

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



# Veterans Benefits Administration

*Audit of  
VA Regional Office's  
Appeals Management  
Processes*

May 30, 2012  
10-03166-75

## ACRONYMS AND ABBREVIATIONS

ASPEN	Automated Standardized Performance Elements Nationwide
BVA	Board of Veterans' Appeals
DRO	Decision Review Officer
MAP-D	Modern Award Processing-Development
NOD	Notice of Disagreement
OIG	Office of Inspector General
RAM	Resource Allocation Model
SOC	Statement of the Case
SSOC	Supplemental Statement of the Case
VACOLS	Veterans Appeals Control and Locator System
VBA	Veterans Benefits Administration

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# Report Highlights: Audit of VA Regional Offices' Appeals Management Processes

## Why We Did This Audit

The nationwide inventory of appeals increased over 30 percent from about 160,000 appeals in FY 2008 to about 209,000 in FY 2010. During this time, the inventory of compensation rating claims increased by 40 percent from 380,000 to 532,000 claims. We conducted this audit to determine if opportunities exist to improve VA Regional Office staff timeliness in processing appeals of rating decisions.

## What We Found

Opportunities exist to improve appeals processing at regional offices. Veterans Benefits Administration (VBA) contributed to the growing inventory and time delays. Regional office managers did not assign enough staff to process appeals, diverted staff from appeals processing, and did not ensure appeals staff acted on appeals promptly because compensation claims processing was their highest priority. *De novo* reviews will result in quicker decisions on the veterans' appeals because decision review officers can render new decisions without waiting for new evidence as required with traditional reviews. Regional office staff did not properly record 145 appeals in Veterans Appeal Control and Locator System (VACOLS) that delayed processing for an average of 444 days.

## What We Recommend

We recommended the Under Secretary for Benefits identify and request staffing resources needed to meet VBA appeals processing goals and conduct *de novo* reviews on all appeals. VBA should revise productivity standards and procedures to emphasize processing appeals timely and implement an oversight plan that ensures staff record appeals in VACOLS promptly.

## Agency Comments

The Under Secretary for Benefits generally agreed that opportunities exist to improve appeals processing at regional offices. The Under Secretary stated VBA was conducting a pilot program to assess the feasibility of implementing recommendations 1-5. We accept VBA's approach to determine the best course of action based on the results of the pilot. The Under Secretary concurred with recommendation 6. We will follow up on the implementation of the corrective actions.

A handwritten signature in blue ink that reads "Linda A. Halliday".

LINDA A. HALLIDAY  
Assistant Inspector General  
for Audits and Evaluations

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## INTRODUCTION

### Objective

The Office of Inspector General (OIG) conducted this audit to determine if opportunities exist to improve appeals processing timeliness at the VA Regional Offices.

### Appeals Process Overview

A veteran (including beneficiaries) has the right to appeal any Veterans Benefits Administration (VBA) decision related to his or her compensation benefit claim. The appeal process begins when the veteran files a Notice of Disagreement (NOD). The veteran then decides whether he or she wants a decision review officer (DRO) review or a traditional review.

- A DRO conducts a *de novo* review, which allows the DRO to make a decision based on a complete review of all information from the beginning with fresh eyes. The DRO is a senior claims examiner authorized to reverse the initial decision, completely or in part, without any new or additional evidence.
- Traditional reviews allow a DRO or rating veterans service representative (rating specialist) to change a decision only when a clear and unmistakable error exists or new supporting evidence is provided.

When regional office appeals staff complete their review of the appeal, they prepare a rating decision for any additional benefits granted. If appeals staff deny any of the issues, they prepare and issue the veteran a Statement of the Case (SOC) explaining their actions and rationale for their decision and provide the veteran with a VA Form 9, *Appeal to Board of Veterans' Appeals* (certified appeal). If the veteran still disagrees with the regional office staff's decision, the veteran uses the form to identify the issues on appeal and provide any additional support. The veteran then returns the form to the regional office staff for their consideration. When appeals staff still cannot decide the issues to the veteran's satisfaction, they certify the appeal to the Board of Veterans' Appeals (BVA) for its review. BVA reviews the appeal and either grants, denies, or remands (decides that additional work is needed before it can rule on the appeal) any or all of the issues within the appeal.

At any time in the appeals process, even after the regional office certifies the appeal to BVA, the veteran can submit additional information that appeals staff must review and decide on. After reviewing this information, appeals staff issue a rating decision for any additional benefits and a Supplemental Statement of the Case (SSOC) explaining their actions and the rationale for any denials.

## RESULTS AND RECOMMENDATIONS

### Finding **Opportunities Exist To Improve Appeals Management Processing Timeliness**

VBA's management of appeals was ineffective in providing timely resolution of veterans' appeals. VBA contributed to appeals processing time delays by not allocating sufficient staff to work on appeals. In addition, regional office managers did not:

- Require DROs and rating specialists to focus on appeals processing.
- Ensure appeals staff reviewed appeals promptly to determine if they had the necessary information to make a decision on the appeal.

Delays also occurred because not all appeals received a *de novo* review. In many cases, the DRO review process results in a quicker decision on the veteran's appeal because the DRO can render new decisions without the need to delay the appeal waiting for new evidence, which is usually required for traditional appeals. In addition, for 783 potential NODs, regional office staff did not properly record 145 appeals in Veterans Appeal Control and Locator System (VACOLS), which delayed processing the associated veteran appeals for an average of 444 days. Without change, the age of the appeals comprising the inventory will continue to increase and veterans will continue to face unacceptable delays in receiving their entitled monetary and health benefits.

