

# Module 7 – Understanding the “Modernized Review System”

## Topics Covered in This Module

- The Appeals Backlog Problem
- Initial, Original and Supplemental Claims
- Higher-Level Review
- Board of Veterans Appeals
- Legacy Claims and Appeals
- Legacy Appeals Rules
- Opting into the New System



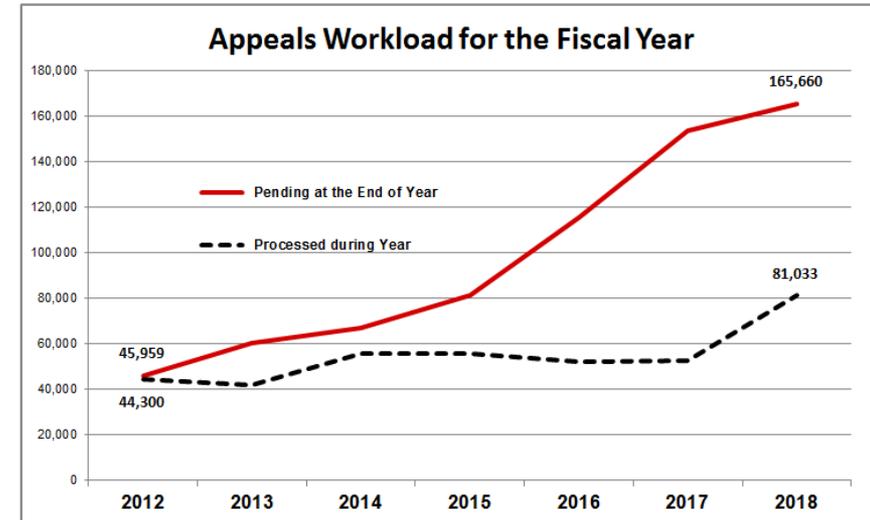
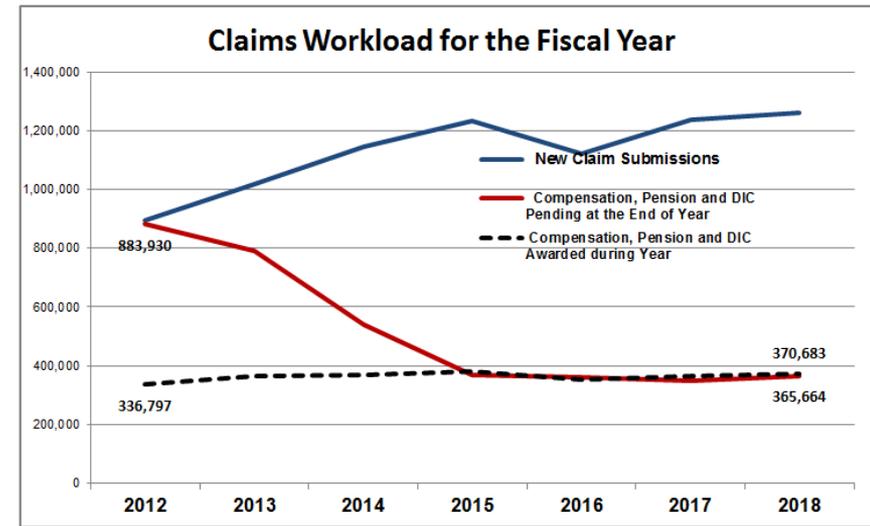
Claims Questions?

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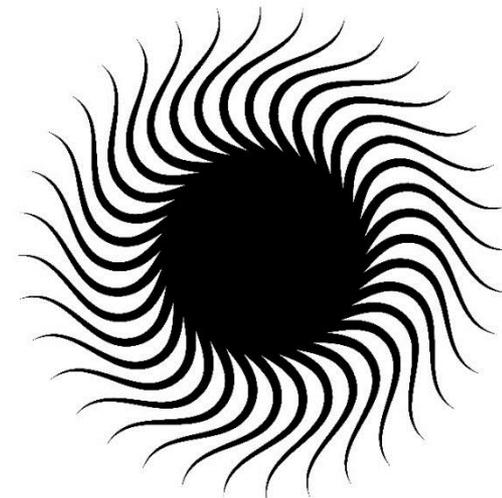
# The Appeals Backlog Problem

- In 2012 the claims backlog reached a peak of almost 900,000 pending claims that were in the system and undecided
- Implementation of the paperless claim system, a slew of new hires and the growing functionality of VBMS, were all gearing up to reduce the burden at this point
- VA became fixated on solving the claims backlog and virtually ignored an increasing backlog of appeals
- Even though the denial rate of 74% and the appeals rate of 12% remained about the same, VA knew that hundreds of thousands of backlogged claims together with new claims generating appeals would produce an appeals backlog, but VA did nothing about it



