



# U.S. Department of Veterans Affairs

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

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**February 2024 Update**

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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..... 47

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## **Executive Summary**

This is the tenth 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.

VA's core values: Integrity, Commitment, Advocacy, Respect, and Excellence are integral to fulfilling the Department's statutory mission to fully consider and resolve matters raised by Veterans, their dependents, or their survivors.

This report focuses on updates to elements of the Comprehensive Plan since the August 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 the 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 the 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 GAO Reports**

GAO issued its biennial 2023 High Risk List (HLR) report ([GAO-23-106203](#)) on 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.

Based on redundancy between the remaining open recommendations, they can be summarized as: (1) 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 (HLR), and Board appeal receipts show 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 continued to drop to 14% for FY 2023.
- More developed tracking and reporting revealed a consistent 4-year trend that AMA remand rates are roughly 20% lower than the rates of the Legacy appeals system, and AMA grant rates are consistently 10% higher than grant rates for the Legacy appeals system.
- Significant capacity was built during FY 2023 to address both pending inventories and workload surges. During the past year, the Board increased judge capacity by 12.6% and increased decision writing attorneys by 16%. OAR increased on-board staffing levels at the Decision Review Operations Centers (DROCS) by 247 FTE in FY 2023. At the time of this report, the DROCs are authorized to hire



up to 1,821 FTE in FY24 and are actively working to achieve allocated staffing levels.

- A focus on AMA quality assurance (QA) trends at the Board shows AMA decision quality is as good as or better than Legacy system appeal quality. AMA QA rates at the Board during FY 2023 averaged 93.5%. The higher-level review QA rate at VBA averaged 98% for FY 2023.
- Education campaigns and workload shifts reduced Legacy system hearings to functional zero and caused AMA hearing requests to drop from 49% in FY 2019 down to a 35% request rate during FY 2023. Only 34% of pending AMA appeals require a hearing. The Board continues to see significant numbers of hearing request withdrawals on top of these reduced percentages of initial hearing requests.
- An 83.5% reduction in pending original Legacy appeals from 40,994 on October 1, 2022, to 9,639 pending as of December 31, 2023.

### Future Actions Planned

- Continue to monitor VA's pending claims and appeals inventory for any emerging or changing trends under the Promise to Address Comprehensive Toxins (PACT) Act.
- Continue to monitor Veteran choice under AMA enterprise-wide (especially at the Board and VBA) to identify trends to inform future training, potential system improvements, and related resource requests.
- Better understand root causes for remands and enhance an enterprise-wide recognition that remands do not provide Veterans with final answers on their appeals and can cause unnecessary delays. For current inventory Legacy system appeals returned to the Board after remand, 53% have been remanded at least twice; 28% have been remanded three times or more; 15% have been remanded at least four times; and 8% have been remanded five times or more.
- Full resolution of Legacy system appeals remains a risk. Although VA reduced from over 472,000 in November 2017, down to under 55,500 FY 2023 to date; the Board's pending Legacy System inventory includes 9,639 original Legacy system appeals that are still pending as of December 31, 2023, 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 with PACT Act claims.
- Board 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.

### **III. VA Office of Inspector General (OIG) Review on 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 OIG's [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 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.
8. Establish interim tracking procedures with the program offices until Caseflow 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 ensure that 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.

#### Completed Actions Demonstrating Progress Addressing the OIG's recommendations

- In December 2023, VHA's Claims and Appeals Modernization Office (CAMO) established an Integrated Project Team (IPT) to respond to the OIG report and its recommendations. The AMA Implementation IPT brings together benefits offices from across VHA to discuss future compliance initiatives.

#### Future Actions Planned

- Present IPT deliverables and CAMO's recommendations to the Under Secretary for Health at the end of FY 2024.

#### **IV. Fiscal Year 2024 Department of Veterans Affairs (VA) AMA Summit**

The Board and the Veterans Benefits Administration (VBA) brought together Veterans Service Organizations (VSOs), State and County Veterans Service Officers, members of the private bar, Congressional staff, GAO, and senior VA leaders for an AMA Summit to identify areas of success since the implementation of AMA in February 2019 and opportunities for improvement going forward.

Discussion panels included: Supplemental Claims, Higher-Level Review Process, and Forms; AMA Appeals and the Pace of Adjudication; Hearings in AMA; Veteran Service Organization & Representative AMA Experience; and Remands in AMA.

During the AMA Summit, several concerns regarding the AMA Appeals process were raised by the VSOs and other stakeholders. Those concerns and responses are noted below.

1. What is VA doing to improve pace of adjudication under AMA, including legacy resolution and prioritizing the AMA direct docket in the short term?

The Board has committed to adjudicating its remaining inventory of pending “original” Legacy appeals (i.e., those claims that have not had at least one judicial review) by the end of in FY 2024. Once the inventory of original Legacy appeals is adjudicated, the Board will prioritize adjudication of appeals on the AMA Direct docket (while continuing to provide expedited review for cases advanced on the dockets and remanded from the Court of Appeals for Veterans Claims). The Office of the Clerk of the Board plans to dedicate additional resources to inventory review to ensure that cases are not unduly delayed or “stuck” in the system. Following an initial review of the pending appeals inventory, the Board has already identified one issue, missing Informal Hearing Presentations (IHPs) from VSOs, that prevent adjudication of Veterans’ appeals until an IHP is either submitted or waived. The Board is committed to work with the VSOs to obtain the missing IHP’s or waivers as appropriate.

## 2. What is the Board doing to build/leverage capacity to focus on AMA adjudication?

Thanks to continued support from Congress, President Biden has appointed 50 VLJs since 2021 to increase the overall number of VLJs to 134, a 33% net increase, a 12.6% increase in FY 2023 alone. This was the largest expansion of judges in the Board’s 90-year history. However, VLJs are only as productive as the attorneys who prepare draft decisions for them, so the Board also focused on attorney hiring--increasing attorney ranks by 16% during FY 2023, with the addition of over 200 new attorneys and law clerks. The Board is currently prioritizing two rounds of attorney hiring during FY 2024 to fully staff the current VLJ teams and maximize the number of decisions that can be issued. Review of the Board’s attrition rate shows that once they are hired and trained, they tend to stay. Attorney attrition has decreased for the fourth consecutive year from 13.4% in FY 2019 to 7.4% in FY 2023.

## 3. What are VBA and the Board doing to understand and take steps to reduce potentially unnecessary remands under AMA (with focus on adequacy of exams, etc)?

VBA’s Office of Administrative Review (OAR), the Board, Compensation Service (CS), and the Medical Disability Examination Office (MDEO) stood up a Remand Tiger Team in FY 2023 to analyze remand data, identify trends, and promote more efficient remand solutions through increased communication, collaboration, and information sharing. The team meets monthly, with long-term plans to continue the working group. A review of the AMA appeal remands in FY 2023 shows the majority were related to examination and medical opinion requests. The Tiger Team is currently reviewing the data to identify specific issues that are remanded at higher rates and identify why, to identify trends/patterns, and then target training to examiners and VBA adjudicators to reduce the likelihood that exams/opinion are found inadequate by the Board. OAR is currently reviewing a sample of FY 2023 Board Remands to identify trends. This analysis will be used to inform training or other process improvements in VBA and the Board. Both the Board and OAR will continue to share information which will allow for relatively rapid adjustment and risk mitigation as new trends or concerns emerge.

4. Would the “no go” rate of hearings be improved by increasing Veteran/representative understanding of how to request docket changes.

As of February 5, 2024, there are 74,191 pending hearing requests in the Board’s inventory. By law, an appellant must be given at least 30 days’ notice of the hearing unless that notice period is waived. As a practical matter, the Board generally schedules hearings 60-120 days in advance of the actual hearing date to comply with the notice requirements and to give the Veterans and attorneys/representatives time to finalize their preparation. Unfortunately, a high percentage of hearings do not occur on their originally scheduled date (or at all). For the period from September 1, 2023, through February 5, 2024, the held 6,493 hearings while another 3,136 were cancelled/withdrawn, no-show, or postponed.

The Board’s docketing notice which is provided to both the Veteran and the representative also includes instructions on how to change from the Hearing docket to another docket and they also contain information about how to notify us when a hearing is no longer desired.

To change from the hearing docket to either the direct or evidence docket, the claimant may submit a new Notice of Disagreement within a year Agency of Original Jurisdiction decision on appeal, or within 60 days of the submission of the original Notice of Disagreement, whichever is later. 38 C.F.R. § 20.202(c)(2). If a request to switch dockets is received outside of that time frame, then a switch may still be allowed if good cause is shown for an extension. 38 C.F.R. § 20.203(c).

Additionally, even without requesting to switch dockets, a claimant may cancel or withdraw his or her hearing request while maintaining the ability to submit additional evidence. If a hearing is withdrawn, then the Board’s review will be based on the evidence of record at the time of the decision on appeal, as well as any evidence submitted within 90 days of the receipt of the claimant’s withdrawal request. 38 C.F.R. § 20.302(b).

Thus, when a claimant initially selects the hearing docket on his or her Notice of Disagreement to the Board, VA regulations already contain numerous ways to modify or cancel this request, and the Board informs both claimants and their representatives of this fact.

Unexpected life events, such as hospitalization, which might cause a hearing delay or cancellation request, are expected. However, the significant number of non-emergent postponement and withdrawal requests that are received by the Board within 30 days of the scheduled hearing prevent the Board from offering that now unneeded hearing block to another Veteran. The result is not only a Veteran who cannot have a hearing, but lost judge time preparing for hearings that did not occur. For example, less than one week after the AMA Summit, one private law firm postponed more than 40 hearings, within the 30-day window, so it’s attorneys could attend a Veterans’ law training conference

that had been scheduled since early January 2024. This resulted in more than 40 “lost” hearing slots that could not be filled by other waiting Veterans.