#### **Appeals Inventory Continues To Increase**

The nationwide inventory of appeals increased over 30 percent from approximately 160,000 appeals in FY 2008 to about 209,000 in FY 2010. During this same time, the inventory of compensation rating claims increased 40 percent from 380,000 to 532,000 claims. For FY 2010, VA (including regional offices and BVA) completed approximately 118,000 appeals in an average of 656 days. VBA senior management stated the inventory of appeals and the average time to complete appeals was likely to increase because during FY 2011 they devoted a significant number of their appeals ratings staff (DROs and ratings specialists) to assist with rating compensation claims. According to VBA, these compensation claims included approximately 145,000 previously decided claims relating to new presumptive conditions now authorized in accordance with the U.S. Court of Appeals, Ninth Circuit case decision in *Nehmer vs. VA*. Because of this, VBA reported inventories increased to over 813,000 compensation claims and 246,000 appeals as of August 31, 2011.

As shown in Table 1 of Appendix B, for the eight regional offices we visited, the inventory of appeals increased an average of 22 percent during FY 2010 ranging from 6 to 43 percent.

**Not Meeting  
Performance  
Targets**

Regional offices were not meeting performance targets related to timely appeals processing. VBA monitors the average number of days to process the NODs (the elapsed number of days from receipt of the NOD to completion of the SOC). They also monitor the average number of days to complete the certified appeals (the elapsed number of days from receipt of the certified appeal form to certification of the case to BVA). In FY 2010, only one of the eight regional offices we visited met its goal of processing NODs within the 125-day average established by VA policy. As shown in Figure 1 of Appendix B, the regional offices average for processing NODs ranged from 120 to 448 days.

For FY 2010, none of the eight regional offices we visited met its goal of certifying appeals within the 125-day average established by VA policy. VBA allows 125 days for every SOC and SSOC the regional office completes. Therefore, considering completed SSOCs, VBA's goal for the eight regional offices to complete certified appeals ranged from 153 to 195 days. As shown in Figure 2 of Appendix B, the regional offices average for certifying appeals ranged from 236 to 1,219 days.

**Managers  
Need To Use  
Appeals Staff  
More  
Effectively**

VBA contributed to this growing inventory and time delays by not allocating sufficient staff to work on appeals and, in some cases, not using its appeals staff effectively. Regional office staff completed 1.1 million ratings in FY 2010, an increase of 19 percent since FY 2008. During that same time, the inventory of appeals increased by approximately 49,000 (30 percent). Since 2007, VBA increased its staff from approximately 8,300 to just over 13,400 to address the growing workload. VBA staff could not locate records prior to FY 2009 but did confirm that the percent of staff allocated to appeals has remained constant at 10 percent since FY 2009.

Managers and staff at the regional offices we visited told us repeatedly that reducing the backlog of initial compensation rating claims is VBA's highest priority and that is where regional office managers deployed most of the staff. We also found managers did not:

- Require appeals rating staff to focus on processing appeals.
- Ensure appeals staff reviewed appeals promptly to determine if additional information was necessary to decide the appeal.

*Not Enough  
Staff Assigned  
To Process  
Appeals*

Managers at eight regional offices did not allocate sufficient staff to process appeals in a timely manner. As shown in Table 2 of Appendix B, appeals made up about 19 percent of the claims workload, yet, on average, the eight regional offices assigned only 8 percent of their staff to processing appeals.

VBA allocates staff to regional office operations using the Resource Allocation Model (RAM). After VBA assigns staff to special missions (such as resource centers, national call centers, and pension management centers), they apply the following weights to the remaining full-time employees to determine an allocated number of staff for each regional office:

- Number of claim receipts (50 percent)
- Claim completion accuracy (20 percent)
- Timeliness of claims processing (20 percent)
- Appeals management (10 percent)

For FY 2010, VBA had approximately 13,400 compensation and rating staff. After assigning staff to special missions, the RAM showed VBA had about 9,400 full-time employees. Therefore, based on the 10 percent appeals weight, VBA allocated 940 staff to appeals management.

We asked VBA senior managers to explain the disparity between the FY 2010 appeals workload (19 percent of compensation claims), compared to the 10 percent allocation shown in the RAM. The managers told us in the current environment, claims processing was a higher priority and therefore received a bigger share of staffing allocation. We also asked VBA senior managers why they did not require regional offices to adhere to the RAM guidelines and at least allocate the full 10 percent to work on appeals workload instead of the 8 percent we identified at the eight regional offices. Senior managers told us the RAM was a guideline and they expected the managers to use their staffing in the most efficient manner necessary to get claims processed. They acknowledged and confirmed our finding that this flexibility often resulted in directors diverting staff from working on appeals to working on claims processing.

As of August 31, 2011, the appeals inventory increased to 246,000, which was 23 percent of the 1,059,000 total claims—significantly more than both the 10 percent RAM staffing allocation and the 8 percent actual staffing we found at the eight regional offices we visited. A critical starting point to reducing the appeals inventory would be to assign a sufficient number of staff to appeals workload. VBA can improve appeal processing timeliness by identifying and requesting the staffing needed to meet appeal processing goals.

*Appeals Rating  
Staff Worked  
On Non-  
Appeals Work*

Managers did not require appeals rating staff at eight regional offices to focus on processing appeals. Appeals rating staff from seven of the eight offices worked an average of only 65 percent of their time on processing appeals. DROs at one regional office took part in a VBA test program and not all of their work credits were available for our analysis and therefore were not included. As shown in Table 3 of Appendix B, average time regional office staff spent processing appeals ranged from a low of 33 percent to a high of 86 percent. At some regional offices, processing ratings was required before accomplishing appeals work. For example, at one regional office, appeals rating staff were responsible for completing 300 compensation claims ratings each month.

Regional office managers told us these staffing diversions occurred because VBA management placed a higher priority on completing compensation claims workload. Managers were able to divert their staff because VBA policies do not restrict appeals staff from using non-appeal workload to meet their individual performance goals (production standards). Specifically, VBA measures productivity by counting completed work credits. DROs were required to complete at least three production credits per 8-hour day, but could meet this goal by processing either appeal or non-appeal related work. Revising production standards for DROs assigned to appeals processing to limit credit to actions directly related to processing appeals such as preparing and completing SOCs, SSOCs, and certified appeals can improve VBA timeliness.

