



# U.S. Department of Veterans Affairs

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Periodic Progress Report on Appeals  
P.L. 115-55, § 3

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**September 2023 Update**

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## **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. 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 April 2023 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. Government Accountability Office (GAO) Recommendations on Appeals**

This report provides an update on findings contained in the GAO reports noted below. Both reports align under the GAO high risk list series, VA's Managing Disability Claims Workload. For more information on GAO's 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: Additional Planning Would Enhance Efforts to Improve the Timeliness of Appeals Decisions, [GAO-17-234](#), published on 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 Veterans Benefits Administration (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 information technology (IT), which are consistent with relevant sound planning practices." GAO made five recommendations, one of which remains open. The five recommendations are as follows:

- 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).
- Create a schedule for information technology IT improvements that takes into account plans for potential process reform (closed).

**Report 2:** VA Disability Benefits: Improved Planning Practices Would Better Ensure Successful Appeals Reform, [GAO-18-352](#), published on 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 the following 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 – partially addressed).
- Augment the master schedule for implementation of VA’s appeals plan (closed).
- Fully address risk associated with appeals reform (open).

## **B. Department of Veterans Affairs (VA) Progress to Address Both GAO Reports**

During the past 180 days, GAO issued their biennial 2023 Higher Level Reviews (HLR) report (GAO-23-106203) published online April 20, 2023. VA’s Managing Disability Claims Workload improved from “partially met” to “met” in two of the five assessment criteria used to assess open recommendations. The criteria now “met” include Leadership Commitment, Action Plan and “Monitoring.” However, the criteria that remain at “partially met” include “Capacity” and “Demonstrated Progress” by VA as it works to address the remaining open recommendations from the reports outlined above. [www.gao.gov/high-risk-list](http://www.gao.gov/high-risk-list).

Because of redundancy between two of the three remaining open recommendations, the remaining open recommendations on the High-Risk List can be summarized as (1) for monitoring and assessing comparisons between AMA and Legacy systems and (2) addressing risk with fully transitioning to the AMA system. This update highlights key actions completed as well as future planned actions to fully address these open recommendations.

### Completed Actions Demonstrating Progress and Capacity

- More transparent reporting of AMA and Legacy appeals trends in quarterly reports for the fiscal year (FY) 2023 Board of Veterans' Appeals (Board) (va.gov), Congressional mandated biannual reports, annual reports and the FY 2024 Congressional Budget Justification.
- Collaborative monitoring and reporting of VBA’s supplemental claims, higher-level reviews and Board appeals receipts has revealed a steady and consistent trend of Veterans choosing to “appeal first to VBA.” For example, the appeal rate to the Board was 17% in FY 2021 and that number has continued to drop significantly, down to 10% for FY 2023 to date.
- More developed tracking and reporting revealed a 4-year trend that AMA remand rates are roughly 20% lower than the rates of the Legacy system appeals and AMA grant rates are consistently 10% higher than grant rates for the Legacy system appeals.
- Significant capacity was built during FY 2023 to address both pending inventories and workload surges. During the past year, the Board has attained a 34% increase in judge capacity and projected a 25% increase for attorney hiring by year-end.

- A Focus on AMA quality assurance (QA) trends has shown AMA decision quality is as good as or better than Legacy system quality. Established AMA QA goal in quarter1, FY 2023 will be the same as the Legacy system goal of 92% or better. AMA QA rates during FY 2023 have averaged 93.5%.
- Education campaigns and workload shifts have reduced Legacy system hearings to functional 0 and caused AMA hearing requests to drop from 49% in FY 2019 down to a 35% request rate during FY 2023. Currently, only 34% of pending AMA appeals require a hearing. It is important to note that the Board continues to see significant numbers of hearing request withdrawals on top of these reduced percentages of initial hearing requests.

### Future Actions Planned

- Continued monitoring of VA's pending claims and appeals inventory for any emerging or changing trends under the Promise to Address Comprehensive Toxins (PACT) Act.
- Across the enterprise (especially at the Board and VBA), continue to monitor Veteran choice under AMA to identify trends that better inform future training, potential system improvements and related resource requests.
- Better understand root causes for remands and enhance an enterprise-wide recognition that remands provide Veterans no final answers on their appeals and can cause unnecessary delays. For current inventory Legacy system appeals returned to the Board after remand, 46% of them have been remanded at least twice; 25% have been remanded 3 times or more; 13% have been remanded at least 4 times; and 6% have been remanded 5 times or more.
- Full Legacy system appeals system resolution remains a risk. Though reduced from over 472,000 in November 2017, down to under 67,000 FY 2023 to date; however, roughly 22,000 original Legacy system appeals are still pending due to persistent remand challenges.
- PACT Act workload trends are still emerging and ongoing data modeling efforts with VBA will continue to evaluate whether the AMA strategy of "appeal first to VBA" trends for supplemental claims and higher-level review processes will continue.
- Attorney retention rates have vastly improved in recent years and the Board is closely monitoring whether rapid attorney hiring and changes to onboarding/training during FY 2023 will impact retention rates.

### **C. VA Office of Inspector General (OIG) Review of VHA Appeals Benefit Decisions**

Prior to this report, the VA Office of Inspector General (OIG) conducted a review assessing the Veterans Health Administration's (VHA) effectiveness in processing and tracking claimants' health care benefit decision reviews according to the Appeals Improvement and Modernization Act of 2017 (AMA) requirements and two interim policy notices. The report focused on HLR and supplemental claims specifically.

Based on this assessment, OIG made the following two findings:

- VHA has not ensured claimants receive sufficient information to appeal benefits decisions; and
- VHA did not accurately track decision reviews because it has not implemented effective systems, sufficient policies, or adequate training.

As a result, OIG provided the following 14 recommendations to the Under Secretary for Health. The 14 recommendations are as follows:

1. Require the Office of Regulations, Appeals and Policy, in coordination with the Office of General Counsel, to determine whether the Office of Dentistry and the Consolidated Patient Account Center program have appealable benefits decisions governed by AMA and, if so, to update program policies, processes and procedures, accordingly, including ensuring that claimants receive written decision notices that meet all act requirements.
2. Require the Office of Regulations, Appeals and Policy to evaluate the program offices' barriers to include all required elements in decision notices and take corrective action, including seeking Congressional relief, if needed.
3. Using the evaluation findings from recommendation 2, require Payment Operations to update their systems to generate AMA-compliant decision notices to the extent possible.
4. Using the same evaluation findings, require the Veteran and Family Member Programs to update their systems to generate AMA-compliant decision notices to the extent possible.
5. Require the Office of Regulations, Appeals and Policy and Member Services' Eligibility and Enrollment Division Program to ensure that priority group assignment decision notices are provided with enrollment handbooks given to Veterans.
6. Identify resources and assign duties to conduct quality control reviews of decision letters with program offices to remediate deficiencies.
7. Work with the Office of Information and Technology (OIT) to update Casflow to address identified VHA system requirements within specified deadlines, including adding a program identifier and facilitating entries for individuals and entities that are not Veterans.
8. Establish interim tracking procedures with the program offices until Casflow can be considered a reliable system for VHA oversight.
9. In coordination with the Office of General Counsel, seek clarification on how the AMA reporting metrics sections apply to VHA and then develop those measures.
10. Issue policy and other clear guidance that includes standard tracking processes and procedures and oversight of that tracking.
11. Work with VBA and others to allow access to all VHA program offices and those offices in turn require that staff use the Centralized Mail Portal for all decision reviews or establish another mechanism that ensures all decision reviews are tracked from request receipt through routing and processing.
12. Work with the Office of Information and Technology to determine the best way to create a central repository and identify the necessary resources to implement and maintain it.

13. Develop decision review retention standards and communicate to the relevant programs what types of claims and appeals documentation should be stored, for how long and where.
14. Implement training on processing and tracking appeals that is mandatory for VHA staff who process decision reviews.

### **III. Comprehensive Implementation Plan Updates Since the February 2023 Report**

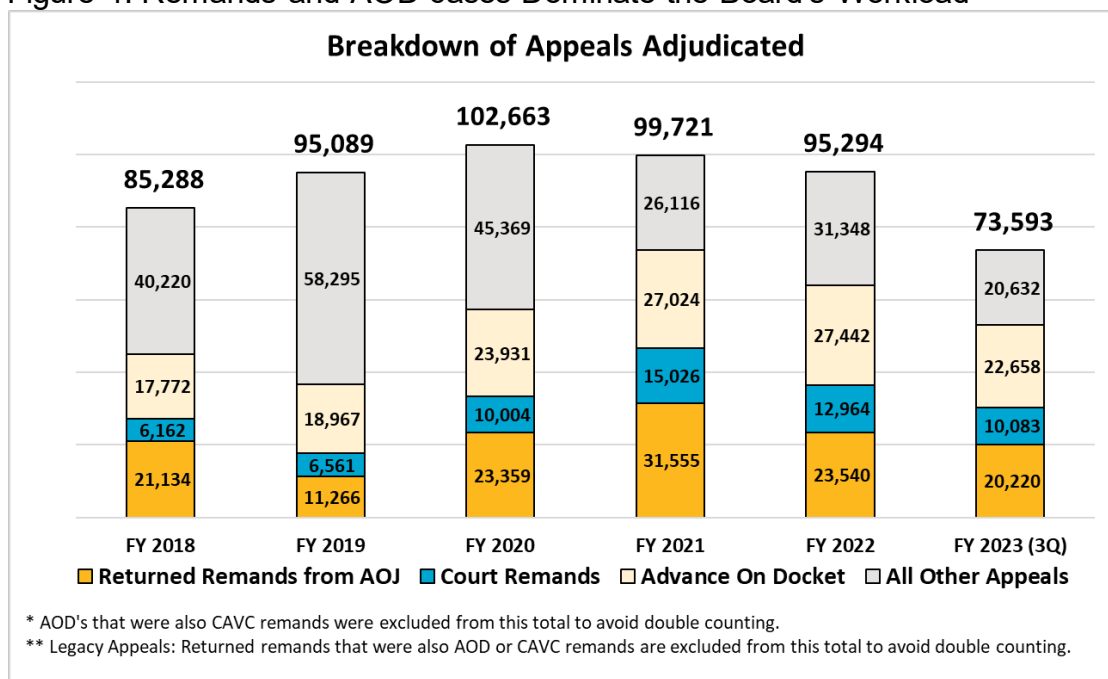
#### **Section 3(a)(1) of AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States for the processing of appeals of decisions on Legacy claims that the Secretary considers pending.**

The Department of Veterans Affairs (VA) has continued to make Department-wide progress during the previous 180 days to resolve the remaining Legacy system appeals. Current data indicates there are 67,223 pending Legacy system appeals Department-wide, of which 23,677 are pending an initial decision by the Board and an additional 10,318 pending Legacy system appeals that have been remanded by the Board to the agency of original jurisdiction (AOJ) for additional development. Both categories of pending Legacy system appeals remain higher than previously projected. Constraints placed on docket order including advance on docket (AOD) cases (age, financial hardship, serious health conditions), remands from the Court of Appeals for Veterans Claims (CAVC) and post-remanded appeals with earlier Form 9 dates have caused the adjudication of the remaining original Legacy system appeals to take longer than anticipated. As a result, approximately 72% of Legacy system appeals adjudicated through the third quarter of FY 2023 were either AOD, Court remanded or post-remand appeals recertified to the Board from VBA. The remaining 28% were original appeals.

