

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



Veterans Benefits Administration

*Review of
Timeliness of the
Appeals Process*

March 28, 2018
16-01750-79

ACRONYMS AND ABBREVIATIONS

ARC	Appeals Resource Center
EIC	Executive in Charge
FY	Fiscal Year
NOD	Notice of Disagreement
OFO	Office of Field Operations
OIG	Office of Inspector General
SOC	Statement of the Case
USB	Under Secretary for Benefits
VA	Department of Veterans Affairs
VACOLS	Veterans Appeals Control and Locator System
VARO	Veterans Affairs Regional Office
VBA	Veterans Benefits Administration

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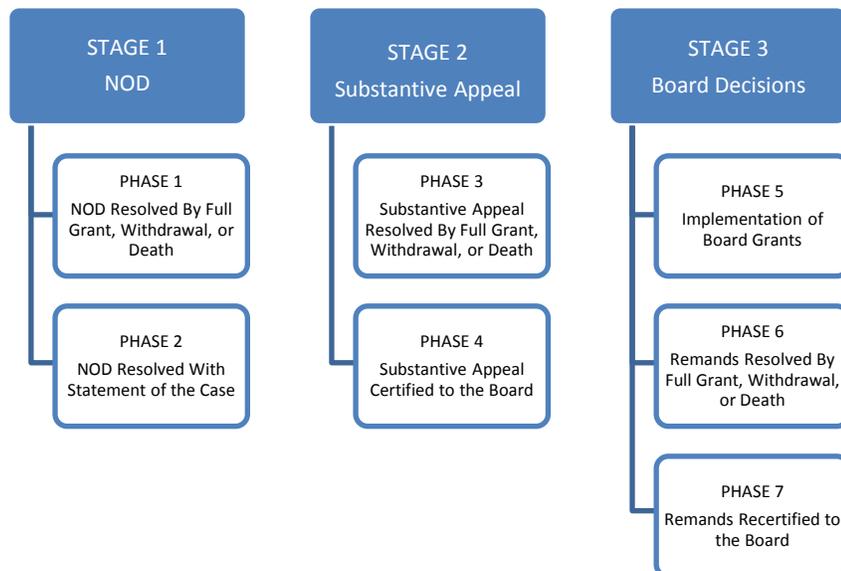
Executive Summary

Why the OIG Did This Review

Our prior report, *Audit of VA Regional Offices' Appeals Management Processes* (Report No. 10-03166-75, May 30, 2012), concluded that opportunities existed for the Veterans Benefits Administration (VBA) to improve timeliness in processing appeals. The OIG found VA Regional Office (VARO) managers did not assign enough staff to process appeals and diverted appeals staff to compensation claims processing, which VBA considered a higher priority. At the end of FY 2012, VBA reported having 254,604 appeals pending nationwide and an overall average of 903.1 days to resolve appeals. By the end of FY 2015, VBA reported its pending appeals had increased to 318,532 nationwide, and the overall average days to resolve appeals had risen to 935.9.

The OIG conducted this review to determine whether opportunities continued to exist for VBA staff to improve the timeliness of appeals processing. This review focused on appeals in seven phases where VBA was required to take action after receipt of a (1) notice of disagreement (NOD), (2) substantive appeal, or (3) decision from the Board of Veterans' Appeals (Board). Figure 1 depicts the three stages and seven phases where VBA was required to take action on an appeal.

Figure 1. Overview of Appeals Stages and Phases



Source: VA OIG analysis of M21-1, *Adjudication Procedures Manual, Part I, Chapter 5, Appeals*

What the OIG Did

The OIG conducted this review from January 2016 through November 2017. To accomplish its objective, the OIG reviewed applicable laws, regulations, policies, procedures, and guidelines. The OIG reviewed statistically selected random samples of 30 appeals related to rating decisions from each of these seven phases—a total of 210 appeals. Although each selected appeal completed a phase during the first quarter of FY 2016, not all of the appeals were fully resolved. Appeals that completed Phases 4 or 7 were transferred to the Board for further processing. Appeals that completed Phase 5 may have remained pending if there were also remanded issues. The OIG analyzed the time it took VBA staff to complete processing actions in these phases, such as establishing or managing controls in the electronic systems, requesting or obtaining evidence, making decisions, processing payment adjustments, communicating with appellants, and transferring cases to the Board.

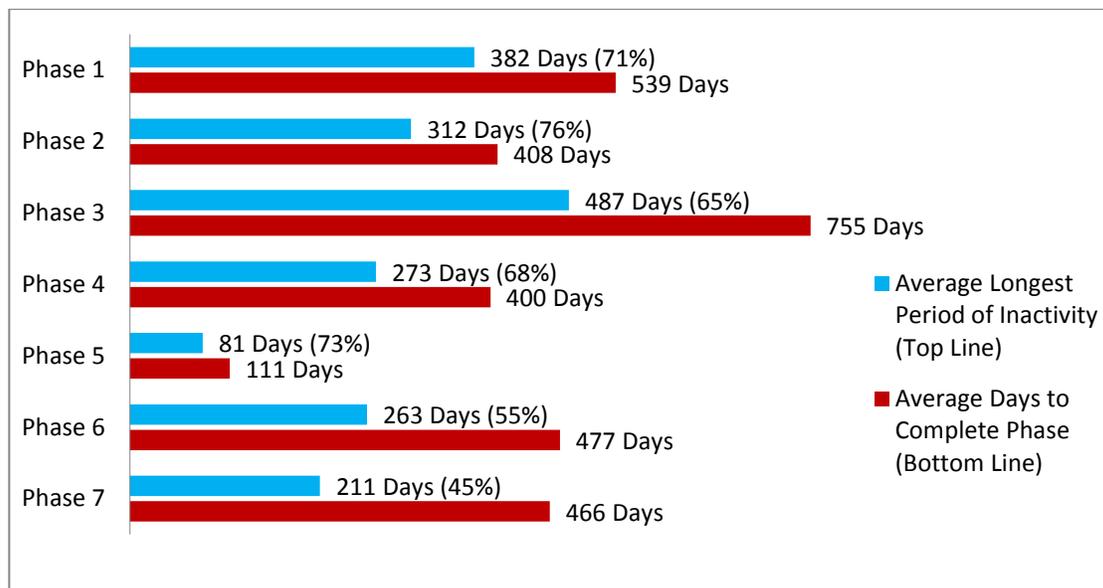
The OIG interviewed appropriate VBA management and staff responsible for processes associated with appeals to obtain an understanding of work performed in each phase. The OIG conducted onsite interviews with VBA management and staff at six randomly selected VAROs and the Appeals Resource Center. The VAROs selected were Chicago, Illinois; Honolulu, Hawaii; Jackson, Mississippi; Montgomery, Alabama; Togus, Maine; and White River Junction, Vermont. The OIG assessed whether VBA staff complied with appeals processing policies and procedures, specifically focusing on those affecting timeliness.

What the OIG Found

VBA staff did not always timely process the appeals workload. Sample results showed VBA took an average of 111 to 755 days to complete the various phases, and the OIG found significant periods of inactivity throughout all phases. The OIG considered a period of inactivity to be from when VBA staff could have taken action on an appeal to when they actually took an action. Although some appeals had multiple periods of inactivity, the OIG focused on the longest single period of inactivity in each case. On average, a single period of inactivity accounted for approximately 45 to 76 percent of the total processing time in each phase.

Figure 2 shows the average number of days for the longest single period of inactivity as a percentage of the average days to complete each phase.

Figure 2. Average Days of Longest Period of Inactivity as a Percentage of the Average Days to Complete Each Phase



Source: VA OIG analysis of periods of inactivity and days to complete each phase during first quarter of FY 2016

Examples of periods of inactivity in each stage follow.

