

Department of Veterans Affairs (VA) Strategic Plan to Transform the Appeal Process

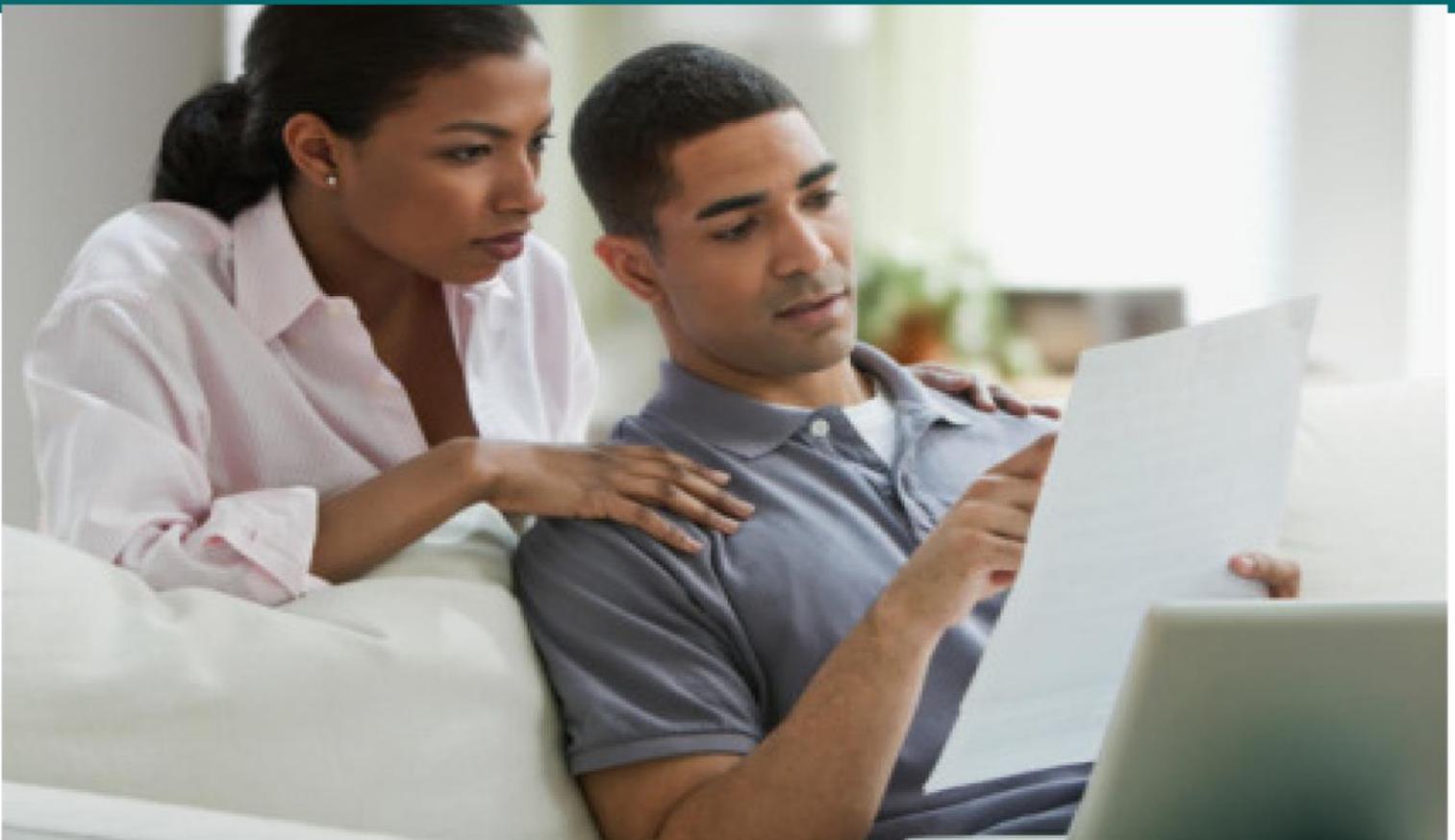


Table of Contents

0.0 Introduction	3
0.1 Veterans Benefits Administration’s (VBA) Claims Transformation Plan	3
0.2 Recent Legislation	4
1.0 Current Appeal Process	5
1.1 History of the Appeal Process	5
1.2 Current Statutory Framework	5
1.3 Appeal Statistics	11
1.4 Decision Accuracy and Appeals	11
2.0 Transforming the Appeal Process	13
2.1 People Initiatives	14
2.2 Process Initiatives	15
2.3 Technology Initiatives	17
3.0 Veterans’ Claims Adjudication Commission Study of VA’s Adjudication and Appellate System	20
4.0 Conclusion	21
Appendix 1.0 – People Initiatives	22
Appendix 1.1 – Process Initiatives	23
Appendix 1.2 – Technology Initiatives	24

VA Strategic Plan to Transform the Appeal Process

0.0 Introduction

During a December 11, 2013, Senate Committee on Veterans' Affairs hearing on the Department of Veterans Affairs' (VA) backlog of disability compensation claims, several Committee members expressed concern about the growing inventory of appealed claims and the time it takes VA to resolve appeals. Chairman Sanders requested that VA prepare and submit a plan for improving the claims appeal process within 45 days of the hearing.

This document responds to the Chairman's request with a preliminary plan for the administrative appeal process currently authorized in title 38, United States Code (U.S.C.). While VA has identified and implemented some initiatives that may improve the timeliness of appeal processing, stakeholder support is needed to provide appellants a modern, efficient appeal process that is consistent with VA's goals for the initial claims process. Within this plan, VA describes the current multi-step process, which is complex and utilizes an open record – that is, it allows a Veteran to submit evidence at any point from the beginning to the end of the process, including while the claim is pending on appeal, which may in turn require VA to develop further evidence on the Veteran's behalf. The plan also identifies initiatives in people, process, and technology that address several stakeholder concerns.