As shown in Figure 1 on page 7, post-remand decisions, Court remands and AOD cases continue to dominate the Board's workload.



Figure 1. Remands and AOD cases Dominate the Board's Workload



The Board is prioritizing resources to address pending Legacy system appeal inventories and issued 73,593 decisions through the third quarter of FY 2023, of which 72% (53,208) were Legacy system appeals. The Board is still on track to meet the annual goal of 103,132 decisions (Legacy and AMA).

As shown in Table 1 below, pending Legacy system appeals Department-wide have been reduced by approximately 20% from 84,063 at the end of quarter1 in FY 2023 to 67,223 at the end of June 2023. VA anticipates the downward trend will continue.

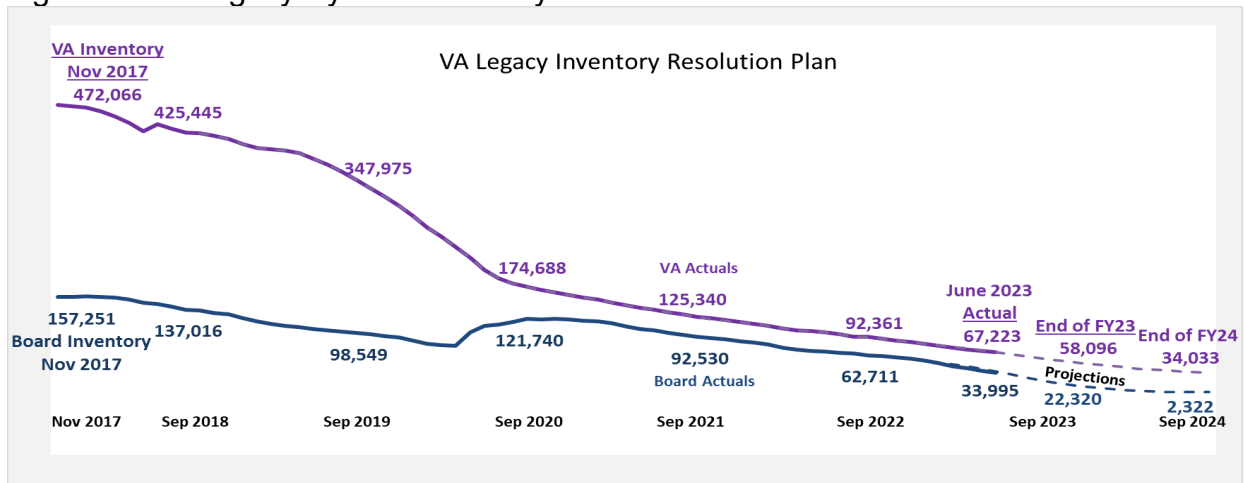
Table 1. Pending Legacy System Appeals by VA Office-FY 2021 through June FY 2023

	FY 2021	FY 2022				FY 2023		
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
<b>VBA</b>	31,425	29,757	30,197	29,770	27,609	25,098	28,488	31,041
<b>VHA</b>	1,444	1,417	1,552	1,668	2,267	2,319	2,051	2,187
<b>NCA</b>	10	6	8	0	0	0	0	0
<b>Board</b>	92,461	85,721	74,974	68,421	62,485	56,646	43,940	33,995
<b>Total:</b>	<b>125,340</b>	<b>116,901</b>	<b>106,731</b>	<b>99,859</b>	<b>92,361</b>	<b>84,063</b>	<b>74,479</b>	<b>67,223</b>

\*Note: There were 347,975 Legacy system appeals pending Department-wide at the start of FY 2020, dropping down to 125,340 pending at the end of FY 2021. (Data Source: VBA Pending Month Summary Report (June 2023)).

Figure 2 below shows the projected inventory of pending Legacy system appeals Department-wide and at the Board. The Board finished the third quarter of FY 2023 with 213,625 appeals pending adjudication, of which 33,995 were Legacy system appeals, which was 2,485 appeals below its projected inventory level of 36,480. The Board has issued 73,593 decisions and held 14,855 hearings through the end of quarter 3 in FY 2023.

Figure 2. VA Legacy System Inventory Resolution Plan

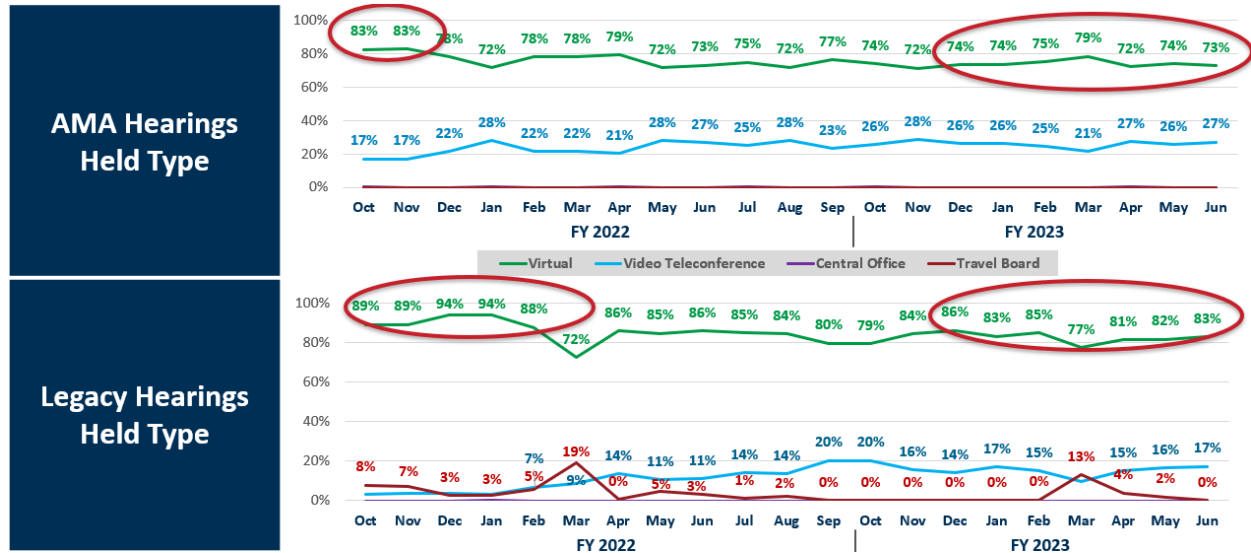


As shown above, Legacy system appeals have been significantly reduced from a Department-wide high of 472,066 in November 2017 to 67,223 pending at the end of June 2023. VA’s pending inventory is now lower than the levels projected in the updated resolution plan but remains higher than originally projected. The initial drawdown plan was developed prior to the Coronavirus Disease, 2019 (COVID-19) pandemic and was shared on October 29, 2019. The resolution plan has been updated several times with the most recent version having been issued in February 2023. 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. During quarter 2 and quarter 3 of FY 2023 approximately 72% of the Board’s workload has been adjudication of Legacy system appeals. Based on a review of the pending appeals, the Board is still anticipating that the number of AMA decisions will be roughly equal to Legacy system decisions by FY 2024.

During the COVID-19 pandemic, the Board leveraged technical innovation to expand virtual tele-hearing capacity. The forum of choice data shown in Figure 3 on page 9 continues to indicate that Veterans are overwhelmingly electing to use the virtual tele-hearing capacity which allows the Board to provide hearings to Veterans from the comfort of their own home or any other chosen location. One trend that is highlighted during briefings to Veteran Services Organization (VSO) partners is the slight drop in virtual hearing requests in favor of modified in-person video hearings at regional offices where VSO representatives meet in person with Veterans for the video hearing with a Veterans Law Judge (VLJ). The Board continues to emphasize this should be the result

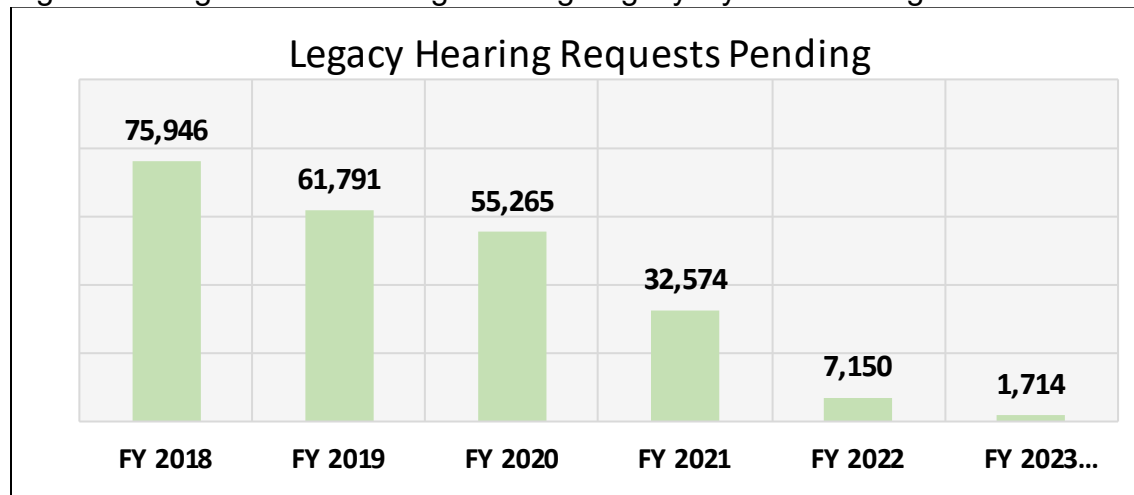
of true Veteran choice, rather than convenience of representatives to ensure the AMA goals of increased Veterans choice are met.