5. Can VA communications (letters, customer service/outreach) be made Veteran-centric?

In FY23 the Office of the Clerk of the Board completed a comprehensive review of the Board’s outgoing correspondence templates. To the greatest extent possible, “legalese” was removed from the templates and replaced with Veteran-friendly language. The same occurred shortly after Congress passed the Dignity for MST Survivors Act (Public Law No. 117-300) to ensure that our correspondence was appropriate for those who may have suffered military sexual trauma, and again after the Court of Appeals for Veterans Claims’ *Edwards* decision requiring additional procedures when the notice of disagreement might be unclear. To regularize the review of Board correspondence, the Office of the Clerk of the Board decided identify specific subject-matter experts in early FY 2024 to regularly review correspondence for legal compliance and Veteran-friendly messaging.

Board leadership is currently reviewing an internal proposal to better address and manage most public contacts initiated by external stakeholders including Veterans, appellants, legal representatives, the White House, and Congressional offices.

The Board will continue to monitor the allocation of resources, workload assignments, the pace of adjudication to include competing workload and capacity allocation of each AMA docket, and Veteran experience with the appeals process under AMA.

## **V. Comprehensive Implementation Plan Updates Since the August 2023 Report**

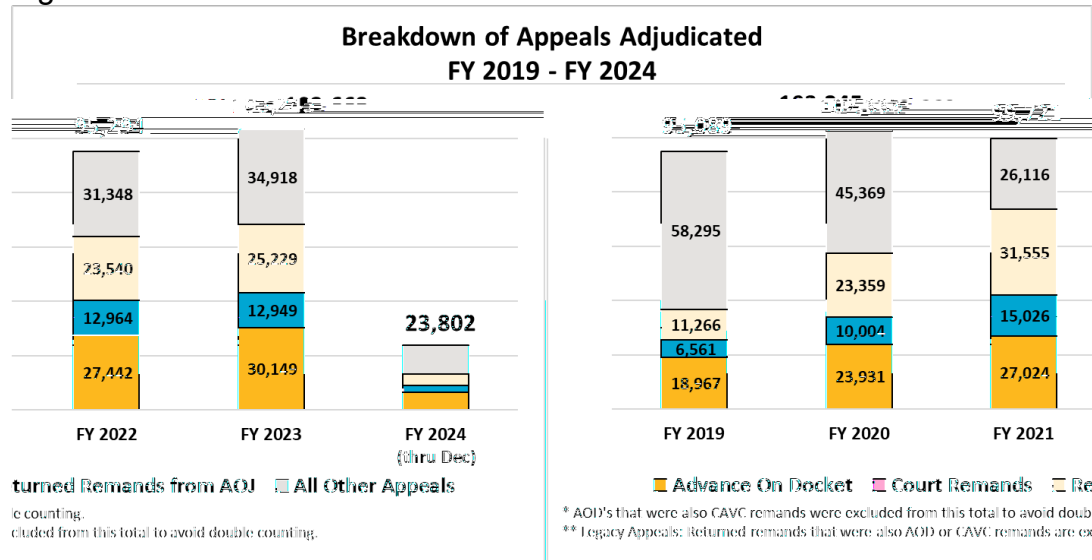
**Section 3(a)(1) of AMA directs the Secretary to submit a comprehensive plan to the appropriate committees of Congress and the Comptroller General of the United States for the processing of appeals of decisions on Legacy claims that the Secretary considers pending.**

The Department of Veterans Affairs (VA) has continued to make progress during the previous 180 days to resolve the remaining Legacy system appeals. Current data indicates there are 53,423 pending Legacy system appeals Department-wide, of which 9,639 are pending an initial decision by the Board, and an additional 32,727 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 7,933 (58%) of Legacy system appeals adjudicated through the first quarter of FY 2024 were either

AOD, Court remand or post-remand appeals recertified to the Board from the AOJ. The remaining 5,794 (42%) were original appeals.

As shown in Figure 1 below, AOD, Court remand, and post-remand cases continue to dominate the Board's workload.

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



The Board continues to prioritize resources to address pending Legacy system appeal inventories. A record 103,245 decisions were issued in FY 2023, of which 70,584 (68%) were Legacy system appeals. The Board added approximately 200 decision writing attorneys in FY 2023, a 16% increase over FY 2022. The Board's production goal for FY 2024 is 111,000 decisions (Legacy and AMA).

As shown in Table 1 below, pending Legacy system appeals have been reduced department-wide by approximately 20.5% from 67,223 at the end of quarter 3 in FY 2023 to 53,423 at the end of quarter 1 FY 2024. VA anticipates the downward trend will continue.

Table 1. Pending Legacy System Appeals by VA Office (Q2 FY 2022 - Q1 FY 2024)

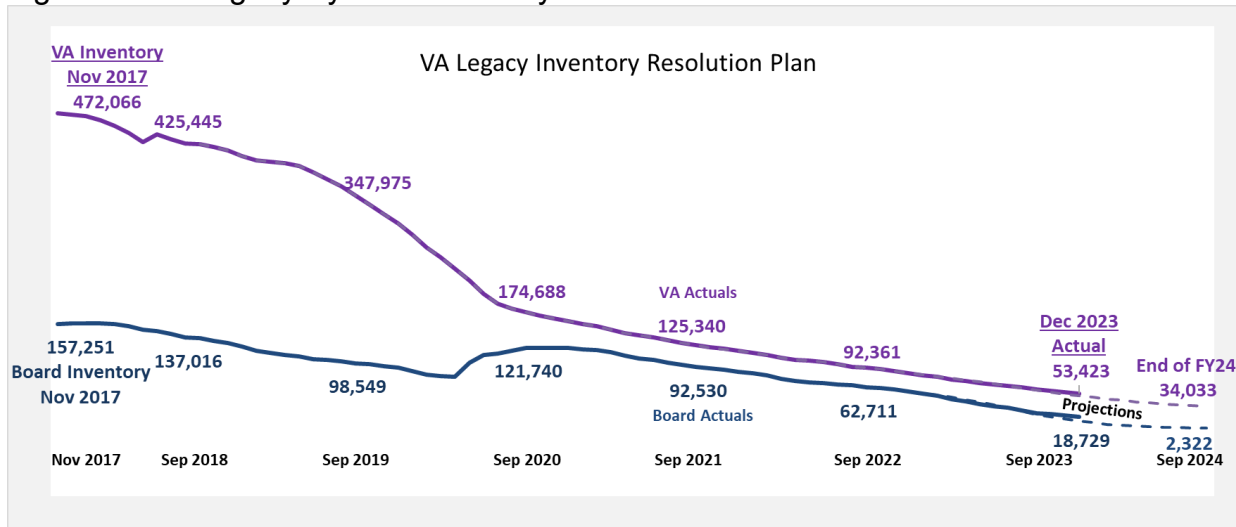
	FY 2022			FY 2023				FY 2024
	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
<b>VBA</b>	30,197	29,770	27,609	25,098	28,488	31,041	33,446	32,859
<b>VHA</b>	1,552	1,668	2,267	2,319	2,051	2,187	1,951	1,835
<b>NCA</b>	8	0	0	0	0	0	0	0
<b>Board</b>	74,974	68,421	62,485	56,646	43,940	33,995	23,967	18,729
<b>Total:</b>	<b>106,731</b>	<b>99,859</b>	<b>92,361</b>	<b>84,063</b>	<b>74,479</b>	<b>67,223</b>	<b>59,364</b>	<b>53,423</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 (December 2023)).

Figure 2, below, shows the projected inventory of pending Legacy system appeals Department-wide and at the Board through the end of FY 2024. The Board finished the first quarter of FY 2024 with 208,862 appeals pending adjudication, of which 18,729 are Legacy system appeals, 6,360 appeals above the projected inventory level of 12,552. The Board has issued 23,802 decisions and held 2,819 hearings through the end of Q1 in FY 2024.

Figure 2. VA Legacy System Inventory Resolution Plan



Legacy system appeals have been significantly reduced from a department-wide high of 472,066 in November 2017 to 53,423 pending at the end of December 2023. However, VA's pending Legacy system appeals inventory remains higher than was originally projected. The initial drawdown plan, developed prior to the Coronavirus Disease 2019 (COVID-19) pandemic, was shared on October 29, 2019, and has been updated several times with the most recent version having been issued in February 2023. An updated version is anticipated during quarter 2 of FY 2024. Each iteration incorporates historical actuals, updated assumptions to include the changing environment, workload projections, Board resources, hiring plans, and various other factors that influence outcomes. During quarter 1 of FY 2024, approximately 58% of the Board's workload was adjudication of Legacy system appeals compared to 73% in FY 2023. Based on a review of projected FY 2024 Legacy system receipts, the Board anticipates the Legacy inventory will continue declining, providing additional capacity to decide a higher number of AMA decisions in FY 2024.