- In one appeal in Stage 1, VARO staff established control of the appeal on September 13, 2014. VARO staff did not take the next required action until August 6, 2015—327 days later. This period of inactivity accounted for 71 percent of the time from when VBA received the NOD until it was resolved.
- In one appeal in Stage 2, a veteran requested his appeal be sent to the Board on October 31, 2014. VARO staff did not certify the appeal to the Board until December 7, 2015—402 days later. This period of inactivity accounted for 48 percent of the time from when VBA received the substantive appeal until it was certified.
- In one appeal in Stage 3, the Board remanded an appeal to VBA on February 12, 2015. VARO staff did not take action on the remand until September 24, 2015—224 days later. This period of inactivity accounted for 78 percent of the time from when VBA received the remand until the appeal was resolved.

In addition, the OIG found errors that delayed appeals processing. In Phase 2, the OIG estimated 17 percent of the appeals were closed prematurely. Once the records were closed, processing on the appeals stopped when they required additional action. Also, in Phase 7, the OIG estimated 13 percent of the appeals were not processed according to the Board’s remand instructions.

OIG determined opportunities continued to exist to improve appeals timeliness because periods of inactivity accounted for significant percentages of the total processing time in each phase, and errors caused additional avoidable delays. The OIG reviewed appeals that completed a phase during the first quarter of FY 2016. However, at the end of April 2017, VBA reported pending appeals at VAROs averaging 444.2 days, a 1.4-day improvement compared to the end of the first quarter of FY 2016.

Why This Occurred

Generally, periods of inactivity associated with the appeals process occurred because VBA senior leadership prioritized the rating claims backlog over other workloads and did not dedicate sufficient resources to timely address appeals. Senior VBA leadership acknowledged it knew these actions would have negative consequences on appeals timeliness, but the then Under Secretary for Benefits (USB) made the decision to prioritize the rating claims backlog over any other work.

In addition, VBA had an ineffective procedure for notifying VAROs when they were required to process Board grants. Some appeals were prematurely closed because VBA staff failed to update, or incorrectly updated, the electronic system, and they relied on an automated function to close some appeals. Failure to follow the Board's remand instructions resulted from inattention to detail and ineffective oversight.

What Resulted

VBA's lack of priority in processing appeals delayed appellants receiving timely resolution of their appeals, which in some cases resulted in appellants waiting years to receive favorable decisions and compensation. For example, one appeal that involved a favorable Board decision took approximately five years from the date VBA received the NOD until the appeal was resolved. This overall period included some processing time that was outside VBA's control, such as time spent with the Board. However, once the Board ultimately granted the appeal, VBA staff took more than one year to implement the decision. VARO staff's delay in implementing this favorable Board grant contributed to the delay in resolving the appeal.

Overall, the OIG estimated that VBA staff issued favorable decisions in 29 percent of appeal stages that were completed during first quarter of FY 2016. The OIG estimated the appeals with favorable decisions resulted in additional compensation averaging approximately \$32,800 through January 2016, and \$650 in recurring additional monthly payments as of February 2016.

Delaying decisions also resulted in some appellants paying more of their benefits to accredited attorneys and agents who were entitled up to 20 percent of the appellants' past-due benefits. Past-due benefits are calculated from the effective date of the increase in benefits to the date of the decision awarding benefits. Since delays in VBA staff completing decisions that award benefits can result in an increase in past-due benefits, VBA may pay more of appellants' benefits to their representatives.

Some appellants died before receiving final decisions on their appeals. In accordance with its procedures, VBA counted these as resolved appeals. VBA reported that, at the end of the first

quarter of FY 2016, they had resolved approximately 23,200 appeals. The OIG estimated approximately 1,600 of these appeal records (7 percent) were closed due to the death of the appellant. About 1,100 of these appeal records had been pending for more than one year when the appellants died. However, as these appellants died before receiving final decisions, the OIG could not determine whether they would have received any additional benefits. In some cases, VBA will open a new appeal record if an eligible party continues the appeal for the deceased appellant.

Finally, appeals processing errors resulted in VBA losing control of some appeals, misrepresented VA's reported statistics, and caused unnecessary delays in resolving appeals. Based on sample projection results, the OIG estimated 2,300 appeals records were closed prematurely during the first quarter of FY 2016. VA considered these appeals resolved; however, appellants were likely unaware since VARO staff did not notify appellants at the time VA closed the appeals. In addition, the OIG estimated 630 remanded appeals were returned to the Board without following the Board's instructions. As a result, these errors could cause significant delays in appeals processing and misrepresent appeals statistics.

What the OIG Recommended

The OIG recommended the acting USB continue to monitor the effectiveness of VBA's appeals realignment and increased resources towards meeting its established targets related to appeals processing timeliness. The OIG recommended the acting USB monitor the effectiveness of the Caseflow application to ensure Board decisions are timely controlled and assigned to the appropriate VARO or the Appeals Resource Center. In addition, the OIG recommended the acting USB implement a plan to amend VBA procedures for closing appeals records to prevent appeals being closed prematurely, to remind staff of their responsibilities when processing remands and recertifying appeals to the Board, and to ensure compliance.

Agency Comments

The Executive in Charge (EIC), formerly known as the acting Under Secretary for Benefits, noted that the OIG report did not assess the statutory features of the current administrative appeals process for impact on timeliness. The EIC explained that this finding is misleading because it implies, without further analysis, that VBA could have timely processed appeals, in the current process, with its finite resources. In fact, for the past few years, VA has been clear that the current appeals process is broken and provides veterans a frustrating experience. To address this problem, VBA and the Board of Veterans' Appeals worked with Veterans Service Organizations, advocacy groups, congressional staff, and other stakeholders to design a new appeals process that is timely, transparent, and fair. These efforts resulted in the enactment of the Veterans Appeals Improvement and Modernization Act of 2017, which VA will implement in February 2019. While VBA agrees with OIG's suggestion that VBA had opportunities for improved timeliness in its appeals processing, which VBA has already demonstrated with its realignment of appeals and the resulting 24-percent increase in FY 2017 production, it does not agree that VBA could have timely processed appeals in the current process with its finite resources. The legacy appeals system does not allow VA to drive timeliness. This is a factor of veterans' choice and the inefficient "churn" inherent in the system.

The OIG disagrees that the finding is misleading. The OIG did not state VBA could have timely processed appeals in the current process with its finite resources. Rather, the OIG report states that VBA dedicated resources disproportionately to process the claims backlog, despite being aware of challenges in the appeal process and anticipating that processing more claims would result in more appeals. Ultimately, VBA's decision to prioritize the disability claims backlog negatively affected appeals processing timeliness. This workload decision does not negate the OIG's conclusion that periods of inactivity demonstrated that opportunities existed to improve the timeliness of completing the appeal phases.

The EIC concurred with Recommendations 1, 2, 3, and concurred in part with Recommendation 4. The EIC's comments and actions are responsive to the recommendations. The OIG will follow up with the implementation of the recommendations as required.



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INTRODUCTION

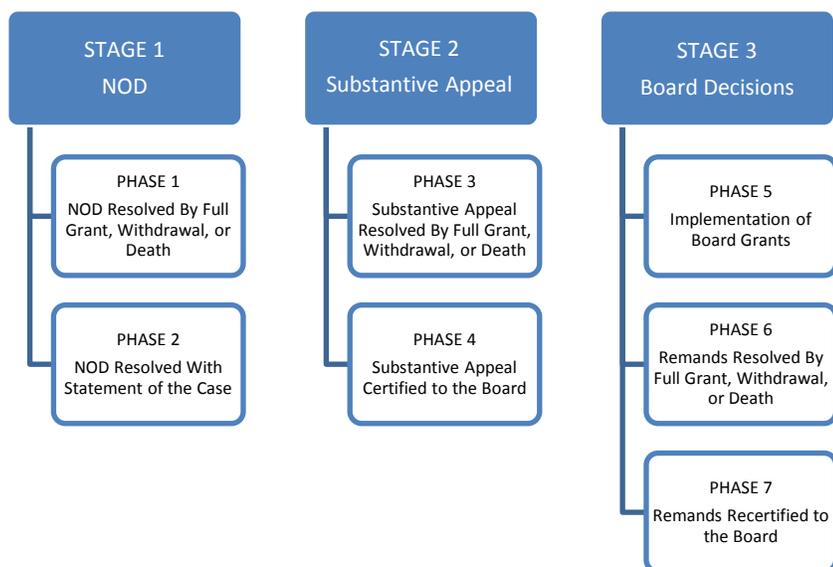
Objective

The OIG conducted this review to evaluate the Veterans Benefits Administration's (VBA) timeliness for processing appeals and to determine if opportunities for improvement existed.

