

An Introduction to
VA Appeals Reform

Navigating the Transition

A Publication of Chisholm Chisholm & Kilpatrick LTD



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SECTION ONE

Timeline of Appeals Reform



Timeline of Appeals Reform

The Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Reform) began as a collaborative effort involving VA, Veterans Service Organizations, and Congressional Staff. It quickly gained bipartisan support and was signed into law on August 23, 2017. In November of 2017, VA introduced the Rapid Appeals Modernization Program (RAMP), which served as a pilot program to test the new appeals system. Initially, RAMP was only available to veterans through invitation. However, following a low opt-in rate, VA opened RAMP to all veterans with pending appeals in April of 2018.

Despite extending RAMP eligibility to all veterans, VA only offered partial access to the pilot program, preventing RAMP participants from taking their claims to the Board. Instead, veterans were able to choose either the higher-level review lane or the supplemental claim lane when appealing. Yet this changed in October of 2018 when VA opened the Board lane to veterans enrolled in RAMP. As of now, RAMP will be formally phased out following the full implementation of Appeals Reform which took place on February 19, 2019.

August 23, 2017 – Veterans Appeals Improvement and Modernization Act (i.e. Appeals Reform) signed into law



November 2017 – VA introduces RAMP: partial access to veterans with the oldest pending appeals in any of the following stages: NOD, VA 9, certified but not activated, remand



April 2018 – RAMP open to all veterans with pending appeals (only higher-level review and supplemental claim lanes are open)



October 2018 – RAMP Board lane opens



February 19, 2019 – full implementation of Appeals Reform; RAMP gets formally phased out

SECTION TWO

VA's Motivation Behind Appeals Reform



VA's Motivation Behind Appeals Reform

Appeals Reform is aimed towards restructuring the entire VA disability appeals process in order to simplify and streamline the parts of the current appeals process that typically increase wait times. Additionally, it intends to provide veterans, their families, and their survivors increased choice in handling disagreements with VA's decisions. Generally speaking, VA's total restructuring of the appeals system was prompted by the current system's overall complexity and inefficiency. VA is unable to keep up with its workload while serving veterans in a timely manner. The number of claims received increases every year, adding onto the current VA backlog.

Problems with the Current Legacy Appeals System – In the current Legacy system, there is no defined endpoint or timeframe in regards to processing appeals. Instead, it features an open record and ongoing duty to assist. Such continuous evidence gathering and readjudication prolongs VA's ability to reach a final decision. For example, in Fiscal Year 2016, it took an average of seven years from the date a Notice of Disagreement was filed to eventually receive a decision from the Board. Additionally, VA recognizes that the current system is too complicated as it contains too many steps and is difficult to communicate with veterans.

Benefits of Appeals Reform – The new appeals framework intends to address the above-mentioned issues by implementing an understandable review system that leads to the earlier resolution of disagreements. By increasing choice through multiple review options, veterans will be able to choose the one that best fits their situation. Nonetheless, choosing one lane over another does not prevent the veteran from later choosing a different lane. Under Appeals Reform, VA has proposed several timeframe goals including a 125-day goal for issuing decisions in both the higher-level review and supplemental claim lanes, and a 365-day goal for issuing decisions in the direct docket Board lane. While these goals are not guaranteed, VA will reportedly provide regular updates and estimates regarding wait times, thereby offering transparency throughout the appeals process. To ensure adherence to such timeframes, Appeals Reform limits both VA's duty to assist and the open record that currently contribute to delays in the Legacy system. Specifically, VA's duty to assist only applies in the supplemental claim lane, and there is a closed or limited window to submit evidence in two out of three of the lanes (i.e. the higher-level review lane and Board lane).

Under Appeals Reform, the Agency of Original Jurisdiction (AOJ) acts primarily as a claims agency while the Board acts primarily as an appeals agency. Each lane will provide improved notice about the reasons for VA's decision and the available review options. Namely, decisions under Appeals Reform will identify the issues adjudicated, favorable findings, the elements not satisfied, and the criteria needed to grant service connection or an increased rating. Additionally, if either the Board or higher-level reviewers find issues with the decision on



appeal, quality feedback will be provided to the AOJ, increasing accountability amongst adjudicators.

