughout FY 2023, VBA will engage in a new strategic campaign to increase understanding and awareness of the two VBA-owned AMA decision review options.

Risk: New VHA capabilities, enhancements and procedures need to be socialized with external and internal VHA stakeholders.

Mitigation: VHA is engaging with internal and external stakeholders, as necessary, including meeting with VSOs and engaging in a year-long “AMA Awareness Campaign.”

14. Timeline for Policy Updates (Section 3(b)(14))

Risk: Updated VHA policies are not currently published.

Mitigation: VHA program offices have provided the affected workforce interim guidance. VHA published VHA Notice 2022-05, The Appeals Modernization Act in the Veterans Health Administration, as interim policy guidance.

15. Timeline for Promulgating Regulations (Section 3(b)(15))

Risk: VHA does not have final AMA regulations.

Mitigation: VHA published Appeals Modernization regulation AQ44, which sunsets Legacy reconsideration processes, in July 2022. VHA will continue to process health benefits claims and appeals in accordance with AMA statutory authorities.

16. Outline of “Opt-In” Circumstances (Section 3(b)(16))

VA has no updates from prior reports.

17. Key Goals and Milestones for Reducing Legacy Inventory (Section 3(b)(17))

Risk: The Board may receive a large number of Legacy appeals in a short time with a corresponding increase in AMA appeals that could result in a delay in reducing the number of pending Legacy appeals and impact the processing of AMA appeals.

Mitigation: The Board increased the number of personnel over the past 3 years and continues to identify and request resources necessary to adjudicate Legacy and AMA appeals timely and accurately. Additionally, the Chairman reorganized the Board structure to put more personnel in Veteran-facing positions that directly deliver results to Veterans and their families. The Board monitors the Legacy workload (case receipts, pending remand inventory and so forth) in each Administration and closely collaborates with VBA, VHA and NCA to adjust workload and workforce processes, as needed. The Board also utilizes automated case distribution to ensure AOD and post-CAVC appeals are appropriately expedited. The Board then distributes these appeals based on the order in which the VA Form 9 or VA Form 10182 was received. An example of the effectiveness of mitigation strategies occurred during 2020 when the Board received an increased number of AMA appeals and also a spike in Legacy appeals from VBA, yet the Board still set an all-time record in decision output during FY 2020. However, as noted in other sections above, Legacy Resolution Plan setbacks are having an impact on processing times for newer AMA appeals that may require additional mitigation steps in coordination with external stakeholders.

Risk: VHA may be unable to resolve the Legacy appeals inventory in a timely manner.

Mitigation: VHA is actively monitoring Legacy appeal inventory and will realign resources, as necessary. In FY 2021, CAMO established an “office hours” policy, enabling program office staff to work directly with CAMO staff to more quickly resolve VHA’s oldest Legacy appeals.

Risk: CAVC decisions adversely impact VHA’s ability to resolve the Legacy appeals workload in a timely manner. Particularly, the ruling in *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), may add thousands of PCAFC appeals to VHA’s Legacy inventory.

Mitigation: VHA is working to establish PCAFC Legacy appeals processes and capabilities.

Section 4 of the AMA authorizes the Secretary of Veterans Affairs to carry out such programs as the Secretary considers appropriate to test any assumptions relied upon in developing the comprehensive plan required by section 3(a) and to test the feasibility and advisability of any facet of the new appeals system. Whenever the Secretary determines, based on the conduct of a program under paragraph (1), that legislative changes to the new appeals system are necessary, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives notice of such determination.

VBA's Test Program: Rapid Appeals Modernization Program (RAMP)

Prior Periodic Progress Reports describe the RAMP program, which allowed certain claimants with Legacy appeals to opt-in to the AMA system. The Board adjudicated appeals arising from RAMP as early AMA appeals in a phased-in approach that allowed the Board to identify and address potential issues and risks related to AMA implementation. Post AMA implementation, the Board has decided appeals that arise from RAMP decisions under the AMA.

On July 20, 2022, VA announced and published in the Federal Register that it will no longer process elections in the RAMP after October 18, 2022 (See [87 Federal Register 43387](#)).

As of December 31, 2022, VBA has 2 RAMP claims. VBA expects to resolve these claims in FY 2023.

Appendix A – Update on Board Outreach

FY-Quarter	Outreach Date/Type	Outreach/Communication Activities
FY 2022 Quarter 4	August 11, 2022 VSO	Chairman Mason authorized the travel of VLJ Paulette Burton to present on her behalf to the Michigan Association of VSOs to train on AMA process and provide an overview of the Board. A mock AMA hearing was demonstrated.
FY 2022 Quarter 4	August 14-17, 2022 <i>Stakeholder</i>	Former Chairman Mason presented as the past Chairman to the annual conference of National Association of State Directors of Veterans Affairs (NASDVA) in Honolulu, HI.
FY 2022 Quarter 4	September 16, 2022 VSO	Vice Chairman Arnold authorized the travel of VLJ Paulette Burton to present on behalf of the Board to the Colorado Department of Veterans Affairs annual VSO training to train on AMA process and provide an overview of the Board. A mock hearing using AMA processes was completed.