Figure 3. Forum of Choice



The Board continued to communicate with Veterans through multiple streams regarding their hearing options during the past 180 days, specifically how to opt into virtual telehearings. These efforts have allowed the Board to make significant progress in reducing the number of pending Legacy system appeals with a Veteran requested hearing. Since the February 2023 report through quarter 3 of FY 2023, the number of pending Legacy system appeals with a hearing request decreased by 69%, from 5,506 to 1,714. This results in a 76% decrease in the number of pending Legacy system hearing requests during FY 2023 as shown in Figure 4 below.

Figure 4. Progress in Reducing Pending Legacy System Hearings

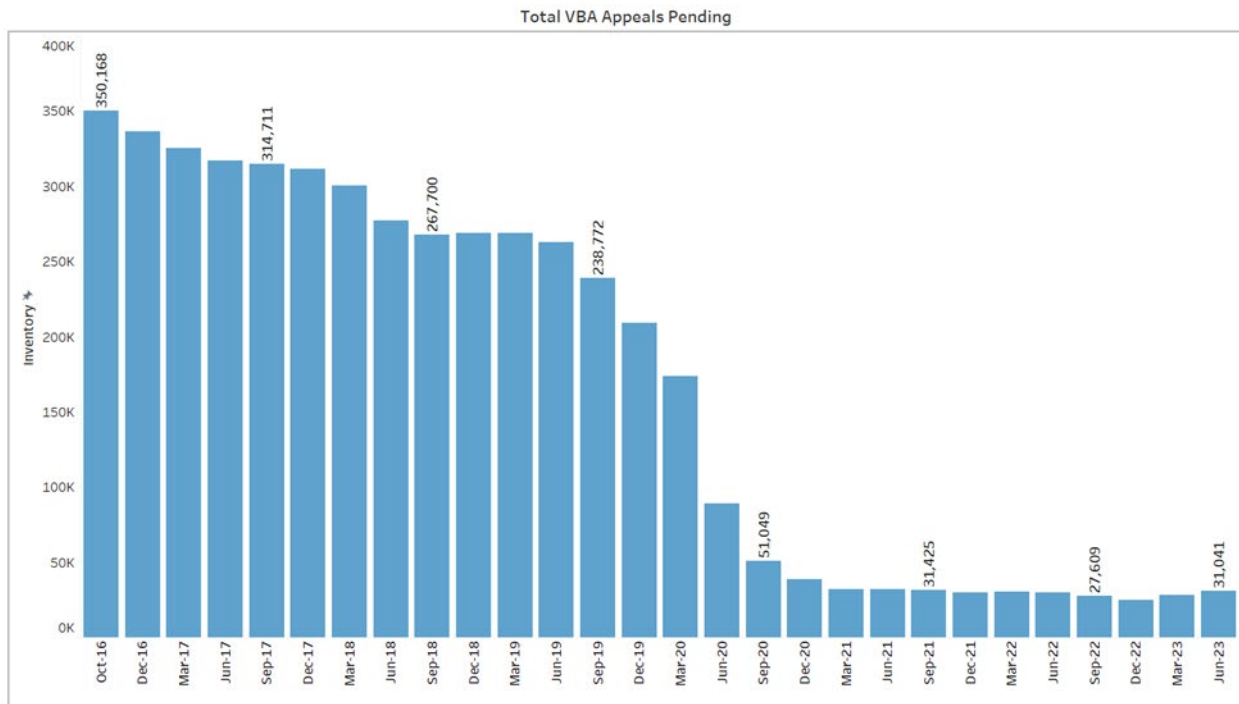


VBA continues to utilize several strategies to resolve the remaining inventory of Legacy system compensation appeals. These strategies continue to include workload

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 June 2023, the total VBA Legacy system appeals inventory decreased by approximately 91.1%, as depicted in Figure 5 below.

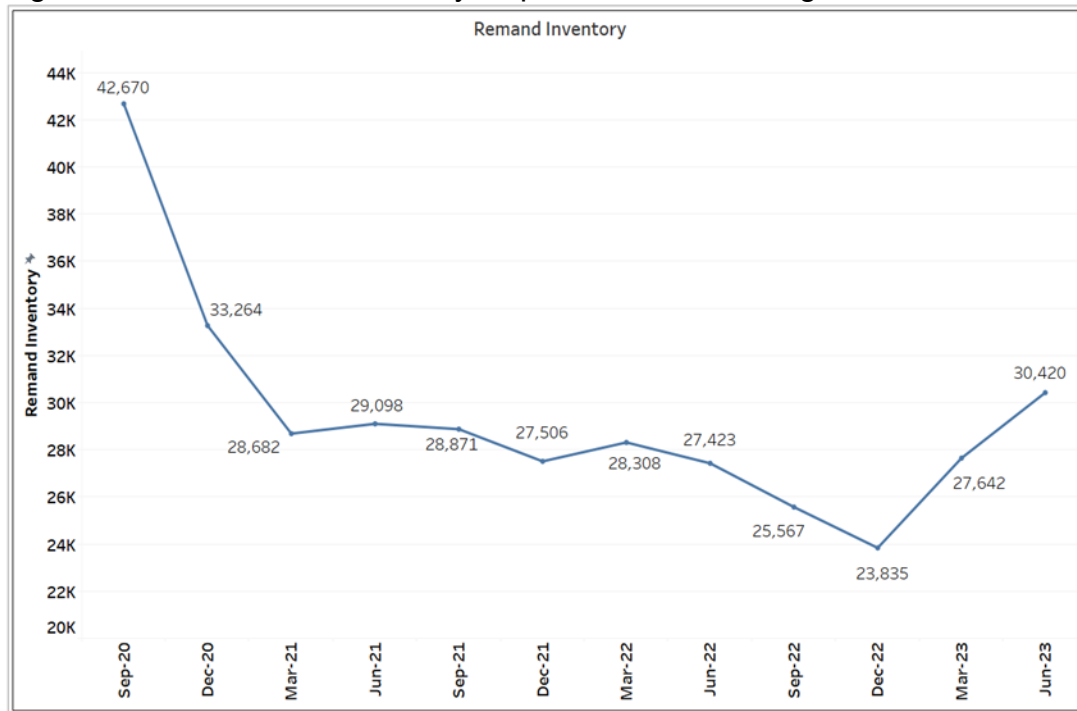
In May 2022, VBA’s Office of Administrative Review (OAR) reviewed 3,806 pending VA Form 9s identified in response to a U.S. Court of Appeals for Veterans Claims order in *Freund v. McDonough*, 35 Vet. App. 466 (2022), regarding Legacy system appeals that may have been prematurely or erroneously closed. Of the 3,806 VA Form 9s reviewed, 2,893 required reactivation. An additional 61 Form 9s warranting reactivation in VACOLS were discovered during special monthly reviews. After completing reactivation actions, as of June 30, 2023, 2,453 have been certified to the Board; 490 were not certified to the Board but were otherwise processed; and 11 are pending VBA action. OAR continued performing special monthly reviews of VACOLS conversions. Any such appeals that cannot be resolved by VBA will be certified and transferred to the Board, resulting in a corresponding increase in the Legacy system appeals inventory.

Figure 5. VBA Legacy System Appeals Pending – October 2016 through June 2023



As of June 30, 2023, VBA reduced remand inventory by 28.7% since the start of FY 2021 as shown in Figure 6 on page 11. The ability to complete Legacy system 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 the Legacy system appeal remands, which may result in extending the Legacy system appeals resolution through quarter 4 of FY 2025.

Figure 6. VBA Remand Inventory-September 2020 through June 2023



VBA remand inventory is projected to increase until January 2024, peaking at approximately 38,000 pending cases. Once the inventory hits that level it will begin decreasing towards functional 0 which is projected to occur in the second half of FY 2025. VBA has defined functional zero as an inventory of 5,000 pending cases. When Legacy system remands are completed in VBA and the issue cannot be granted, the case is recertified back to the Board; therefore, remaining in the overall Department-wide Legacy system appeals inventory until the Board renders a final decision.

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 (HLR) and duty-to-assist error corrections or difference of opinion dispositions identified under HLR and the Board lanes; and (ii) Legacy system appeals.

VBA eliminated the majority of its Legacy system appeals 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. As of June 30, 2023, only 215 Compensation and Pension NODs and 122 Form 9s remain.

VBA will continue in FY 2023 to achieve a working Legacy system remand inventory. VBA defines this as an inventory of Legacy system remands that are currently “in

process.” Annual VBA Legacy system 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 system appeals processing as of June 30, 2023:

- The Pension Program had 212 Legacy system appeals pending with VBA: one in the NOD stage and 211 in the remand stage.
- The Fiduciary Program had two Legacy system appeals pending with VBA: one in the NOD stage and one in the remand stage.
- The Insurance Service had seven Legacy system appeals pending within VBA: one in the NOD stage, one in the Form 9 stage and five in the remand stage.
- The Education Service had 14 Legacy system appeals pending within VBA and all of them are in the remand stage.
- The Veteran Readiness and Employment Service (VR&E) had 57 Legacy system appeals pending within VBA, with 3 in the NOD stage and 54 in the remand stage.
- The Loan Guaranty Service (LGY) had two Legacy system appeals pending within VBA, both pending in the remand stage.

VHA continues to collaborate with the Board and other VA Administrations to address the Legacy system appeals inventory. VHA business lines realigned resources towards eliminating Legacy system appeals inventory while continuing to process claims in a timely manner. All Legacy system appeals are being tracked through the Veteran Appeals and Control Locator System by stage and business line. VHA continued progress on drawing down Legacy system appeals inventory, reducing it to 866 cases as of May 31, 2023.