*Appeals Staff  
Did Not Act  
Promptly On  
New Appeals*

Appeals staffs were not reviewing appeals immediately to determine what additional records (if any) rating staff needed in order to make a decision on the appeal. As a result, appeals rating staff deferred decisions for approximately 36 percent of their appeals workload ranging from 14 to 48 percent at the eight regional offices, as shown in Table 4 of Appendix B. Deferred decisions are necessary when the appeals rating staff do not have all the information or evidence required to make a decision. Deferrals can delay the appeal for several months to allow for receipt of the required information.

We reviewed 24 non-statistically selected deferrals from three regional offices and found that for 20 of the deferrals, the DRO was the first person to review the appeal. For the 20 deferrals, it took the DROs on average 225 days before they began their first review and, at that time, determined they needed additional records before they could decide the appeal. The 20 deferrals were for routine appeal development such as requesting service verification or private treatment records and compensation exams, or sending DRO election letters. VBA should ensure that the DRO has all the information needed to make the decision the first time they review the appeal. It took an average of 178 additional days from the date of the deferral before the DRO received the requested information and was able to

make a decision on the appeal. This additional 178 days could be avoided if appeals staff, such as the veterans service representative, conduct an initial review of the appeal to determine if required actions had been completed or not or whether additional information was needed.

VBA needs a policy that prescribes a timeline for the initial development of NODs and certified appeals. Appeals staffs need to conduct an initial review of new NODs and certified appeals to ensure the appeals rating staff have the necessary information to make a decision on the appeal. VBA can improve processing timeliness by implementing criteria requiring appeals staff to initiate a review or development for NODs and certified appeals within 60 days of receipt.

**De Novo-  
Reviewed  
Appeals Were  
More Timely**

Requiring *de novo* reviews on all appeals will result in a quicker decision on the veteran's appeal because DROs can render new decisions without delaying the appeal to wait for new evidence as is usually required for traditional reviews. Further, conducting a *de novo* review on all appeals would eliminate the need to issue the appeal election letter, and therefore, reduce the appeals process as much as 60 days.

In 2001, VBA established the *de novo* review that allows a DRO to reverse VA's initial denial, completely or in part, without needing any new or additional documentation from the veteran, or based upon new evidence. Current procedures allow veterans 60 days to determine whether they want a DRO review or traditional review of their appeal. A traditional review requires appeals rating staff to check the file for completeness, and make a review of the evidence, arguments, and any other information available in the claims folder. However, they do not have the authority to change the decision unless regional office staff made a clear and unmistakable error, or they identify new and material evidence.

We analyzed approximately 39,000 completed appeals from FY 2010 that VBA staff sent to BVA and found over 15,000 *de novo*-reviewed appeals were completed about 600 days earlier than traditionally reviewed appeals. Regional office appeals managers commented that this probably occurred because *de novo*-reviewed appeals generally receive a more thorough review with less development required after staff sent it to BVA; VBA senior leaders could not confirm the DRO's comments stating additional analysis would be required to determine why appeals staff completed the *de novo* reviews quicker.

In FY 2010, for appeals not sent to BVA that used the DRO process, the appeals had a 29 percent grant rate compared to 22 percent for traditionally reviewed appeals. DROs told us the 22 percent grant rate for traditionally reviewed appeals was probably overstated because even when a veteran selects a traditional review, they will often conduct an unofficial *de novo*

review and “suggest” to the veteran what new evidence to submit to allow regional office staff to grant the appeal. This suggestion would be contrary to normal traditional review processes to evaluate the previous decision.

In September 2006, a VBA study group issued a report on improving the efficiency and consistency of the DRO program and recommended that the Under Secretary for Benefits require a *de novo* review for all NODs. The Under Secretary did not implement the recommendation. VBA officials told us the cost to eliminate the traditional review process would be too high because they would need to replace rating specialists with more DROs for these reviews. For the 8 sites reviewed, 52 DROs and only 8 (15 percent) ratings specialists were working appeals. VBA can streamline the appeals process and improve completion times by identifying and requesting the resources necessary to conduct *de novo* reviews on all appeals and revise current policy to require *de novo* reviews on all appeals.

**Regional  
Offices Did  
Not Process at  
Least 145  
Appeals**

Regional office staff did not properly record 145 appeals in VACOLS, which delayed processing for an average of 444 days. The oldest of these appeals was at the regional office for more than 4 years with no action by regional office staff to resolve the veteran’s appeal. Through a comparison of VACOLS and Veterans Service Network Operations Reports for veterans with potential appeals, we identified 783 NODs that did not have a corresponding entry in VACOLS. We asked the appropriate regional office staff to review the 783 NODs to determine if they were aware of the appeals and if appeals staff recorded the NODs into VACOLS. The regional office staff determined that 638 NODs were either processed or not related to an appeal, but they overlooked 145 appeals that were pending. For example, appeals staff received and input an NOD into VBA’s Modern Award Processing-Development (MAP-D) system on October 20, 2006. However, regional office staff did not take action on the appeal because the veterans service representative failed to enter the appeal in VACOLS. When we inquired about the status of this NOD, regional office staff entered the appeal into VACOLS on February 17, 2011, which was a delay of 1,574 days (more than 4 years).

This occurred because appeals staffs were not consistently following prescribed procedures to enter the NOD into VACOLS within 7 days. VBA area and regional office managers told us it has been, and continues to be, a challenge to properly control incoming mail, route to the appropriate location, and effectively initiate development where action is necessary. VBA can make sure regional office staff enter appeals into VACOLS by developing and implementing a plan to provide adequate oversight. VBA also needs to take appropriate action to complete and provide a decision on the 145 appeals that were not processed.

**Conclusion**

The nationwide inventory of appeals increased over 30 percent from approximately 160,000 appeals in FY 2008 to about 209,000 in FY 2010. However, regional office managers continued to shift resources away from appeals to meet the priority of reducing the compensation claims inventory that increased by 40 percent from 380,000 to 532,000 claims during this same period. VBA reported inventories increased significantly higher to over 813,000 compensation claims and 246,000 appeals as of August 31, 2011.