SECTION THREE

Structure of Appeals Reform: 3 Lanes



Structure of Appeals Reform: 3 Lanes

Appeals Reform is aimed towards restructuring the entire VA disability appeals process in order to simplify and streamline the parts of the current appeals process that typically increase wait times. Additionally, it intends to provide veterans, their families, and their survivors increased choice in handling disagreements with VA's decisions. Specifically, the new system allows veterans to choose from three different lanes when filing an appeal:

1. **Higher-Level Review Lane.** By choosing this lane, veterans are requesting that the Regional Office (RO) issues another decision based on a higher level of review. This review is conducted by a more experienced rating specialist at the Regional Office (RO) who evaluates the veteran's claim *de novo* (i.e. new look). The higher-level reviewer has the ability to overturn a previous decision based on a number of factors including a clear and unmistakable error (CUE). In this lane, veterans are not allowed to submit additional evidence in support of their claims. Instead, the RO will issue a new decision based on the same evidence of record that was available at the time of the prior decision.
2. **Supplemental Claim Lane.** This lane allows for the submission of new and relevant evidence. Furthermore, it is the only lane in which VA has a duty to assist veterans in gathering evidence to support their claims. Importantly, veterans will maintain the same effective dates for their claims when submitting new and relevant evidence as long as the supplemental claim is submitted within one year of the RO's initial decision. Veterans can also submit a claim with new and relevant evidence after receiving an unfavorable decision from the higher-level review process, or after receiving a denial from the Board. Again, if veterans do so within one year of the decision, their effective date will be preserved.
3. **Notice of Disagreement Lane (i.e. Appeal to the Board of Veterans' Appeals).** In this lane, veterans can appeal their cases directly to the Board following an unfavorable decision from the RO, or an unfavorable decision in either the higher-level review lane or supplemental claim lane. Here, veterans are able to skip the second level of review at the RO. There are an additional three lanes at the Board that veterans can choose from: the direct docket, hearing docket, and evidence docket.
 - i. **Direct Docket.** For veterans who do not want to submit additional evidence to the Board, and do not want a hearing before a Veterans Law Judge. In this docket, the Board will only look at the evidence that was in the veteran's file when the appealed decision was issued. VA has set a 365-day goal for issuing decisions in the direct docket Board lane, which is projected to be the fastest among all three options.
 - ii. **Hearing Docket.** For veterans who want to have a hearing before a Veterans Law Judge. The only hearing options available to veterans under Appeals Reform include a videoconference hearing and a hearing at the Board in Washington, D.C. Travel board



hearings, held by Veterans Law Judges at Ros, will only be available in the Legacy Appeals system (i.e. the old appeals system).

- iii. **Evidence Docket.** For veterans who want to submit additional evidence, but do not want a hearing. In this lane, veterans can submit additional evidence to the Board within their Notice of Disagreement (NOD) and within the 90 days following their NOD.

Under Appeals Reform, the Agency of Original Jurisdiction (AOJ) acts primarily as a claims agency while the Board acts as an appeals agency. Both the higher-level review lane and supplemental claim lane function at the AOJ, while the Notice of Disagreement lane functions at the Board of Veterans' Appeals.

SECTION FOUR

Appeals Reform Deadlines and Available Lane Options



Appeals Reform Deadlines and Available Lane Options

If you receive an unfavorable decision regarding your VA disability claim, it is important to be aware of the timeframes involved in filing an appeal. Under Appeals Reform, there will be a number of changes involving these deadlines. Generally speaking, veterans will have **one year** to appeal unfavorable VA decisions. However, there are exceptions to this timeframe. As such, all deadlines within Appeals Reform based on the decision veterans receive, including the available lane options for appealing, are outlined below:

- **Initial Rating Decision.** Veterans have **one year** to appeal by opting in to one of three appeal lanes: the higher-level review lane, supplemental claim lane, and Notice of Disagreement (NOD) lane.
- **Supplemental Claim Rating Decision.** Veterans have **one year** to appeal by opting in to one of the three above-mentioned lanes.
- **Higher-Level Review Rating Decision.** Veterans have **one year** to appeal by filing either a supplemental claim or a Notice of Disagreement.
- **Board Decision.** Veterans can either file a supplemental claim within **one year** or appeal to the Court of Appeals for Veterans Claims (CAVC) within **120 days**.
- **CAVC Decision.** Veterans can either file a supplemental claim within **one year** or appeal to the Court of Appeals for the Federal Circuit within **60 days** of judgement.