Appeals Processing Stages

VBA is responsible for three appeals stages that involve processing: (1) notice of disagreements (NOD), (2) substantive appeals,¹ and (3) Board of Veterans' Appeals (Board) decisions. Within these stages, the OIG identified seven phases of the appeals process and focused on evaluating the length of time to complete each of these phases. Not every appeal goes through every stage because the appeal can be resolved at any time during the appeals process due to a full grant of benefits, the appellant's death, or receipt of a withdrawal of the appeal. Figure 3 depicts the three stages and seven phases the OIG reviewed where VBA is required to take action on an appeal.²

Figure 3. Overview of Appeals Stages and Phases



Source: VA OIG analysis of M21-1, *Adjudication Procedures Manual, Part I, Chapter 5, Appeals*

Stage 1–NOD

The first stage in VBA's appeals process is for the claimant or his or her authorized representative to file an NOD. An NOD expresses disagreement with a VBA decision and a desire to contest the result. Once VBA

¹ A substantive appeal consists of a properly completed VA Form 9, "Appeal to Board of Veterans' Appeals," or other written correspondence containing the necessary information. See Title 38, Code of Federal Regulations, § 20.202.

² Appeals that completed Phases 4 or 7 were transferred to the Board for further processing. Appeals that completed Phase 5 may have remained pending if there were also remanded issues.

acknowledges the NOD as valid and timely, VA Regional Office (VARO) staff will establish an appeal record in the Veterans Appeals Control and Locator System (VACOLS).³ VARO staff will issue a statement of the case (SOC) if they determine a full grant of the decision on appeal is not warranted. The SOC provides a complete explanation of the decision so the appellant can prepare an effective appeal with specific allegations of errors of fact or law. If the VARO receives additional evidence following the SOC, staff will issue a supplemental statement of the case, which presents the appellant with changes or additions to the SOC.⁴

*Stage 2–
Substantive
Appeal*

If the appellant disagrees with the SOC, he or she must submit a timely substantive appeal, and VBA staff will enter the date VA received the substantive appeal in VACOLS. This action officially places the appeal on the Board's docket. The appeal record remains under the VARO's jurisdiction until it is certified as ready for Board review.⁵ Once all steps in the certification process are completed, VARO staff must immediately transfer the appellate record to the Board.⁶ If a timely receipt date for the substantive appeal is not entered in VACOLS, VA will automatically close the appeal record and consider it resolved.⁷

*Stage 3–Board
Decisions*

The Board may grant, deny, or remand issues on appeal. If the Board grants or remands an issue, the appeal will be transferred to the Appeals Resource Center (ARC) or the VARO for processing.⁸ When the Board grants benefits, the VARO or ARC implements the grant by issuing a rating decision. When the Board remands an appeal, VBA staff are required to initiate the Board's detailed development instructions within 15 days of receipt of the remand.⁹ According to VBA policy, VARO and ARC management are responsible for close control and timely processing of Board remanded appeals, which must be worked on a priority basis.¹⁰ Once all remand instructions have been followed and relevant evidence obtained, the appeal must be recertified and returned to the Board.¹¹

³ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section A, Topic 2, *Appeal Process*.

⁴ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section A, Topic 1, *Common Appeals Terminology and Definitions*.

⁵ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section F, *Docketing, Certification, and Claims Folder Transfer to the Board of Veterans' Appeals (BVA)*.

⁶ *Ibid.*

⁷ M21-1 *Adjudication Procedures Manual*, Part III, Subpart ii, Chapter 3, Section E, Topic 4, *Controlling Substantive Appeals*.

⁸ The Board will remand an appeal when it determines development is needed for additional evidence, due process, or reconsideration of issues. See M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section A, *General Information on Appeals*.

⁹ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section G, Topic 3, *Remanded Appeals*.

¹⁰ *Ibid.*

¹¹ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section G, Topic 4, *Developing, Reviewing, and Transferring Remanded Appeals*.

RESULTS AND RECOMMENDATIONS

Finding

Opportunities Existed to Improve Appeals Workload Management and Processing Timeliness

The OIG found significant periods of inactivity throughout all stages of the appeals process. Generally, this occurred because VBA senior leadership prioritized the rating claims backlog over other workloads and did not dedicate sufficient resources to timely address appeals. Senior VBA leadership told us they knew this action would have negative consequences on appeals timeliness, but the then Under Secretary for Benefits (USB) made the decision to prioritize rating claims backlog over any other work.

In addition, the OIG determined that procedures used to identify appeals workload were ineffective, causing significant delays before VBA staff identified appeals needing action. The OIG also identified processing errors where VBA staff failed to update or incorrectly updated VACOLS, and they relied on an automated function that prematurely closed some appeals. Other errors where staff did not follow the Board's remand instructions were the result of inattention to detail and ineffective oversight.

VBA's lack of priority in processing appeals delayed appellants receiving timely resolution of their appeals, which in some cases resulted in appellants waiting years to receive decisions and compensation. The financial effect to appellants caused by these delays can be significant. Overall, the OIG estimated that VBA staff issued favorable decisions in 29 percent of appeal stages that were completed during the first quarter of FY 2016. The OIG estimated the appeals with favorable decisions resulted in additional compensation averaging approximately \$32,800 through January 2016, and \$650 in recurring additional monthly payments as of February 2016.

Delaying decisions also resulted in some appellants paying more of their benefits to accredited attorneys and agents who were entitled to a percentage of their past-due benefits. Finally, appeals processing errors resulted in VBA losing control of some appeals, misrepresented VA's reported statistics, and caused unnecessary delays in resolving appeals.

Periods of Inactivity in All Phases

The OIG's review determined opportunities existed for VBA staff to improve workload management and the timeliness of processing appeals. The OIG reviewed statistically selected random samples of 30 appeals from each phase that were completed during the first quarter of FY 2016. Not every appeal goes through every stage because the appeal can be resolved at any time during the appeals process due to a full grant of benefits, the appellant's death, or receipt of a withdrawal of the appeal.

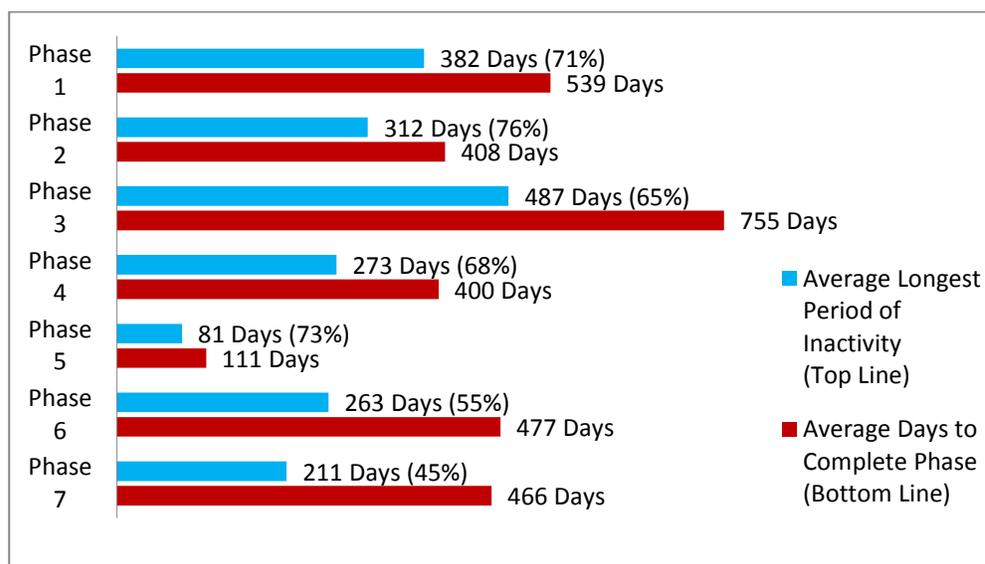
The OIG analyzed the time it took to process each appeal. As part of the analysis, the OIG identified the longest period of inactivity by VBA in each

appeal. The OIG considered a period of inactivity to be from when VBA staff could have taken action on an appeal to when they took an action. The OIG found significant periods of inactivity in which appeals were not being processed.