Forum of choice data shown in Figure 3 on page 12, continues to indicate that Veterans are overwhelmingly electing to use the virtual tele-hearing capacity which allows the Board to provide hearings to Veterans in the comfort of their own home or any other chosen location. One trend that the Board continues to highlight during briefings to 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



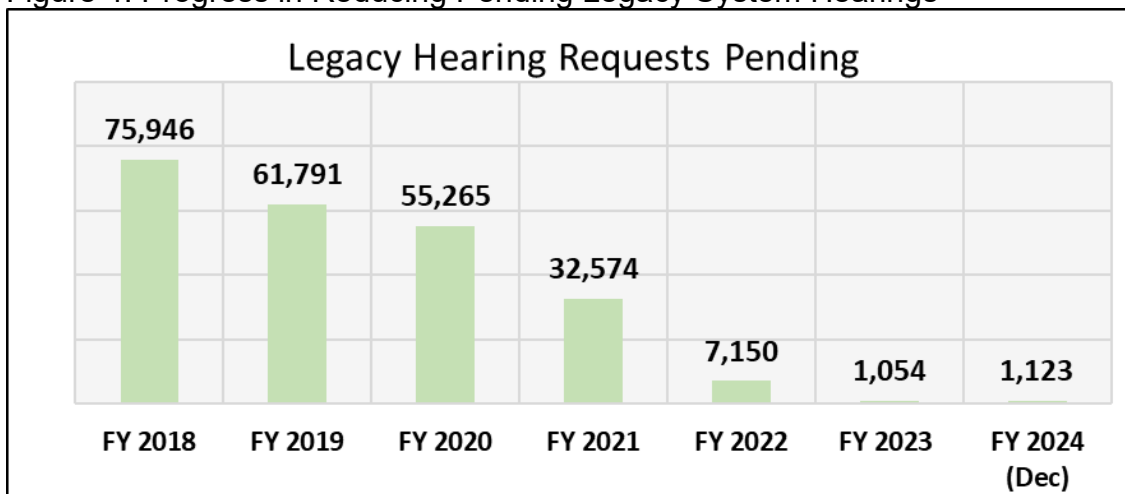
emphasize this should be the result of true Veteran choice, rather than for the convenience of representatives to ensure the AMA goals of increased Veterans choice are met.

Figure 3. Forum of Choice



Ongoing communication with Veterans regarding their hearing options during the past 180 days has allowed the Board to continue to make continued progress in reducing the number of pending Legacy system appeals with a Veteran requested hearing. As shown in Figure 4 below, the Board ended quarter 1 of FY 2024 with 1,123 pending Legacy system appeals with a hearing request, a decrease of 34% from the 1,714 pending in August 2023. The Board continues to receive a small number of new Legacy system hearing requests from returned remands from VBA and from Court remands. As a result, the Board projects a residual number of Legacy system hearing requests will remain pending for the foreseeable future.

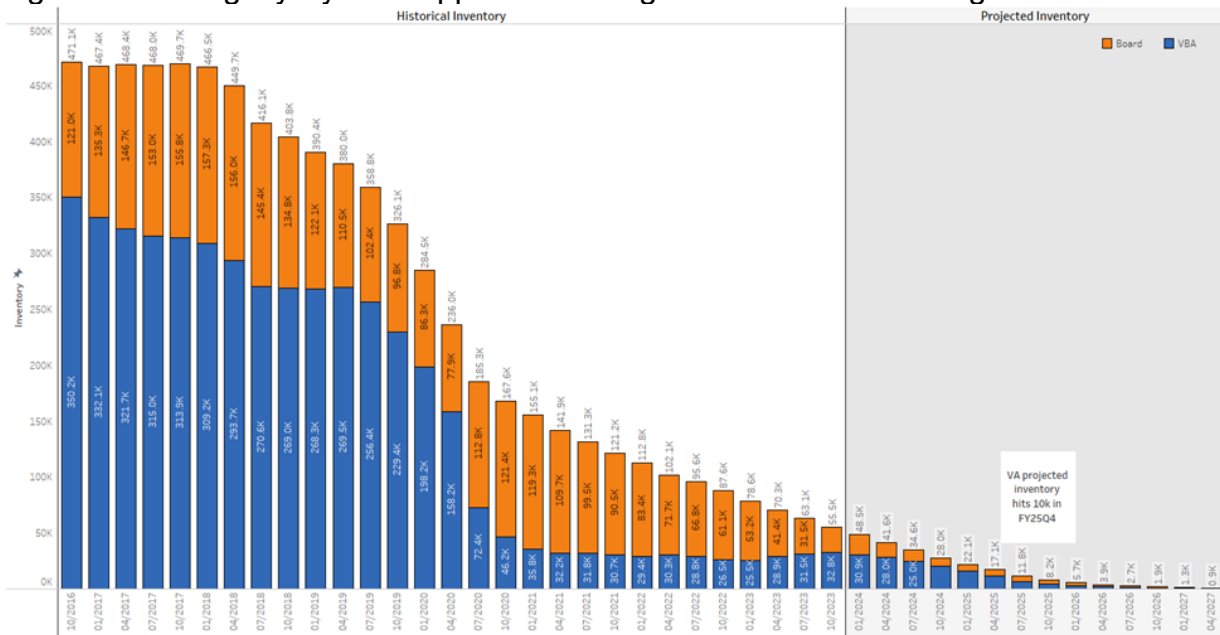
Figure 4. Progress in Reducing Pending Legacy System Hearings



VBA continues to utilize several strategies to resolve the remaining inventory of Legacy system compensation and pension appeals. These strategies 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 AMA. Between October 2016 and the end of December 2023, the total VBA Legacy system appeals inventory decreased by approximately 90.5%, as depicted in Figure 5 below. VBA remand inventory is projected to stay below 34,000 cases and begin a trend downward to a legacy inventory target of 5k by the end of FY2025. VBA will continue to balance multiple workloads.

In May 2022, VBA’s 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 December 31, 2023, 2,460 appeals have been certified to the Board; 490 were not certified to the Board but were otherwise processed; and two are pending VBA action. OAR has continued performing special monthly reviews of VACOLS conversions. Appeals that cannot be resolved by VBA will be certified and transferred to the Board, resulting in a corresponding increase in the Board’s Legacy system appeals inventory.

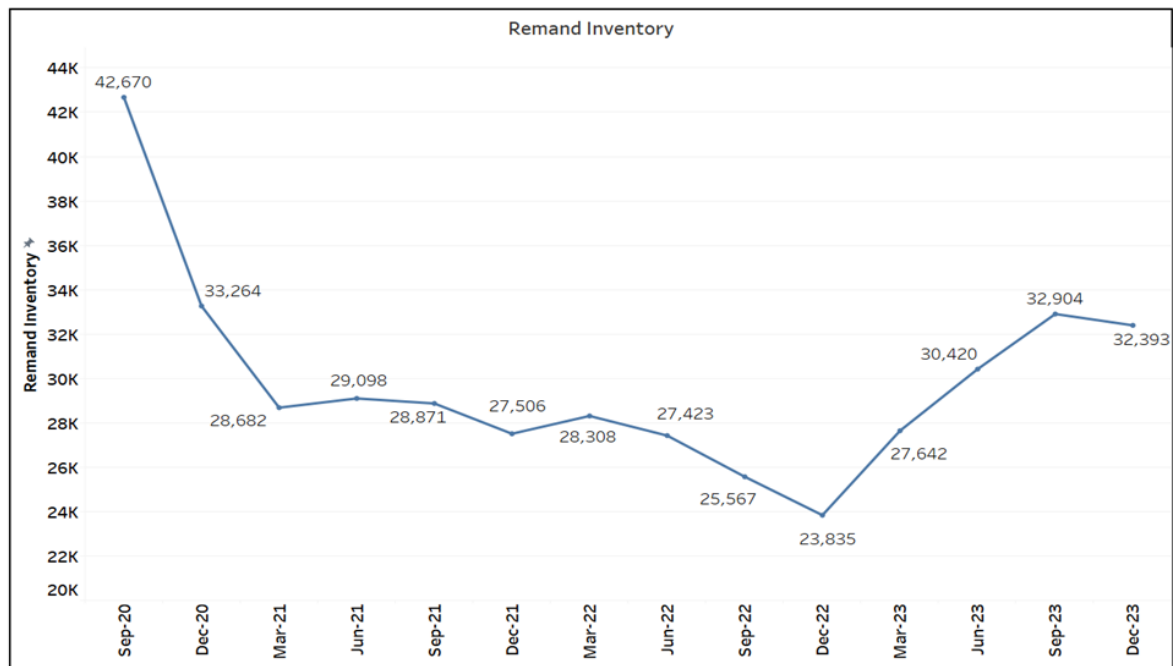
Figure 5. VA Legacy System Appeals Pending – October 2016 through December 2023



As shown in Figure 6, on page 14, VBA has reduced remand inventory by 24.1% from the start of FY 2021 through December 31, 2023. The Covid-19 pPandemic significantly slowed VBA’s ability to complete Legacy System Appeals between April 2020 and June 2022. 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. This may cause Legacy system appeals resolution to extend through quarter four of FY 2025.

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



VBA remand inventory is currently projected to increase until February 2024, peaking at approximately 34,000 pending cases. Once the inventory hits that level, it will begin to decrease towards functional zero, 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 cannot be granted by VBA, the case is recertified to the Board; thus, remaining in the overall Department-wide Legacy system appeals inventory until the Board renders a final decision.

VBA will continue to assess resources depending on workload in FY 2024. 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 (e.g., the 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 December 31, 2023, only 147 Compensation and Pension NODs and 62 Form 9s remain.

VBA projects achieving a working Legacy system remand inventory in FY 2024. 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 December 31, 2023:

- The Pension Program had 209 Legacy system appeals pending within VBA: one in the NOD stage and 208 in the remand stage.
- The Fiduciary Program had two Legacy system appeals pending within 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 ten Legacy system appeals pending within VBA and all of them are in the remand stage.
- The Veteran Readiness and Employment Service (VR&E) had 55 Legacy system appeals pending within VBA, with three in the NOD stage and 52 in the remand stage.
- The Loan Guaranty Service (LGY) had one Legacy system appeals pending within VBA 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 (VACOLS) by stage and business line. VHA continued to draw down the Legacy system appeals inventory, reducing it to 585 cases as of September 30, 2023.

VHA's progress has been impacted by the ruling in *Beaudette v. McDonough*, 34 Vet. App. 95 (2021), which Court of Appeals for Veterans Claims (Court) 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, the VA worked to notify all individuals who 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 the 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 is also closely monitoring ongoing legal proceedings related to *Beaudette*. On December 6, 2023, the United States Court of Appeals for the Federal Circuit held oral arguments in the ongoing *Beaudette* appeal to review whether the Court erred in issuing a writ of mandamus allowing PCAFC decisions to be appealable to the Board. 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 1 of FY 2024, the Board has received a total of approximately 295,429 (15%) appeals, compared to a total of approximately 1,672,823 (85%) AMA decision reviews filed by Veterans choosing either the HLR or supplemental claim options at VBA during the same period. VBA clarified its AMA receipts calculation beginning in FY 2022 to exclude supplemental claims received at VBA more than one year after the original rating decision as these claims do not have the effective date for service connection protected and are thus processed by VBA as new claims.