0.1 Veterans Benefits Administration's (VBA) Claims Transformation Plan

The President has charged the Secretary of Veterans Affairs with transforming and modernizing VA, to include eliminating the backlog of disability compensation claims in 2015 and ensuring expeditious delivery of benefits and services to Veterans, their families, and Survivors. The Department's strategic plan includes an agency priority goal to eliminate the disability claims backlog and process all claims in 125 days with 98-percent accuracy in 2015. VBA formulated and implemented a Transformation Plan to accomplish these goals by identifying best practices and initiatives that target people, process, and technology. See *Department of Veterans Affairs (VA) Strategic Plan to Eliminate the Compensation Claims Backlog*, January 25, 2013, available on VBA's transformation Web site at www.benefits.va.gov/transformation.

VBA's claims Transformation Plan seeks to improve personnel performance, redesign business processes, and replace paperbound and manual systems with those that are digital and automated. A cornerstone of the plan is a process change, under which claimants may file a fully developed claim (FDC) through VA's online eBenefits portal. One of the key features of the FDC program is that claimants must submit all relevant evidence at the time that they file a claim; in return, VBA expeditiously processes the claim. VBA processes FDCs in half the time of other claims.

VA Strategic Plan to Transform the Appeal Process

During fiscal years (FY) 2010 through 2013, VBA completed more than 1 million claims annually, which is a record level of production. Yet, the number of claims that VBA received was greater than the number processed. In 2011, VBA received 1.3 million claims, including claims for the three new presumptive conditions added by VA for Veterans exposed to herbicides in Vietnam. In 2012 and 2013, VBA received another 1.08 million and 1.04 million claims, respectively, and the backlog of claims, defined as those claims pending more than 125 days, grew from 180,000 in 2010 to 594,000 claims by the end of December 2012.

Nonetheless, the Transformation Plan has already had a positive impact, and VBA is on track to meet the Department's goals. It reduced the claims inventory by 22 percent, from 884,000 in July 2012 to 693,000 in November 2013, and the backlog by 36 percent, from 611,000 in March 2013 to about 400,000 today. This included VBA's initiative to process all claims pending more than one year. Additionally, VBA's 12-month claim-level accuracy increased from approximately 83 percent in 2011 to 90 percent in FY 2013, and its 3-month issue-based accuracy to 96 percent.

0.2 Recent Legislation

Congress has already recognized the need for legislation to help reform VA's initial claim and administrative appeal processes. In the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (Public Law 112-154), Congress authorized VA to streamline the claim process by allowing more efficient delivery of the notice required by 38 U.S.C. § 5103 and limiting the number of such notices when claimants submit more than one claim within a year. In addition, the Act authorized VA to encourage submission of FDCs by providing first-time Veteran applicants a 1-year retroactive effective date if they submit a compensation claim that meets FDC requirements within the specified timeframe. It also authorized VA to change the nature of appeals after an appellant submits a VA Form 9, Appeal to Board of Veterans' Appeals, with VBA. Under this change in law, which is codified at 38 U.S.C. § 7105(e), if an appellant or an appellant's representative submits additional evidence with or after the filing of a Form 9, the evidence is subject to initial review by the Board of Veterans' Appeals (Board), unless the appellant requests VBA review of the evidence in writing.

Although VA is still in the process of implementing the Act's appeal provisions, the other provisions helped VBA modernize and streamline the initial claim process. In short, Congress' statutory amendments furthered VBA's ability to successfully implement some of the people, process, and technology strategies in its claims Transformation Plan.

VA Strategic Plan to Transform the Appeal Process

1.0 Current Appeal Process

1.1 History of the Appeal Process

The current adjudication process has evolved over nearly a century from the World War I (WWI) system originally managed by the Bureau of War Risk Insurance. During most of this evolution, decisions on Veterans claims were final and no court had authority to review the agency's decisions. Veterans first received the right to seek judicial review of agency decisions on their claims in the 1988 enactment of the Veterans' Judicial Review Act (VJRA) (Public Law 100-687). The VJRA established judicial review of VA decisions in the new United States Court of Appeals for Veterans Claims (CAVC); maintained the Board as the final adjudicator within VA; abolished the \$10 limit on attorneys' fees for representing Veterans in certain claims; and created additional levels of judicial review in the United States Court of Appeals for the Federal Circuit and the United States Supreme Court.

Judicial review of VA's decisions has had both positive and negative effects for VA and claimants. Judicial review has been beneficial for Veterans by providing them with their "day in court." It has also created a forum for debating the interpretation of Veterans benefits law and the validity of VA's regulations, resulting in a significant body of case law on Veterans' benefits issues.

However, judicial review has also significantly complicated VA's administration of its benefits programs, resulting in significant delays in the initial claim and appeal processes. The processes that were developed in the decades after WWI were not designed to be compatible with judicial review. As a result, the interpretation of statutes and regulations that often date to WWI or WWII has led to many unexpected results that have been difficult to integrate into the decades of procedures that have accumulated. Specifically, the applicable law as developed primarily by precedential CAVC and Federal Circuit decisions is constantly increasing in complexity. As a result, Board decisions are lengthier, more complex, and require more time and resources to prepare than ever before. While there are a number of CAVC decisions that affect the timeliness of the claim and appeal processes, the most significant factor has been the CAVC's interpretation of VA's statutory duties to assist and notify, which have substantially increased the number of remands to the Board and VBA.

1.2 Current Statutory Framework

It is important to understand the current framework that has been built up in stages since WWI. The VA appeals process divides responsibility between VBA and the Board. In brief, it is not a closed or linear process. The appeal process is **not** a review of the initial decision, and the process does **not** move in one direction to a set

VA Strategic Plan to Transform the Appeal Process

conclusion. The claimant pays no fee to utilize the VA appeals process and there is no limit to the number of appeals that can be submitted. New evidence may be submitted or obtained at any time and an appeal may have to go through multiple cycles of development and readjudication to be resolved.

VBA

A claimant may initiate VA's administrative appeal process by filing a notice of disagreement (NOD) with VBA regarding a specific VBA decision. Section 7105(b)(1) of title 38, U.S.C., provides claimants with a 1-year period, beginning on the date that VA issued the decision, in which to file a NOD.