With the exception of Phase 5, VBA took an average of at least 400 days to process the appeals in each of the other phases. The OIG identified periods of inactivity consisting of delays establishing or managing controls in the electronic system, requesting or obtaining evidence, making decisions, processing payment adjustments, communicating with appellants, and transferring cases to the Board. Although appeals had multiple periods of inactivity, the OIG identified the longest single period of inactivity in each appeal and then calculated the average for the 30 reviewed appeals in each phase.

Figure 4 shows the average of the longest single period of inactivity as a percentage of the average days to complete each phase. The average single period of inactivity ranged from 45 percent of the average total processing time in Phase 7, to 76 percent of the average total processing time in Phase 2.

Figure 4. Average Days of Longest Period of Inactivity as a Percentage of the Average Days to Complete Each Phase



Source: VA OIG analysis of periods of inactivity and days to complete each phase during first quarter of FY 2016

Examples of periods of inactivity for each stage follow.

- In one appeal in Stage 1, VARO staff established control of the appeal record on September 13, 2014. VARO staff did not take the next required action until August 6, 2015—327 days later. This period of inactivity

accounted for 71 percent of the time from when VBA received the NOD until it was resolved.

- In one appeal in Stage 2, a veteran requested his appeal be sent to the Board on October 31, 2014. VARO staff did not certify the appeal to the Board until December 7, 2015—402 days later. This period of inactivity accounted for 48 percent of the time from when VBA received the substantive appeal until it was certified.
- In one appeal in Stage 3, the Board remanded an appeal to VBA on February 12, 2015. VARO staff did not take action on the remand until September 24, 2015—224 days later. This period of inactivity accounted for 78 percent of the time from when VBA received the remand until the appeal was resolved.

The OIG also noted that Phase 5, which generally requires no other actions before issuing a new rating decision, still had an average of 81 days of inactivity. In addition, although VBA is required to prioritize remands because they are among the oldest cases, the OIG found significant periods of inactivity averaging 263 days in Phase 6 and 211 days in Phase 7.

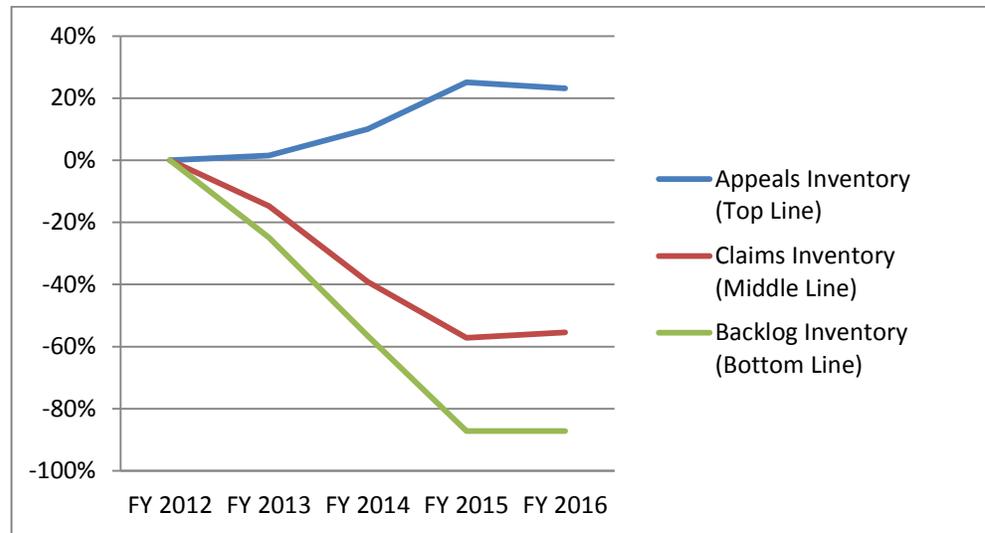
The OIG reviewed appeals that completed a phase during the first quarter of FY 2016. At the end of the first quarter of FY 2016, VBA reported total VARO appeals average days pending of 445.6 days. VBA reported this measurement had only improved by 1.4 days by the end of April 2017.

*VBA
Leadership
Prioritized
Other Work*

Delays in appeals processing occurred because VBA leadership prioritized the backlog of disability claims over all other workloads, including appeals. In 2010, the then Secretary of VA defined the VA claims backlog as any disability claim over 125 days old, and VA set a goal to provide all veterans with decisions on their claims in no more than 125 days. As a result, despite being aware of challenges in the appeals process and anticipating that processing more claims would result in more appeals, VA dedicated resources disproportionately to process the claims backlog.

Figure 5 illustrates that as VBA's disability claims and backlog inventories decreased, its appeals inventory increased.

Figure 5: Claims and Appeals Inventories Fiscal Years 2012–2016



Source: VA OIG analysis of VBA's pending claims and appeals data, FY 2012–FY 2016

During interviews with VARO management and staff, the OIG was told the increased appeals inventory was due to the increase in claims processing associated with VBA's initiatives to reduce the claims backlog. They also confirmed that appeals staff were diverted from working appeals in order to assist with the reduction of the claims backlog.

A former VA Deputy Under Secretary with VA's Office of Field Operations (OFO), serving in that role from September 2014 through July 2016, stated VBA maintained its existing appeals resources; however, VA had to make a choice about where to concentrate those resources. She stated that in 2012 the former USB made the decision to prioritize rating claims over any other work, including appeals. VBA's decision to prioritize the disability claims backlog negatively affected appeals processing timeliness. The OIG was concerned that delays in appeals processing would continue if VA did not adopt a more balanced approach to its workload.

Although reducing the claims backlog was the priority, the former Deputy Under Secretary also stated that performance metrics on the Director's Performance Dashboard were used to ensure VARO management and staff prioritized appeals.¹² The OIG found that even though the timeliness targets

¹² The Director's Performance Dashboard provides VBA managers with a concise report on performance categories for which each business line and each station have defined measures and performance targets.

for NODs and substantive appeals on the VARO Director's Performance Dashboard were not met in FYs 2014 and 2015, those targets were removed in FY 2016. Despite their removal from the VARO Director's Performance Dashboard, VA's Annual Performance Plan and Report dated February 2016,¹³ set FY 2016 targets for NODs average days pending of 437 days, and substantive appeals average days pending of 454 days. However, the OIG was concerned that without specific targets for each VARO, local management responsible for appeals processing would not be held accountable to ensure VA met its overall targets.

A Deputy Director with VBA's OFO told the OIG that VBA increased its appeals workforce from 1,195 to over 1,490; however, she did not think this would be sufficient to reduce the pending appeals inventory. In March 2016, VBA allocated funds for optional appeals overtime intended to reduce the oldest pending appeals in each appeal category.