Importantly, if veterans do not appeal within the Appeals Reform deadlines, their decisions will become final. When a decision becomes final, veterans will lose their effective dates since the claim will no longer be continuous.

There are also certain Appeals Reform deadlines regarding the submission of evidence at the Board. Specifically, there will be an additional three options for veterans at the Board including the direct docket, hearing docket, and evidence docket. Veterans are permitted to submit additional evidence in both the hearing and evidence dockets while adhering to the following timeframes:

- **Submitting evidence in the hearing docket.** Veterans can submit additional evidence to the Board during their hearing or up to **90 days** after.
- **Submitting evidence in the evidence docket.** Veterans can submit additional evidence to the Board with their NOD or within **90 days** following submission of their NOD.

Does VA have any deadlines under Appeals Reform? – Similar to the Legacy Appeals system, VA does not operate under any mandated deadlines. However, VA has proposed several timeframe goals



regarding the processing of decisions under Appeals Reform. Namely, in both the supplemental and higher-level review lanes, VA has set forth a **125-day** goal for issuing decisions. In regards to the direct docket within the Board lane, VA has set forth a **365-day** goal for issuing decisions. While both the hearing and evidence dockets are subject to longer wait times, VA intends to provide regular wait time predictions so that veterans can remain informed and up to date on the status of their appeals.

SECTION FIVE

Switching Lanes Under Appeals Reform



Switching Lanes Under Appeals Reform

Appeals Reform intends to provide veterans, their families, and their survivors increased choice in handling disagreements with VA's decisions. Specifically, the new system allows veterans to choose from three different lanes when filing an appeal: the supplemental claim lane, the higher-level review lane, and the Notice of Disagreement lane (i.e. Appeal to the Board of Veterans' Appeals). This emphasis on increased choice continues at the Board level as claimants are provided with an additional three lanes to choose from: the direct docket, hearing docket, and evidence docket.

Switching Lanes at the Regional Office Level – Importantly, claimants can change their request for a certain review option at any time prior to VA issuing a decision on their claim. If the claimant's lane withdrawal occurs within the one-year period following the date VA issued the decision being reviewed, the claimant can choose another review option and their effective date will be preserved. For example, a claimant who received a denial of benefits and appeals via the higher-level review lane and request that his/her appeal be moved to the supplemental claim lane for review. Receipt of an unfavorable decision also presents an opportunity to change your appeal lane. For example, a claimant can submit a supplemental claim with new and relevant evidence after receiving an unfavorable decision from higher-level review, even though he or she did not select the supplemental claim lane to begin with.

Additionally, Appeals Reform proposes that claimants will be able to select different lanes for different issues after full implementation on February 19, 2019. However, claimants may not elect to have the same issue reviewed concurrently under different review options.

Switching Lanes at the Board of Veterans' Appeals Level – Claimants are also permitted to switch dockets at the Board level by modifying their Notices of Disagreement. In creating this policy, VA sought to provide claimants with an opportunity to change their initial election if their circumstances and preferences changed. However, VA also wanted to prevent claimants from unfairly gaining the advantage of two dockets. For example, at the Board level, claimants will not be permitted to take advantage of the faster direct docket if he or she has already submitted evidence or testified at a Board hearing. Therefore, VA proposes to limit the time period in which claimants may request to modify their Notices of Disagreement.

Under Appeals Reform, this request to modify must be made within **one year** of the agency of original jurisdiction decision on appeal, or **30 days** after the Notice of Disagreement is received by the Board, whichever is later. As indicated above, the request will be denied if the claimant has already submitted evidence or testimony.