The critical starting point to reducing the appeals inventory would be to identify and request the staffing needed to meet goals for processing appeals in a timely manner. The regional offices also have opportunities to improve appeals management processing timeliness through better use of designated appeal staff and revised procedures. Until VBA implements these changes, the appeals inventory will continue to grow and untimely appeal decisions will further delay the delivery of potential monetary and health benefits for veterans.

**Recommendations**

1. We recommended the Under Secretary for Benefits identify and request the staffing resources needed to meet Veterans Benefits Administration's processing goals and conduct *de novo* reviews on all appeals.
2. We recommended the Under Secretary for Benefits revise productivity standards for decision review officers assigned to appeal processing to limit credit to actions that progress the appeal such as Notices of Disagreement, issuance of Statements/Supplemental Statements of the Case, conducting requested hearings, and certification of appeals.
3. We recommended the Under Secretary for Benefits implement criteria requiring appeals staff to initiate a review or development for Notices of Disagreement and certified appeals within 60 days of receipt.
4. We recommended the Under Secretary for Benefits revise current policy to require *de novo* reviews on all appeals.
5. We recommended the Under Secretary for Benefits develop and implement a plan to provide adequate oversight to ensure staff record Notices of Disagreement into the Veterans Appeals Control and Locator System.
6. We recommended the Under Secretary for Benefits establish a mechanism to ensure VA Regional Offices' staff take appropriate action to complete the appeal and provide a decision on the 145 appeals that were not processed.

**Management Comments**

The Under Secretary for Benefits generally agreed that opportunities exist to improve appeals processing at regional offices. The Under Secretary stated VBA was conducting a pilot program to assess the feasibility of

implementing recommendations 1-5. The Under Secretary stated that because such a deviation in appeals processing procedures (*de novo* reviews of all appeals) would require regulatory change and would significantly alter appellants' appeal rights by imposing a mandatory, first level of administrative appeal, VBA believes further review is necessary. The Under Secretary is piloting a new process at the Houston VA Regional Office that will allow VBA to conduct a gap analysis, identify resource needs, and identify ways to leverage the knowledge and abilities of DROs to streamline the appeals process. The pilot will allow VBA to determine the level of resources that should be devoted to appeals processing in general and the appropriate timeliness standards for the initial development of NODs and certified appeals. If the pilot demonstrates success, VBA will consider initiating a rulemaking proceeding to implement the recommendation to require *de novo* review of all appeals.

VBA is revising the DRO performance standards to include a critical element for workload management. The proposed standards would hold DROs accountable for accuracy, output, and timeliness. The proposed standard allows the DRO to take a work credit when the veteran receives a final decision.

The Under Secretary concurred with recommendation 6. The Under Secretary stated that, as of April 5, 2012, regional office staff have either completed or addressed to the extent currently possible all 145 appeals identified by the OIG.

**OIG Response**

The Under Secretary's decision to pilot a new process at the Houston VA Regional Office that includes a *de novo* review of all appeals is a positive step toward timely appeal processing. VBA should not construe a mandatory, first level review of administrative appeal as a negative. This review, performed by VBA's most experienced employees (DROs), results in a quicker decision to the appellant. We analyzed approximately 39,000 completed appeals from FY 2010 that VBA staff sent to BVA and found over 15,000 *de novo*-reviewed appeals were completed about 600 days earlier than traditionally reviewed appeals. We would prefer a stronger commitment to implementing *de novo* review of all appeals but accept the Under Secretary's desire to analyze the results of the pilot before requiring *de novo* review of all appeals.

Based on actions taken by VBA to address the 145 appeals, we consider recommendation 6 closed. We will monitor VBA's progress and follow up on the implementation of the remaining five recommendations until all proposed actions are completed. See Appendix C for the full text of the Under Secretary's comments.

## Appendix A Scope and Methodology

### Scope

We conducted our audit work from October 2010 through December 2011. The audit focused on the appeals management processes for FY 2010 and significant changes for FY 2011. We identified an audit universe of completed, pending, and remanded appeals during FY 2010, and potential NODs not entered into VACOLS as of September 30, 2010.

### Methodology

To determine our potential site visits, we examined VA Office of Performance, Analysis, and Integrity reports that measure timeliness. From these reports, we evaluated each regional office's performance and sorted regional offices based on the number of pending compensation claims. We divided the regional offices into three groups based on the number of pending claims:

- Eleven regional offices had fewer than 4,900 pending claims.
- Twenty-three regional offices had from 4,901 to 15,000 pending claims.
- Twenty-three regional offices had over 15,000 pending claims.

We excluded the 11 regional offices with fewer than 4,900 pending claims from potential visits because regional offices with such a small workload would not present an accurate representation of the overall appeals process. We determined the highest and lowest performing regional offices for the remaining two groups. For these two groups, we randomly selected two of the highest performing and lowest performing regional offices. The regional offices selected were:

Boston	Montgomery
Lincoln	New York
Los Angeles	Philadelphia
Milwaukee	Salt Lake City

During our site visits, we:

- Interviewed regional office management and appeals staff including coaches, DROs, rating specialists, veterans service representatives, and claims assistants.
- Reviewed workload management plans, systematic analyses of operations, and staffing levels/assignments.
- Evaluated the timeliness of appeals segments by reviewing non-statistical samples of completed, pending, and remanded appeals.

To determine the work the appeals staff completed, we reviewed Automated Standardized Performance Elements Nationwide (ASPEN) production credits recorded by appeals staff at the eight regional offices we visited. We evaluated deferrals to determine if appeals staff could have prevented the deferral through an initial review. This included a folder review of 24 non-statistically sampled deferral credits at the last 3 sites visited.

To determine if regional office staff entered appeals into VACOLS as required, we evaluated a universe of 783 NODs. We asked regional office staff to review the potential NODs and provide an explanation as to why they did not enter the appeals into VACOLS.