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

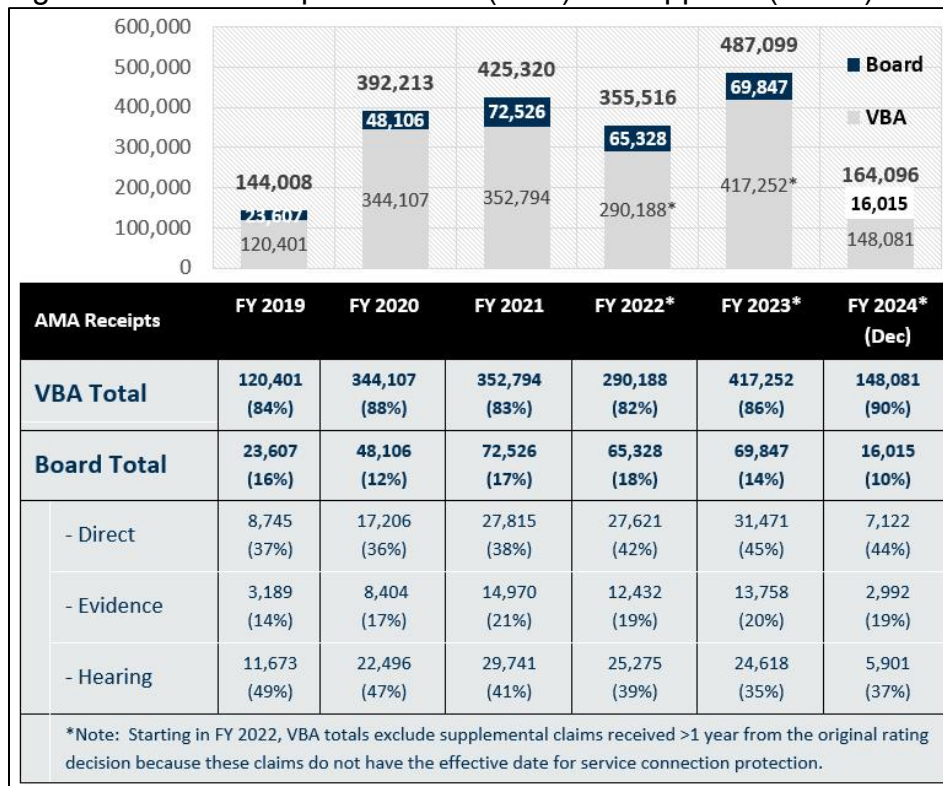
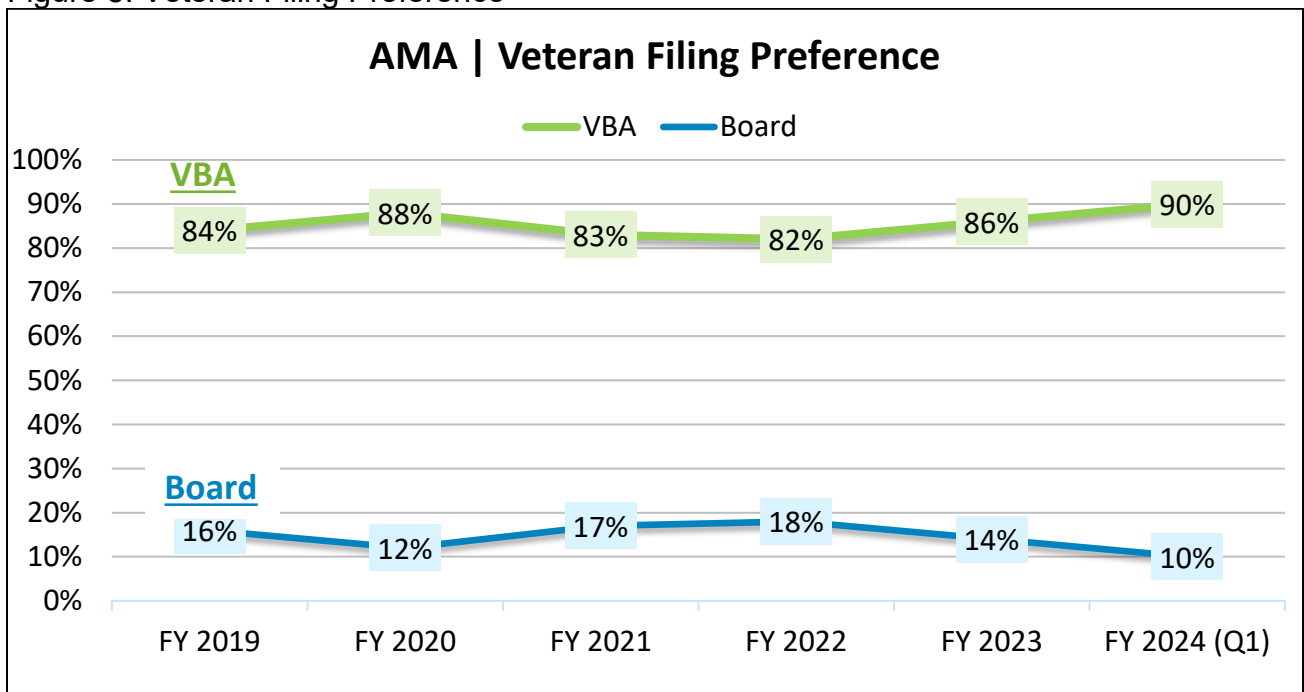


Figure 7, on page 16, also clearly shows Veterans continue to “appeal first to VBA” when compared to the Board. This appears to reflect that VBA’s additional review options under AMA are attractive alternatives for veterans. Figure 8 below shows that while the number of VBA’s AMA decision reviews in HLR and supplemental claims has increased, the average percentage of AMA appeals received at the Board has started to decline. 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.

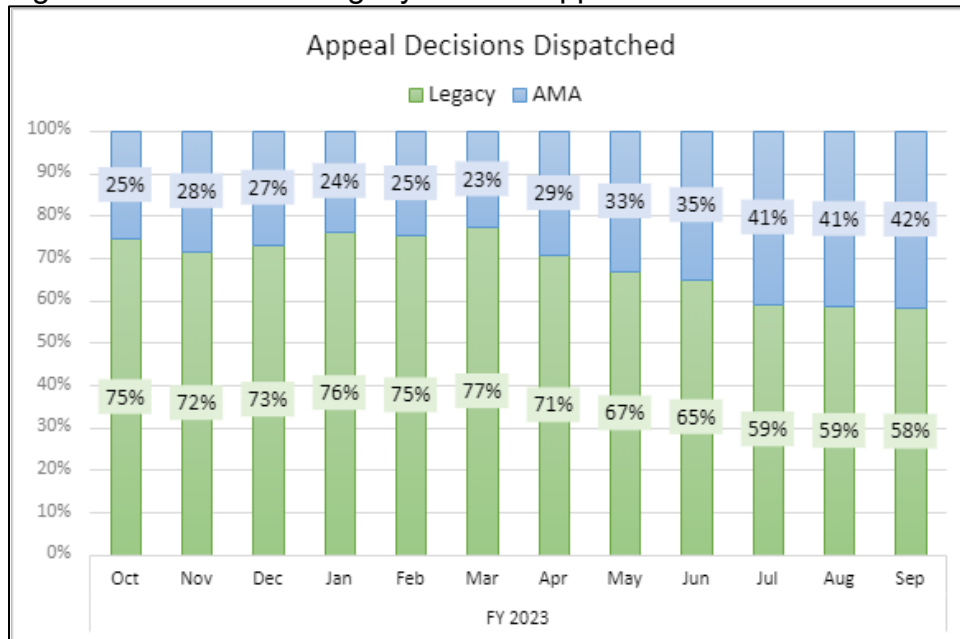
Figure 8. Veteran Filing Preference



Note: Excludes supplemental filings received by VBA more than one year from the original rating decision.

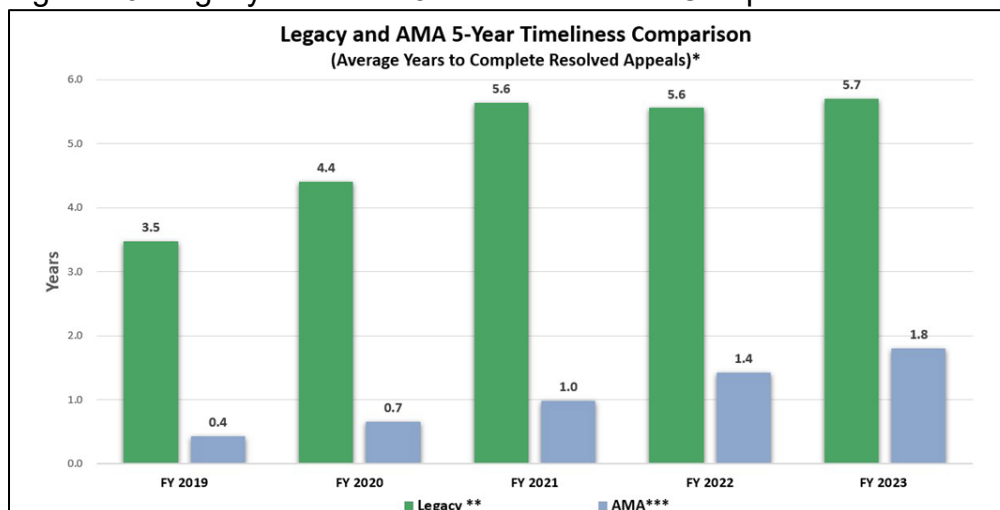
Even with continued Department-wide resolution of pending Legacy system appeals, the Board issued a total of 32,661 AMA decisions in FY 2023. Based on the projected declining level of Legacy inventory, which frees up capacity to decide more AMA appeals, the Board projects issuing more than 55,000 AMA decisions in FY 2024. The Board still anticipates that FY 2024 will be the first year in which the number of AMA decisions exceeds the number of Legacy system decisions. As shown in Figure 9, on page 18, during the last two quarters of FY 2023 and quarter 1 of FY 2024, the overall ratio of AMA appeals adjudicated has increased and is currently 58% Legacy System to 42% AMA. However, the ratio of AMA appeals continues to increase each week.

