

HVAC Post-Hearing QFRs

Chairman Roe

1. Is it important for the Department of Veterans Affairs (VA) to continue to work with veterans advocates throughout the implementation phase of appeals reform?

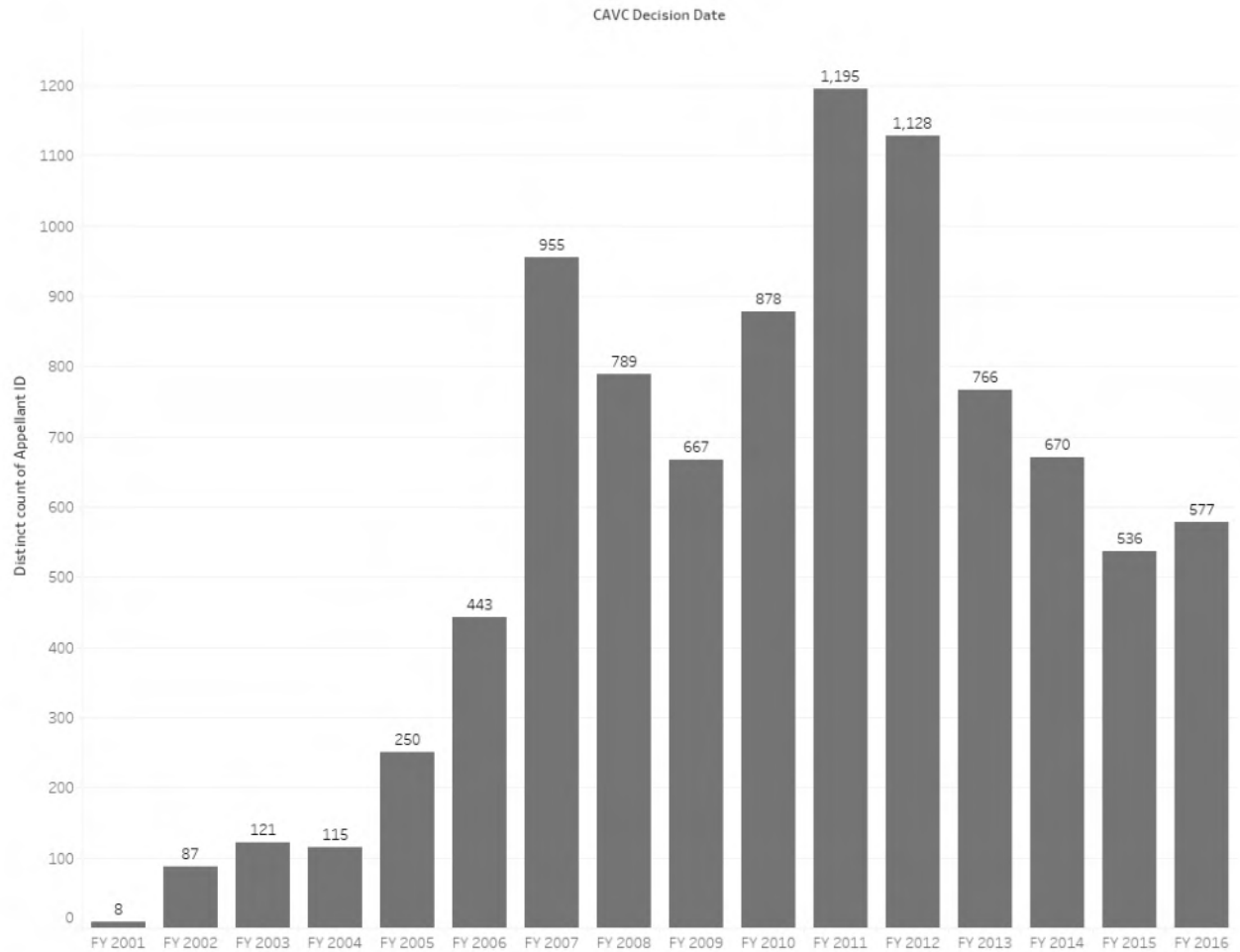
RESPONSE: Yes, it is important for VA to continue to work with Veterans advocates throughout the implementation phase of appeals reform. VA has previously stated that we are committed to ongoing engagement during the implementation phase of appeals reform, to the extent allowed by law.