**Reliability of  
Data**

To address our audit objective, we assessed the reliability of VACOLS data on decision dates, NOD dates, certified appeal dates, and veteran identifier information. We also reviewed ASPEN data to evaluate production credits. We validated and reconciled VACOLS and ASPEN data with the data found in documentation included in the claims folder. However, we noted VACOLS data were not complete and verified the information with regional office staff. Despite this limitation, we concluded that the VACOLS and ASPEN data used were sufficiently reliable to accomplish the audit objectives.

**Government  
Audit  
Standards**

Our assessment of internal controls focused on those controls relating to our audit objective. We conducted this performance audit in accordance with generally accepted government auditing standards that require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

## Appendix B Regional Office Results

For the eight regional offices we visited, the inventory of appeals increased an average of 22 percent during FY 2010 ranging from 6 to 43 percent.

Table 1

Percent Increase of Pending Appeals			
Regional Office	Pending Appeals		
	FY 2009	FY 2010	Percent of Increase
3	1,177	1,681	43%
5	2,121	2,900	37%
7	4,777	6,190	30%
6	2,479	3,162	28%
2	2,839	3,383	19%
8	7,631	8,825	16%
1	1,191	1,297	9%
4	1,870	1,975	6%
<b>Total:</b>	<b>24,085</b>	<b>29,413</b>	<b>22%</b>

Source: VA Office of Performance Analysis and Integrity

Appeals made up about 19 percent of the claims workload, although the eight regional offices assigned an average of only 8 percent of their staff to processing appeals.

Table 2

Pending Appeals and Staffing Levels as of September 30, 2010						
Regional Office	Total Pending Claims	Pending Appeals	Appeals Percent of Pending Claims	Total Rating Staff	Appeals Staff	Percent of Appeals to Rating Staff
5	11,918	2,900	24%	92	10	11%
7	22,666	6,190	27%	175	15	9%
2	26,873	3,383	13%	288	22	8%
6	17,291	3,162	18%	156	13	8%
8	32,503	8,825	27%	212	17	8%
1	10,980	1,297	12%	176	12	7%
3	10,431	1,681	16%	228	16	7%
4	18,743	1,975	11%	130	9	7%
<b>Total:</b>	<b>151,405</b>	<b>29,413</b>	<b>19%</b>	<b>1,457</b>	<b>114</b>	<b>8%</b>

Source: VA Office of Performance Analysis and Integrity and VA Regional Office Veterans Service Center Managers

Appeals rating staff worked an average of 65 percent of their time on appeals with a low of 33 percent to a high of 86 percent. One regional office was not included in our analysis of appeal workload percentage of overall workload because DROs at the regional office took part in a VBA test program and not all of their work credits were available for analysis.

**Table 3**

<b>Appeals Rating Staff Production Credits for FY 2010</b>			
<b>Regional Office</b>	<b>Total Credits</b>	<b>Appeal Credits</b>	<b>Appeal Percentage</b>
<b>1</b>	5,033	4,335	86%
<b>6</b>	4,365	3,738	86%
<b>2</b>	6,257	5,248	84%
<b>8</b>	5,367	3,576	67%
<b>5</b>	3,320	1,840	55%
<b>4</b>	5,699	3,097	54%
<b>7</b>	7,330	2,409	33%
<b>3</b>	All DRO credits were not available for analysis		
<b>Total:</b>	<b>37,371</b>	<b>24,243</b>	<b>65%</b>

Source: ASPEN

Appeals rating staff deferred decisions for approximately 36 percent of their appeals workload ranging from 14 to 48 percent at the eight regional offices.

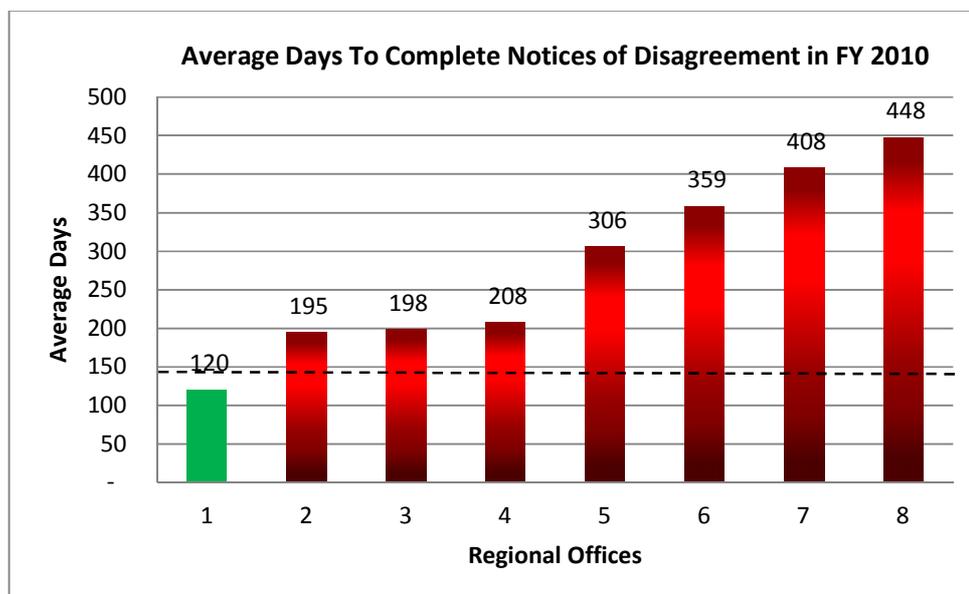
**Table 4**

<b>Percentage of Deferrals by Appeal Rating Staff for FY 2010</b>			
<b>Regional Office</b>	<b>Total Appeal Actions</b>	<b>Total Deferrals</b>	<b>Deferral Percentage</b>
<b>7</b>	3,972	1,920	48%
<b>2</b>	7,241	3,053	42%
<b>4</b>	4,514	1,813	40%
<b>6</b>	5,321	2,107	40%
<b>1</b>	6,278	2,406	38%
<b>8</b>	4,847	1,552	32%
<b>3</b>	4,274	865	20%
<b>5</b>	2,598	375	14%
<b>Total:</b>	<b>39,045</b>	<b>14,091</b>	<b>36%</b>

Source: ASPEN

In FY 2010, only one of the eight regional offices we visited met its goal of completing NODs within the 125-day average established by VA policy. The regional office average for completing NODs ranged from 120 to 448 days.