SECTION SIX

Finality of Decisions Under Appeals Reform



Finality of Decisions Under Appeals Reform

Under Appeals Reform, there will still be a Rating Decision after every claim is filed. However, if a veteran disagrees with VA's decision, he or she has **one year** to appeal via one of the following three lanes: the higher-level review lane, supplemental claim lane, or Notice of Disagreement lane (i.e. Appeal to the Board). There are an additional three lanes at the Board that veterans must choose from including the direct docket, hearing docket, and evidence docket. The proposed regulations under Appeals Reform are similar to the Legacy Appeals system in regards to the finality of decisions. Specifically, a decision will become final if the veteran does not appeal within the appropriate timeframe. However, the main difference between the Legacy system and Appeals Reform is that veterans will have **one year** to appeal no matter what type of decision they receive, whether it is a higher-level review decision, a Board decision, or a supplemental claim decision. The only exception is if a veteran chooses to appeal a Board decision to the CAVC or a CAVC decision to the Federal Circuit, in which the appeal period will be the same as it is in the Legacy system (i.e. **120 days** and **60 days**, respectively).

In the new appeals system, effective dates are based on the date of the substantially complete initial claim, the date of the supplemental claim if filed more than one year after a final decision, or the date entitlement arose. If continuously pursued, the effective date is preserved. When a decision becomes final, veterans will lose their effective date since the claim will no longer be continuous.

Are Board decisions final? – Board decisions are still final on the date they are issued as Appeals Reform does not propose any changes to the regulations here. Both the Legacy appeals system and Appeals Reform allow claimants to challenge final Board decisions by appealing to the CAVC, filing a motion for reconsideration, or filing a clear and unmistakable error (CUE) motion.

To challenge a final decision based on CUE, a claimant must believe that VA misapplied the law when making its decision. Here, he or she can argue that the original decision was wrong. However, proving a CUE is extremely difficult for claimants. CUEs can only be filed for a decision that is final, meaning a decision that the claimant did not appeal. There is no statute of limitations on filing a CUE claim, so claimants can allege a CUE any time following a final decision.

However, in addition to those shared options mentioned above, Appeals Reform also allows veterans to submit a supplemental claim following a final Board decision. A supplemental claim may have the Agency of Original Jurisdiction reviewing the same issue, but with new and relevant evidence that was not before the Board at the time of the Board's decision. Under Appeals Reform, a favorable finding regarding new and relevant evidence is binding on all of VA and will be listed on decision notification letters. Such favorable findings are only rebuttable by clear and convincing evidence. Additionally, an unfavorable finding that new and relevant evidence has not been submitted is a separately appealable issue.

Overall, a previous Board decision remains final insofar as it is the final determination on the evidentiary record before the Board at the time. The new and relevant evidence will provide for a new decision, while allowing the effective date to be preserved if the supplemental claim was submitted within **one year** of the Board decision.

SECTION SEVEN

VA's Duty to Assist



VA's Duty to Assist

The duty to assist requires VA to gather information that may help develop and support the veteran's claim, such as service personnel records, service medical records, and VA medical records. In the Legacy Appeals system, VA's is required to remand a veteran's claim for any duty to assist errors that occurred at any time while their appeal was pending. Here, duty to assist errors can include inadequate medical examinations or opinions, or a lack of *Stegall* compliance. Specifically, *Stegall* requires VA to comply with previous remand orders. For example, if the Regional Office fails to follow the instructions of the Board when it reviews and decides a claim on remand, it is in violation of *Stegall*. This reflects a duty to assist error and the Board will likely have to vacate the decision containing the error and remand it back to the Regional Office for correction. Importantly, in the Legacy system, appeals may be returned to the Board following development or correction with the same docket number.