Under section 7105(d)(1), when VBA receives a NOD, it initiates a fresh review and undertakes any development required for additional evidence submitted with the appeal in an attempt to resolve the disagreement. If VBA's further action regarding the appealed claim does not resolve the disagreement, it must issue a statement of the case (SOC), which must include a summary of the evidence, citation to pertinent laws and regulations, a discussion regarding how VBA applied the law to the facts of the claim, a decision on each issue in the claim, and a summary of the reasons for the decision on each issue. Claimants may then file a substantive appeal within 60 days of the date VBA issued the SOC or within 1 year of the date of VBA's initial decision, whichever is later, which completes the formal appeal for certification and transfer of jurisdiction to the Board.

VA has interpreted its authority under section 7105 as allowing claimants who filed a NOD to elect either a traditional appeal to the Board or a first level of *de novo* review within VBA by a Decision Review Officer (DRO). If a claimant elects a DRO review, a VBA employee who processes appeals readjudicates the claim and issues a decision granting the benefits on appeal or a SOC confirming the prior decision. A claimant who elects a DRO review and remains dissatisfied with VA's decision may still file a substantive appeal to the Board and receive another *de novo* review of the claim.

A claimant may submit additional evidence to support an appealed claim at any point in the process, regardless of whether the appeal is pending at VBA or the Board. If additional evidence is received after the claimant files a NOD but before VA issues the SOC, the evidence will be reviewed by VBA and incorporated into the SOC (if VBA cannot grant benefits). However, Congress did not prescribe the procedures for processing evidence that VBA receives after it issues a SOC in an appeal. Accordingly, under VA regulations, VA will issue a supplemental SOC in these claims and will wait 30 days for the claimant to respond before sending the appeal to the Board. Each time the claimant submits additional evidence, VBA must reconsider its decision on the appealed claim and conduct any necessary development of the claim under its duty to assist the claimant. If VBA's reconsideration of the appealed claim does not resolve the disagreement, it will issue another supplemental SOC.

VA Strategic Plan to Transform the Appeal Process

There is no limit to the number of times a claimant may submit additional evidence that may require VA to repeat this process. Accordingly, many appealed claims require several supplemental SOC's, depending on the number of times that the claimant submits additional evidence. The submission of additional evidence during the appeal process often results in multiple reviews of a claim before VBA is in a position to transfer it to the Board for its *de novo* review. In FY 2013, an appeal in which VBA issued only one supplemental SOC took, on average, 562 days to complete. Thereafter, each additional supplemental SOC added, on average, more than 200 days to the total appeal processing time.

The Board

Under 38 U.S.C. § 7104(a), VBA's decisions are subject to one *de novo* review on appeal to the Board. In general, this right of review requires evidence to be considered by VBA in the first instance before a case can proceed to the Board unless the claimant waives this right. However, when the Board receives an appeal, it reviews the entire record on the claim and does not give any deference to a prior VBA decision. The Board will either issue a decision granting or denying the benefit or will remand the claim back to VBA for additional action. Two-thirds of the decisions that are remanded to VBA are a result of additional evidence or information becoming available, or change in circumstances that arose after the claim was certified to the Board. As discussed above, claimants may submit additional evidence at any time during the process, regardless of whether the appeal is at VBA or the Board. This submission of additional evidence and other inherent delays in the appeal process often cause the Board to remand the claim to VBA for a new examination or a search for previously unidentified records, which causes further "churning" of the claim. Furthermore, if the Board identifies an error in evidence gathering, the case must be returned to VBA to repeat the development and adjudication process before being returned to the Board.

In July 2003, VBA created its Appeals Management Center (AMC) for the purpose of consolidating remands from the Board at a single office for more efficient and consistent processing. The AMC has the authority to develop additional evidence regarding remanded claims and issue new decisions. If the AMC is unable to issue a full grant of benefits, it will issue a supplemental SOC and recertify the appeal to the Board for continuation of the administrative appeal process. Currently, the AMC processes approximately 90 percent of the Board's remands to VBA. VBA's regional offices process the remaining remands, including remands in claims where the appellant has asked for a hearing or a private attorney represents the claimant.

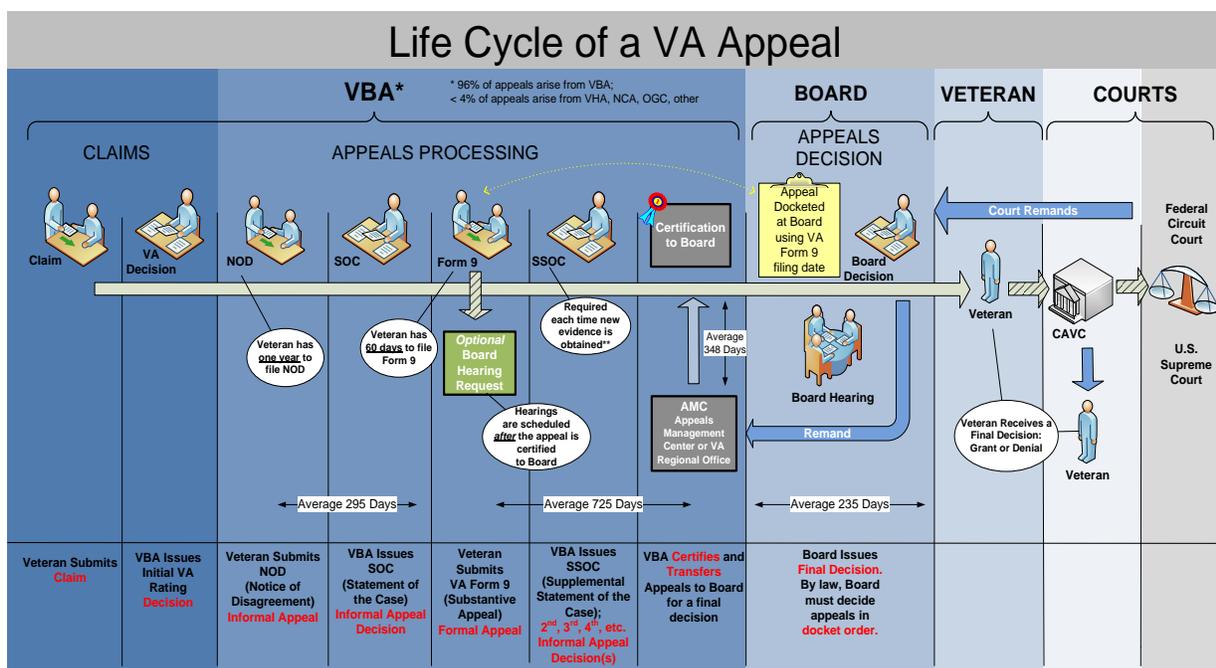
The current process (see Figures 1 and 2) provides appellants with multiple reviews in VBA and one or more at the Board depending upon the submission of new evidence or whether the Board determines that it is necessary to remand the matter to VBA. Although VA has allocated significant resources to the appeals workload, the multi-step,

VA Strategic Plan to Transform the Appeal Process

open-record appeal process set out in current law precludes the efficient delivery of benefits to all Veterans. Further, the longer an appeal takes, the more likely it is that the claimed disability will change, resulting in the need for additional medical and other evidence and further processing delays. As a result, the length of the process is driven by how many cycles and readjudications are triggered.