# The Black Hole of Appeals

- In 2017, the average processing time of an appeal from Notice Of Disagreement to remand back to the Regional Office and final disposition **was almost exactly 6 years**; broken down as follows
  - In 2017, the average processing time of an appeal in the Regional Offices was 1,802 days or almost exactly 5 years
  - In 2017, the average processing time of an appeal with the Board of Veterans Appeals was 568 days or almost exactly 1 year
  
- Currently, the average processing time has gone up to around **7 years for an appeal**



Source: 2017 Board of Veterans Appeals Report to Congress

Time Interval	Responsible Party	Average Elapsed Processing Time	
Notice of Disagreement Receipt to Statement of the Case*	VBA**	500 days	AOJ
Statement of the Case Issuance to Substantive Appeal (VA Form 9) Receipt*	Appellant	37 days	
Substantive Appeal Receipt to Certification of Appeal*	VBA**	773 days	

Time Interval	Responsible Party	Average Elapsed Processing Time	
Certification of Appeal to Board Receipt of Certified Appeal*	Board	321 days	Board
Receipt of Certified Appeal to Issuance of Board Decision	Board	247 days	
Average Remand Time Factor	VBA**	492 days	AOJ

# VA's Solution to the Appeals Backlog Problem



- “Appeals Improvement and Modernization Act of 2017”, now commonly referred to as the AMA (Appeals Modernization Act)
- New regulations implementing the AMA became effective February 19, 2019. VA calls the new process the "Modernized Review System"
- The new rules incorporate a number of laborsaving initiatives to include the following:
  - Eliminating certain previously required notices
  - Eliminating reopened claims and the informal practice of reconsideration of evidence
  - Eliminating the paperwork burden of certifying an appeal
  - Significantly restricting the availability of Regional Office hearings
  - Board of Veterans Appeals expedited appeal lane

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# Significant Changes Affecting Claims Processing Rules

- The record is closed after a decision
- Reconsideration and reopening of claims are no longer options
- New evidence will only be considered with a supplemental claim or with the Board Appeal Lane for that option
- Arguments can still be submitted where no new evidence is allowed such as a higher-level review or Board Appeal Lane with review only
- Hearings are still allowed but only in connection with new evidence previous to a decision for a supplemental claim or with the BVA
- Accredited representatives can charge fees after the first notice of decision as long as the claimant has not elected one of the review options first
- Decisions by the Board Of Appeals can be challenged by a supplemental claim
- Requests for an increase in rating must be filed as an initial claim and evidence of the increase can only apply 1 year prior to the date of application



# Initial, Original and Supplemental Claims

Expiration Date: 10/31/2021

Department of Veterans Affairs

**APPLICATION FOR VETERANS PENSION**

VA DATE STAMP  
(DO NOT WRITE IN THIS SPACE)

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 9 before completing the form.

SECTION I: VETERAN'S PERSONAL INFORMATION (MUST COMPLETE)

1. VETERAN'S NAME (Last, First, Middle)      2. SOCIAL SECURITY NUMBER      3. DATE OF BIRTH (MM,DD,YYYY)

Department of Veterans Affairs

**APPLICATION FOR DIC, SURVIVORS PENSION, AND/OR ACCRUED BENEFITS**

VA DATE STAMP  
(DO NOT WRITE IN THIS SPACE)

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 11 before completing the form.

SECTION I: PERSONAL INFORMATION (MUST COMPLETE)

1. VETERAN'S NAME (Last, first, middle)      2. VETERAN'S SOCIAL SECURITY NUMBER      3. VETERAN'S DATE OF BIRTH (MM,DD,YYYY)

4. VETERAN'S SEX      5. HAS THE VETERAN: SURVIVOR'S SERVICE: CHILD OR PARENT EVER      6. VA FILE NUMBER

Expiration Date: 03/31/2021

Department of Veterans Affairs

**APPLICATION FOR DISABILITY COMPENSATION AND RELATED COMPENSATION BENEFITS**

VA DATE STAMP  
(DO NOT WRITE IN THIS SPACE)

IMPORTANT: Please read the Privacy Act and Respondent Burden on page 12 before completing the form.