Figure 9. The ratio of Legacy to AMA Appeals Decided



The Board’s ability to adjudicate a higher proportion and number of AMA appeals has resulted in completion of the AMA appeals that have been pending the longest. Figure 10 below shows that while the average days to complete AMA appeals exceeds the established timeliness goals, resolution of AMA cases is still approximately four years faster than Legacy system appeals. However, the Board anticipates that the average years to complete an appeal under the AMA will continue to increase as the Board resolves the oldest pending AMA cases before cresting and then settling back to within published goals in the future.

Figure 10. Legacy and AMA 5-Year Timeliness Comparison



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. VBA deploys the initial survey to the Veteran upon receipt of a decision review request and sends either an HLR or a supplemental claim survey at the completion of the selected decision review process.

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

VHA and the Board 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 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 the records relevant to that appeal to the Board. 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 took initial steps toward the implementation of centralized VHA appeals management, designed to improve the quality and timeliness of VHA decision reviews. VHA is also working with the Board and OIT on enhancements to Caseflow to allow VHA to actively manage its HLR and supplemental claim workload.

In response to the holding in *Beaudette*, PCAFC decisions include notice of the right to seek further review options, including HLR, supplemental claim, and Board appeals. VHA worked closely with the Board and OIT to establish the necessary functionality and processes to transfer PCAFC evidence files to the Board, to enable 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*.

VHA stood up the VHA AMA Implementation integrated project team (IPT) on December 12, 2023, to address the OIG recommendations as well as findings from a VHA functional assessment. The purpose of VHA's IPT is to evaluate the enterprise-wide functions that govern VHA claim and decision review processing at the program level and identify solutions that would establish the appropriate oversight and governance, coordination, and administration functions necessary to ensure VHA's compliance with the AMA. Upon conclusion, the VHA AMA Implementation IPT will deliver recommendations that outline process improvement needs and IT solution requirements for VHA Leadership approval, funding and implementation support.



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). NCA intends to integrate all three systems 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 appeals in the following 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 allow the Board to appropriately track and process 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 based on 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 implementation through the end of quarter 1 in FY 2024, approximately 25% of Veterans have requested a review of their initial claims decisions, of which, 85% have chosen to file a supplemental claim or request for higher-level review at VBA for a quicker resolution, and 15% have filed an appeal to the Board. As noted earlier, this excludes supplemental claims received by VBA more than one year after the original rating decision. As shown in Figure 7 on page 16, the rates of appeal to the Board continue to decline. During FY 2023, 14% of VA AMA claims received were appeals to the Board, followed by 10% the quarter 1 in FY 2024. Another intended goal of the AMA legislation was to reduce the Board's remand rate. That strategy appears to be working. Through December 31, 2023, 58.9% of the Board's Legacy system appeal decisions

contained at least one remanded issue compared to only 38.8% of AMA appeals, a difference of 20.1%.

As displayed in Table 2 below, the Board continued to meet its 365-day average timeliness goal for processing direct review docket appeals in FY 2023. The Board issued 8,931 decisions with an average days to complete (ADC) of 314 days. With all AMA appeals now distributed based on docket date (oldest first), the anticipated increase in Direct docket timeliness materialized in quarter 1 of FY 2024, and decisions were issued in an average of 388 days.

Table 2. Board AMA Docket Timeliness – FY 2023 and Quarter 1 FY 2024

Average Days to Complete (ADC)	Direct Review	Evidence Submission	Hearing
<b>FY 2023</b>	314	695	927
<b>Percent that qualified for priority processing</b>	82%	60%	54%
<b>FY 2024 (through Q1)</b>	388	1,002	1,001
<b>Percent that qualified for priority processing</b>	84%	33%	44%

As noted above, due to the declining inventory of Legacy appeals, the Board is able to distribute a higher number of AMA appeals for decision. Through the end of quarter 3 of FY 2023, the majority (61%) of the Board’s evidence submission and hearing docket decisions were noted as priority (AOD) appeals that were decided out of docket order and much quicker, with the remaining 39% of decisions coming from non-priority appeals. With an increased number of evidence and hearing docket appeals being distributed for decision in quarter 4 of FY 2023 and quarter 1 of FY 2024, 63% of evidence and hearing docket decisions were non-priority (older) appeals. As anticipated, this resulted in an increase in the average number of days to decide appeals for both dockets (see Table 2 above). The Board expects the average days to complete AMA appeals for all dockets will exceed the established timeliness goals before cresting and settling back to within published goals.

Table 2 on page 19 also shows that in FY 2023, 82% of the direct review, 60% of the evidence submission, and 54% of the hearing docket decisions that were dispatched qualified for priority processing. Through quarter 1 of FY 2024, the percentage of evidence and hearing docket decisions dispatched that qualified for priority processing has decreased to 33% and 44%, respectively.

Through the end of December 2023, the average days pending (ADP) for an appeal in the AMA direct review docket was 625 days; the ADP for the evidence submission docket was 707 days; and the ADP for the AMA hearing docket was 724 days. The ADP for all AMA appeals is currently affected by the Legacy system appeals resolution plan

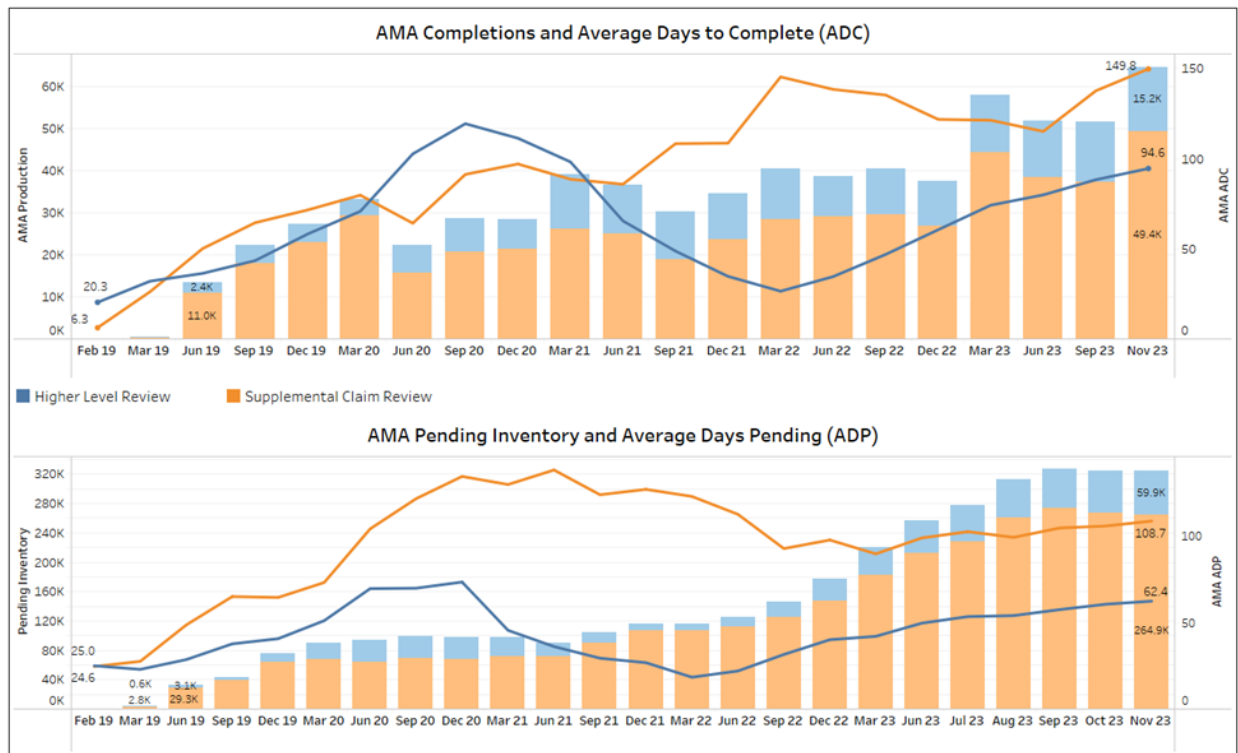
as well as the completion of AMA appeals that qualify to be adjudicated out of docket order. The Board continues to inform the VSO community of current ADP and ADC for each Board docket and also provides the data for other stakeholders on its external websites, <https://www.bva.va.gov/decision-wait-times.asp>. and [https://www.bva.va.gov/Quarterly\\_Reports.asp](https://www.bva.va.gov/Quarterly_Reports.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 1,837 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 December 31, 2023, the Decision Review Operation Centers (DROC) in St. Petersburg, Florida, and Seattle, Washington, are authorized a total of 1,201 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 620 FTE and predominately completes the 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 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 the PACT Act.

VBA's goal is to maintain processing timeliness of an average of 125 days to complete the AMA workload (HLRs and supplemental claims). Overall average timeliness for completing the AMA workload at VBA from AMA implementation on February 19, 2019, through December 31, 2023, was approximately 99.5 days, which measures below the ADC goal of 125 days.