2. Which stakeholders do you believe that VA should collaborate with prior to certifying that the Secretary?

RESPONSE: We believe that VA should collaborate with the stakeholders that participated in the March 2016 Appeals Summit, specifically, the American Legion, American Veterans, Disabled American Veterans, the Military Officers Association of America, the National Association of County Veterans Service Officers, the National Association of State Directors of Veterans Affairs, the National Organization of Veterans' Advocates, Paralyzed Veterans of America, Veterans of Foreign Wars, and Vietnam Veterans of America.

3. How many veterans would be impacted if Congress were to protect veterans' effective dates after an adverse decision at the Veterans Court?

RESPONSE: If Congress were to protect Veterans' effective dates after an adverse decision at the United States Court of Appeals for Veterans Claims (CAVC), any Veteran who has at least one issue affirmed on appeal to CAVC could be impacted, as that Veteran could file a supplemental claim within one year of the CAVC decision and have the date of claim, for purposes of assigning the effective date of an award of a benefit eventually granted, relate back to the date of filing of the initial claim. The Board does not have information about how many Veterans file a request to reopen their claim after a CAVC affirmance and eventually have a benefit granted. The table below shows the number of individual appellants by fiscal year (FY), 2001 through 2016, who had at least one issue affirmed at the CAVC. Any Veteran who has at least one issue affirmed at the CAVC would potentially be impacted if Congress were to protect Veterans' effective dates following an adverse decision at CAVC after the effective date of the legislation.



4. Does VA anticipate allowing veterans who are currently in the system, but would not be eligible to opt-in to the new system under the draft legislation, to opt-in to the new system in the future?

RESPONSE: The opt-ins presently in the draft legislation provide opportunities for Veterans who would otherwise have an appeal in the legacy process to choose to participate in the new system instead. While one opt-in provides opportunities to Veterans who receive a decision during the 1-year period prior to the effective date of the law, the other allows Veterans who receive a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) in a legacy appeal after the effective date of the law, to opt-in to the new system. This SOC/SSOC opt-in means that, even if a Veteran is not immediately eligible to opt-in to the new system, he or she could later opt-in upon issuance of an SSOC in the legacy system. VA does not anticipate creating additional opt-ins during the initial implementation of the new system. However, after we have been operating in the new system, and have had an opportunity to reassess pending workload and resource allocations, we are open to the possibility of exploring whether there may be additional opportunities for opt-ins into the new system.

5. How many resources will the Board of Veterans' Appeals (Board) devote to deciding legacy appeals?

RESPONSE: The Board intends to devote resources required to maintain timely processing in the new system. All remaining resources will be allocated to addressing legacy appeals.

a. Based on the estimated resource allocation, how long does the Department anticipate that it will take to resolve legacy appeals?

RESPONSE: Depending upon legislative reform and available resources, VA intends to address the legacy appeals inventory as quickly and efficiently as possible. Without significant legislative reform to modernize the appeals process, VA projects that Veteran wait times and the cost to taxpayers will continue to increase over time. The goal is to eliminate the inventory of legacy appeals in a timely manner following enactment of the appeals modernization legislation, while also maintaining timely processing in the new process. Prioritization, assessment of resource requirements in the annual budget process, and the opt-in features of the new process will assist VA in accomplishing that goal. However, due to the nature of the complex, inefficient and outdated legacy process, VA projects that there will be an inventory of legacy appeals for a substantial amount of time, regardless of the amount of resources made available to legacy appeals processing. Whether VA will need additional resources for appeals after enactment of appeals reform legislation is contingent upon resource allocation decisions made by the Department and the Administration during the annual budget process and cannot be predicted at this time.

6. How will the Board balance the resources for multiple dockets to ensure that veterans receive a timely decision even if he or she wants to have a hearing?

RESPONSE: As indicated above, the Board will allocate resources to maintain timely processing in the new system. While VA does not have an established timeliness goal for appeals with a request for a hearing or a request to submit additional evidence, we project appeals in this lane at the Board will take, on average, less than three years to complete.

7. At this time, how many resources does Veterans Benefits Administration (VBA) plan to allocate to the legacy appeals?

RESPONSE: VBA is mindful of the need to balance resources so that the agency can eliminate the legacy appeals inventory as quickly as possible. VBA intends to allocate resources in a manner that will establish timely processing in the new system and will allocate all remaining appeals resources to address the inventory of legacy appeals.

a. Based on the estimated resource allocation, how long does the Department anticipate that it will take to resolve the legacy appeals?