When does VA have the duty to assist under Appeals Reform? – Under Appeals Reform, VA's duty to assist is limited insofar as it is only required when a veteran files an initial claim for benefits, and when a veteran files a supplemental claim with new and relevant evidence. The duty to assist no longer applies to the Board, meaning the Board will no longer be obligated to remand decisions for the purpose of developing additional evidence for the claim. However, if the Board finds that the Regional Office made a duty to assist error, it can remand the case and instruct the Regional Office to fix that error. It is important to note that the duty to assist error must be **pre-decisional**, meaning it occurred prior to the Agency of Original Jurisdiction (e.g. Regional Office) adjudication on appeal. In other words, the only evidence that can be looked at for duty to assist errors in Appeals Reform, has to already be in the file prior to the initial decision. For example, a Veteran never explained that he had symptoms from his time in service until now. As a result, the Regional Office did not get a medical opinion. In the new system, this would not be considered a duty to assist error. However, in the old system, the Veteran could have provided information about his symptoms in his Notice of Disagreement or other submissions *subsequent* to the Rating Decision and the Board would have remanded to comply with the duty to assist.

How does VA correct pre-decisional duty to assist errors under Appeals Reform? – In order to correct pre-decisional duty to assist errors, the Board may instruct the Agency of Original Jurisdiction (AOJ) to obtain an advisory medical opinion. However, unlike the Legacy Appeals system, the Board cannot request independent medical opinions under Appeals Reform. If there is no pre-decisional duty to assist error, the Board is instructed to either grant or deny the claim based on the evidence considered by the AOJ, and any evidence submitted during or within **90 days** of the filing of the Notice of Disagreement or the Board hearing.

If the Board remands an appeal for correction of a pre-decisional duty to assist error, the appeal is not automatically returned to the Board following development the way it is in the Legacy appeals system. Instead, the AOJ will re-adjudicate the pending appeal. It will only be returned to the Board if the claimant files another Notice of Disagreement within one year of the AOJ's readjudication.

SECTION EIGHT

Opting in to Appeals Reform



Opting in to Appeals Reform

Full implementation of Appeals Reform took place on February 19, 2019. However, claimants who received unfavorable decisions prior to that date reserved the option to continue their appeals in the Legacy system. If that is the case, claimants will have several occasions in which they can opt in to Appeals Reform from the Legacy system.

How to opt in to Appeals Reform – Claimants are able to leave the Legacy Appeals system and opt in to Appeals Reform after receiving an initial decision, a Statement of the Case, or a Supplemental Statement of the Case. To opt in after receiving an initial decision, claimants must select either the supplemental claim lane, higher-level review lane, or NOD lane within **one year** of the date VA issued the initial decision. If claimants would like to opt in after receiving either a Statement of the Case or a Supplemental Statement of the Case, they will have to do so within **60 days** of the date VA issued its decision. Going forward, all of the Statements of the Case will contain information regarding the process for opting in to the new system. It is important to note that any appeal that was filed prior to the official implementation of Appeals Reform went into the Legacy appeals system, unless claimants specifically opt-in as outlined above. However, now that Appeals Reform is completely enacted, there is no longer an opt-in requirement, as that is the only way to appeal an unfavorable decision. To ensure this transition occurs, VA will stop accepting Notices of Disagreement for legacy claims one year after Appeals Reform went into full effect, thereby requiring participation in Appeals Reform to continue the appeals process.

RAMP opt-in statistics – VA created RAMP as a way to test the new appeals system before it goes into full effect in February of 2019. There were approximately 60,000 RAMP opt-ins from November of 2017 to September of 2018, increasing the national opt-in rate from 3 percent to 17 percent. Additionally, RAMP elections have produced roughly \$80,596,288 in retroactive benefits paid to claimants on 18,789 completed claims. As of now, RAMP will be formally phased out following complete implementation of Appeals Reform on February 19, 2019.

Can claimants return to the legacy appeals system after posting in to Appeals Reform?

Similar to RAMP, once a claimant opts in to the new system the decision is permanent and he or she cannot return to the Legacy appeals system. Specifically, the switch triggers VA to formally withdraw claimants' claims from the old system and process them in the new system. All requests for review of VA decisions that were issued on or after February 19, 2019 will be processed under the new, multi-lane process.