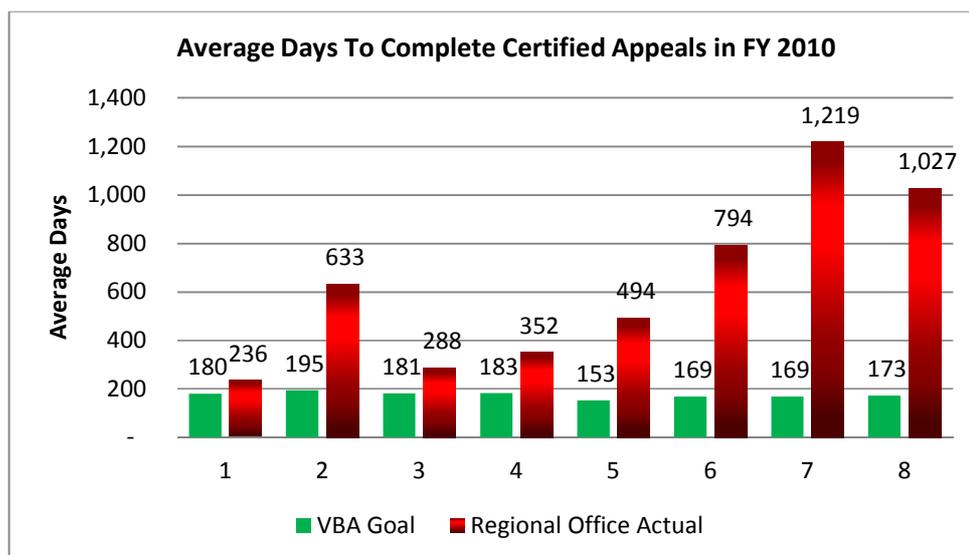
Figure 1



Source: VACOLS

Considering completed SSOCs, VBA's goal for the eight regional offices to complete certified appeals ranged from 153 to 195 days. The regional office average for completing certified appeals ranged from 236 to 1,219 days.

Figure 2



Source: VACOLS

## Appendix C Under Secretary for Benefits Comments

### Department of Veterans Affairs

### Memorandum

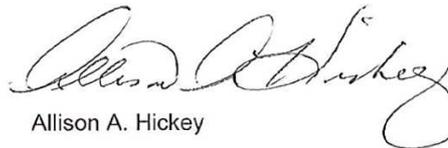
**Date:** May 11, 2012

**From:** Under Secretary for Benefits (20)

**Subj:** OIG Draft Report – Audit of VA Regional Office Appeals Management Processes  
[Project No. 2010-03166-R5-0329] – VAIQ 7181847

**To:** Assistant Inspector General for Audits and Evaluations (52)

1. Attached is VBA's updated response to the OIG Draft Report: Audit of VA Regional Office Appeals Management Processes.
2. VBA appreciates the opportunity to review the OIG's comments on our January 20, 2012 response to the draft report. The attached includes updated comments providing further clarification and additional information. The response to recommendation six is also updated to reflect the action taken to address the 145 appeals identified by the OIG.
3. Questions may be referred to Kurt Hessling, Director, Program Integrity and Internal Controls Staff, at 461-9072.



Allison A. Hickey

Attachment

## **Veterans Benefits Administration (VBA)**

### **Comments on OIG Draft Report**

#### **Audit of VA Regional Office Appeals Management Processes**

##### **The Veterans Benefits Administration provides the following general comments:**

VA's appeals process is extremely complex. From the time that a claimant initiates an administrative appeal of a VBA decision on a claim by filing an NOD, to the time that the VBA regional office of jurisdiction certifies the appeal and transfers the case to the Board of Veterans' Appeals (Board), many factors affect the time it takes the agency to process an appeal. First, VA is experiencing an increase in appellate workload, commensurate with the overall increase in its benefit claims workload. As discussed below, court decisions and other unforeseen changes in law can have a significant impact on this workload. Second, the record on appeal is an open record that allows claimants all-but-unlimited opportunities to submit evidence during the appeal process. Each such submission triggers development obligations for VBA and incumbent response times that must be afforded the claimant. Third, appeals processing in VBA cannot receive higher staffing levels without negatively impacting initial adjudications, which is inconsistent with VA policy regarding delivery of benefits to Veterans, their dependents, and survivors as quickly as possible. This systemic complexity makes it difficult to identify simple, easily implemented, solutions to the problem addressed by this OIG report.

We also note that VA used rulemaking under the Administrative Procedure Act to implement the appeal process authorized by Congress. For those appeal processes governed by regulation that OIG recommends VA change or that VA decides on its own to change, e.g., de novo review under current 38 C.F.R. § 3.2600, VA must provide a rational basis for the change. This means that VA's regulatory amendments must be based upon a rational connection between the facts found and the policy choice. In other words, if VA initiated rulemaking to impose mandatory de novo review at the regional office level for all appellants and thus proposed to limit the statutory right of appeal to the Board, it would have to show that the proposed measure is a rational choice over other alternatives, such as closing the record and expeditiously certifying all appeals to the Board without de novo review. Accordingly, while VBA agrees in principle with some of OIG's recommendations related to the role of the DRO, implementation of some of the recommendations made by the OIG would require regulatory change with an appropriate notice and comment period.