For the same period, ADC for HLRs, including AMA full grants, was approximately 69.2 days with 530,653 completions. ADP for HLRs, including AMA full grants, was 66.2 days for a pending inventory of 60,272 claims. For supplemental claims, to include associated HLR returns, ADC was 110.1 days with 1,508,256 completions, and ADP was 114.5 days for a pending inventory of 266,808. The "AMA completions and ADC month-to-date" graph in Figure 10 on page 23 provides the monthly breakdown for completions and ADC for HLRs and supplemental claims. The "AMA pending inventory and ADP" graph in Figure 11, on page 23, provides the monthly breakdown for pending inventory levels and ADP for HLRs and supplemental claims.

Figure 11. VBA Monthly AMA Completions and Inventory – February 2019 to December 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, the overall average timeliness for completed AMA work was 110.1 days. The ADC for HLRs, including AMA full grants, was 73.3 days with 151,669 completions. The ADC for supplemental claims, including HLR associated returns, is 122.9 days with 436,040 completions. In FY 2024, through December 31, 2023, the overall average timeliness for completed AMA work is 138.7 days. The ADC for HLRs, including full grants, is 95.6 days with 45,733 completions. The ADC for supplemental claims, including HLR associated returns and AMA remands, is 152.2 days with 146,265 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 for the period between July 1, 2023, and December 31, 2023:

- Insurance Service completed zero HLRs and two supplemental claims with an average of 133.0 days.
- Education Service completed 316 HLRs with an average of 13.5 days and completed 900 supplemental claims with an average of 8.2 days.
- Veteran Readiness and Employment Services (VR&E) completed 272 HLRs with an average of 86.9 days and completed 70 supplemental claims with an average of 42.3 days.
- Loan Guaranty (LGY) completed 58 HLRs with an average of 147.4 days from the date received and completed 142 supplemental claims with an average of 94.6 days.
- 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, which 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 continues to examine 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 noted earlier, comparisons of AMA claims received at VBA and the Board now excludes supplemental claims received at VBA more than one year after the original rating decision. These claims do not have the effective date for service connection protected have not been continuously pursued. As depicted previously in Figure 7 on page 16, an ever-increasing number of Veterans continue to choose to file a VBA HLR of supplemental claim over an appeal to the Board under AMA. While the VBA AMA claim receipts in both the supplemental claim and HLR lanes are steadily climbing, the number of AMA appeals brought to the Board has remained between 65,000 and 75,000 each year for the past three years.

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 also 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 the overall merits and effectiveness of the AMA system and the Legacy system.

The much lower appeal rates to the Board under AMA previously discussed, combined with the increasing percentage of Veterans instead seeking the new and faster review options at VBA, provide encouraging evidence that these expanded Veteran choices are providing more timely and effective final resolution for Veterans. Figure 12 below shows remand and resolution rates for Legacy system appeals, while Figure 13, on page 26, shows the same data for the AMA. 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 have consistently been much lower - 15 to 20% better than Veterans experience under the Legacy system.

Figure 12. Legacy System Appeals Resolution Rates: 5-Year Trend

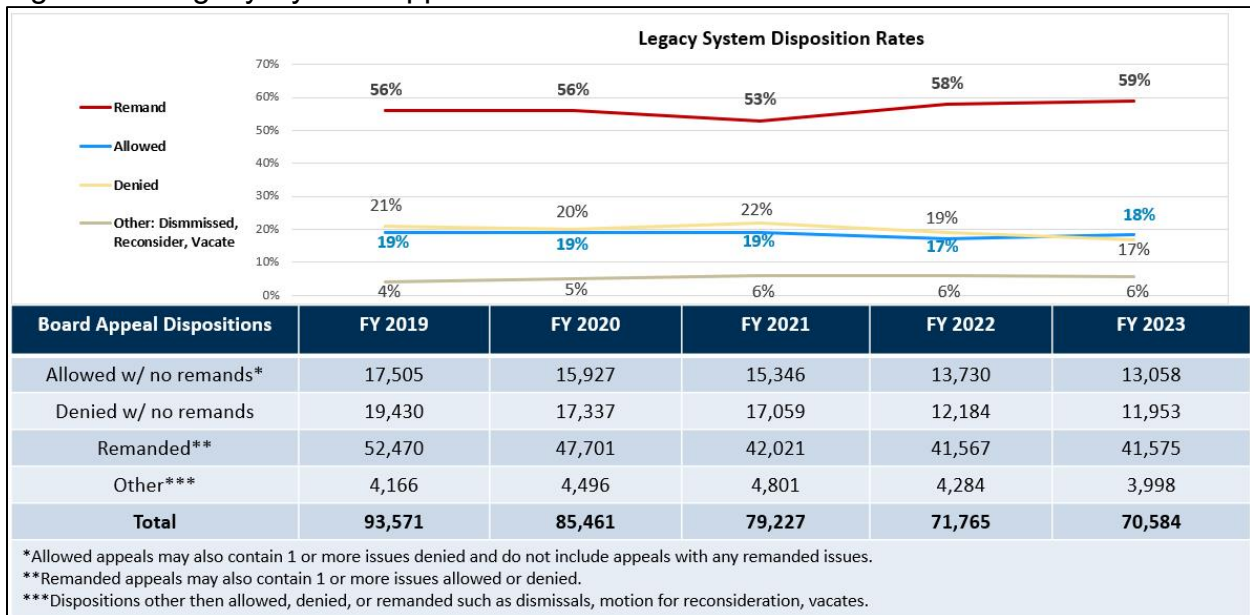
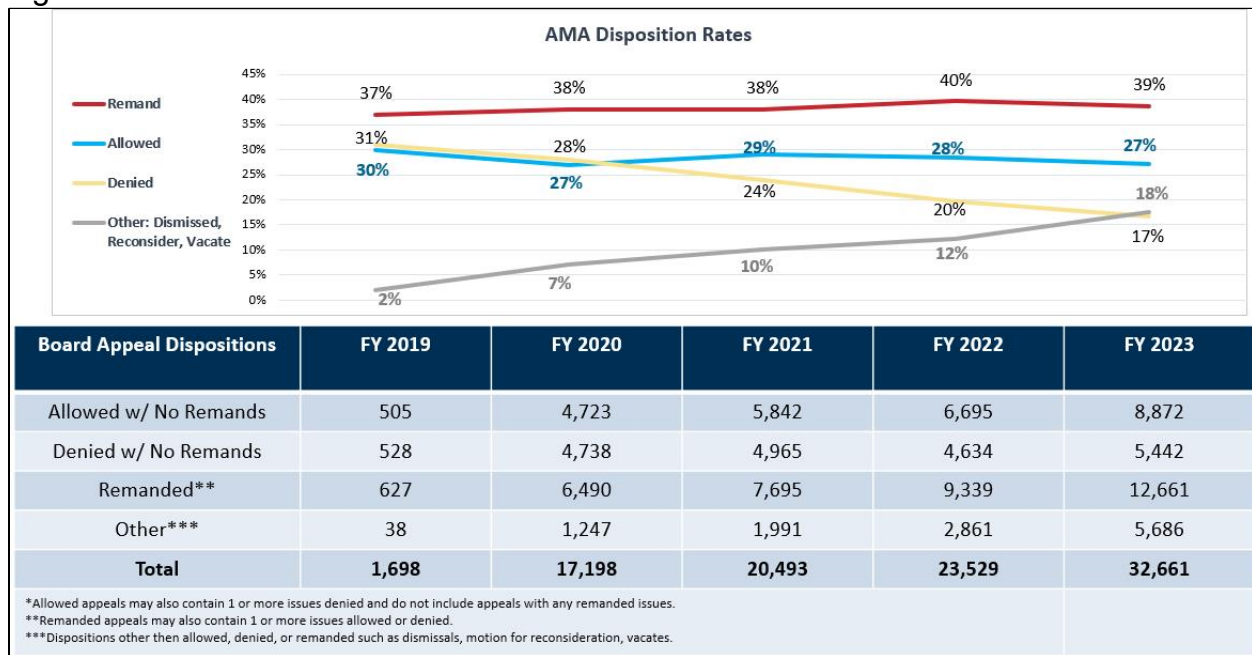