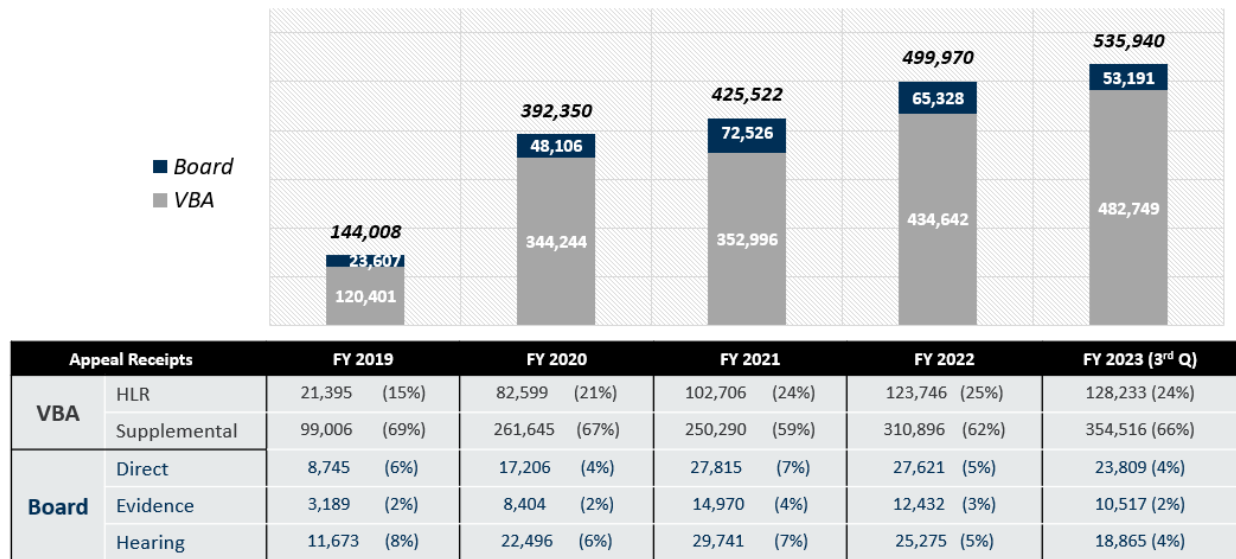
VHA’s progress has been impacted by the ruling in *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), which held that Program of Comprehensive Assistance for Family Caregivers (PCAFC) decisions rendered by the VHA Caregiver Support Program (CSP) are appealable to the Board. Consequently, VA has worked 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 system 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 the Board partners, CSP worked diligently to garner the resources to develop and implement new workflows, processes and procedures required to support the rights 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 system appeals.

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

**Section 3(a)(2) of 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.**

Based on a review of available data, the vast majority of Veterans continue to choose VBA lanes for another review after their initial VBA decision. Figure 7 below shows that since AMA implementation in FY 2019 through the end of quarter 3 of FY 2023, the Board has received a total of approximately 262,758 (13%) appeals, compared to a total of approximately 1,735,032 (87%) AMA reviews filed by Veterans choosing either the HLR or supplemental claim options at VBA during the same period.

Figure 7. AMA Receipts – Claims (VBA) and Appeals (Board)

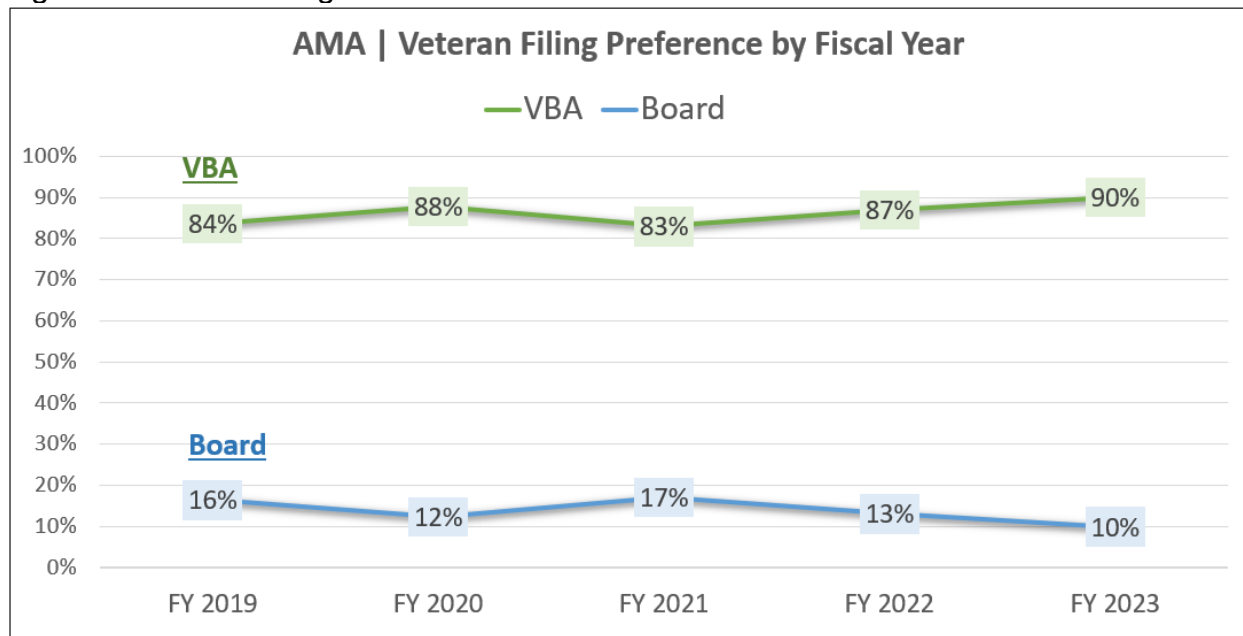


Appeal Receipts		FY 2019	FY 2020	FY 2021	FY 2022	FY 2023 (3 <sup>rd</sup> Q)
VBA	HLR	21,395 (15%)	82,599 (21%)	102,706 (24%)	123,746 (25%)	128,233 (24%)
	Supplemental	99,006 (69%)	261,645 (67%)	250,290 (59%)	310,896 (62%)	354,516 (66%)
Board	Direct	8,745 (6%)	17,206 (4%)	27,815 (7%)	27,621 (5%)	23,809 (4%)
	Evidence	3,189 (2%)	8,404 (2%)	14,970 (4%)	12,432 (3%)	10,517 (2%)
	Hearing	11,673 (8%)	22,496 (6%)	29,741 (7%)	25,275 (5%)	18,865 (4%)

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

Veterans are choosing to “appeal first to VBA” in ever-increasing numbers, which appears to reflect VBA’s additional review options under AMA are attractive alternatives for Veterans. Figure 8 on page 14 shows that while the number of VBA’s AMA decision reviews in HLR and supplemental claims has steadily increased since FY 2021, the average number of docketed AMA appeals at the Board has trended downwards during that same period. In FY 2021, 17% of Veterans were filing AMA appeals with the Board and that percentage dropped to 13% in FY 2022 and is now, in FY 2023, down to 10% of Veterans choosing to appeal to the Board. It should be noted that initial projections after the passage of the PACT Act (P.L. 117-168) indicated the Board could receive as many as 78,000 additional AMA appeals in FY 2023 and nearly 86,000 in FY 2024. However, that increase has not yet materialized.

Figure 8. Veteran Filing Preference



With continued Department-wide resolution of pending Legacy system appeals, the Board is anticipating issuance of 25-30,000 AMA decisions in FY 2023 and another 57,000 AMA decisions in FY 2024. The Board still anticipates that FY 2024 will be the first year in which the number of AMA decisions will be roughly equal to the number of Legacy system decisions. During quarter 3 of FY 2023, the overall percentage of AMA appeals adjudicated began to steadily rise. 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. Therefore, the Board expects the average days to complete AMA appeals will exceed established timeliness goals before cresting and then settling back to within published goals.

VBA continues to administer Veterans Signals (VSignals) surveys to measure satisfaction with 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.

For example, previous quarters showed inconsistency with how Decision Review Operation Centers (DROC) operated the Informal Conference process. VSignals feedback showed that Veterans often thought they were being contacted to schedule an Informal Conference; however, the decision maker was contacting the Veteran to hold the Informal Conference, which left the Veterans ill-prepared. Data from FY 2023, quarter 2 showed that the process has improved as there was a significant drop in negative comments from Veterans on informal conference scheduling and experience.

Additionally, long-standing data indicated Veterans did not understand va's duty to assist or the Decision Review Process. Updates were made to VA.gov in late April 2023



to both of these topics, providing more detailed information in an easier to understand format.

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 the 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 the VHA Legacy system reconsideration processes, in July 2022. See [87 Fed. Reg. 43746](#).

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 being updated. VHA has published revised notices since then, the latest is VHA Notice 2023-03, on April 27, 2023. VHA also published Directive 1041, Appeal of VHA Clinical Decisions, on September 28, 2020.

VHA and the Board have partnered with VBA and 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.

VHA will stand up an integrated project team (IPT) by the end of FY 2023 to address the recent OIG recommendations and further address outstanding AMA implementation deficiencies.

In response to the holding in *Beaudette*, PCAFC decisions include notice of the right to seek further review, including HLR, 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 the following 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.

**Section 3(a)(3) of 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 the following appeals in several dockets:

- Legacy system 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 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 system appeals) or VA Form 10182 (in AMA appeals) 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).

AMA affords Veterans greater choice if they disagree with a VA decision. Since AMA implementation through the end of quarter 3 in FY 2023, approximately 30% of Veterans have requested review of their initial claims decisions, of which, 87% have chosen to file a supplemental claim or request for higher-level review at VBA for a quicker resolution and 13% have filed an appeal to the Board. However, as noted earlier, the rates of appeal to the Board are continuing to decline. During FY 2023, the rates of appeal to the Board was only 10%. Another intended goal of the AMA legislation was to reduce the Board's remand rate and that strategy appears to be working. In FY 2021, 43.1% of the Board's Legacy system appeals issues were

remanded compared to 32.3% of AMA appeals issues. In FY 2022, 46.7% of Legacy system issues appealed were remanded versus 32.9% of AMA issues appealed.

The Board continues to meet its 365-day average timeliness goal for processing direct review docket appeals in FY 2023. Through quarter 3 in FY 2023, the Board has completed 6,455 direct review docket appeals in FY 2023, with an average days-to-complete (ADC) of 312 days. The Board shared strategic goals in the FY 2022 President's Budget of 550 days for the evidence submission and 730 days for the hearing dockets in response to GAO recommendations. Due to prioritization of Legacy system and AOD appeals, the direct review docket makes up approximately 32% of the Board's FY 2023 decisions. The Board's inventory of pending Direct Review docket cases has increased approximately 129%, from 26,849 pending at the start of FY 2022, to 61,533 pending at the end of the quarter 3 in FY 2023.