VA Strategic Plan to Transform the Appeal Process

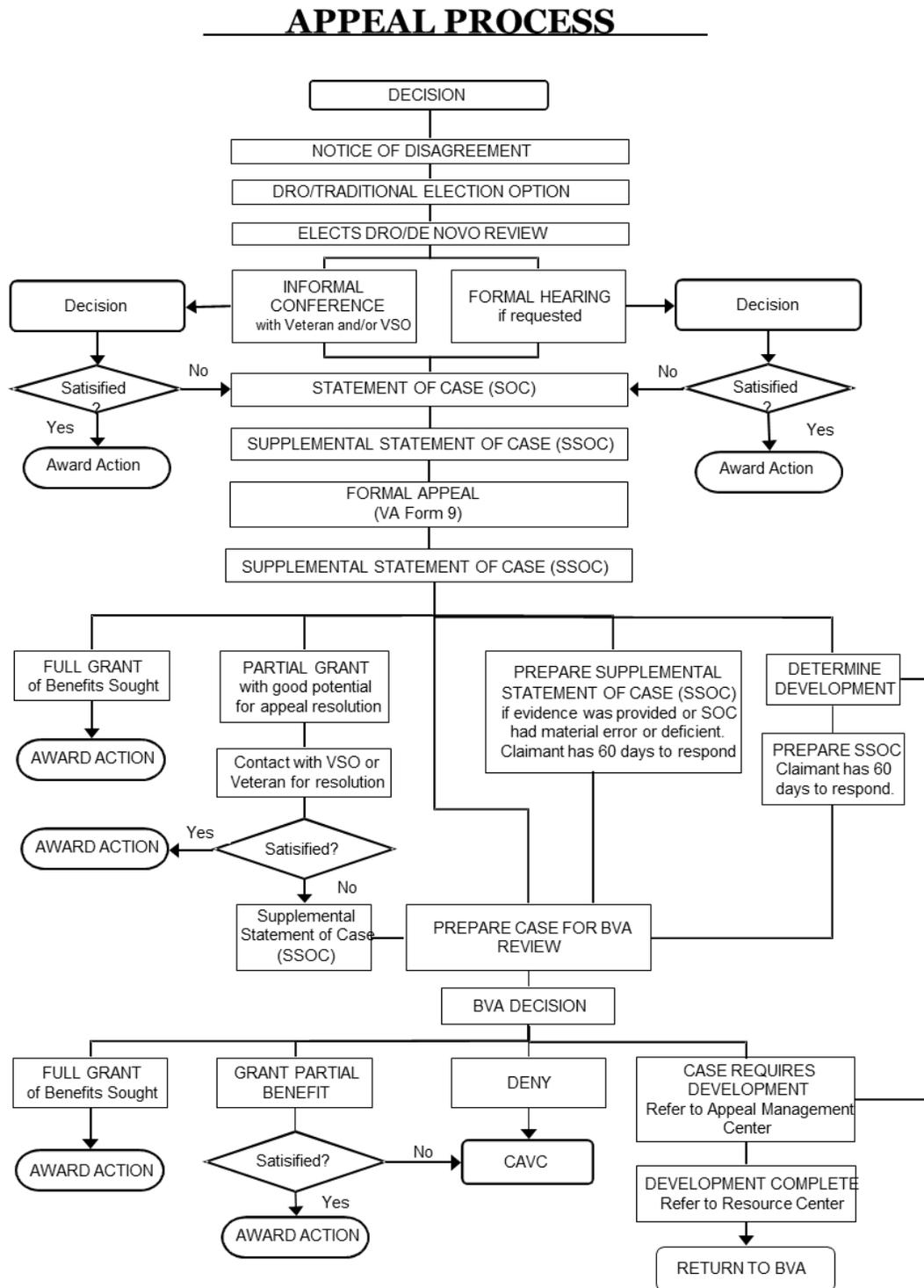
Figure 1: Illustrating the entire appeal process, including judicial review.



** In FY 2013, an appeal in which VBA issued only one supplemental SOC took, on average, 562 days to complete. Thereafter, each additional supplemental SOC added, on average, more than 200 days to the total appeal processing time.

VA Strategic Plan to Transform the Appeal Process

Figure 2: Illustrating the complex administrative appeal process created by current law.



VA Strategic Plan to Transform the Appeal Process

Judicial Review

As noted above, claimants have had the right to judicial review of VA's decisions on their claims since 1988. If an appellant is dissatisfied with a final Board decision on a claim, the appellant may appeal to the CAVC within 120 days of the date of the decision. Further, limited review is available in the Federal Circuit and Supreme Court. The 1988 legislation placed judicial review on top of the layers of procedures that had evolved since WWI.

1.3 Appeal Statistics

Each year since 1996, the volume of NODs received by VBA equated to 9 to 15 percent of the total claims VBA completed in those years, with the annual average being 11 to 12 percent. During the same period, the Board received new appeals averaging approximately 4 to 5 percent of all claims completed by VBA in a year. Many appellants drop out of the appeal process (approximately 7 percent of all claims decided by VBA in a year) for a variety of reasons, such as satisfaction with a DRO decision, satisfaction with VBA's reprocessing of the claim after one or more submissions of additional evidence, or obtaining a better understanding of the merits for an appeal in consultation with a representative. VBA's data also indicates that 72 percent of all appeals are from Veterans who are already receiving VA disability compensation, with approximately 54 percent of appellants having a disability rating of 50 percent or higher.