SECTION NINE

How Appeals Reform Affects Claims and Appeals Pending in the Legacy System



How Appeals Reform Affects Claims and Appeals Pending in the Legacy System

In November of 2018, VA released its fifth report in a series of reports that satisfies the requirements of the Veterans Improvement and Modernization Act of 2017 (Appeals Reform), which became law in August of 2017. Appeals Reform serves to revamp the entire VA disability appeals process in order to provide veterans, their families, and their survivors with increased choice in handling disagreements with VA's decisions. Furthermore, it sets forth specific elements that must be addressed in VA's comprehensive plan, including: implementing the new appeals system; timely processing under the new appeals system; and monitoring the implementation of the new appeals system, including metrics and goals. The report reflects all updates that have occurred within those areas. Overall, the main goal of VA's comprehensive plan is to eliminate the inventory of legacy appeals as quickly as possible while also maintaining timely processing under Appeals Reform.

Processing of Legacy Appeals

The Veterans Benefits Administration. The Veterans Benefits Administration (VBA) is currently employing several strategies to reduce the pending inventory of its legacy appeals, including: workload redistribution across Regional Offices (ROs), increased oversight and accountability, dedicated resources, increased efficiencies by leveraging technology, and opt-in opportunities made available through the Rapid Appeals Modernization Program (RAMP). As a result of these strategies, VBA has increased the number of ROs participating in RAMP from 8 to 12 to keep up with the increasing number of opt-ins. Specifically, there were approximately 60,000 RAMP opt-ins from November 2017 to September 2018, broken down as follows:

- Higher-Level Review Claims
 - 20,445 claims currently pending (55% of all RAMP claims)
 - 14,040 claims completed, resulting in \$60,202,396.20 paid to date
 - 27.2% of claims granted, versus 72.8% of claims denied
 - 18.3% of issues granted, versus 81.7% of issues denied
- Supplemental Claims
 - 16,710 claims currently pending (45% of all RAMP claims)
 - 4,749 claims completed, resulting in \$20,393,892.05 paid to date
 - 28.4% of claims granted, versus 71.6% denied

By the end of September 2018, RAMP elections produced approximately \$80,596,288 in retroactive benefits paid to veterans on 18,789 completed claims.

Additionally, such strategies have contributed to a 14.5 percent reduction of the legacy appeals inventory since the beginning of Fiscal Year (FY) 2018 alone, and a total decrease of 23 percent overall. Furthermore, VBA has seen an increase in the production of legacy appeals action by 9.2 percent. VBA's main goal in the processing of legacy appeals is to reduce the legacy inventory to a "steady state" in FY 2020. Here, a steady state is defined as the elimination of all legacy inventory in the NOD and VA 9

stages, with an inventory of remands that equals the number of appeals resolved per year. The November 2018 report estimates that 400 full-time employees will be required to maintain the steady state.

The Appeals Management Office – The Appeals Management Office (AMO) has also played a role in the simultaneous handling of both appeals under the legacy system and the new appeals system. Specifically, the AMO began brokering legacy appeals from the ROs participating in RAMP. The AMO distributes these appeals to other ROs by considering a station’s inventory, the average days to process each stage of the appeal, and the number of full-time employees. Importantly, the November 2018 report indicates that VA’s Budget for FY 2019 allocates resources to hire an additional 605 full-time employees. The new hires will be placed primarily at newly created Decision Review Operations Centers located in St. Petersburg, Florida and Seattle, Washington.

The Board of Veterans’ Appeals – By September 2019, there should be approximately 95 Veterans Law Judges, 809 decision writing attorneys, and 225 support staff at the Board. However, this report states that all Board personnel will likely spend a percentage of their time working on both legacy appeals and appeals in the new system.

The Board plans to continue to build on its success from FY 2018 when it issued 85,288 decisions to veterans. The Board finished with 137,383 legacy appeals in its pending inventory, more than 28,000 appeals lower than its original projection. Further, this number of decisions not only exceeded the Board’s goal, but also represented an increase of 33,277 decisions from FY 2017. Nonetheless, the goal for FY 2019 is now set for 90,050.