ADC goals for the direct and evidence 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. However, as noted below, the Board is beginning to adjudicate an ever-increasing number of non-AOD appeals under AMA and expects the ADC for AMA dockets to temporarily climb before declining back within established timeliness goals. Table 2 on page 18 shows that through June 2023, 81% of the direct review and 86% of the evidence submission docket decisions that were dispatched qualified for priority processing. Of the direct review docket appeals adjudicated by the Board through June 2023, approximately 58% 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 system appeals. Initial projections show 25-30,000 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 lead to an increase in the average days to complete appeals to levels that exceed the prescribed timeliness goals. This trend is already evidenced by the increase in timeliness for the hearing docket, which was 847 days in FY 2023 through June 30, 2023, and can be attributed to an increase in the number of Hearing docket decisions and lower proportion of AOD or CAVC remand decisions compared to the other two dockets. This trend of increasing timeliness results 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 June 2023

	Direct Review	Evidence Submission	Hearing
<b>ADC AMA Decision from NOD in FY 2023 through June</b>	312	403	847
<b>Percentage of Decisions that are Priority Appeals (AOD or CAVC remands)</b>	81%	86%	64%

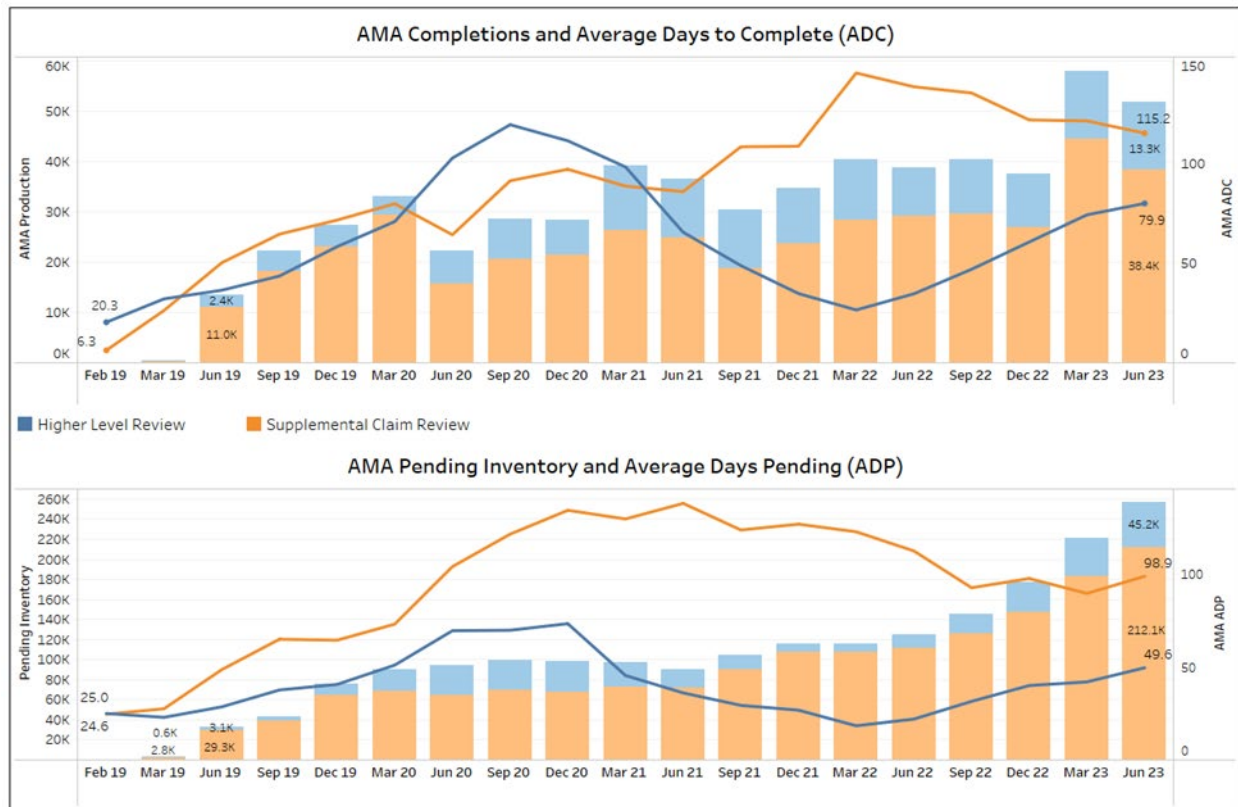
As of the end of June 2023, the average days pending (ADP) for an appeal in the AMA direct review docket was 526 days; the ADP for the evidence submission docket was 665 days; and the ADP for the AMA hearing docket was 686 days. The ADP for all AMA appeals is currently affected by the Legacy system appeals resolution plan as well as the 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, <https://www.bva.va.gov/decision-wait-times.asp>, to help explain the average wait time trends and what the Board is doing about it,

VBA projects it currently requires a total of 1,573 dedicated full-time equivalent employees (FTE) to reduce the pending VBA Legacy system remand inventory to a working inventory level while maintaining timeliness goals in its HLR and related AMA lanes. As of June 2023, the Decision Review Operation Centers (DROC) in St. Petersburg, Florida and Seattle, Washington are authorized a total of 989 full-time equivalent (FTE) employees to complete claims processing for AMA claims (e.g., HLRs, HLR returns due to duty to assist errors or difference of opinions, Board remands and Board full grants). The third DROC, DROC DC, is authorized 488 FTE and predominately completes processing of Legacy system appeals and some AMA work. VBA also has 16 FTEs in the St. Paul, Minnesota Restricted Access Claims Center (RACC) to process both Legacy appeals and AMA claims filed by VBA employees. The number of dedicated FTEs has increased from previous reports due to the signing of the PACT Act on August 10, 2022, and the anticipated increased receipts resulting from the new legislation. VBA anticipates the number of FTEs dedicated to OAR for AMA claims processing will continue to increase through FY 2025 due to PACT Act.

VBA's goal is to maintain processing timeliness of an average of 125 days to complete AMA workload (HLRs and supplemental claims). Overall average timeliness for completing AMA workload at VBA from AMA implementation on February 19, 2019, through June 30, 2023, was approximately 93.2 days, which measures below the ADC goal of 125 days.

For the same period, ADC for HLRs, including AMA full grants was approximately 65.0 days with 442,436 completions. ADP for HLRs, including AMA full grants, was 49.6 days for a pending inventory of 45,174 claims. For supplemental claims, to include associated HLR returns, ADC was 103.2 days with 1,250,765 completions and ADP was 98.9 days for a pending inventory of 212,106. The “AMA completions and ADC” graph in Figure 9 below provides the monthly breakdown for completions and ADC for HLRs and supplemental claims. The “AMA pending inventory and ADP” graph in Figure 9 provides the monthly breakdown for pending inventory levels and ADP for HLRs and supplemental claims.

Figure 9. VBA Monthly AMA Completions and Inventory – February 2019 to June 2023



During FY 2022, the overall average timeliness for completed AMA work was 100.9 days. The ADC for HLRs, including AMA full grants, 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 June 30, 2023, the overall average timeliness for completed AMA work was 106.8 days. The ADC for HLRs, including AMA full grants, is 68.7 days with 109,185 completions. The ADC for supplemental claims, including HLR associated returns, is 119.6 days with 324,814 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, the VBA 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 January 1, 2023, through June 30, 2023, Insurance Service completed four HLRs with an average of 27.3 days and completed 10 supplemental claims with an average of 41.7 days.
- From January 1, 2023, through June 30, 2023, Education Service completed 317 HLRs with an average of 10.8 days and completed 826 supplemental claims with an average of 12.2 days.
- From January 1, 2023, through June 30, 2023 (VR&E) Service completed 250 HLRs with an average of 367.6 days and completed 72 supplemental claims with an average of 82.3 days. Please note, the increase in the average days for HLR completion for this reporting period is due to the identification of 123 pending HLRs. These HLRs were identified during the development of a centralized process for the completion of HLRs in December 2022.
- Current system limitations measure timeliness by the date the Veteran submitted the appeal, not by the date the appeal was received by LGY. From January 1, 2023, through June 30, 2023, LGY completed 30 HLRs with an average of 23.6 days from the date received and completed 71 supplemental claims with an average of 36.6 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 the VHA 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 needs and is considering an 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 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 7 on page 13, an 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 the VBA 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 2 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. The much lower appeal rates to the Board under AMA discussed previously and increasing percentage of Veterans instead seeking the new and faster review options at VBA are encouraging evidence that these expanded Veteran choices are providing more timely and effective final resolution for Veterans. For appeals to the Board under both the Legacy and AMA appeals systems, Figure 10 and Figure 11 on page 22 show that remand rates under the Legacy appeals system have remained relatively stable with 59% of all appeal decisions being remanded while remand rates under the AMA system consistently have been much lower - 15 to 20% better than Veterans experience under the Legacy system.

Figure 10. Legacy System Appeals Resolution Rates: 5-Year Trend

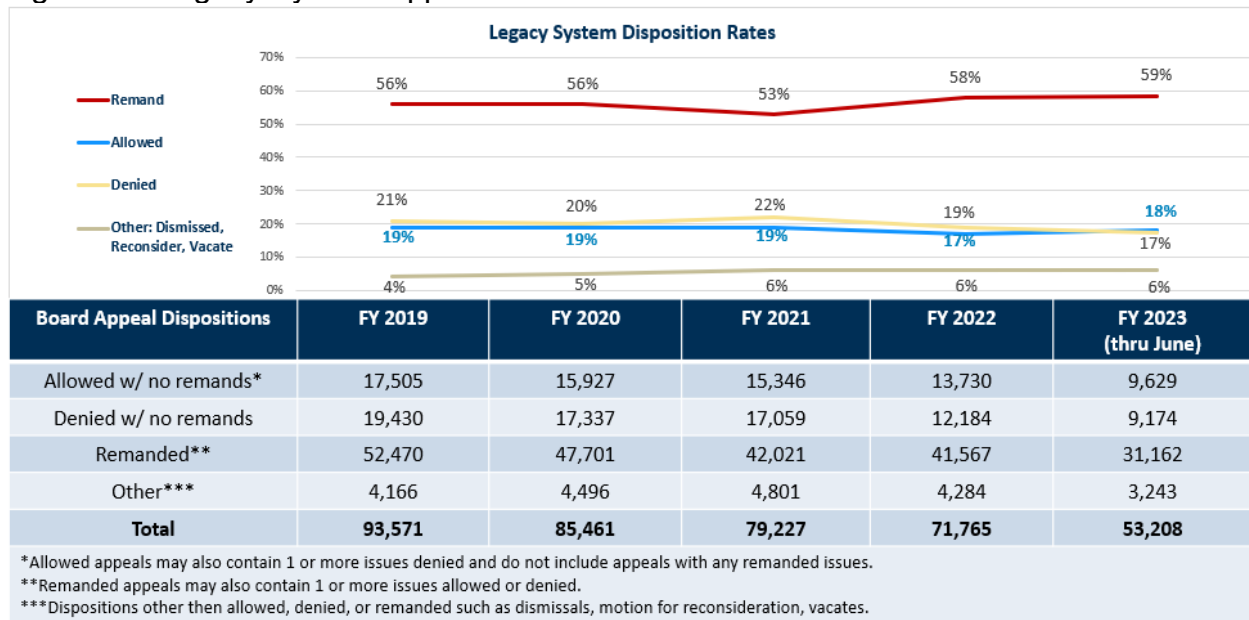
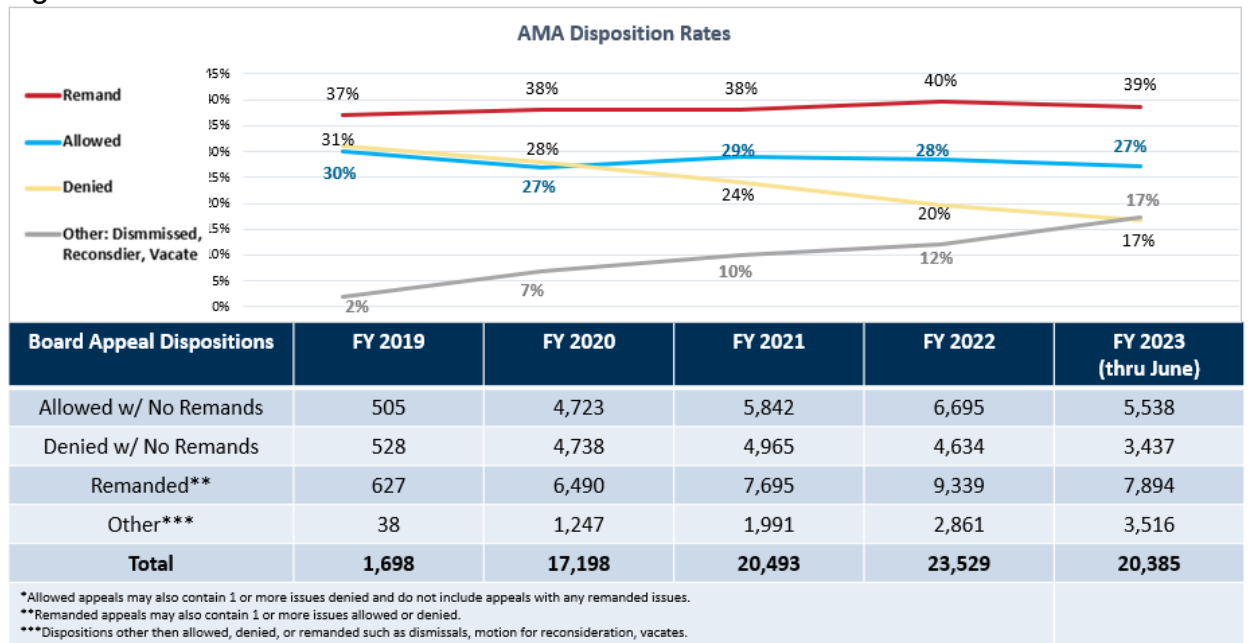