RESPONSE: The goal is to eliminate the inventory of legacy appeals in a timely manner following enactment of the appeals modernization legislation, while also maintaining timely processing in the new framework. Prioritization, assessment of resource requirements in the annual budget process, and the opt-in features of the new process will assist VA in accomplishing that goal. However, due to the nature of the complex, inefficient and outdated legacy process, VA projects that there will be an inventory of legacy appeals for a substantial amount of time, regardless of the amount of resources made available to legacy appeals processing. Whether VA will need additional resources for appeals after enactment of appeals reform legislation is contingent upon resource allocation decisions made by the Department and the Administration during the annual budget process and cannot be predicted at this time.

b. Based on the estimated resource allocation, will VBA be able to meet its goal of processing the appeals for veterans who want a hearing within 1 year?

RESPONSE: One of the benefits of the new system is that VBA will be the claims agency and the Board will be the appeals agency. Therefore, VBA will not process appeals under the new legal framework. A Veteran may request a pre-decisional hearing during the processing of an initial claim, and a supplemental claim; however, there are no hearings in the higher-level review lane. The average processing time goal for initial claims, supplemental claims, and higher-level reviews in the new system is 125 days.

8. Will VA provide an examination or develop for relevant private medical evidence if the veteran's condition worsens while the appeal is pending?

RESPONSE: No. In the new system, all appeals will be handled by the Board. As stated above, clearly establishing VBA as the claims agency and the Board as the appeals agency is one of the benefits of the new system. Because the duty to assist will not apply to review on appeal by the Board, the Board would not remand to obtain an examination or develop relevant private medical evidence if the Veteran's condition worsens *while the appeal is pending*. However, if a Veteran believes that his or her condition worsened while the appeal was pending, he or she could file a supplemental claim with new and relevant evidence within 1 year of the Board decision, in which case the effective date of any increased benefits granted would be protected.

9. Will VA have a duty to assist if a veteran files a supplemental claim?

RESPONSE: Yes. In the new system VA's duty to assist applies in the supplemental claim lane.

10. Do you have concerns that putting the contents of a decision notification letter into statute would make it more difficult for VA to revise these letters as the needs of veterans or other laws change over time?

RESPONSE: While VA generally prefers administrative flexibility in its statutory authority, it became clear during March 2016 appeals design discussions with stakeholders that any reform legislation would need to prescribe the core elements of a decision notice. Without these provisions, it is unlikely VA would have reached a near unanimous consensus for change. VA will still have the flexibility it needs to prescribe rules related to providing this notice and to modify its notification letters consistent with the statutory requirements. To the extent that the needs of Veterans change over time, VA would work with stakeholders to propose necessary statutory amendments.

11. Is VA planning to update VBMS to enable it to process appeals?

a. If so, when will such update be available?

RESPONSE: In December 2016, the first iteration of the SOC and SSOC legacy program was integrated into the Veterans Benefits Management System (VBMS). The new functionality reduces reliance on legacy systems, and improves VBA systems integration while streamlining the process of issuing an SOC. However, under the appeals modernization legislation, VBA would not process any new appeals; therefore, VBA would require a modification to VBMS to account for changes to the claims process, specifically the higher-level review and supplemental claim lanes in the new process. VA plans to have those changes implemented before the effective date of the legislation.

12. How long would it take for the Board to update its Information Technology system to implement the changes required by the bill?

RESPONSE: The United States Digital Service has a team of digital service experts at the Board working to replace the Veterans Appeals Control and Locator System (VACOLS), its current, outdated software for managing the appeals process, with Caseflow, a modern suite of web applications designed to increase timeliness, accuracy and Veteran experience in the appeals process. The Digital Service team has been monitoring the legislative process, and is developing Caseflow using agile, iterative processes that enable them to quickly adapt in response to the final form of the legislation. Therefore, the Board and Digital Service are fully prepared to implement in Caseflow the information technology related changes required by the bill, in the normal course of development, within one year of passage of the Veterans Appeals Improvement and Modernization Act.

a. What are the anticipated costs of these changes?

RESPONSE: There are no anticipated additional costs for these changes. Because Caseflow development work is ongoing, and will include these changes, all funding for these changes is covered by the existing Appeals Modernization budget.