FY 2022 Quarter 4	September 20, 2022 VSO	Vice Chairman Arnold authorized the travel of VLJ Tiffany Dawson to present on behalf of the Board to the Colorado Department of Veterans Affairs annual VSO training to train on AMA process and provide an overview of the Board. A mock hearing using AMA processes was completed.
FY 2022 Quarter 4	September 22, 2022 VSO	Vice Chairman Arnold authorized the travel of VLJ Evan Deichert to present on behalf of the Board to the New York Department of Veterans Services annual VSO training to train on AMA process and provide an overview of the Board. A mock hearing using AMA processes was completed.
FY 2022 Quarter 4	September 22, 2022	Vice Chairman Arnold attended the Federal Circuit Conference.
FY 2022 Quarter 4	September 26-28, 2022 VSO	Vice Chairman Arnold authorized the travel of VLJ Jennifer White to present on behalf of the Board to the Tennessee Department of Veterans Services annual VSO training to train on AMA process and provide an overview of the Board. A mock hearing using AMA processes was completed.
FY 2023 Quarter 1	October 5, 2022 VSO	Chairman Areizaga-Soto spoke at the VA Center for Minority Veterans Hispanic Heritage Month Series: The American Latino Veterans Association.
FY 2023 Quarter 1	October 11- 14, 2022 VSO	Vice Chairman Arnold authorized the travel of VLJ Donny Hachey to present on behalf of the Board to the Montana Department of Military and Veteran Services annual VSO training to train on AMA process and provide an overview of the Board. A mock hearing using AMA processes was completed.
FY 2023 Quarter 1	October 17, 2022 VSO	Chairman Areizaga-Soto met with and presented at Disabled American Veterans, the American Legion, and the Veterans of Foreign Wars at their respective Washington, DC headquarters.
FY 2023 Quarter 1	October 17- 21, 2022 VSO	Vice Chairman Arnold authorized the travel of VLJ Nathan Doan to present on behalf of the Board to the Wisconsin Department of Veterans Affairs annual VSO training to train on AMA process and provide an overview of the Board. A mock hearing using AMA processes was completed.
FY 2023 Quarter 1	October 19- 21, 2022 VSO	Vice Chairman Arnold authorized the travel of VLJ Marti Hyland to present on behalf of the Board to the Arkansas Department of Veterans Affairs annual VSO training to train on AMA process and provide an overview of the Board. A mock hearing using AMA processes was completed.
FY 2023 Quarter 1	October 20, 2022 VSO <i>Stakeholder</i>	Chairman Areizaga-Soto, accompanied by Vice Chairman Arnold held the Board's quarterly VSO and stakeholder call to provide an update on appeals at the Board and introduction of the new Chairman.

FY 2023 Quarter 1	Oct 27-28, 2022 <i>Stakeholder</i>	Chairman Areizaga-Soto presented a Board update to the National Organization of Veterans Advocates.
FY 2023 Quarter 1	November 2, 2022 VSO	VLJ Marti Hyland presented virtually to the National Association of County Veteran Service Officers, advanced appeals training on behalf of the Board. A mock hearing using AMA processes was completed.
FY 2023 Quarter 1	December 7, 2022 VSO	Chairman Areizaga-Soto presented before the MS Bar Veteran Law Section.
FY 2023 Quarter 1	December 7, 2022 <i>Stakeholder</i>	Vice Chairman Arnold met with the Judges of the U.S. Court of Appeals for Veterans Claims (CAVC).
FY 2023 Quarter 1	December 16, 2022 <i>Stakeholder</i>	Chairman Areizaga-Soto attended the Investiture of Judge Scott J. Laurer and Judge Grant C. Jaquith to the CAVC.
FY 2023 Quarter 2	January 10, 2023 VSO	Chairman Areizaga-Soto attended co-located VSO Meeting.
FY 2023 Quarter 2	January 23, 2023 VSO	Vice Chairman Arnold attended VVA/VVA meeting.
FY 2023 Quarter 2	February 6, 2023 <i>Stakeholder</i>	Vice Chairman Arnold attended CAVC Bar Association – Sixth Annual VA Update Program.
FY 2023 Quarter 2	February 6, 2023 VSO	Vice Chairman Arnold presented to the NACVSO Summit.
FY 2023 Quarter 2	February 20, 2023 VSO	Chairman Areizaga-Soto presented at the National Association of State Directors of Veterans Affairs (NASDVA).
FY 2023 Quarter 2	February 27, 2023 VSO	Chairman Areizaga-Soto presented at the American Legion Washington, DC Conference.
FY 2023 Quarter 2	February 28, 2023 VSO	Chairman Areizaga-Soto attended a Disabled American Veterans Reception honoring Joseph Parsetich, National Commander Disabled American Veterans.

**Department of Veterans Affairs
April 2023**