VA has a large inventory of pending appeals (approximately 350,000), in part because VBA received and completed more claims. Every year since 2003, VBA received more than 100,000 NODs from claimants seeking to appeal a decision on their claims. To address this workload, VBA allocates significant resources to appeals in its regional offices (735 employees) and at the AMC (222 employees). The Board currently has 628 employees processing appeals, a growth of approximately 22 percent in FY 2013, including a growth of approximately 100 attorneys.

1.4 Decision Accuracy and Appeals

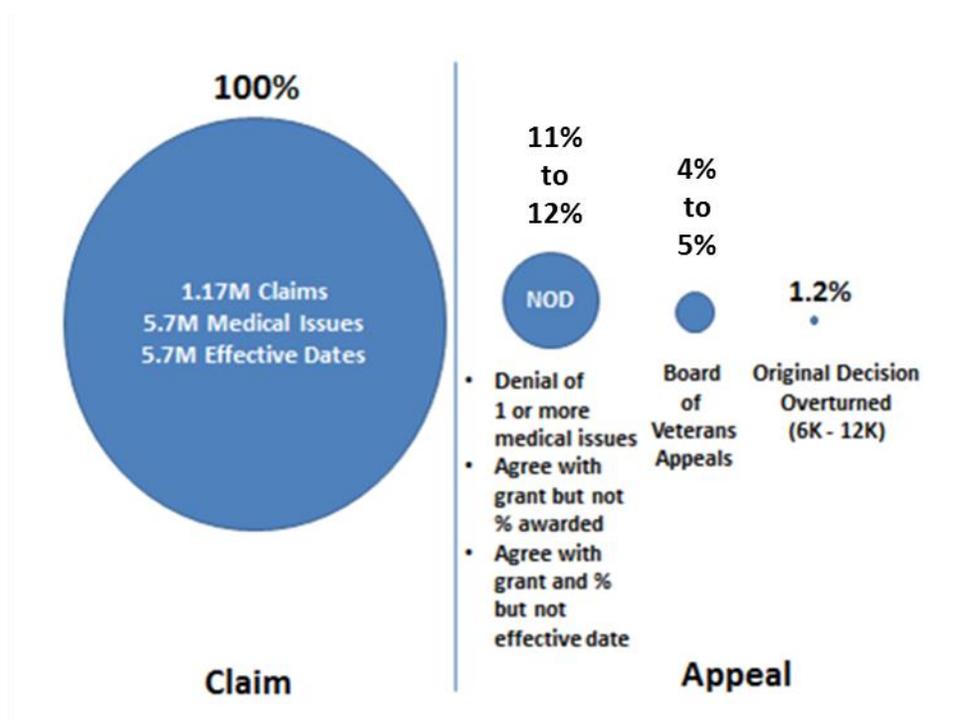
As noted above, VA is working within the constraints of a multi-step, open-record, appeal process that is administered jointly by VBA and the Board, more complex than ever before, and subject to as many as three levels of judicial review following a final agency decision. It is using this process to provide final decisions on a growing number of claims that generally involve many complex medical issues. Meanwhile, VBA's quality assurance statistics, using a process validated by the Institute for Defense Analyses, reveal that accuracy at the claim level and medical-issue level remains high and continues to improve at the initial decision point. Also, as noted above, VA's historical administrative appeal rate has remained constant, with approximately 11 to 12 percent of all claimants filing a NOD and 4 to 5 percent completing an appeal to the

VA Strategic Plan to Transform the Appeal Process

Board. These statistics indicate that Veterans tend to exercise their right of appeal at the prevailing rate regardless of the nature of VBA's initial decision.

In addition, as described above, unlike a traditional appellate body, the Board does not reverse or affirm VBA decisions. Rather, the Board undertakes a fresh look at all of the evidence of record -- including evidence that has been added since initial adjudication by VBA. As a result, the evidentiary record before the Board is often very different than that which was before the initial VBA decision maker. As Figure 3 illustrates, of all claims decided by VBA, only 1.2 percent result in a grant of benefits on appeal by the Board. Although the Board remands approximately another 1.7 percent to VBA, those remands often are due to the submission of evidence that was not available at the time of VBA's initial decision or evidence that has become out-of-date in the appeal process. VA's growing inventory of pending appeals is the result of the multi-step, open-record process established under current law.

Figure 3: Illustrating the small percentage of VBA decisions that result in a grant of benefits on appeal by the Board.



VA Strategic Plan to Transform the Appeal Process

2.0 Transforming the Appeal Process

VA has made significant progress on its goal to eliminate its disability claims backlog and improve the quality of its initial decisions on claims without seeking significant statutory changes. As noted above, VBA's Transformation Plan focuses on improving personnel performance, redesigning business processes, and replacing paperbound and manual systems with those that are digital and automated. As outlined in this appeals plan, VBA and the Board can deploy similar people, process, and technology innovations in the appeal process, but those innovations will not provide a real solution without stakeholder support. In this regard, the appeals problem is unique, and one should not view this preliminary plan as providing a comprehensive solution. Absent a comprehensive solution that considers the unique statutory procedures that govern VA's appellate system, VA will use its limited resources as efficiently as possible to decide claims and process appeals.

As discussed above in section 1 of this plan, current law requires that VA maintain a non-linear, multi-step, open-record, administrative appeal process, with jurisdiction over various steps in the process split between VBA and the Board. There is no bright line distinguishing the end of VBA's claim adjudication process from the beginning of the appeal process. Unlike a typical appeal process in which the appellate body reviews the same record as the initial decision maker, VA's administrative appeal process has an open record. Appellants, at no cost and without limitation, may submit additional evidence at any time during the pending appeal, regardless of whether the appeal is at VBA or the Board, and VBA must generally reevaluate the claim based upon the new evidence. This feature prolongs the amount of time that Veterans must wait for their appeal to be decided and commits extensive resources to each appeal. As a result, Veterans who experience exceptional customer service in dealing with private- and other public-sector organizations and receive their initial decisions from VBA in 125 days under the Transformation Plan will nonetheless endure an inefficient VA appeal process. The delays in a benefits system that delivers an initial decision within 125 days and an appellate decision on average in more than 1,000 days may outweigh any benefit to a multi-step, open-record system. Although some individual claimants may be able to take advantage of the current legal framework, it comes at the cost of timely resolution of appeals for Veterans as a whole.