Representative Bost

13. Is VA planning to process appeals through the National Work Queue?

RESPONSE: In the new process, VBA will use its National Work Queue (NWQ) workload management strategy to electronically distribute claims in the higher-level review and supplemental claims lanes to any VA regional office that has processing capacity. In addition, VBA intends to distribute legacy appeals pending in VBA's jurisdiction to its regional offices using the NWQ. The Board does not utilize the NWQ to manage its appeals workload.

14. After appeals reform is enacted, will the Board be able to meet its goal of processing the appeals for veterans who want a hearing within one year?

RESPONSE: To clarify, the average processing goal of 1 year in the new system is for appeals with no request for a hearing and no additional evidence. The Board anticipates that it will be able to meet that timeliness goal in the new system. While VA does not have an established timeliness goal for appeals with a request for a hearing or a request to submit additional evidence, it projects that appeals in this lane at the Board will take, on average, less than 3 years to complete.

a. If not, what additional resources, such as technology, does the Board need to meet its goal?

RESPONSE: As indicated above, the Board anticipates that it will be able to meet the timeliness goal of an average processing time of 1 year for appeals with no request for a hearing and no additional evidence in the new system. Whether the Board will need additional resources for appeals after enactment of appeals reform legislation is contingent upon resource allocation decisions made by the Department and the Administration during the annual budget process and cannot be predicted at this time.

15. Total number of BVA decisions issued in which at least one claim contained therein was remanded for each of the past three fiscal years (i.e., Fiscal Year 2014, Fiscal Year 2015, and Fiscal Year 2016). Please also note the top five reasons necessitating remand by BVA.

RESPONSE: The table, below, provides the number of decisions with at least one remanded issue for FYs 2014 through 2016.

Decisions--Revised Hierarchy										
Fiscal Year	Decisions	Allowed	Allowed (No remanded issue)	Decisions with at least one remanded issue (Allowances with at least one remanded issue + remands)	Allowed (with at least one remanded issue)	Remanded	Denied	Other		
2014	55,536	16,189	8,766	32,703	7,423	25,280	11,935	2,132		
2015	55,726	17,281	8,574	34,596	8,707	25,889	10,628	1,928		
2016	52,025	16,550	8,099	32,384	8,451	23,933	9,383	2,159		

***Note:** Data for this request was pulled from a Veterans Appeals Control and Locator System (VACOLS) report on June 20, 2017, while the decision totals reflected in the Board's Annual Report to Congress are pulled at the end of the fiscal year (FY). VACOLS reports are completed in "real time" and are updated continuously as work process records are updated to reflect current status, reassigned to another employee, cancelled, or completed.

Below are the top five reasons for remand from the Board to the Agency of Original Jurisdiction for FYs 2014-2016:

Year Reason

- 2014 VA medical records
Nexus opinion
Incomplete/inadequate findings
Current findings (medical examination/opinion)
Private medical records

- 2015 VA medical records
Nexus opinion
Current findings (medical examination/opinion)
Incomplete/inadequate findings
Private medical records

- 2016 VA medical records
Incomplete/inadequate findings
Nexus opinion
Current findings (medical examination/opinion)
Private medical records

Representative Rutherford

16. Please provide the number of appeals decided in the Board of Veterans' Appeals in 2016.

RESPONSE: In FY 2016, the Board issued 52,011 decisions for Veterans and their families.

a. How many were remanded, denied; and, granted?

RESPONSE: See the information, below. 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 (i.e., 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.

Decisions											
Fiscal Year	Total Decisions	Percent	Allowed	Percent	Remanded	Percent	Denied	Percent	Other	Percent	
2016	52,011	100.00	16,544	31.81	23,926	46.5	9,384	18.04	2,157	4.15	

17. Please provide the number of appeals decided in VBA in 2016.

RESPONSE: In FY 2016 VBA decided 202,088 appeals.

a. How many of such appeals were remanded, denied, and granted.

RESPONSE: See the information below.

Decisions	GRANTS		DENIALS	
	Full Grants*	47,477	Statements of the Case	53,048
2016	Partial Grants	12,672	Certified to the Board**	88,891
202,088	Total	60,149	Total	141,939

*Grants include 6,774 Board remands resolved in the appellant's favor by VBA.

** Denials include *27,412 remands re-certified to the Board for a decision after VBA adjudication of the remand.