1. SELECT THE TYPE OF CLAIM PROGRAM/PROCESS (Check the appropriate box) (See instruction pages 1-3 for definitions of the Fully Developed Claim (FDC) Program (Optional Expedited Process) or the Standard Claim Process. See instruction page 3 for the definition of a Benefit Delivery or Discharge (BDD) Program Claim)

FULLY DEVELOPED CLAIM (FDC) PROGRAM       STANDARD CLAIM PROCESS

IDES (Select this option *only* if you have been referred to the IDES Program by your Military Service Department)

BDD Program Claim (Select this option *only* if you meet the criteria for the BDD Program specified on instruction Page 5)

NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing of the form.

SECTION I: IDENTIFICATION AND CLAIM INFORMATION

2. VETERAN'S SERVICE MEMBER NAME (First, Middle Initial, Last)

3. VETERAN'S SOCIAL SECURITY NUMBER (SSN)      4. HAVE YOU EVER FILED A CLAIM WITH US?      5. VA FILE NUMBER

- The new rules define the concepts of initial, original and supplemental claims
- An initial claim is a new claim for benefits using VA Forms 21-527EZ, 21-534EZ or 21-526EZ
- An initial claim also includes Compensation applications for secondary disability or a request for increase in rating
- An original claim is the first-time filing for any benefit
- A supplemental claim is used to formally submit new evidence

Paper claim sent to Janesville Scanning Center or submitted through eBenefits

Scanned claim uploaded into VBMS through the VA intranet and assigned to a Regional Office through the National Workload Queue. eBenefits claim goes directly into the work load queue. Attempt is made to assign to the Regional Office area where the claimant lives.

- An initial claim is a claim for new benefits, for secondary service connection or for a request for increase in rating
- An original claim is an initial claim that represents a first-time filing for any benefit
- A supplemental claim is any claim that is not an initial claim but is an application for reconsideration by introducing new evidence for the claimant

## New and Relevant Evidence

- 38 CFR §3.2501 (a)(1) Definition. "New evidence is evidence not previously part of the actual record before agency adjudicators ."
- 38 CFR §3.2501 (a)(1) Definition. "Relevant evidence is information that tends to prove or disprove a matter at issue in a claim. Relevant evidence includes evidence that raises a theory of entitlement that was not previously addressed."
- Congress's intent is to lower the current burden to have a claim readjudicated based on relevant instead of the previous standard of material evidence
- When evidence is considered neither new nor relevant



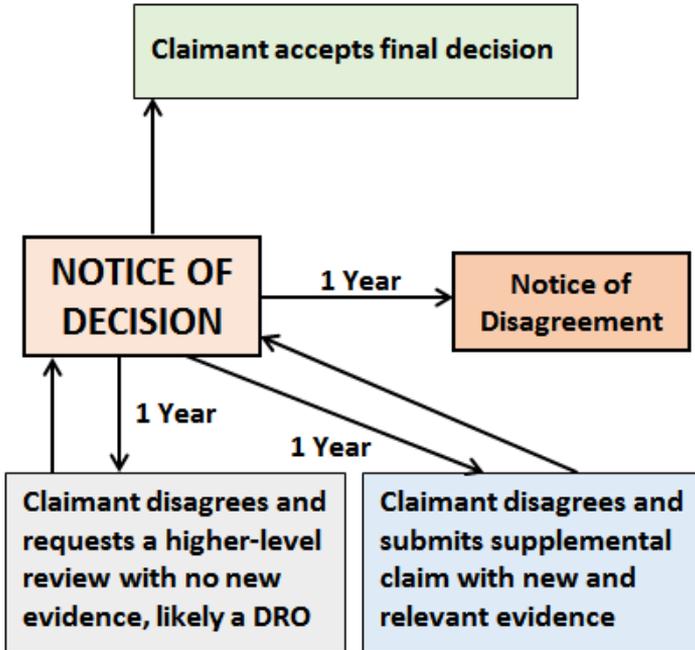
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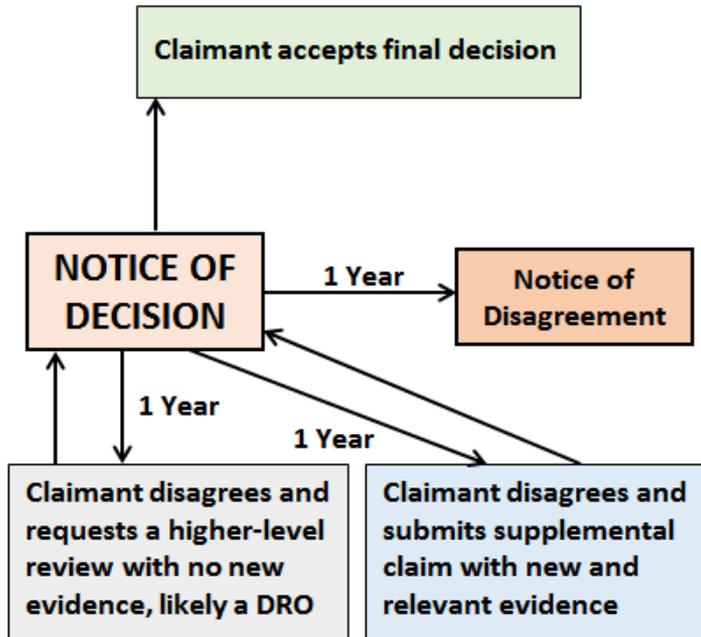
 Department of Veterans Affairs		VA DATE STAMP DO NOT WRITE IN THIS SPACE
<b>DECISION REVIEW REQUEST: SUPPLEMENTAL CLAIM</b>		
<small>INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 2 BEFORE COMPLETING THIS FORM.</small>		
<b>PART I - CLAIMANT'S IDENTIFYING INFORMATION</b>		
<small>NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing the form.</small>		
1. VETERAN'S NAME (First, Middle Initial, Last)		
2. VETERAN'S SOCIAL SECURITY NUMBER		
3. VA FILE NUMBER (if applicable)		
4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)		