In January 2017, VBA issued guidance regarding realignment of appeals policy and operational control to its Appeals Management Office. Under the realignment, the Appeals Management Office Director is the single accountable official responsible for overseeing VBA's appeals, allowing VBA to increase oversight and management attention in its appeals program. The guidance also directs that appeals employees must work exclusively on appeals and cannot be used to perform non-appeal tasks.¹⁴ However, as of June 28, 2017, the Appeals Management Office Director stated they had been instructed to put appeals team Decision Review Officers and Rating Veteran Service Representatives on claims production from July through September 2017 to support the VA Secretary's goal to reduce the rating claims backlog to 70,000 by the end of FY 2017. The VARO appeals teams were to support claims production through a combination of mandatory overtime and regular duty hours.

VA's *Annual Performance Plan and Report*¹⁵ reported surpassing its FY 2016 target for NODs average days pending and that the additional staffing and overtime funds contributed to this success. VA also reported reducing its substantive appeal average days pending by approximately 100 days although it did not meet its FY 2016 target. This report adjusted these targets for FY 2017 and established new targets for FY 2018. In addition, VBA's appeals realignment under the Appeals Management Office promotes accountability for appeals performance.

¹³ VA FY 2017/FY 2015 *Annual Performance Plan and Report* (APP&R).

¹⁴ VBA Letter 20-17-02, *Realignment of Appeals Policy and Operational Control to the Appeals Management Office*.

¹⁵ VA FY 2018/FY 2016 *Annual Performance Plan and Report* (APP&R), May 2017.

Recommendation 1 addresses the need for the acting Under Secretary for Benefits to continue to monitor the effectiveness of VBA's appeals realignment and increased resources towards meeting its established targets related to appeals processing timeliness.

*Ineffective
Procedures for
VAROs to
Identify Board
Grants*

If the Board grants an issue, the ARC or a VARO is responsible for implementing the decision. VARO staff the OIG interviewed stated that prior to VBA's shift to a paperless environment, paper files were shipped to the VARO along with the Board's decision, making it easy for staff to identify when action was required. However, since many appeals are now processed in a paperless environment, VARO management and staff the OIG interviewed stated there was no effective process for them to identify which Board grants they were responsible for processing. During our interview with a Deputy Director with VBA's OFO, he acknowledged there was an ineffective process for VAROs to determine which Board grants they were responsible for processing. He said that when the Board granted an appeal, Board staff closed out the VACOLS record. A VACOLS report was a workload management tool used to track and ensure these Board grants were processed. He stated VBA was required to sort through thousands of granted appeals to determine when action was necessary and by whom (i.e., the ARC or a specific VARO). As a result, VARO staff had difficulty identifying which granted appeals they were responsible for implementing.

In the absence of an effective method for VAROs to identify and track granted appeals they were responsible for implementing, significant and unnecessary delays often resulted. During this review of Phase 5, the OIG found the longest periods of inactivity generally occurred from the Board decision date to the date VBA identified and tracked the decision. For example, in one appeal, the Board granted an earlier effective date for a right shoulder condition on December 24, 2014. However, VARO staff did not establish a control in the electronic system until October 8, 2015—288 days later. Had it been easier for VARO staff to identify this Board grant, they may have implemented it more quickly. Therefore, the lack of an effective procedure for VAROs to identify and track Board grants contributed to delays in appellants receiving their benefits.

In March 2017, VBA began using a web-based application called Caseflow to identify and track Board grants. As this was after the scope of this review, the OIG could not assess the effectiveness of this application. Therefore, VBA should monitor its new application to ensure Board decisions are identified and tracked.

Recommendation 2 addresses the need for the acting Under Secretary for Benefits to assess the effectiveness of the Caseflow application to ensure Board decisions are identified and tracked.

**Appeal
Records
Prematurely
Closed**

During the review of Phase 2, the OIG estimated 17 percent of NODs resolved by an SOC were closed prematurely. The VACOLS records indicated either that an SOC was issued when there was no evidence of the document in the electronic file, or staff did not update VACOLS to show receipt of a timely substantive appeal. The appeals records were closed without providing notice to the appellants, and processing of the appeals stopped even though they required additional action.

For example, in one case, an SOC was issued on September 16, 2015. A timely substantive appeal was received from the veteran on September 18, 2015, and the appeal should have remained open. However, VBA staff did not update VACOLS to show the date the substantive appeal was received, and it was erroneously closed on December 1, 2015, without notifying the appellant. The appeal was eventually reactivated in March 2016 and was still pending as of August 2017. For another case, VBA staff prematurely closed the appeal record on December 1, 2015, and did not reactivate it until November 2, 2016—11 months later. Some appellants might never have received final decisions on their appeals if not for our review.

**Automated
Functionality to
Close VACOLS
Records**

Appeals were closed prematurely because VBA staff did not timely and accurately update VACOLS, and VA uses an automated function in VACOLS that relies on these updates to close appeal records. An interview with a VBA information technology specialist revealed at the end of each month VA automatically closed appeals when VACOLS indicated an SOC was issued and no timely substantive appeal was received. This method relies on VBA staff to accurately enter dates when SOCs are issued and promptly enter dates when timely substantive appeals are received. Thus, if VBA staff do not update VACOLS timely and accurately, VA could continue to prematurely close appeals records without notifying appellants.

Recommendation 3 addresses the need for the acting Under Secretary for Benefits to implement a plan to modify VBA's procedures for closing VACOLS appeal records due to lack of timely substantive appeals.

**Remands
Incorrectly
Recertified**

In Phase 7, recertifying remands to the Board, the OIG estimated 13 percent were not processed according to the Board's remand instructions. The majority of these errors the OIG identified occurred at the ARC, VBA's centralized processing center for remanded appeals. VBA staff are required to follow the Board's instructions and must ensure all requested actions have been accomplished in compliance with the remand.¹⁶ Recertifying these remands to the Board prematurely can cause additional delays because the Board may remand the appeal again due to noncompliance.

¹⁶ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section G, Topic 4, *Developing, Reviewing, and Transferring Remanded Appeals*.

For example, in one case the Board remanded an appeal for the second time in February 2014 for a VA medical examination with specific information. However, VARO staff recertified the appeal to the Board in November 2015—over one year and nine months later without obtaining the information as directed. The Board subsequently remanded the appeal for a third time in February 2016 due to noncompliance with the prior remand instructions. This additional delay could have been avoided if VBA staff had followed all of the remand instructions.

*Inattention to
Detail and
Ineffective
Oversight*

Generally, errors where VBA staff did not follow the Board's remand instructions occurred because of inattention to detail and ineffective oversight. VBA staff the OIG interviewed who processed Board remands knew they should ensure all remand instructions had been followed before recertifying appeals to the Board. VBA management and staff felt these errors were due to rushing and not paying attention in order to meet individual production standards.

VBA policy provides step-by-step procedures for recertification of appeals.¹⁷ The OIG interviewed staff from ARC who administratively recertified appeals to the Board. They provided us a handout and checklist for recertifying appeals; however, neither of these included a step for verifying that the Board's remand instructions were followed. When describing the quality review process for recertifying appeals, an ARC manager did not include ensuring the remand instructions were followed and specifically stated that staff are not looking at that. ARC management and staff also noted that the staff responsible for administratively recertifying appeals were not held to a quality standard. If staff are not held accountable for the accuracy of these actions, inattention to detail could continue to result in errors and delays, and VBA management might not identify trends where policy clarification and training may be needed.

Recommendation 4 addresses the need for the acting Under Secretary for Benefits to remind staff of their responsibilities when processing remands and recertifying appeals to the Board and to implement a plan to ensure compliance.

*Delays and
Errors
Negatively
Affected
Appellants*

VBA's lack of priority in processing appeals delayed appellants receiving timely resolution of their appeals, which in some cases resulted in appellants waiting years to receive favorable decisions and compensation. These delays negatively affected appellants, as some received significant additional payments. Delaying decisions also resulted in some appellants paying more of their benefits to accredited attorneys and agents who were entitled a percentage of their past-due benefits. Finally, appeals processing errors

¹⁷ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section F, Topic 3, *Certifying Substantive Appeals*.

resulted in VBA losing control of some appeals, misrepresented VA's reported statistics, and caused unnecessary delays in resolving appeals.