As recognized by OIG, VBA experienced a drastic increase in inventory to over 813,000 compensation claims due in large part to the readjudication of previously denied claims for the new Agent Orange presumptive conditions required under U.S. Court of Appeals, Ninth Circuit decision, *Nehmer vs. VA*. As OIG indicated in paragraph 1 on page i, the claims inventory increased more than the appeals inventory for the period. In the beginning of FY 2010, VBA's thirteen resource centers began preparing to readjudicate nearly 150,000 claims resulting from the *Nehmer* litigation. Additionally, over the course of FY 2011, VBA received approximately 70,000 additional claims for the new Agent Orange presumptives. The reallocation of resources necessitated by this dramatic workload increase resulted in a significant loss in claims

processing capacity and left fewer resources to process the regular rating workload, including appeals. In fact, two of the eight regional offices (ROs) visited in this audit (Lincoln and Philadelphia) had dedicated Day-One Brokering Centers that *exclusively* processed Nehmer work in FY 2011. These unusual circumstances VBA faced in FY 2011 greatly contributed to the growing appeals inventory.

In paragraph 2 on page i, OIG states “Requiring *de novo* reviews on all appeals will result in a quicker decision on the Veteran’s appeal because DROs can render new decisions without delaying the appeal to wait for new evidence as is usually required for traditional reviews.” However, as mentioned previously, VA needs to provide a rational basis before making any regulatory changes to include considering other choices such as closing the record and expeditiously certifying all appeals to the Board without *de novo* review. In support of this effort, VBA believes that additional analysis is needed to determine whether *de novo* review is causally related to a faster appeals resolution or decision. In creating the DRO review process, VBA did not intend to establish a new mandatory level of administrative appeal, but intended to provide appellants with a choice to try to resolve their appeals at the regional office level. Further analysis is needed to understand how to make the DRO process more effective, and to determine why, despite DRO review, more than 15,000 appellants continued their appeal to the Board of Veterans Appeals. VBA believes the results of the pilot, currently ongoing at the Houston VA Regional Office, may provide data from which VBA can draw conclusions on the merits of various appeals process changes. In summary, OIG’s recommendation would significantly alter appellants’ appeal rights by imposing a mandatory, first level of administrative appeal. As noted above, because such a deviation in appeals processing procedures would require regulatory change, VBA believes further review is necessary and is piloting such a process.

On page 5, paragraph 2, OIG states, “Revising production standards for DROs assigned to appeals processing to limit credit to actions directly related to processing appeals such as preparing and completing SOCs, SSOCs, and certified appeals can improve VBA timeliness.” However, DROs are VBA’s most experienced and knowledgeable employees, and the OIG’s statement ignores other responsibilities assigned to DROs based on their experience and knowledge, such as training and “second signature reviews” of rating decisions written by trainees. These actions are not currently measured by a defined metric, but contribute to VBA’s overall mission and are important elements of the DRO position.

On page 8, OIG states, “VBA can make sure regional office staffs enter appeals into VACOLS by developing and implementing a plan to provide adequate oversight.” VBA asserts that this is not just an oversight issue, and that it is primarily caused by difficulties in identification of NOD. Currently, claimants can submit an NOD in virtually any form, making it difficult for employees to identify language potentially indicating an appeal within a multi-page document. Greater oversight of VACOLS data entry alone will not remedy this issue of properly identifying potential appeals. Of the 145 appeals that were identified as not properly identified in VACOLS, there is no indication given in the report as to the reason these claims were not identified earlier.

**The following comments are submitted in response to the recommendations in the OIG Draft Report:**

**Recommendation 1: We recommend the Under Secretary for Benefits identify and request the staffing resources needed to meet Veterans Benefits Administration's processing goals and conduct *de novo* reviews on all appeals.**

VBA Response: Concur in principle. While OIG contends that VBA regional office managers did not assign enough staff to process appeals, as noted above in VBA's general comments, appeals staffing resources were necessarily diverted in FY 2011 to process the court-supervised Nehmer claims. When the Nehmer claims are completed in FY 2012, VBA will be able to devote additional resources to appeals processing.

Many of VBA's newly hired employees are still in various stages of their training programs, and their productivity will increase as they complete their training and gain additional experience. However, continuing to add full time equivalents (FTE) is not the long-term solution. VBA has developed an aggressive transformation plan that will adopt near-term innovations and break down stubborn obstacles to timely and accurate decisions on claims and appeals. The transformation plan includes people, process, and technology initiatives that will be implemented beginning in FY 2012. Using "Design Teams," VBA is conducting rapid development and testing of process changes, automated processing tools, and innovative workplace incentive programs.

Launched on March 1, 2012, at the Houston VA Regional Office, the Appeals Design Team is piloting several different process changes to the appeals workflow. The results of this pilot will allow VBA to conduct a gap analysis, identify resource needs, and identify ways to leverage the knowledge and abilities of DROs to streamline the appeals process. For instance, the pilot will study the degree of interaction between a DRO and an appellant or his/her representative and determine the impact of this interaction on appeals resolution. Another element of the Appeals Design Team is the piloting of a *de novo* review of all appeals by DROs. We expect to be able to identify which types of cases actually benefit from the *de novo* review process. As a result of the pilot, VBA will be in a position to be able to determine the level of resources which should be devoted to appeals processing in general, and the DRO process specifically. If the data analysis of the Appeals Design Team supports the recommendation of OIG to conduct a *de novo* review of all appeals, then VBA will consider initiating a rulemaking proceeding to implement the recommendation.

Target Completion Date: January 31, 2013

**Recommendation 2: We recommend the Under Secretary for Benefits revise productivity standards for decision review officers assigned to appeal processing to limit credit to actions that progress the appeal such as Notices of Disagreement, issuance of Statements/Supplemental Statements of the Case, conducting requested hearings, and certification of appeals.**

VBA Response: Concur in principle. VBA agrees that while working within the scope of appeals processing, work credits earned by DROs should be limited to those actions that progress the appeal, such as those actions listed above.

However, productivity is only one performance measure monitored in the DRO program. The other measures include training, mentoring, and quality reviews. Measuring the success of the DRO program on production alone would undermine these other key measures that ultimately contribute to appeals quality and timeliness. Restricting the scope of DRO responsibility to only *de novo* review of appeals and processing appeals will not have the intended impact on appeals production.