# Supplemental Claim

- Use VA Form 20-0995
- Under the old rules, new evidence could be submitted at any time requiring a reconsideration and a potential new decision
- Under the new rules, the record is closed after a decision is made and new evidence will only be considered using a supplemental claim. Treating informally submitted evidence
- Under the old rules, a Regional Office Hearing could be requested at any time along with submission of new evidence and the potential production of a new decision
- Under the new rules, a new evidence hearing is only available with submission of a supplemental claim prior to a decision from that filing
- Any number of supplemental claims can be filed within one year of any notice of decision, including a Board decision, as long as "new and relevant evidence" is submitted
- A supplemental claim will be rejected if new and relevant evidence is lacking and as a result the prior notice of decision will stand



 Department of Veterans Affairs		VA DATE STAMP DO NOT WRITE IN THIS SPACE
<b>DECISION REVIEW REQUEST: HIGHER-LEVEL REVIEW</b>		
<small>INSTRUCTIONS: PLEASE READ THE PRIVACY ACT NOTICE AND RESPONDENT BURDEN INFORMATION ON PAGE 1 BEFORE COMPLETING THIS FORM.</small>		
<b>PART I - CLAIMANT'S IDENTIFYING INFORMATION</b>		
<small>NOTE: You can either complete the form online or by hand. If completed by hand, print the information requested in ink, neatly, and legibly to expedite processing the form.</small>		
1. VETERAN'S NAME (First, Middle Initial, Last)		
<input type="text"/>		
2. VETERAN'S SOCIAL SECURITY NUMBER		
<input type="text"/>		
3. VA FILE NUMBER (if applicable)		
<input type="text"/>		
4. VETERAN'S DATE OF BIRTH (MM/DD/YYYY)		
<input type="text"/>		



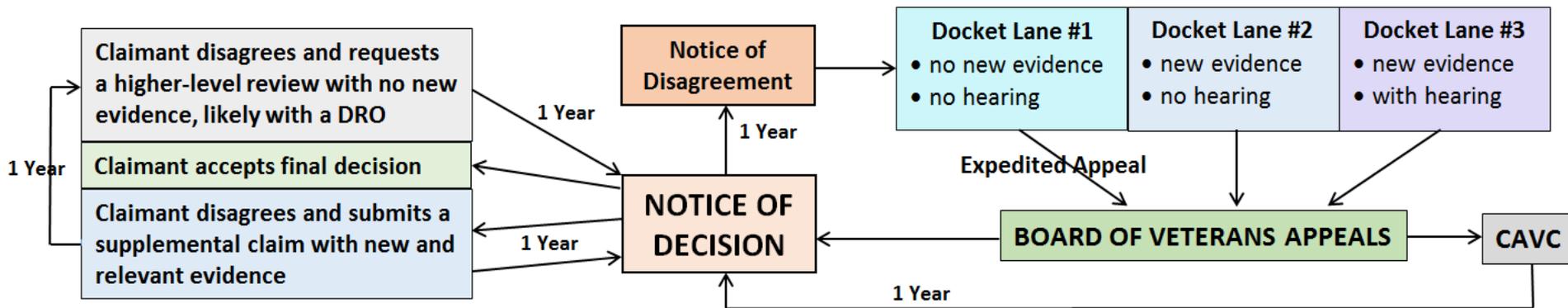
## Higher-Level Review

- Use VA Form 20-0996
- Under the old rules, a fresh review and a new decision, along with submission of new evidence and a DRO Regional Office Hearing, could be requested after filing a Notice of Disagreement
- Under the new rules, a higher-level review and a new decision is available with no new evidence and with only a phone conference. Arguments are accepted
- Under the new rules, an NOD is not required for a higher-level review as long as the request for the review is made within 1 year of the previous notice of decision
- Theoretically, any number of higher-level reviews can be requested as long as new and relevant evidence is submitted within 1 year of an unfavorable decision from a higher-level review with a supplemental claim