*Delayed
Decisions and
Compensation*

Excessive appeals processing times resulted in delays in appellants receiving decisions and additional associated compensation. Other than Stage 1, the phases the OIG reviewed were just a portion of the total time appellants waited for VBA to resolve their appeals. For example, one appeal the OIG reviewed in Phase 5 took VBA staff more than one year to implement a Board grant. However, it took approximately five years to resolve the appeal from the date VBA received the NOD. This overall period included some time that was outside of VBA's control, such as time spent with the Board; however, the appeal could have had additional delays in prior stages. For more information on the timeliness of the seven phases of appeals under VBA control, please see Appendix D.

VBA staff issued favorable decisions resulting in additional monetary benefits in each of the appeal phases the OIG reviewed. Based on sample projection results, the OIG estimated that overall VBA staff issued favorable decisions in 29 percent of appeal stages that were completed during the first quarter of FY 2016. The OIG estimated the appeals with favorable decisions resulted in additional compensation averaging approximately \$32,800 through January 2016, and \$650 in recurring additional monthly payments as of February 2016.

Table 1 shows the estimated percentage of appeals with favorable decisions, the cumulative additional payments that had resulted from those favorable decisions through January 2016, and the amount of recurring additional monthly payments as of February 2016.

Table 1. Favorable Appeal Decisions and Additional Payments

Appeal Phase	Percentage with Favorable Decisions	Cumulative Additional Payments (Millions)	Recurring Additional Monthly Payments (Millions*)
Phases 1 and 2	24%	\$89.3	\$2.1
Phases 3 and 4	12%	\$40.7	\$843,000
Phase 5	100%	\$120.2	\$1.6
Phases 6 and 7	49%	\$139.2	\$3.2
Overall	29%	\$389.4	\$7.7

Source: VA OIG statisticians' projection of favorable appeal decisions and resulting additional payments

Note: Each percentage is of a different size population, and payments do not total due to rounding.

**Except for additional monthly payments for appeals Phases 3 and 4.*

If an appellant is represented by an accredited agent or attorney, delays in processing their appeal can result in VA paying a greater amount of their benefits to the representative. Federal regulation authorizes direct payment of fees to accredited agents or attorneys who may charge reasonable fees for representation.¹⁸ The fee must be contingent on a favorable outcome for the appellant, and the total fee payable cannot exceed 20 percent of the amount of the past-due benefits awarded.¹⁹ Past-due benefits are calculated from the effective date of the increase in benefits to the date of the decision awarding benefits.²⁰ Since delays in VBA staff completing decisions that award benefits can result in an increase in past-due benefits, VBA may pay more of appellants' benefits to their representatives.

For example, in one case, the Board granted entitlement to increased benefits on November 7, 2014. However, VARO staff did not complete a rating decision implementing the Board's decision until October 16, 2015. During this period, another 343 days of past-due benefits accrued to which the appellant's attorney was entitled to 20 percent. Ultimately, VBA paid the attorney approximately \$4,200 in additional fees that accrued after the Board's decision. If VARO staff had completed the rating decision sooner, the appellant would have received more of what became past-due amounts because of the delay in the appeals process.

*Appeals
Counted as
Resolved When
Appellants Died*

In accordance with VBA's processing procedures, when an appellant dies before receiving a final decision on their appeal, staff are required to update VACOLS to indicate the appeal has been withdrawn due to the death of the appellant. This action closes the appeal record, and VBA counts these as resolved appeals. VBA reported resolving approximately 23,200 appeals during the first quarter of FY 2016. The OIG estimated approximately 1,600 of these appeal records (7 percent) were closed due to the death of the appellant. About 1,100 of these appeal records had been pending for more than one year when the appellants died. However, as there were no final decisions, the OIG could not determine whether these appellants would have received any additional benefits. In some cases where an appellant dies before receiving a final decision, VBA will open a new appeal record to continue the appeal if an eligible party requests substitution.²¹

*Loss of
Control and
Misrepresented
Statistics*

VA prematurely closed appeals records in VACOLS, thereby removing controls used to track and monitor pending work and misrepresenting VA's reported statistics for pending and resolved appeals. Based on sample projection results, the OIG estimated 2,300 appeals records were closed prematurely during the first quarter of FY 2016. The records incorrectly

¹⁸ Title 38, Code of Federal Regulations, § 14.636.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ M21-1 *Adjudication Procedures Manual*, Part VIII, Chapter 3, *Development for Eligibility of Accrued Benefits and the Right to Substitution*.

indicated VBA staff issued an SOC or the appellant did not submit a timely substantive appeal. VA considered these appeals resolved; however, appellants were likely unaware of that since VARO staff did not notify appellants at the time VA closed these appeals. As a result, these errors can cause significant delays in appeals processing and misrepresent appeals statistics. Furthermore, some appellants may never receive final decisions on their appeals if they are not identified and corrected.

For example, in one case VBA staff issued an SOC in June 2013 upholding a denial of service connection for a mental health condition. The appeal record was closed in September 2013 indicating no timely substantive appeal had been received; however, the veteran had timely submitted a substantive appeal in July 2013. VA received a reopened claim for a mental health condition in May 2015 and reactivated the appeal record in July 2015. The Board ultimately granted the appeal in November 2015, and VBA implemented the decision in December 2015. If the veteran had not submitted a reopened claim, VBA staff may not have identified this prematurely closed appeal, and the veteran may never have received their favorable decision.

*Additional
Avoidable
Delays*

VBA incorrectly recertified appeals records without following the Board's remand instructions. Based on sample projection results, the OIG estimated this error occurred in 630 appeals that were returned to the Board during the first quarter of FY 2016. These errors can cause significant delays if the appeals are remanded again due to noncompliance. The resulting delays could be easily avoided if staff simply followed the Board's instructions.

*Management
Views on
Timeliness
and Errors*

VBA management concurred with the OIG's analysis of when VBA staff took actions on each appeal and with the errors described above; however, they did not always agree with the OIG's conclusions that opportunities existed to improve the timeliness of completing the appeal phases.

A Deputy Director from VBA's OFO stated VBA faced an overwhelming increase in its appeals workload due to an increase in claims decisions produced in recent years. The Deputy Director indicated VA's current appeals process is seriously flawed and inefficient and staff cannot keep up with the increased workload. The Deputy Director stated VA needed congressional action to provide additional resources and enact legislation in order to address the current appeals inventory and simplify and modernize the process for all veterans. She agreed that it is not good for appeals to sit without action, but she stated VA had finite resources. The OIG acknowledged that VA had finite resources; however, VBA's choice to prioritize other work does not negate our conclusion that periods of inactivity demonstrate that opportunities existed to improve the timeliness of completing the appeal phases.

Conclusion

Following the OIG's prior audit, VBA continued to focus on the rating claims backlog at the expense of its appeals workload. This contributed to lengthy periods of inactivity accounting for large percentages of appeals processing times. Since many appeals ultimately resulted in favorable decisions with significant additional compensation, these workload choices negatively affected appellants waiting for these decisions. Although VBA has taken some steps to increase its focus on appeals, recent actions demonstrate that the rating claims backlog is still a higher priority. The OIG is concerned that appeals processing times will not improve unless senior leaders adopt a more balanced approach to VBA's workloads.

Recommendations

1. The OIG recommended the acting Under Secretary for Benefits continue to monitor the effectiveness of the Veterans Benefits Administration's appeals realignment and increased resources, towards meeting its established targets related to appeals processing timeliness.
2. The OIG recommended the acting Under Secretary for Benefits monitor the effectiveness of the Caseflow application to ensure Board of Veterans' Appeals decisions are timely controlled and assigned to the appropriate VA Regional Office or the Appeals Resource Center.
3. The OIG recommended the acting Under Secretary for Benefits implement a plan to amend Veterans Benefits Administration's procedures for closing appeals records to prevent appeals being closed prematurely.
4. The OIG recommended the acting Under Secretary for Benefits remind staff of their responsibilities when processing remands and recertifying appeals to the Board of Veterans' Appeals, and implement a plan to ensure compliance.