VBA is in the process of revising the DRO performance standards to include a critical element for workload management. The proposed DRO performance standards emphasize building relationships with Veterans Service Organizations to discuss the merits of an appeal at an early stage in the appellate process with the goal of resolving as many appeals as possible. Under the proposed standards, DROs will be held accountable for measures based on accuracy, output, and timeliness. These proposed standards are aligned with organizational goals. Notably, the Output Element in the proposed standards is a significant departure from the current standard (Productivity Element). The proposed standard allows DROs to take credit for work based on appeals resolution, i.e., the DRO receives work credit when the Veteran receives a final decision.

Target completion date: May 31, 2012

**Recommendation 3: We recommend the Under Secretary for Benefits implement criteria requiring appeals staff to initiate a review or development for Notices of Disagreement and certified appeals within 60 days of receipt.**

VBA Response: Concur in principle. The VBA Appeals Design Team is currently identifying areas for improvement in appeals processing, to include focusing on the control time for appeals and piloting certain initiatives. The pilot will provide VBA with data necessary to determine the appropriate timeliness standard for the initial development of NODs and certified appeals.

The pilot also includes creation of a standardized NOD form. This should resolve the current problem of identifying whether a written communication received from a claimant is in fact a notice of disagreement. Currently, NODs can be submitted in virtually any written form and, consequently, can be difficult to identify and record timely in VACOLS. A standard form, which clearly states an intent to appeal, identifies the issue(s) the claimant is appealing, and the disability evaluation level the claimant is seeking, if applicable, will allow VBA to timely identify and record NODs. In addition, VBA anticipates that the pilot program's emphasis on early communication between DROs and claimants and their representatives will improve the frequency and timeliness of appeals resolution. The up-front involvement of a DRO will allow for more expedient identification of appeals that require development actions prior to a decision. The Appeals Design Team developed this proactive approach to address the length of time between the receipt of a claimant's NOD and control of the appeal in VACOLS, as well as the development initiation time. Proper up-front development will result in faster appeals resolution times, improved accuracy of VBA certifications, and an overall reduction in avoidable remands.

Upon completion of the pilot, VBA will be in a position to be able to determine whether the above measures address OIG concerns and whether the recommended 60-day control standard is appropriate.

Target Completion Date: December 31, 2012

**Recommendation 4: We recommend the Under Secretary for Benefits revise current policy to require *de novo* reviews on all appeals.**

VBA Response: Concur in principle. As noted in VBA's response to Recommendation 1, some of the concepts proposed by OIG warrant further study. Regarding mandatory *de novo* review, the OIG report indicated that appeals with *de novo* reviews were completed about 600 days earlier than traditional appeals, there is no definitive evidence showing that this processing time is causally related to the *de novo* review. More thorough analysis is needed to determine the respective impact of other factors, including the workload balances of all members of the regional office appeals teams.

As stated earlier, VBA's Appeals Design team is piloting several process changes to the appeals workflow, to include a DRO *de novo* review of all appeals. Following completion of the pilot, VBA will be in a position to be able to determine the types of cases that will actually benefit from the DRO review process. If the Appeals Design Team's analysis supports the recommendation of OIG to conduct a *de novo* review in all appeals, then VBA will consider initiating a rulemaking proceeding to implement the recommendation.

Target Completion Date: January 31, 2013

**Recommendation 5: We recommend the Under Secretary for Benefits develop and implement a plan to provide adequate oversight to ensure staff record Notices of Disagreement into the Veterans Appeals Control and Locator System.**

VBA Response: Concur in principle. As indicated previously, the problem identified lies not just in a lack of oversight but in a regional offices' ability to identify a Veteran's communication as an NOD. Oversight of the requirement to enter NODs into VACOLS is already part of the protocol for Compensation Service site visits to VA regional offices. Any non-compliance findings are already shared with RO management and VBA leadership. Compensation Service continues its monitoring of an RO's progress in correcting its appeals processing procedures until an improvement is demonstrated in NOD control time. VBA will continue to emphasize the importance of proper workload management and appeals tracking.

VBA has two initiatives that will help with the identification of potential appeals. The Appeals Design Team is piloting a standardized NOD form, which is predicted to help with a station's ability to timely identify an NOD and enter it into VACOLS. Second, in FY 2012, VBA will begin the first stage of implementing Intake Processing Centers (IPCs). IPCs will utilize more experienced employees for the initial screening of mail and, consequently, should lessen the number of times NODs are not properly identified upon receipt. VBA plans to establish IPCs at sixteen stations in FY 2012, with the remaining to be implemented in a phased approach in 2013.

Target Completion Date for Appeals Design Team pilot: January 31, 2013

Target Completion Date for IPC establishment in sixteen VAROs: September 30, 2013

**Recommendation 6: We recommend the Under Secretary for Benefits establish a mechanism to ensure VA Regional Offices' staff take appropriate action to complete the appeal and provide a decision on the 145 appeals that were not processed.**

VBA Response: Concur. These 145 appeals have been identified. On December 19, 2011, a list was sent to VA regional offices, tasking the offices with providing a status update and moving the appeal to the next stage in the process, where possible. VBA can only complete the steps in the appellate process that are under RO control. As of December 30, 2011, 128 of these NODs had been either completed or moved to the next step in the appeals process and were awaiting the expiration of a suspense date, evidence from the Veteran, a VA exam, or other event that prevented immediate processing. As of April 5, 2012, all 145 appeals have been identified and addressed. All appeals have been either completed or have been addressed to the extent currently possible. VBA requests closure of this recommendation.

## **Appendix D Office of Inspector General Contact and Staff Acknowledgments**

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OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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Acknowledgments	Larry Reinkemeyer, Director Robin Frazier Lee Giesbrecht Lance Kramer Brad Lewis Russ Lewis Ken Myers Carla Reid Jason Schuenemann
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