# Board of Veterans Appeals

Department of Veterans Affairs		DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)	
<b>PART I - PERSONAL INFORMATION</b>			
1. VETERAN'S NAME (First, middle initial, last)			
2. VETERAN'S SOCIAL SECURITY NUMBER	3. VETERAN'S VA FILE NUMBER (if different than their SSN)	4. VETERAN'S DATE OF BIRTH	
5. IF I AM NOT THE VETERAN, MY NAME IS (First, middle initial, last)		6. MY DATE OF BIRTH (If I am not the Veteran)	
7. MY PREFERRED MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country) <input type="checkbox"/> I AM HOMELESS			
8. MY PREFERRED TELEPHONE NUMBER (Include Area Code)	9. MY PREFERRED E-MAIL ADDRESS	10. MY REPRESENTATIVE'S NAME	
<b>PART II - BOARD REVIEW OPTION (Check only one)</b>			
1. A Veterans Law Judge will consider your appeal in the order in which it is received, depending on which of the following review options you select. (For additional explanation of your options, please see the attached information and instructions.)			
<input type="checkbox"/> 11A. Direct Review by a Veterans Law Judge: I do not want a Board hearing, and will not submit any additional evidence in support of my appeal. (Choosing this option often results in the Board issuing its decision most quickly.)			
<input type="checkbox"/> 11B. Evidence Submission Reviewed by a Veterans Law Judge: I have additional evidence in support of my appeal that I will provide within the next 90 days, but I do not want a Board hearing. (Choosing this option may add delay to issuance of a Board decision.)			
<input type="checkbox"/> 11C. Hearing with a Veterans Law Judge: I want a Board hearing and the opportunity to submit additional evidence in support of my appeal that I will provide within 90 days after my hearing. (Choosing this option may add delay to issuance of a Board decision.)			
<b>PART III - SPECIFIC ISSUE(S) TO BE APPEALED TO A VETERANS LAW JUDGE AT THE BOARD</b>			
12. Please list each issue decided by VA that you would like to appeal. Please refer to your decision notice(s) for a list of adjudicated issues. For each issue, please identify the date of VA's decision and the area of disagreement.			
<input type="checkbox"/> Check here if you attached additional sheets. Include the Veteran's last name and last 4-digits of the Social Security number.			
Check the SOC/SSOC Opt in box if any issue listed below is being withdrawn from the legacy appeals process. <input type="checkbox"/> Opt In from SOC/SSOC			

- Use VA Form 10182 – Notice of Disagreement
- Statement of the Case, Supplemental Statement of the Case and Form 9 have been eliminated and the request goes directly to the Board
- Under the new rules, 3 docket lanes are available instead of only one option under the old rules
- Under the old rules, Board decisions were final, pending an appeal to the CAVC, but under the new rules, Board decisions, the CAVC and even the Circuit Court can be challenged with a supplemental claim
- VA asserts that an appeal under Docket Lane #1 will take 1 year or less to complete



 <b>Department of Veterans Affairs</b>		<b>DECISION REVIEW REQUEST: BOARD APPEAL (NOTICE OF DISAGREEMENT)</b>	
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2. VETERAN'S SOCIAL SECURITY NUMBER	3. VETERAN'S VA FILE NUMBER <i>(if different than their SSN)</i>	4. VETERAN'S DATE OF BIRTH	
5. IF I AM NOT THE VETERAN, MY NAME IS <i>(First, middle initial, last)</i>		6. MY DATE OF BIRTH <i>(If I am not the Veteran)</i>	
7. MY PREFERRED MAILING ADDRESS <i>(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)</i> <input type="checkbox"/> I AM HOMELESS			
8. MY PREFERRED TELEPHONE NUMBER <i>(Include Area Code)</i>	9. MY PREFERRED E-MAIL ADDRESS	10. MY REPRESENTATIVE'S NAME	
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## Opting into the New System

- Any decisions on legacy claims after February 19, 2019 are automatically processed under the new review system
- Any legacy appeals in the system prior to February 19, 2019 have the choice of opting into the new system once a Statement of the Case or Supplemental Statement of the Case has been issued by the office of original jurisdiction
- VA Form 10182 will be used for legacy appeals opting into the new system

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