Figure 11. AMA Resolution Rates: 5-Year Trend



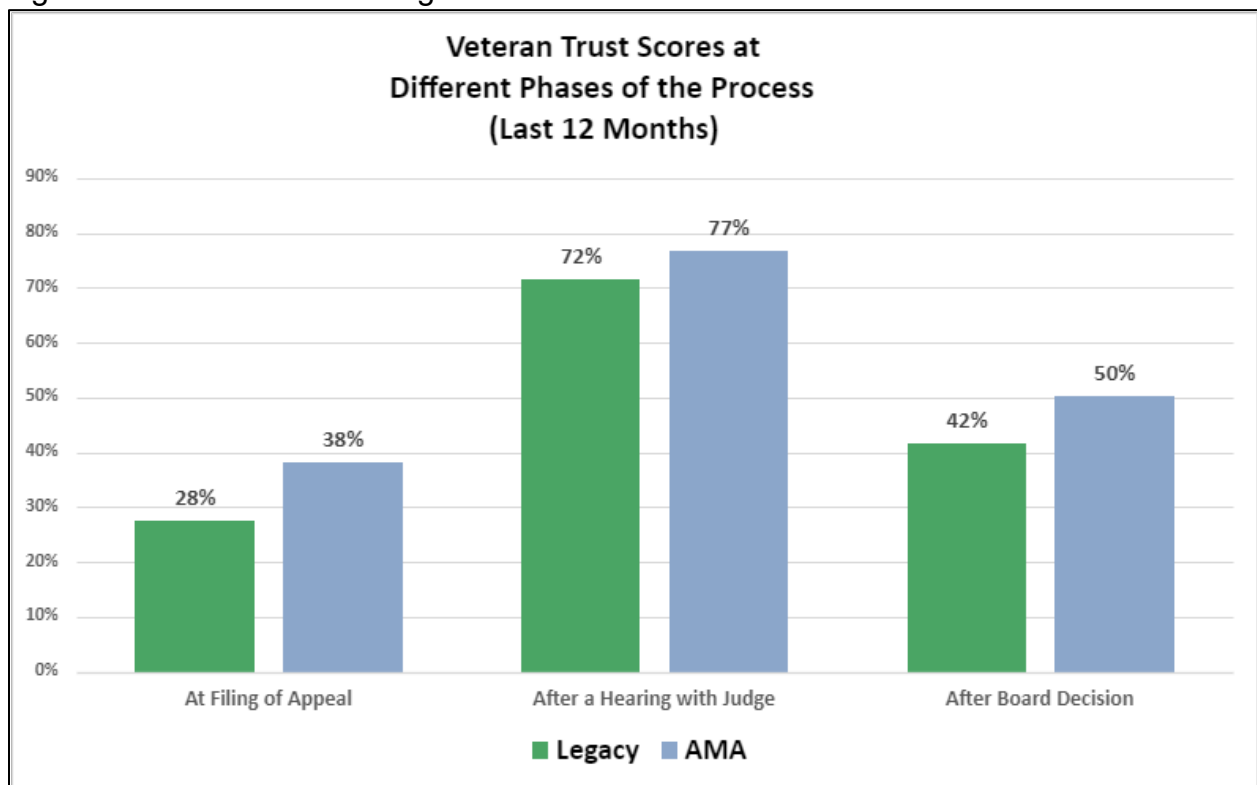
For those Veterans choosing to appeal to the Board under AMA instead of the Board-only option for Veterans under the Legacy system, it is important to reiterate how Veteran trust scores have been impacted under both the Legacy appeals system and AMA system. This is particularly notable when appeals are first docketed at the Board under both systems and after a Veteran receives a Board final decision under both systems. Simply put, trust scores under AMA have been consistently higher and significantly so.



The Board also continues to collaborate with the Veterans Experience Office) to administer the VSignals 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 this survey data to measure understanding and improve the hearing experience, as well as revise its letters and decisions to provide better information and improved clarity to Veterans. Figure 12 on page 23 shows that Veterans’ trust in the Board continues to increase throughout the lifecycle of their appeal at the Board.

The survey data demonstrates that the Veteran experience during the appeal process is generally positive, with overall trust scores rising approximately 13 percentage points from the time they first file with the Board until after they receive the Board’s decision. Figure 12 below shows Veteran trust in VA’s commitment to them is fairly low when they file their appeals. That is unsurprising considering they are appealing a “no” decision from VA with respect to their claim for benefits and services. However, that score dramatically increases to approximately 72%-77% after a Board hearing and remains higher after issuance of the Board’s decision.

Figure 12. Trust Scores Rising



Note: Survey results from July 2022 through June 2023

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

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 quarter of Veterans receiving a decision on their appeal. Figure 12 above on page 23 shows under both the Legacy and AMA appeal systems, that Veteran trust scores increase 12-14% from the time they initially file an appeal through the time when they receive a decision. 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 AMA than in the Legacy system.

The AMA QA goal for FY 2023 is 92%, the same goal for Legacy system appeals. AMA QA rates during FY 2023 have averaged 93.5% year to date.

VHA’s 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 the adoption of VA’s Centralized Mail Portal for receiving and routing some AMA mail and the 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 February 2023 report.**

**Sections 3(b)(1) & (2) of 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 system 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's resource requirements and workload projections are outlined in the FY 2024 Budget Submission (Vol. III, page BVA 271-285) that was released since the last Periodic Progress Report on Appeals was published. As of quarter 3 in FY 2023, the Board has 133 Veteran Law Judges on-board; continues to hire decision writing attorneys; and currently has a total of 1,276 FTEs on-board, which is up 7.6% from last year's cumulative FTEs of 1,182.

In quarter 2 of FY 2022, the VHA CAMO began onboarding detailees to help process and route 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 to coordinate complicated, cross-cutting issues that affect both VHA and the Board.

As a result of *Beaudette v. McDonough*, VHA CSP updated its organizational model and established a dedicated PCAFC review and appeal workstream to support AMA and Legacy system appeals, including quality management. When fully established, the workstream will be staffed by 32 FTEs.

The VHA Office of Payment Operations Management is responsible for most VHA appeals; consolidated appeals processing at select sites; and has dedicated staff for 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 system appeals, AMA supplemental claims, HLRs and other workloads.

**Section 3(b)(3) of 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 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.**

At the end of June 2023, the Board had 1276 FTEs on-board, including the Senior Executive Service and equivalent employees. Budgetary constraints imposed by the 6-month continuing resolution in FY 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 51 new staff, with most of those hires being decision drafting attorneys. Because the Board started FY 2023 with fewer FTEs on-board than originally planned, the Board revised its FY 2023 cumulative FTE goal to 1,341. To meet this goal, the Board started an aggressive hiring plan to recruit and train over 200 new staff, obtaining roughly 1,700 applicants. The Board's successful recruitment strategies also resulted in 50 new VLJs approved by President Biden. This brings the Board's total VLJ staffing level to 134, nearly a 30% increase since the new AMA system went into effect. The Board will continue to onboard new decision drafting attorneys through the end of FY 2023. This fiscal year the Board has already onboarded and/or confirmed entry on duty dates for over 150 new decision drafting attorneys and at least another 50 have accepted tentative job offers.

As previously noted, VBA reduced its workforce from 2,100 to approximately 1,250 FTEs before the end of FY 2021, in conjunction with VBA's Legacy system 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. Passage of the PACT Act in August 2022 resulted in a significant increase in AMA claims receipts. To address the increased workload, VBA implemented strategic hiring plans to increase staffing throughout the organization.

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, 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 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 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.**

Since February 2023, 21 new attorneys have completed the Board's New Attorney Training Program and 81 attorneys are currently enrolled. The Board anticipates continuing to enroll a high volume of attorneys throughout the next 6 months.

In April 2023, the Board's Professional Development Division (PDD) facilitated a 3-week training program for a cohort of 11 new VLJs, which included training on AMA.

PDD also conducted training for existing employees during the past 180 days to include a March 2023 Board-wide training on appeals involving the PACT Act. PDD also presented a Board-wide training on AMA remands, including identifying the bases for remand in the AMA, avoiding pitfalls when remanding in the AMA and recognizing additional circumstances where remands are proper. The Board closely monitors errors identified by its Office of Assessment and Improvement and uses that data to target focused Board-wide training and guidance.