VBA's Transformation Plan for the initial claim process is structured for the future (more than 1 million claims annually, multiple complex medical issues in each claim, and electronic submission and processing), while the appeal process set out in current law is an accumulation of processes and procedures that have built up in stages since WWI. The legal framework of the appeal process precedes the all-volunteer military force, the computer revolution, and judicial review of VA's decisions on claims. For example, the FDC program encourages claimants and representatives to build and submit claims *before* VA renders a decision, while the appeal process encourages them to build their

VA Strategic Plan to Transform the Appeal Process

claims *after* a decision by allowing subsequent submission of evidence in piecemeal fashion.

VA's Appeals Transformation Plan will pursue a series of short- and long-term integrated people, process, and technology initiatives designed to deliver a final agency decision as soon as possible under the governing law. VA's plan focuses on employee training, tools, and assignment of work; streamlining the appeal process; and implementing modern technology solutions in systems that are already under development. However, VA cannot fully transform its appeal process without stakeholder support. VA intends to work with Congress and other stakeholders to explore long-term solutions that provide Veterans the timely appeals process that they deserve.

2.1 People Initiatives

2.1.1 Routing Remanded Cases to AMC

Cases remanded by the Board in which an attorney represents the claimant are one source of workload that affects appeal processing time. These cases are not currently remanded to the AMC, but are sent back to the VBA regional office of original jurisdiction for processing. At the regional offices, there are only a limited number of employees with the required system access level to process these appeals.

In order to reduce the workload for regional office personnel who handle the processing and adjudication of both claims and appeals, VBA will evaluate whether it should route all remanded attorney cases to the AMC, which is a VBA resource specifically established to handle appeals. VBA will also explore reducing the required clearance level to handle attorney cases to best maximize the resources available to process these claims.

2.1.2 Focused Decision Writing at the Board

The Board hopes to shorten the appeal process by training Board attorneys to write draft decisions more succinctly and clearly, which in the past have been lengthy and sometimes difficult for Veterans to fully comprehend. Currently, the Board is training its attorneys to write shorter, more concise decisions, especially when drafting allowances and remands. This will save time in the appeal process by decreasing the time spent writing decisions and increase production at the Board. The Board is also investigating methods for simplifying the content requirements for Board decisions in order to make them more understandable to Veterans.

VA Strategic Plan to Transform the Appeal Process

2.1.3 Appeal In-Process Review Checklist and Appeal Certification to Board Checklist

The Appeals Design Team, an intra-departmental working group created in 2011 to find methods for improving the appeal process, created the Appeal In-Process Review Checklist and Appeal Certification to Board Checklist to enhance accuracy and quality in the appeal process. These checklists help ensure that VBA employees have taken all necessary steps in the appeal process prior to transferring the appeal to the Board. The checklists can eliminate some remands for evidentiary development, thus saving time and resources.

2.1.4 Consider Eliminating Decision Review Officer Review

When a claimant initiates an appeal through submission of a NOD, he or she may choose either the traditional appeal process or *de novo* adjudication by a DRO. The DRO program and its early *de novo* review of appeals was created by VA regulation in 2001 for the dual purposes of resolving disagreements more quickly and improving claimants' and their representatives' access to the person responsible for making the decision.

Partially because claimants are choosing both DRO review and the full appeals process, the total time to resolve appeals has actually increased from an average of 682 days in FY 2000 to 1,040 days in FY 2012. The DRO program has not measurably changed the number of appeals received at the Board, which has consistently been approximately 4 to 5 percent of VBA's initial decisions each year since FY 1996. Eliminating the DRO review process would allow VA to remove a redundant layer from the appeal process without eliminating the statutory *de novo* review on appeal by the Board. VA plans to evaluate whether elimination of DRO review is feasible and would be helpful even if done independently of other reforms to the framework of the appeals process.

2.2 Process Initiatives

2.2.1 Standard Notice of Disagreement Form

On October 31, 2013, VA published a notice of proposed rulemaking, RIN: 2900-AO81, *Standard Claims and Appeals Forms*, which would require claimants to initiate an appeal using a standard notice of disagreement form. This innovation was also a product of VA's Appeals Design Team. The purpose of this standardization is to improve communications with appellants at the beginning of the appeal process and allow VBA personnel to easily identify and initiate the processing of an appeal. From the inception of the design team's pilot program at the Houston VA Regional Office, it saw a significant decrease in the NOD control time (e.g., the time it takes to enter an appeal into VA's appeals tracking system) for appeals initiated using the standard form.

VA Strategic Plan to Transform the Appeal Process

The analysis from the Houston VA Regional Office design team pilot shows that by using the standard form for initiating an appeal, VA can process appeals more expeditiously, as soliciting some specificity concerning the appellant's contentions minimizes confusion and the need to seek clarification from the appellant. By requiring the use of a standard NOD form, all appellants in the appeal process will benefit from shortened processing time and from increased accuracy in identifying contentions claimed.

The public comment period for the proposed rule ended on December 30, 2013, and VBA is currently reviewing and carefully considering the comments it received and preparing the final rule for publication.

2.2.2 Triaging of Cases at the Board

In an effort to minimize wait time for Veterans, the Board has been screening cases out of docket order to identify those cases that require further development via a remand to VBA before a final decision can be made. The statutory authority for such screening, 38 U.S.C. § 7107(f), creates an exception to the Board's legal requirement to decide cases in docket order (i.e., oldest appeals first). In August 2013, the Board completed a 30-day screening pilot in which attorneys triaged approximately 1,300 appeals and identified approximately 400 appeals (30 percent) that could be remanded ahead of schedule. The Board continues to triage cases in a similar manner so that needed claim development can be undertaken as soon as possible.

2.2.3 Adjudication of Additional Evidence by the Board in the First Instance

Under 38 U.S.C. § 7105(e), if a claimant or the claimant's representative submits evidence in support of a claim for which a substantive appeal has been filed, the evidence is subject to initial review by the Board, unless the claimant requests initial review by the agency of original jurisdiction (which is typically a VBA regional office) in writing.