Management Comments

The Executive in Charge (EIC), formerly known as the acting Under Secretary for Benefits, concurred with Recommendation 1. The EIC stated the oversight of national appeals had been realigned under the Appeals Management Office in FY 2017. Furthermore, the EIC reported VBA senior leaders meet monthly to review and assess the status of appeals production. In addition, the EIC submitted a graph showing an improvement in FY 2017 legacy appeals production compared to FY 2016 production. Finally, the EIC submitted slides presented to the EIC for the months of October through December 2017 that included data regarding average days pending in each of VBA's appeals stages. The EIC requested closure of this recommendation.

The EIC concurred with Recommendation 2. The EIC reported Caseflow Dispatch Program facilitates the Board transfer of appeals back to VBA for

the processing of grants of benefits and remands. The EIC stated the Dispatch Program is a great improvement from the legacy system that was hindered by inconsistent tracking of these types of appeals. The EIC submitted a third quarter 2017 Caseflow Product Impact Statement containing metrics indicating some improvements following VA's introduction of the Caseflow application. Additionally, the EIC agreed to continue to monitor the effectiveness of the application. The EIC requested closure of this recommendation.

The EIC concurred with Recommendation 3. The EIC reported the Appeals Management Office implemented a new end product framework for appeals in May 2017 to more efficiently capture each stage of an appeal, and distinguish appeals pending in VBA before and after Board review. Furthermore, the EIC made the creation and tracking of end products in Veterans Benefits Management System mandatory, whereas it was previously optional in some stages. Finally, the EIC stated VBA was in the process of updating the pre-site visit protocol to include a review of closed appeals records. The EIC requested closure of this recommendation.

The EIC concurred in part with Recommendation 4. The EIC stated that remand instructions should be properly addressed, and indicated that the employees responsible for ensuring that remand instructions have been followed are rating veterans service representatives and veterans service representatives. The EIC stated the appeals realignment has placed appeals-related training and quality assurance under the oversight of the Appeals Management Office and that the current quality process addresses errors for failure to follow remand instructions. Furthermore, the EIC indicated quality review specialists conducted more than eight hours of training on remand instructions in June 2017, appeals staff were reminded of their responsibilities on the January 10, 2018, national Appeals Monthly Conference Call, and they will continue monthly error trend training. Finally, the EIC stated the Appeals Management Office noted they revised the FY 2017 claims assistant performance standards to emphasize production, quality, and training. The EIC requested closure of this recommendation.

Additionally, the EIC noted that the OIG report did not assess the statutory features of the current administrative appeals process for impact on timeliness. Rather, the OIG found that there were "significant periods of inactivity throughout all phases" of appeals, which it defined as, "when VBA staff could have taken action on an appeal to when they actually took an action." The EIC explained that this finding is misleading because it implies, without further analysis, that VBA could have timely processed appeals, in the current process, with its finite resources. In fact, for the past few years, VA has been clear that the current appeals process is broken and provides veterans a frustrating experience. To address this problem, VBA and the Board of Veterans' Appeals worked with Veterans Service Organizations,

advocacy groups, congressional staff, and other stakeholders to design a new appeals process that is timely, transparent, and fair. These efforts resulted in the enactment of the Veterans Appeals Improvement and Modernization Act of 2017, which VA will implement in February 2019. While the EIC agrees with the OIG's suggestion that VBA had opportunities for improved timeliness in its appeals processing, which VBA has already demonstrated with its realignment of appeals and the resulting 24-percent increase in FY 2017 production, it does not agree that VBA could have timely processed appeals in the current process with its finite resources. The legacy appeals system does not allow the Agency to drive timeliness. This is a factor of veterans' choice and the inefficient "churn" inherent in the system.

**OIG
Response**

The EIC's comments and actions are responsive to the recommendations. Based on the documentation provided, the OIG considers Recommendations 1-3 closed. The OIG will consider closing Recommendation 4 after receiving and reviewing additional supporting documentation. Appendix E contains the full text of the EIC's response. The OIG will follow up with the implementation of the recommendations as required.

The OIG disagrees with the EIC's additional comments. The OIG did not state that VBA could have timely processed appeals in the current process with its finite resources. Rather, the OIG report states that VBA dedicated resources disproportionately to process the claims backlog, despite being aware of challenges in the appeal process, and anticipating that processing more claims would result in more appeals. Ultimately, VBA's decision to prioritize the disability claims backlog negatively affected appeals processing timeliness. This workload decision does not negate the OIG's conclusion that periods of inactivity demonstrated that opportunities existed to improve the timeliness of completing the appeal phases.

Appendix A Background

VA's Appeals Process

Veterans and other claimants have the right to appeal decisions made by VA. The first step in the appeals process is for the claimant to file an NOD.²² Once the NOD is filed, the appellant has the option to choose the traditional appellate review process, or he or she may elect a decision review officer review.²³ A decision review officer review, or *de novo* review, is a new and complete review of the appealed issues with no deference given to the prior decision.²⁴ If VBA staff do not fully grant the appeal, they will issue an SOC.²⁵ An SOC is an explanation of the decision made, providing the appellant with a complete understanding of the decision.²⁶ In response to the SOC, an appellant may timely file a substantive appeal in order to perfect the appeal.²⁷ If the appellant does not respond, VA will close the record.

Following receipt of the substantive appeal, VARO staff review the appeal and certify that it is ready for review by the Board.²⁸ Before certification to the Board, VARO staff must provide the appellant's accredited representative with 10 days to submit a statement.²⁹ Unless there is a Board hearing pending, VARO staff must immediately transfer the appellate record to the Board once all of the steps of the certification process are completed.³⁰

When the Board issues a favorable decision, it returns the claims folder to the VARO or the ARC for implementation of the decision.³¹ If the Board determines a remand is in order, it will send the appeal directly to ARC for processing.³² However, in some circumstances, ARC staff transfer the

²² M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section A, Topic 2, *Appeal Process*.

²³ *Ibid.*

²⁴ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section A, Topic 1, *Common Appeals Terminology and Definitions*.

²⁵ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section D, Topic 1, *Jurisdiction and Cause for Issuing an SOC*.

²⁶ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section A, Topic 1, *Common Appeals Terminology and Definitions*.

²⁷ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section E, Topic 1, *Substantive Appeal*.

²⁸ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section F, Topic 3, *Certifying Substantive Appeals*.

²⁹ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section F, Topic 2, *VA Form 646, Statement of Accredited Representative in Appealed Cases*.

³⁰ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section F, Topic 4, *Transferring the Appellate Record to BVA [Board of Veterans' Appeals]*.

³¹ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section G, Topic 1, *Reviewing and Processing BVA Decisions*.

³² M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section G, Topic 3, *Remanded Appeals*.

remands to the VAROs.³³ VARO and ARC management are responsible for close control and timely processing of Board remanded appeals.³⁴ Following processing of the remand, staff will complete a supplemental statement of the case for any issue that remains denied.³⁵ The appeal is then recertified and returned to the Board.³⁶

In 1988, Congress established judicial review of final decisions of the VA by creating the United States Court of Veterans Appeals, now known as the U.S. Court of Appeals for Veterans Claims.³⁷ This court has jurisdiction over all appeals of VBA benefits and can affirm, reverse, or remand a final Board decision.³⁸

**VBA's Backlog
Reduction
Plan**

In 2010, the former Secretary of Veterans Affairs established a goal to reduce the average disability claims processing time to 125 days. The target year to reduce the backlog (defined as rating claims pending more than 125 days) was 2015. In April 2013, VBA implemented an initiative to address its oldest claims. The objective of the initiative was for VBA staff to process within 60 days all claims pending more than two years. VAROs were instructed to devote all rating veterans service representatives and as many veterans service representatives as needed to accomplish the objective. In June 2013, VBA began a second initiative to address all disability claims pending more than one year. VBA leadership directed VAROs to develop “an aggressive plan” to complete these disability claims.