In April 2023, the Board held a 3-day in-person VLJ legal training conference, to enhance VLJs' knowledge and ability to preside over hearings and adjudicate appeals efficiently and effectively for Legacy and AMA appeals. Sessions included training on AMA jurisdictional issues; how to navigate appeals involving military sexual trauma, Standards of Representative Conduct; and OGC referrals and appellate practice and trends before the U.S. Court of Appeals for Veterans Claims. Board Supervisory Senior Counsel also attended select portions of the legal training conference.

In May 2023, the Board conducted 2 days of virtual training offered to all judges and attorneys, addressing when it is legally permissible to remand AMA appeals for additional development before deciding the cases on the merits. This training also included practice tips for addressing a variety of common issues in AMA appeals.

PDD also facilitated additional training for VLJs on appeals involving clear and unmistakable error at the Board and agency of original jurisdiction levels in February 2023, a training on severance and forfeiture appeals in April 2023 and a training on VR&E appeals (formerly known as vocational rehabilitation) in June 2023.

PDD also continues to hold open door hours where experienced attorneys field substantive and procedural questions in support of all VLJs and attorneys at the Board.

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

**Section 3(b)(9) of 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 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 closely in conjunction with business teams from the Board to improve system integration and data exchange working towards a fully integrated, enterprise-wide solution, that meets post-AMA implementation requirements.

Throughout FY 2023, OIT has 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 make significant progress in drawing down the Legacy system appeals inventory. Such enhancements include the creation of the CAVC dashboard, the ability to establish AMA CAVC Appeals with recognized granted substitute appellants to Caseflow after death dismissal decisions and an improvement to Reader which allows document types to be able to show as "other" which provides more accurate descriptions of document types. Enhancements to Intake include the ability to create a VHA Regional Office Organization Queue and improvement to the VHA Caseflow Team Management that now allows VHA Caseflow administrators to determine which users can access VHA records within Caseflow by approving or denying individual requests to reduce inaccurate and problematic reviews cause by erroneous actions. Additional functionality includes enabling Contested Claim task creation for appeals that automates the tracking of sending notification letters to appellants; optimization of the Decision Review queue pagination which has reduced load times by 50%; mitigation of delays in EP040 establishment for VBA; updating the Caseflow/IDT API to validate addresses for letters; updating document types for upload to the eFolder to better track correspondence; VA Notify enhancement to send email communications to appellants regarding the status of their appeal when specific events are triggered in Caseflow; and the addition of PACT Act option to the Special Issue

Selection interface. These functionalities are 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 nationwide 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 include allowing all legacy Travel Board hearings to be scheduled in Caseflow improving the Board's scheduling capabilities; creation of a hearing-link for each hearing day to simplify user access and enable direct recording of hearings from the hearing docket, thereby improving efficiencies in the hearing process; resolving an issue when VSO users converting hearings to a virtual hearing unintentionally changed the Veteran's hearing time to the time zone of the VSO user rather than the Veteran; and enabling a fix to ensure that the daily hearing docket successfully loads in Caseflow when a hearing is scheduled for an appellant that is an organization, as this occurrence previously blocked the daily hearing docket from loading for Board staff; and integrating with VA Notify in a multi-phase effort to provide a notification page in Caseflow, set up quarterly notifications, display notification status and provide the ability to create .pdfs of VA notify events to auto upload to eFolder. A guest link can also be added to the top of the Hearing Docket that now provides the ability to distribute a hearing's guest link to a representative when an appellant attends a hearing in person so the representative can join from a remote location and in turn help to improve reporting numbers and eliminate confusion and improper notification.

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. Veterans can 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) 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.**

The Board has 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.

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.

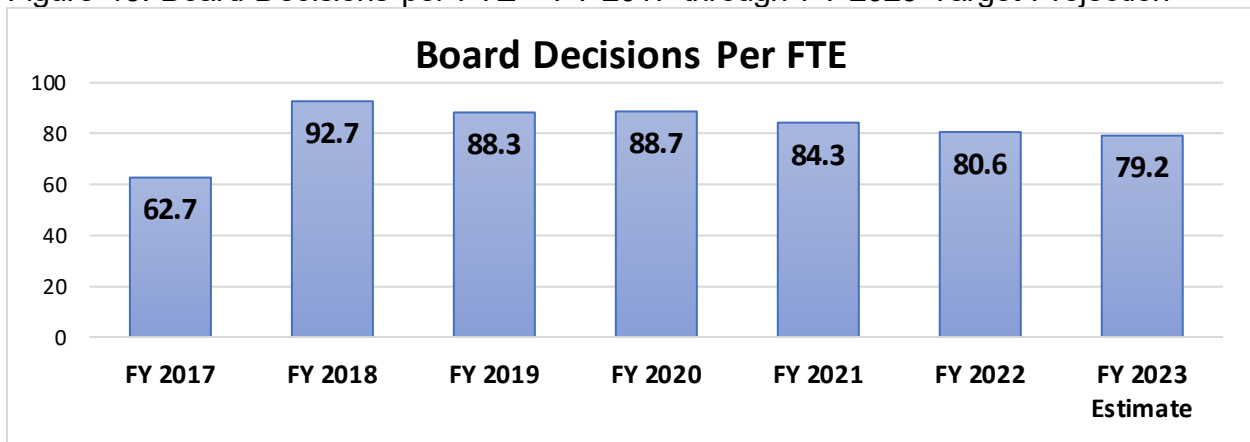
**Section 3(b)(12) of AMA requires projections for the productivity of individual employees at VBA and the Board in carrying out tasks relating to the processing of appeals of decisions on Legacy claims and appeals under the new appeals system, taking into account the experience level of new employees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

The Board's current union negotiated 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. After a 6-month training period, new decision writing attorneys are expected to meet regular production standards. After accounting for the training period and increased emphasis on mentored writing during the first year of employment, new decision writing attorneys have achieved, on average, 72% of the annual productivity standards expected of fully trained attorneys.

Board decisions per FTE as shown in Figure 13 below, is calculated as the total number of appeal decisions divided by the cumulative FTE at the Board for the fiscal year, which includes both attorney and non-attorney staff. The timing and number of new hires, attrition, overtime and leave usage can impact these results differently each year. While FY 2023 projections are lower than desired, the Board expects a quarter 4 incentive program may allow the Board to exceed the estimate.



Figure 13. Board Decisions per FTE – FY 2017 through FY 2023 Target Projection



Through June 2023, VBA decision makers completed an average of 1.5 Legacy system appeals per day; 2.7 HLR decisions per day; 1.8 HLR returns per day, AMA remands and AMA Board grants per day. The data provided is derived by dividing the number of FY 2023, through June 30, 2023, completions by the 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 personal identity verification cards or other good cause). In FY 2023, VBA projects completing 45,651 Legacy system appeals (including Legacy full grants), 142,060 HLRs, 45,788 HLR returns, AMA remands and AMA full grants.

The VBA 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 and AMA systems 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 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 AMA, with a focus on choice, control and clarity for the Veteran. In April 2023, the Chairman hosted a quarter 2, FY 2023 VSO outreach call, updating participants on the Board metrics and best practices. More recently, the Chairman, the Vice Chairman and VLJs attended and spoke in person at VSO conferences, educating hundreds of representatives on best practices to advise Veterans about their choices under AMA. Additional information regarding their outreach activities is available in Appendix A.

As previously noted, the Board uses the VSignals customer experience survey. Based on responses received from the Board's VSignals survey since the last report, Veteran trust continues to rise from 46% in December 2022 and averaged 49% during quarter 3 of FY 2023. This coincides with doing an increasing percentage of AMA appeals. It also appears that overall Veteran trust levels under AMA continue to climb at the stage when their appeal is filed at the Board, while trust scores remain consistently lower among Veterans when they have Legacy appeals docketed 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 between July 1, 2020, and May 31, 2023, there were 435,776 surveys sent and 95,490 responses received, of which 40,654 responses were for the filing survey; 12,650 responses received were for the HLR survey; and 42,186 responses received were for the supplemental claim survey.

The VSignals dashboard is our customer experience listening and measurement platform providing a touchpoint between AMA claimants and VBA. Short customer experience surveys that measure a specific service experience are sent to individuals shortly after an interaction with an AMA service. This data is analyzed and displayed in a dashboard designed specifically for VBA leadership to help them gain a near real-time understanding of the current customer experience. The VSignals platform ensures optimal and effective service for the Veteran, family, caregiver and VBA. Insights derived from survey responses and comments are leveraged to inform AMA Program improvement. VSignals measurement methodology is recognized as a best practice by Office of Management and Budget and was specifically mentioned in the President's Management Agenda.

VHA partnered with the Board to solicit VSOs' views regarding the 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 AMA.

NCA has no substantive update to prior reports.

**Section 3(b)(14) of 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](http://www.bva.va.gov) are ongoing to better ensure Veterans, family members and representatives by providing access to clear, concise and useful information including updated monthly metrics and information about both the Legacy system and AMA process and timelines. The rebranding of the Board's website ensures Veterans and stakeholders can easily find important appeals related information in an intuitive and easy to follow user interface.

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

**Section 3(b)(15) of 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 has no substantive updates to prior reports.

VHA published Appeals Modernization regulation AQ44, which sunsets Legacy system reconsideration processes, in July 2022. See [87 Fed. Reg. 43746](https://www.federalregister.gov/documents/2022/07/20/2022-14374). 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 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.