New section 7105(e) allows VBA to proactively certify many cases to the Board as soon as an appellant files a substantive appeal because this new statutory language eliminates the need for supplemental SOCs for any evidence submitted by an appellant with or after a substantive appeal. Presently, some of the evidence that an appellant submits with or after a substantive appeal may trigger additional development under VA's duty to assist (e.g., notice as to additional VA treatment received or a consent form to obtain third-party treatment records). We are assessing whether VBA must review these documents in the first instance, or may send them to the Board for initial review so that we can implement regulatory changes that maximize the impact of Congress' action.

VA Strategic Plan to Transform the Appeal Process

2.2.4 Board Video Hearings

Current law entitles an appellant to an in-person hearing before the Board at its principal location in Washington, DC, or, more frequently, at the appellant's local VBA regional office. 38 U.S.C. § 7107(d)(1). The Board is also authorized to offer an appellant a videoconference hearing in cases where the appellant is at the regional office and the Veterans Law Judge (VLJ) is in Washington, DC; however, an appellant must affirmatively choose this type of hearing. Statistically, videoconference hearings have been shown to have the same grant rate as in-person hearings. However, the wait times for in-person hearings at regional offices (also known as travel board hearings) are much greater than for videoconference hearings because VLJs must travel to conduct the hearings.

In September 2011, in an effort to reduce wait times for hearings, VA mailed letters to every appellant with a pending travel board request (24,990 appeals) informing them of hearing options that might expedite resolution of their appeals. These options included elections for videoconference hearings, a Board hearing in Washington, DC, or no hearing at all. Almost 30 percent of these individuals either withdrew their hearing request or changed their request to a video hearing. In light of the success of the first mailing, VA is evaluating whether it should conduct these mass mailings each quarter.

VA has also proposed amending 38 U.S.C. § 7107(d)(1) and (e)(2) to allow the Board to determine the most expeditious type of hearing to afford an appellant (i.e., an in-person hearing or a videoconference hearing). The appellant would be scheduled for the type of hearing selected by the Board unless good cause or special circumstances are shown to warrant another type of hearing. This would allow the Board wider use of videoconferencing, which in turn would reduce hearing wait times in the field and increase the Board's productivity in issuing final decisions on appeals. In addition, the proposed amendment would provide greater flexibility in the Board's time management because video hearings could be conducted more efficiently by VLJs in Washington, DC, (e.g., no lost time when an appellant fails to appear for the hearing) and it would not have to allocate scarce resources to fulfill all travel board requests.

2.3 Technology Initiatives

Two key initiatives of VBA's claims Transformation Plan are:

- The Veterans Benefits Management System (VBMS) is automating, streamlining, and building efficiencies for processing claims. VBMS also provides a comprehensive eDocument repository for the storage, management, and annotation of all documents relating to a Veteran's claim.
- The Veterans Relationship Management (VRM) platform, which will enable convenient and seamless interactions between VA and Veterans, Veterans'

VA Strategic Plan to Transform the Appeal Process

families and Survivors, and the organizations and individuals authorized to provide representation on claims.

While VA’s development plan for VBMS and VRM will continue to focus on innovations that directly support the agency priority goal to eliminate the claims backlog in 2015, there is a longer-term need to expand these systems to cover the claim appeal process. In the next section, VA describes a proposal to expand VBMS and VRM to address this need after 2015. Although this expansion has been discussed within VA in concept only and is not funded, VBA and the Board generally agree that such a system would have the functionality described below.

2.3.1 Proposed VA Enterprise Appeals Platform

Although still in the conceptual planning phase, the VA Enterprise Appeals Platform would replace VA’s legacy VACOLS (Veterans Appeals Control and Locator System) with a modern system that includes the key capabilities listed in the following table:

Proposed Concept of a VA Enterprise Appeals Platform	
Key System Capabilities	
Veterans/Veterans Service Organizations/VA Public Contact Teams	VBA/Board Personnel
Ability to digitally submit appeal forms (NOD, Form 9) through eBenefits and other portals, such as the Stakeholder Enterprise Portal (SEP).	Ability to digitally send and receive time-sensitive documents through eBenefits and other portals and trigger automated workflow steps.
Ability to check on status of appeal through existing capabilities, such as eBenefits and SEP.	Ability to view and track documents in an “Appeals Folder” during the appeal process.
Ability for the Veteran or the Veteran’s representative to receive notifications electronically.	Ability to have certain event-based triggers automatically create cases and work queues.
Ability for the Veteran or the Veteran’s representative to submit additional evidence electronically directly to the Veteran’s “Appeals Folder.”	Ability to efficiently track cases in employees’ work queue.
Ability to schedule and confirm hearing dates through eBenefits and other portals.	Ability to notify Veteran through eBenefits and other portals when there is a need for additional evidence.

The Core Approach for the Platform

eFolder Infrastructure

The VBMS eFolder is the electronic replacement for the legacy paper claims folder. The eFolder serves as the primary repository for all electronic documentation related to

VA Strategic Plan to Transform the Appeal Process

a particular Veteran. Users would access the eFolder from the new appeals system to review all documentation relevant to a Veteran's claim.

Correspondence Component

A key component of the new appeals system would be to leverage the new enterprise correspondence component, which is a highly customizable correspondence assembly engine that provides document design functionality and a business-rules engine that enables full automation of letter assembly.

Services-Oriented Architecture Approach

The key to the new system would be the use of a services-oriented architecture that enables the system to build and use common enterprise business services. This approach would enable the system to co-exist with the vast VA legacy environment, yet retain its ability to adapt to the needs of VBA and the Board.

2.3.2 Virtual Docket for Scheduling Board Hearings

The new system would include the Board's and VBA's virtual docket system for scheduling Board hearings. The virtual system saves resources that were formerly allocated to scheduling hearings; ensures uniformity in scheduling practices across various offices; and allows for greater scheduling transparency so that appeals staff can quickly identify available hearing dates and times, regardless of physical location.

VA Strategic Plan to Transform the Appeal Process

2.3.3 Electronic Submission of NOD

In an effort to provide faster and more efficient appeal processing and maximize the use of existing technology, VBA would work with the Board to modify VBA's current electronic claim processing systems to allow claimants to submit redesigned NOD forms electronically. These forms would allow claimants to identify contentions or issues more easily and quickly. For example, checkboxes and drop-down options could eliminate errors or confusion regarding claimants' contentions by having them respond to specific questions. VA is also exploring the potential for electronic submission of supporting evidence along with a standard, electronic, NOD.