Figure 13. AMA Resolution Rates: 5-Year Trend

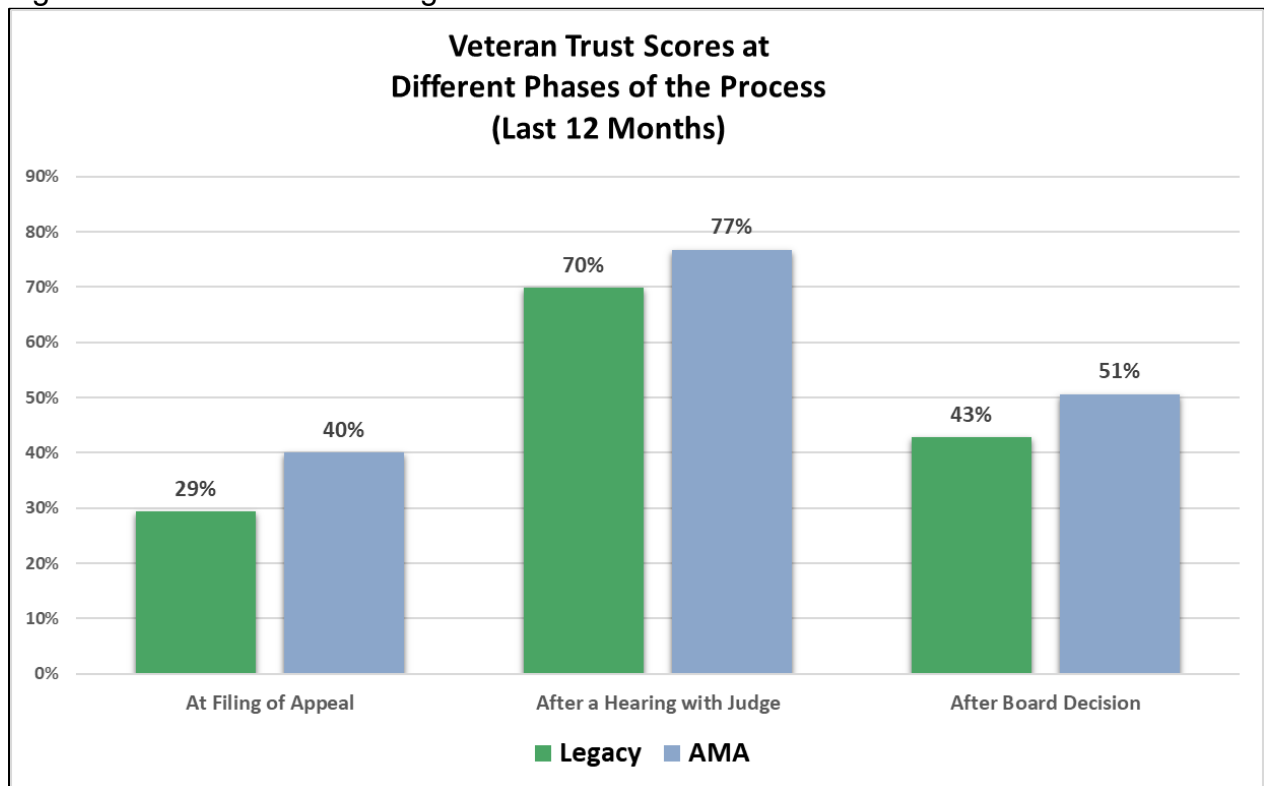


It is important to reiterate how Veteran trust scores have been impacted under both the Legacy appeals system and the AMA. This difference is particularly notable when appeals are first docketed at the Board under both systems and after a Veteran receives a Board final decision under both systems. Simply put, trust scores under the AMA have been consistently and significantly higher.

The Veterans Experience Office continues to administer the VSignals customer experience survey to Veterans who have an active appeal at the Board. Results of 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 14, on page 27, shows that Veterans’ trust in the Board continues to increase throughout the lifecycle of their appeal at the Board.

Figure 14 also shows Veteran trust in VA’s commitment to them is lowest when they file their appeals. That is unsurprising, considering they are appealing a “no” decision from the VA with respect to their claim for benefits and services. However, that score dramatically increases to approximately 70%-77% after a Board hearing and remains higher after issuance of the Board’s decision. The survey data demonstrates that the Veteran experience during the appeal process is generally positive, with overall trust scores rising approximately 11-14 percentage points from the time they first file with the Board until after they receive the Board’s decision.

Figure 14. Trust Scores Rising



Note: Survey results from January 2023 through December 2023

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. Veteran trust scores increase 11-14% from the time they initially file an appeal through the time when they receive a decision under both the Legacy and AMA appeal systems. The Board attributes this increase to improved 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. The Board also notes that Veteran trust scores remain higher under the AMA than the Legacy system at each stage of the appeal process.

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

The Board’s AMA QA goal for FY 2023 is 92%, the same goal for Legacy system appeals. AMA QA rates for the Board averaged 93.5% in FY 2023. The HLR QA goal is 93%. In FY 2023, VBA averaged 98% quality for HLRs.

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 the 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. Additionally, VHA convened a VHA AMA Implementation IPT to assess and develop recommendations for systems enhancements related to claims and decisions review processing, tracking, and data management. Upon conclusion, VHA will submit recommendations for VHA Leadership approval and implementation support for system requirements that enable consistent oversight and accountability across VHA claims and decisions review management.

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

#### **VI. Plan element updates since the August 2023 report.**

**Sections 3(b)(1) & (2) of AMA require 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 updated resource requirements and workload projections will be outlined in the FY 2025 Budget Submission (Vol. III) that is scheduled to be released in March 2024. As of quarter 1 in FY 2024, the Board has 133 Veteran Law Judges on-board; continues to hire decision writing attorneys; and currently has a total of 1,348 FTEs on-board, which is up 8.3% from FY 2023's cumulative FTEs of 1,245.

In FY 2022 Quarter 2, 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. Detailee support ended in January 2024 and was replaced by

contractor support. The Board transitioned their previous embedded detail position with CAMO to a VHA liaison position within the Office of the Chief Counsel. The liaison is available to assist on case or legal issues impacting both VHA and the Board. CAMO will continue to review staffing needs.

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, but both 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.**

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 that resulted in the on-boarding of 200 new decision writing attorneys and law clerks. 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 133, nearly a 30% increase since the new AMA system went into effect. For FY 2024, the Board has already received 600 applications and anticipates on-boarding another 175-200 decision writing attorneys to fully staff each VLJ team.

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, mostly through FY 2023 and FY 2024.

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 August 2023, 93 new attorneys have enrolled in the Board's New Attorney Training Program (NATP). PDD has continued to make periodic improvements to

program content during this period with the goal to continuously improve program effectiveness. To this end, PDD has a NATP survey analysis team that reviews trends in new attorney feedback so that PDD can update the program based on qualitative feedback.

PDD has also conducted training for existing employees to include a mandatory October 2023 Board-wide training on Special Monthly Compensation appeals. In addition, the Board is closely monitoring errors identified by its Office of Assessment and Improvement, and PDD uses that data to develop targeted Board-wide training and guidance.

PDD also facilitated additional training for VLJs on several rarely seen specialty case topics. Specifically, PDD facilitated additional training for the following: (1) an August 2023 training on veteran status and willful misconduct appeals; (2) a November 2023 training on pension appeals; and (3) a December 2023 training on overpayment appeals.

PDD 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.**

VHA, NCA, VBA, and the Board 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 (VBMS) 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 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" to provide a more accurate description 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 caused 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 HLR return establishment for VBA; updating the Caseflow/IDT Application Programming Interface (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. This has allowed 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, which 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 improved 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. The 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 based on VLJ availability, staff resources, and representative capacity rather than the physical number of hearing rooms at the Board or regional offices.

During the first quarter of FY24, Caseflow was migrated out of DSVA into our own dedicated VA Enterprise Cloud (VAEC) account, allowing us to address security vulnerabilities, provide more system resiliency, and improve monitoring and support for our application, as well as the ability to better track and account for cost accrual.

**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.**

VBA has no substantive updates related to office space and has a robust telework program that 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 and the Board have no substantive updates to prior reports.

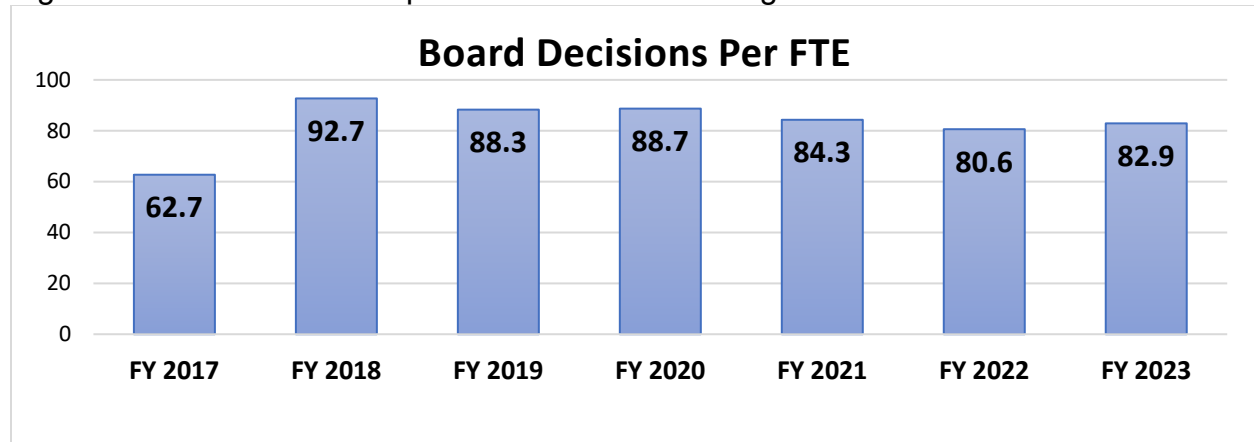
**Section 3(b)(12) of AMA requires projections for the productivity of individual employees at VBA and the Board in carrying out tasks relating to the processing of appeals of decisions on Legacy claims and appeals under the new appeals system, taking into account the experience level of new employees 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 three 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. New decision writing attorneys are expected to meet regular production standards after completion of a 6-month training period. 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 15 below, are 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.

Figure 15. Board Decisions per FTE – FY 2017 through FY 2023



In FY 2023, VBA decision makers completed an average of 1.4 Legacy system appeals per day; 2.7 HLR decisions per day; 2.0 HLR returns, AMA remands, and AMA Board grants per day. The data provided is derived by dividing the number of FY 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 completed 48,664 Legacy system appeals (including Legacy full grants), 141,030 HLRs, and 52,404 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 the 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 Veterans. In October 2023 and January 2024, the Chairman hosted a VSO outreach call, updating participants on the Board metrics and best practices. The Chairman and VLJs continue to attend and speak at VSO conferences, educating hundreds of representatives on best practices to advise Veterans about their choices under AMA. The Board's senior leadership and several VLJs also attended the February 2024 VA AMA Summit. Additional information regarding their outreach activities is available in Appendix A.

As previously indicated, the Board uses the VSignals customer experience survey. Based on responses received from the Board's VSignals survey since the last report, Veteran trust continued to rise from 46% in December 2022 and averaged 49% during quarter 1 of FY 2024. This coincides with an increasing percentage of AMA appeals. It also appears that overall Veteran trust levels under the 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 December 31, 2023, there were 522,756 surveys sent and 113,495 responses received, of which 48,198 responses were for the filing survey; 15,332 responses received were for the HLR survey; and 49,965 responses received were for the supplemental claim survey.

The VSignals dashboard is a 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 the 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. The VHA AMA Implementation IPT, which convened in December 2023, will propose an implementation plan for standardized beneficiary communications and outreach accompanied by current AMA guidance.