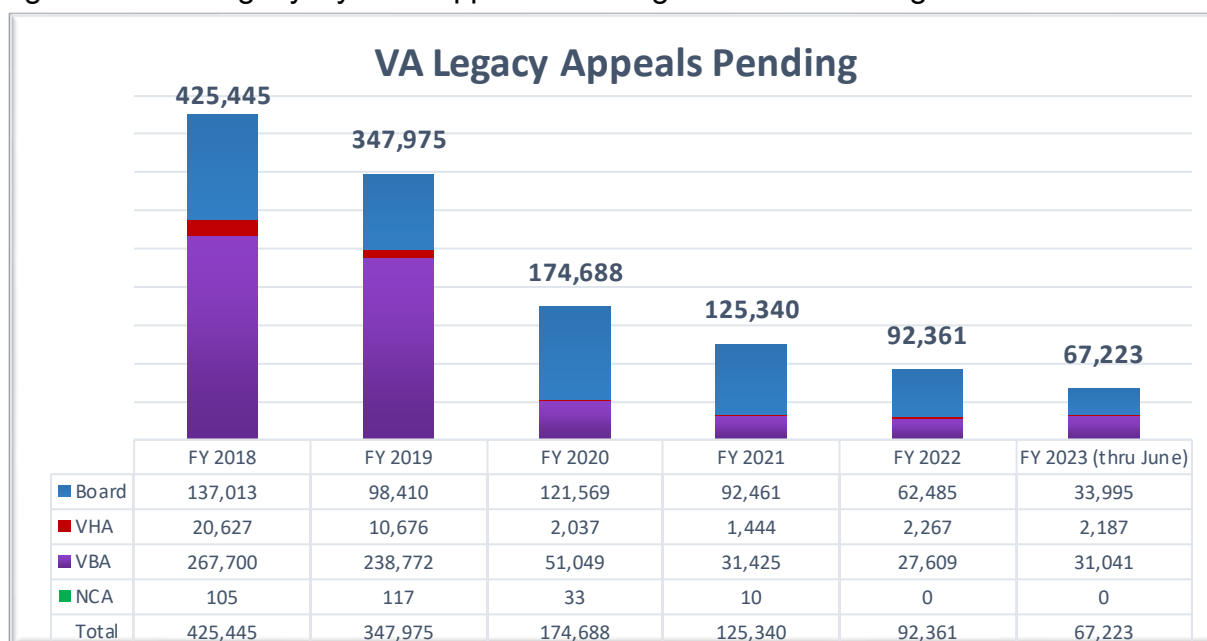
Per the 2023 OIG report, Review of VHA Appeals of Benefit Decision, OIG recommended that VHA work with OIT to update Caseflow to address identified VHA system requirements within specified deadlines, including adding a program identifier and facilitating entries for individuals and entities that are not veterans as well as determining the best way to create a central repository for all supporting documentation (Recommendations 7 and 2, refer to pages 5-6 in the report).

**Section 3(b)(17) of 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 System Appeals Resolution Plan includes a prioritized reduction of Legacy appeals, informed by 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 system appeals pending in the Department before the Board and in VBA, VHA and NCA. The plan demonstrated significant progress by reducing the number of pending Legacy system appeals by 81%, from 347,975 pending at the start of FY 2020, to 67,223 pending at the end of June 2023.

The Department's goal was to resolve Legacy system appeals by the end of calendar year 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 system 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 regional offices, as well as hiring delays and a reluctance to opt into virtual tele-hearings. See Figure 14 on page 35.

Figure 14. VA Legacy System Appeals Pending – FY 2019 through June FY 2023



Based on the relative age of appeals pending in both the Legacy and AMA systems, the Board estimates less than 75% of its workload in 2023 will be the adjudication of Legacy system appeals. It is anticipated that FY 2024 will be the first year in which the number of AMA decisions will be roughly equal to the number of Legacy system decisions.

Progress has been made but there is still a higher-than-expected number of original Legacy system appeals pending an initial decision by the Board. Adjudication of these original appeals has taken longer than anticipated because of the constraints placed on the docket order by including AOD cases (e.g., age, financial hardship and/or serious health conditions), court remands and post-remanded appeals with earlier Form 9 dates. As a result, approximately 72% of the Legacy system appeals adjudicated through quarter 3 in FY 2023 were either AOD, Court remands or post-remand appeals, with the remaining 28% 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 CAVC, it is likely the Board could experience another 37,500 of previously adjudicated Legacy system appeals returned in 2024 due to remands. As such, approximately 50% of the workload is estimated to be Legacy system appeals in 2024 with a potential of finishing the year with fewer 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 system 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 system appeals has ranged from approximately 38.8% to 46.04% between FY 2016 and June 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 system appeals have been received by VBA.

Table 3. Board Legacy System Dispositions – FY 2016 through June FY 2023

<b>Board Legacy System Decisions*</b>					
<b>FY</b>	<b>Decisions</b>	<b>Allowed</b>	<b>Remanded</b>	<b>Denied</b>	<b>Other</b>
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 June)	53,208	32.7%	44.0%	17.2%	6.1%

\*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 actions (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 system inventory in the NOD and Form 9 stages in FY 2020 and significantly reduced its remand inventory in FY 2020 and FY 2021. As of June 30, 2023, VBA has 989 FTEs that are dedicated to managing and administering decisions in the AMA system—specifically HLRs and duty-to-assist error corrections identified under HLR and the Board lanes. The remaining appeals production employees (totaling approximately 488 FTEs) manage and process Legacy system appeals. All remaining FTEs include staff support and management.

Veterans may elect to opt into an AMA decision review lane, rather than remain in the Legacy system appeals process on statements of the case issued after February 19, 2019. From implementation through May 31, 2023, appellants have opted 16,516 Legacy system appeals into AMA through this avenue. In FY 2023, opt-ins from the Legacy system process decreased at a rate of 65 per month as compared to 80 per month in FY 2022. 520 opt-ins have been received in FY 2023 through May 31, 2023.

Specific to other VBA benefit programs:

As previously stated, as of June 30, 2023, there are two Legacy system fiduciary appeals pending at fiduciary hubs with one claim in the NOD stage and one in the remand stage and 212 Legacy system appeals with one or more pension-related issues. There are 211 remands, with one in the NOD stage.

- As of June 30, 2023, the Insurance Service has seven Legacy system appeals pending in insurance-related issues. There are five remands, one each in the NOD and Form 9 stages.
- As of June 30, 2023, the Education Service has 14 Legacy system appeals pending in education-related issues, all pending as remands.
- The VR&E Service started a systematic review and action plan on Legacy system appeals in February 2018. The VR&E Service regularly issued instructions for processing targeted Legacy appeals quarterly to ensure VR&E's role in the Legacy system appeals is completed in a timely manner. VR&E has 57 Legacy system appeals pending as of June 30, 2023. Of these, 54 are in the remand 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 June 30, 2023, there are two remands from the Board remain pending.

VHA has made progress drawing down Legacy system 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 system 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 system appeals.

Section 3(b)(18) of 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 unavailable. 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 system 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. Specific to processing AMA claims and Legacy system appeals following implementation of the PACT Act, VBA added 307 FTEs in FY 2023 to address the increased inventory of claims. VBA will continue hiring additional FTEs in FY 2024 and FY 2025 to meet the needs of projected increasing receipts. The Board is authorized to hire 153 FTE in anticipation of increased future appeals workload resulting from the PACT Act.

### **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 system appeals. The Board also updates organizational charts and requests adequate funding to support staffing as well as training and retention efforts. 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. With huge investments in personnel resources and the other mitigation strategies in place, coupled with consistent trends on rates of appeal, the Board believes this risk is now substantially reduced from prior years.

Risk: The Board may experience a decline in its workforce through attrition, and additional hiring can create an initial but temporary production decline.



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. Within the last 6 months the Board also improved the program to reimburse attorneys and VLJs eliminating the \$300 reimbursement cap for bar dues for one jurisdiction. Due to these initiatives, the Board attrition rate has significantly decreased in each of the last 4 years. However, with recent surges in new attorney hiring, the Board is still identifying this as a potential risk area.

Risk: Current statutes may constrain VBA's ability to scale its workforce to address reduced workload once the inventory of Legacy system appeals, including approximately 29,680 pending Legacy system 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 system appeals. VBA modeling efforts have continued to advance to account for the decreasing workload need and planning for shifting FTE resources from Legacy system work to AMA system work when able to do so. 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 is adjusting staffing accordingly in light of the recent increase in HLR receipts and projected HLRs associated with claims filed under the PACT Act. In FY 2023, VBA added 307 FTEs.

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

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

Mitigation: As of May 31, 2023, the Board had 1,279 FTEs 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, especially if the Board is authorized to begin hiring its own HR specialists during FY 2024, will allow the Board to complete many HR-related functions on its own and this will contribute to faster and more agile recruiting strategies. If this initiative materializes, this risk will be closed.

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))**

The Board has no updates at this time.

## **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 Caseflow 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 Caseflow requirements.

Risk: A recently identified Caseflow system issue resulted in the failure of the end product establishment for HLR returns (duty to assist errors and difference of opinions). End products are VBA's internal control for pending claims. This issue adversely impacts inventory levels and timeliness, as well as VBA's ability to serve Veteran's timely when an HLR return claim is impacted.

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. At the time of this report, OIT has implemented a short-term solution by manually syncing the system, which results in many of the claims being established. The remainder of cases not resolved by the sync are brought under EP control outside of Caseflow. VBA and OIT are working towards the long-term solution of having all claims established in VBMS instead of Caseflow. VBA will continue to 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. With these new efficiencies, the Board is seeing an emerging trend toward lower inventories of pending hearings and this risk appears to have been entirely mitigated.

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 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 engaged 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 system 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 system 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 system appeals and impact the processing of AMA appeals.

Mitigation: Since the last report, the Board has hired additional VLJs bringing the total to 134 VLJs and continues to hire additional decision drafting attorneys to increase capacity for appeals decisions. Additionally, the Board outlined additional hiring plans in the FY 2024 budget request, to include plans to hire 153 positions, if needed, to address a potential increase in workload from appeals under the PACT Act.

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

Mitigation: VHA is actively monitoring Legacy system 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 system appeals.

Risk: CAVC decisions adversely impact VHA’s ability to resolve the Legacy appeals workload in a timely manner. Particularly, the ruling in *Beaudette* may add thousands of PCAFC appeals to VHA’s Legacy inventory.

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

**Section 4 of 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)**

The Rapid Appeals Modernization Program (RAMP) was VBA's pre-implementation test program of the new claims and appeals system established AMA. RAMP ended on February 15, 2019, and VA continued to process previously received unaddressed RAMP Opt-in Election forms discovered in claims files. Pursuant to VBA's procedures to conclude RAMP, effective October 18, 2022, VA will no longer process unaddressed RAMP opt-in elections. See [87 Fed. Reg. 43387](#). Post AMA implementation, the Board decided appeals that arose from VBA RAMP decisions. VBA has completed all RAMP claims.

**Appendix A – Update on Board Outreach**

<b>FY-Quarter</b>	<b>Outreach Date/Type</b>	<b>Outreach/Communication Activities</b>
FY 2023 Quarter 3	April 20, 2023 VSO	Chairman Areizaga-Soto hosted the Board of Veterans' Appeals Quarterly VSO Call.
FY 2023 Quarter 3	May 2, 2023 VSO	Chairman Areizaga-Soto attended and presented at the Virginia Department of Veterans' Services Training Conference.
FY 2023 Quarter 3	June 6, 2023 VSO	Chairman Areizaga-Soto attended and presented at the NACVSO (National Association of County VSOs) Annual Conference.
FY 2023 Quarter 3	June 20, 2023 VSO	VLJ Deichert attended and presented at the NASDVA (National Association of State Directors of Veterans Affairs) Southeast District Conference.

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