3.0 Veterans' Claims Adjudication Commission Study of VA's Adjudication and Appellate System

The most comprehensive study of VA's appeal process to date is the December 1996 Report to Congress completed by the Veterans' Claims Adjudication Commission (VCAC). Established under Public Law 103-446, Congress charged the Commission with evaluating the efficiency of VA adjudication processes and procedures, to include the effects of judicial review. Following its study of VA's adjudication process, among other things, the VCAC made a number of recommendations, some of which have already been incorporated into VA's current appeal process. The following long-term VCAC recommendations to reform the appeal process would require legislative action:

- **Complete the evidentiary record prior to an initial decision.** The VCAC noted that engaging in full information exchange with the claimant prior to an initial decision and ensuring all evidence was of record might eliminate the need for the SOC and substantive appeal to the Board because the initial decision would contain a complete reasons and bases for VBA's decision.
- **Limit repeat claims.** The VCAC recommended limiting the number of times that a claimant can file the same claim. It noted that VA should examine its data to explore measures to reduce a significant number of repeat meritless claims, including a legislative proposal to limit the number of times that a claimant can request to reopen a claim for the same disability on the basis of new and material evidence. It did not recommend that VA include worsening disabilities, i.e., claims for increase or newly discovered conditions within the scope of that limitation.
- **Establish a "statute of limitations" for claims.** The VCAC suggested that VA consider setting a limitations period for the filing of claims to incentivize claimants to file complete claims early. Timely filed claims can be processed more quickly because the evidence is more readily available, and such a "statute of limitations" would conform to other private and public sector programs.

VA Strategic Plan to Transform the Appeal Process

- **Shorten the initial appeal period.** The VCAC recommended shortening the appeal period to 60 days, thereby aligning it with other Federal disability compensation programs. It also suggested that VA consider allowing a “good cause” provision for untimely filing and generous periods for submission of additional evidence.
- **Change the Board’s standard of review to appellate, rather than *de novo*, review.** The VCAC found that *de novo* review impedes the functionality, efficiency, and fairness of the appeal process. It recommended that the Board have the same review standard as the CAVC, with the authority to correct clear error and ensure the legal sufficiency of VBA’s decisions.
- **Close the record.** The VCAC recommended closing the record after VBA’s decision on a claim, noting that such closure would end the time-consuming process that makes final adjudication by the Board difficult and leads to many remands. Moreover, closure would be consistent with appellate practice in courts and other administrative bodies.

4.0 Conclusion

VA recognizes that under the framework established by current law, Veterans are waiting too long for final resolution of appeals. As this plan demonstrates, VA is exploring a series of measures within existing authorities to improve the process. VA looks forward to working with Congress, Veterans, and other stakeholders to identify and implement further improvements so that all Veterans can receive a timely and accurate decision on their appeal.

Appendix 1.0 – People Initiatives

Title and Description
2.1.1 Routing Remanded Cases to AMC <i>Route attorney cases that have been remanded by the Board to VBA's Appeals Management Center rather than to its Regional Offices.</i>
2.1.2 Focused Decision Writing at the Board <i>Training Board attorneys to write more succinct and clearer decisions, saving time in the overall appeal process, and making decisions more understandable to Veterans.</i>
2.1.3 Appeal In-Process Review Checklist/Appeal Certification Checklist <i>Implementing checklists to verify all necessary steps in the appeal have been followed, ensuring consistency and accuracy of the appeal process.</i>
2.1.4 Consider Eliminating DRO Review <i>Remove a redundant layer of VBA de novo review, eliminating lengthy appeal processing time and saving resources for VBA to address claim adjudication.</i>

VA Strategic Plan to Transform the Appeal Process

Appendix 1.1 – Process Initiatives

Title and Description
<p>2.2.1 Standard Notice of Disagreement Form</p> <p><i>Published a proposed rule to standardize the use of an appeal form to initiate an appeal, to improve communication with the appellant, and to allow VBA to identify submission of a NOD with greater efficiency and accuracy.</i></p>
<p>2.2.2 Triaging of Cases at the Board</p> <p><i>Screening cases at the Board out of docket order to identify those cases requiring further development before a decision is made, resulting in more efficient appeal processing.</i></p>
<p>2.2.3 Adjudication of Additional Evidence by the Board in the First Instance</p> <p><i>Review of additional evidence after the filing of a substantive appeal is conducted by the Board, eliminating the need for many supplemental statements of the case (SSOCs) and reducing delays in the appeal process.</i></p>
<p>2.2.4 Board Video Hearings</p> <p><i>Informing appellants of hearing options (to include elections for videoconference hearings, Board hearings in Washington, DC, or no hearing at all) in mass mailings may reduce wait times for hearings when appellants opt for videoconference hearings. Consider allowing the Board to determine the most expeditious type of hearing for wider use of videoconferencing, reducing wait times, and costs associated with travel.</i></p>

VA Strategic Plan to Transform the Appeal Process

Appendix 1.2 – Technology Initiatives

Title and Description
<p>2.3.1 Conceptual VA Enterprise Appeals Platform</p> <p><i>Replacing the legacy VACOLS system with a modern system that will support the proposed appeals transformation goal, providing Veterans and Veterans Service Organizations capabilities to submit appeal forms, check appeal status, receive Board notices, and schedule or confirm hearings.</i></p>
<p>2.3.2 Virtual Docket for Board Hearings</p> <p><i>Converting from a paper-based to a virtual docket for scheduling Board hearings saves administrative time and ensures uniformity in scheduling practices, with greater scheduling transparency for all VA staff regardless of physical location.</i></p>
<p>2.3.3 Electronic Submission of NOD</p> <p><i>Redesigning the NOD form will increase claimants' ease of use by allowing them to respond to standard text with checkboxes. This will reduce errors or confusion by VA. Creating functionality for claimants to attach evidence to an electronic NOD form for submission through VA's electronic claims processing system will expedite the appeal process by eliminating wait time and make it easier to file appeals.</i></p>