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 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/2022/07/28/2022-15046). 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, 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.

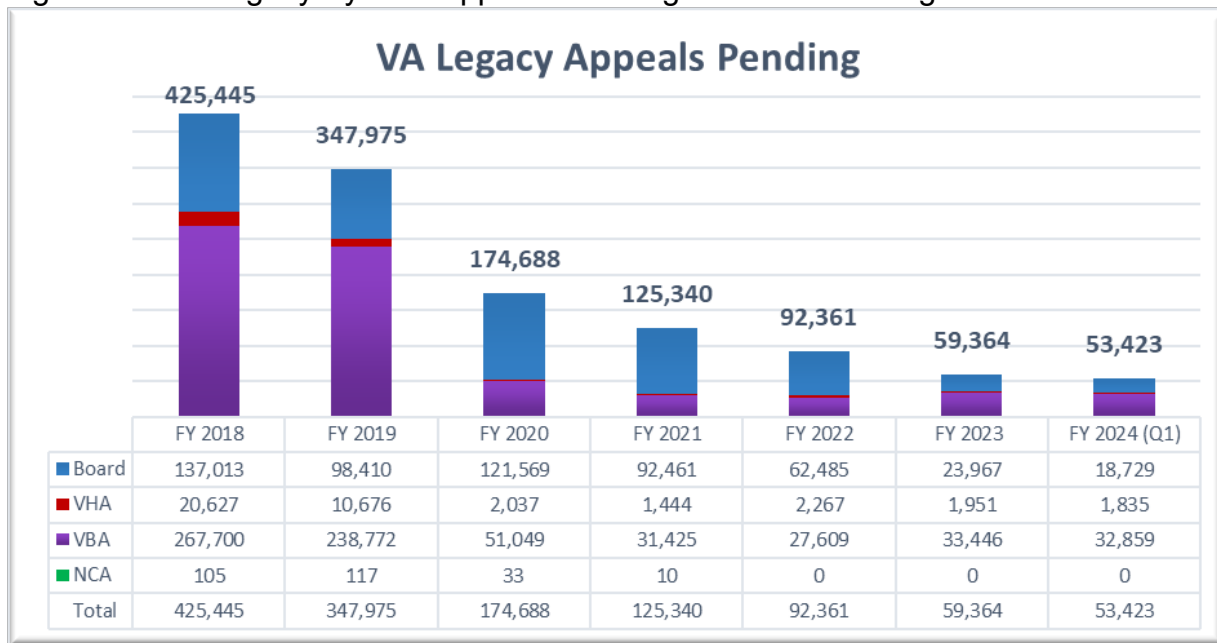
In the 2023 OIG report, Review of VHA Appeals of Benefit Decision, OIG recommended that VHA work with OIT to update Caseflow to address identified VHA system requirements within specified deadlines, including adding a program identifier and facilitating entries for individuals and entities that are not 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 show a marked reduction in the number of Legacy system appeals pending before the Board and in VBA, VHA, and NCA. The plan shows significant progress in the reduction of the number of pending Legacy system appeals by 85%, from 347,975 pending at the start of FY 2020 to 53,423 pending at the end of December 31, 2024.

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, hiring delays, and a reluctance to opt into virtual tele-hearings. See Figure 16 on page 38.

Figure 16. VA Legacy System Appeals Pending – FY 2018 through FY 2024



Based on the relative age of appeals pending in both the Legacy and AMA systems, the Board estimates approximately 45% of its workload in 2024 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 exceed 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 68% of the Legacy system appeals adjudicated in FY 2023 were either AOD, Court remands, or post-remand appeals, with the remaining 32% being original appeals. For the first quarter of FY 2024, approximately 58% of the Legacy system appeals adjudicated were either AOD, Court remands, or post-remand appeals, with the remaining 42% 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 32,000 previously adjudicated Legacy system appeals returned during FY 2024 due to remands. The Board highlights the potential to finish the year with fewer than 8,000 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 FY 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 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	70,584	33.6%	43.8%	16.9%	5.7%

\*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 December 31, 2023, VBA has 1,201 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 620 FTEs) manage and process Legacy system appeals. VBA has 16 FTEs dedicated to processing both Legacy and AMA claims filed by VA employees. All remaining FTEs include staff support and management.

Veterans may elect to opt into an AMA decision review lane on statements of the case issued after February 19, 2019, rather than remain in the Legacy system appeals process. From implementation through December 31, 2023, appellants have opted 16,785 Legacy system appeals into AMA through this avenue. In FY 2023, opt-ins from

the Legacy system process decreased at a rate of 60 per month as compared to 106 per month in FY 2022. A total of 715 opt-ins were received in FY 2023.

Specific to other VBA benefit programs as of December 31, 2023, Legacy system appeals included the following:

- The Pension Program had 209 legacy system appeals pending in VBA, with one in the NOD stage and 208 in the remand stage.
- The Fiduciary Program had two legacy system appeals pending in VBA, with one in the NOD stage and one in the remand stage.
- The Insurance Program had seven legacy system appeals pending in VBA, with one in the NOD stage, one in the Form 9 stage, and five in the remand stage.
- The Education Service had ten legacy system appeals pending in VBA, with all of them pending in the remand stage.
- The Veteran Readiness and Employment Service (VR&E) had 55 legacy system appeals pending in VBA, with three in the NOD stage and 52 in the remand stage.
- The Loan Guaranty Service (LGY) had one legacy system pending in VBA within the remand stage.

VHA has made progress drawing down the Legacy system appeal inventory, reducing it to 585 as of September 30, 2023. 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 and 344 FTEs in FY 2024 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 receipts and pending inventory levels and to 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 and 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's ombuds continues 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 six months, the Board also improved the program to reimburse attorneys and VLJs, removing 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 four 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 32,393 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: Based on current forecast modeling, 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. VBA added 307 FTEs in FY 2023, and an additional 344 FTEs were authorized for FY 2024.

#### 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 strive 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 the 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 to prior reports.

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

The Board has no updates to prior reports.

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

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

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

Risk: A recently identified Caseload system issue 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 has been actively engaged 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 Caseload. VBA and OIT are working towards the long-term solution of having all claims established in VBMS instead of Caseload. VBA will continue to provide status updates on this risk and mitigation in 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 to adjust and reallocate resources when 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 workarounds 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 could better understand the new law and its related implications. The Board revamped its public-facing website in September 2022 to include “storyboards” 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 133 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, including 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 the 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 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)**

VBA has no further updates to RAMP as the program concluded on October 18, 2022.  
See 87 Fed. Reg. 43387.

**Appendix A – Update on Board Outreach**

<b>FY-Quarter</b>	<b>Outreach Date/Type</b>	<b>Outreach/Communication Activities</b>
FY 2023 Quarter 4	August 16, 2023 VSO	VLJ Minami presented at the Idaho Division of Veteran Services Annual County and Post Services Officer Training.
FY 2023 Quarter 4	August 16, 2023 VSO	VLJ Burton presented at the Michigan VSO Training.
FY 2023 Quarter 4	September 15, 2023 <i>Stakeholder</i>	Chairman Areizaga-Soto was the Keynote speaker for 2023 Hispanic/Latino Veteran Outreach, Engagement, and Enrollment.
FY 2023 Quarter 4	September 18, 2023 VSO	VLJ Raymond presented at the Illinois State VSO Training.
FY 2024 Quarter 1	October 2, 2023 VSO	VLJ Mincey presented at the South Carolina Association of County Veterans Affairs Officers.
FY 2024 Quarter 1	October 4, 2023 VSO	VLJ Walker presented at the Missouri Veterans Commission Annual Conference.
FY 2024 Quarter 1	October 19, 2023 VSO	Chairman Areizaga-Soto gave opening remarks to the Board of Veterans' Appeals Quarterly VSO Call.
FY 2024 Quarter 1	October 19, 2023 VSO	Chairman Areizaga-Soto was the guest speaker at the NOVA Virtual Conference.
FY 2024 Quarter 1	October 23, 2023 VSO	Chairman Areizaga-Soto met with and presented VSO Quarterly updates to the Veterans of Foreign Wars (VFW) at their DC HQ.
FY 2024 Quarter 1	October 25, 2023 VSO	Chairman Areizaga-Soto met with and presented VSO Quarterly updates to the Vietnam Veterans of America (VVA) at their MD HQ.
FY 2024 Quarter 1	October 27, 2023 VSO	VLJ Doan presented at the State of Michigan VSO Training.

FY 2024 Quarter 1	October 28, 2023 VSO	VLJ Doan virtually presented at the Jail House Lawyers Initiative.
FY 2024 Quarter 1	November 1, 2023 VSO	Chairman Areizaga-Soto met with Disabled American Veterans (DAV) to discuss the Independent Budget.
FY 2024 Quarter 1	November 15, 2023 VSO	Chairman Areizaga-Soto virtually met with and presented to VSOs in the field at The American Legion's Department Service Officer Quarterly meeting.
FY 2024 Quarter 1	November 30, 2023 VSO	Chairman Areizaga-Soto met with and presented VSO Quarterly updates to the Wounded Warrior Project at their DC HQ.
FY 2024 Quarter 1	December 5, 2023 VSO	The Honorable Jaime Areizaga-Soto engaged with multiple VSO Stakeholders at the American Legion's Holiday Reception.
FY 2024 Quarter 1	December 12, 2023 VSO	The Honorable Jaime Areizaga-Soto engaged with multiple VSO Stakeholders at the Disabled American Veterans (DAV) Open House and Holiday Reception.
FY 2024 Quarter 1	December 12, 2023 VSO	The Honorable Jaime Areizaga-Soto engaged with multiple VSO Stakeholders at the Jewish War Veterans' Hanukkah Reception.
FY 2024 Quarter 1	December 13, 2023 VSO	The Honorable Jaime Areizaga-Soto engaged with multiple VSO Stakeholders at the Wounded Warrior Project Reception.

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