Implementing the New Appeals System – VA continues to take coordinated steps to deal with the full implementation of the new appeals system, which occurred on February 19, 2019. Representatives from various departments including VBA, the Board, Veterans Health Administration (“VHA”), and the National Cemetery Administration (“NCA”) meet regularly to collaborate and resolve issues. In their meetings, the group assesses VBA’s progress towards modernization initiatives, provides regular updates, exchanges ideas and best practices, identifies risks, and offers further guidance.

VA is continuing to use RAMP to test and evaluate the implementation of the new appeals system. The report indicates that not only does RAMP reduce legacy appeals inventory, but it also allows VA to collect data on the efficiency and effectiveness of the new framework. The Board is also running two test programs including the beginning of adjudication of RAMP appeals and the continuing adjudication of Board’s Early Applicability of Appeals Modernization (BEAAM) appeals. BEAAM is a small-scale research program that partners with veterans who are dissatisfied with a recent claim decision. The veterans are able to make elections under the new framework of appeals reform and will receive decisions consistent with the option that they choose. The purpose is to allow the Board to collect preliminary data about veterans’ preferences, choices, and experiences.

Based upon veteran feedback, the Board recently contracted with VA’s Veterans Experience Office to conduct surveys of veterans who have an active appeal at the Board. Again, this provides the Board with important comparative data regarding the veteran experience, and it can also be reviewed to assist with program improvement and implementation by informing the Board’s policies and procedures. Ultimately, the main goal under this component of VA’s comprehensive plan is to integrate and synchronize all appeals reform implementation plan efforts across the Department of Veterans Affairs.

Timely Processing Under New Appeals System – In regards to the specific timelines under the new appeals system, VBA’s goal is to maintain an average of 125 days to complete both higher-level review and supplemental claims. The Board is prioritizing legacy appeals and appeals in the new system’s “direct” docket. Its target for the average processing time of direct docket appeals remains 365 days, as the direct docket option does not involve the submission of new evidence or a hearing. However, appeals in the new system’s hearing and evidence dockets will be subject to longer wait times.

Legacy appeals must be decided in order according to docket date, which is based on the date of receipt of a VA 9 substantive appeal. Additionally, they retain their original docket date after a remand by the Board. On the other hand, appeals under the new framework must be decided in the order they are received on each docket. Nevertheless, under both the legacy and new framework, cases may be advanced on their docket due to the Veteran’s age, illness, financial hardship, or other reasons, and remands are still handled expeditiously.

In order to maintain this level of timeliness, VA anticipates a minimum of 10 percent of the Board’s workforce capacity will be applied to the Appeals Modernization Act framework. The Board’s main priority in this regard is to offer complete transparency regarding the wait times with each docket. Accordingly, VA plans to publish the projected wait times for each docket after implementation, based on early results, and will provide regular updates.

Monitoring Metrics and Goals of New Appeals System – The metrics and goals for the new appeals system continue to indicate that VA is prepared for the full implementation that took place. VA has reviewed all of the comments from the public in response to the proposed regulations and will now work to complete the final rule Federal Register notice. However, the report acknowledges that additional time may be required to update guidance following publication of the final regulations. VA also anticipates, additional rulemaking after February 2019 to optimize both claims and appeals rules and processes.

Education Regarding Appeals Reform – As there is a significant amount of information circulating about the new appeals system, VA is developing resources in an effort to help educate both veterans, their families, and veterans’ advocates. Namely, the Board has collaborated with Veterans Service Organizations (“VSOs”) to develop a joint training on the Appeals Modernization Act to assist representatives in guiding veterans through the new claims and appeals process. This training will likely occur after the finalization of the regulations. Additionally, the Education Service has developed a communication and outreach plan to ensure veterans are aware of the new system as well. This plan includes the following:

- A fact sheet outlining the new appeals process
- E-mailing veterans who have received a decision letter in 2018 explaining the new appeals process
- Posting informational updates via VBA social media platforms both 60- and 30- days prior to enactment of the new law, as well as on the day of enactment
- Updating call center scripts for veterans who contact the call center for information regarding the new appeals system

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