For the period from the end of FY 2012 to the end of FY 2016, VBA reported its rating claims inventory decreased from 846,590 to 377,107 (55 percent), and the backlog inventory decreased from 557,191 to 71,609 (87 percent). Over this time VBA's appeals inventory increased from 254,604 to 313,545 (23 percent).

**Prior OIG
Report**

The OIG's prior report, *Audit of VA Regional Offices' Appeals Management Processes* (Report No. 10-03166-75, May 30, 2012), concluded that opportunities existed for VBA to improve timeliness in processing appeals. The OIG found VARO managers did not assign enough staff to process appeals and diverted appeals staff to compensation claims processing, which VBA considered a higher priority. Following that report, VBA reported having 254,604 appeals pending nationwide, and an overall average of

³³ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section G, Topic 3, *Remanded Appeals*.

³⁴ *Ibid.*

³⁵ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section G, Topic 4, *Developing, Reviewing, and Transferring Remanded Appeals*.

³⁶ *Ibid.*

³⁷ M21-1 *Adjudication Procedures Manual*, Part I, Chapter 5, Section I, Topic 1, *General Information on CAVC* [Court of Appeals for Veterans Claims].

³⁸ *Ibid.*

903.1 days to resolve appeals at the end of FY 2012. By the end of FY 2015, VBA reported its pending appeals had increased to 318,532 nationwide, and the overall average days to resolve appeals had risen to 935.9.

Appendix B Scope and Methodology

Scope

The OIG conducted this review from January 2016 through November 2017. The OIG focused on appeals related to rating decisions within seven phases of the appeals process under VBA's timeliness control. The OIG identified a universe of about 45,200 appeals that completed a phase during the first quarter of FY 2016.

Methodology

To accomplish the objective, the OIG reviewed applicable laws, regulations, policies, procedures, and guidelines. The OIG reviewed VBA's appeals processing policies, VARO workload management plans, training materials, and databases. The OIG interviewed officials from VBA and the Board. The OIG also interviewed VARO directors, supervisors, and appeals staff to obtain an understanding of work performed in each phase. The OIG conducted onsite interviews with VBA management and staff at six VAROs in April 2016: Chicago, Illinois; Honolulu, Hawaii; Jackson, Mississippi; Montgomery, Alabama; Togus, Maine; and White River Junction, Vermont. The OIG statisticians selected the offices by segregating the universe of VAROs into three groups based on the ratio of appeals inventory to rating claims inventory, then using the Microsoft Excel random number generator. The OIG also judgmentally selected the ARC for onsite interviews because the ARC operated as the centralized processing center for remanded appeals.

In collaboration with OIG statisticians, the OIG developed a sampling methodology that required the review of a statistically selected random sample of 30 appeals from each phase—a total of 210 appeals. Although each selected appeal completed a phase during the first quarter of FY 2016, not all of the appeals were fully resolved. Appeals that completed Phases 4 or 7 were transferred to the Board for further processing. Appeals that completed Phase 5 may have remained pending if there were also remanded issues. The OIG analyzed the time it took VBA staff to complete processing actions in these phases, such as establishing or managing controls in the electronic systems, requesting or obtaining evidence, making decisions, processing payment adjustments, communicating with appellants, and transferring cases to the Board. In addition, the OIG identified the longest period of inactivity by VBA in each appeal. For each of the appeals in these samples, the OIG reviewed electronic records as well as paper claims folders. Appendix C provides details on the statistical sampling methodology and projections.

Fraud Assessment

The OIG assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this review. The OIG exercised due diligence in staying alert to any fraud indicators, and did not identify any instances of fraud during the review.

Data Reliability

The OIG used computer-processed data from VACOLS, as well as from VBA's Corporate Database. To test for reliability, the OIG reviewed the data to determine whether any data were missing from key fields, including any calculation errors, or were outside the time frame requested. The OIG also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the OIG compared appellants' names, file numbers, Social Security numbers, VARO numbers, and various dates as provided in the data received, with information contained in the 210 appeals the OIG reviewed. Our testing of the data disclosed that they were sufficiently reliable for our review objectives.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix C Statistical Sampling Methodology

<i>Sampling Methodology</i>	The OIG reviewed a representative sample of appeal records that were under VBA's control in one of seven phases of the appeals process to determine whether opportunities existed for VBA staff to improve the timeliness of appeals processing. The OIG used statistical sampling to estimate the populations, to quantify the number of appeals with errors, and to project the potential monetary effect.
<i>Population</i>	The population of appeals records that completed a phase during the first quarter of FY 2016 was 45,173.
<i>Sampling Design</i>	The OIG selected and reviewed a stratified random sample of 30 appeal records from each phase, for a total of 210 records. Within each phase, all appeal records had a known probability of selection to allow making projections.
<i>Weights</i>	The OIG calculated estimates in this report using weighted sample data. Sampling weights are computed by taking the product of the inverse of the probabilities of selection at each stage of sampling.
<i>Projections and Margins of Error</i>	<p>The OIG used WesVar software to calculate the weighted population estimates and associated sampling errors. WesVar employs replication methodology to calculate margins of error and confidence intervals that correctly account for the complexity of the sample design.</p> <p>The margins of error and confidence intervals are indicators of the precision of the estimates. If the OIG repeated this review with multiple samples, the estimates and confidence intervals would differ for each sample, but the confidence intervals would include the true population value 90 percent of the time. For example, 90 percent of all possible samples we could select would yield an estimate of NODs related to rating decisions that were resolved with a grant, withdrawal, or death during the first quarter of FY 2016 between 4,171 and 5,853.</p>

Table 2 shows the review projections for populations of seven appeal phases.

Table 2. Summary of Projections and Confidence Intervals for Populations for Phases 1 through 7

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Phase 1	5,012	841	4,171	5,853	30
Phase 2	13,842	1,278	12,564	15,120	30
Phase 3	1,119	201	918	1,320	30
Phase 4	11,277	621	10,656	11,898	30
Phase 5	2,673	147	2,526	2,761	30
Phase 6	1,724	159	1,565	1,883	30
Phase 7	4,736	0	4,736	4,736	30
Overall	40,383	1,677	38,706	42,060	210

Source: VA OIG statisticians' projection of estimated populations. Our data were obtained from VACOLS and VBA's Corporate Database.

Note: The upper limit of the population of Phase 5 was adjusted based on the universe of Board grants implemented by VBA.

Table 3 shows the review projections for favorable decisions and monetary effect in Stage 1.

Table 3. Summary of Projections and Confidence Intervals for Stage 1

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Percentage with Favorable Decisions	24.2%	8.1%	16.1%	32.2%	60
Cumulative Additional Payments	\$89,258,539	\$41,815,159	\$47,443,380	\$131,073,698	60
Recurring Additional Monthly Payments	\$2,088,600	\$1,067,115	\$1,021,485	\$3,155,716	60

Source: VA OIG statisticians' projection of favorable decisions and monetary effect. Our data were obtained from VACOLS.

Table 4 shows the review projections for favorable decisions and monetary effect in Stage 2.

Table 4. Summary of Projections and Confidence Intervals for Stage 2

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Percentage with Favorable Decisions	11.8%	7.1%	4.6%	18.9%	60
Cumulative Additional Payments	\$40,692,392	\$27,637,431	\$13,054,961	\$68,329,822	60
Recurring Additional Monthly Payments	\$843,239	\$552,263	\$290,976	\$1,395,502	60

Source: VA OIG statisticians' projection of favorable decisions and monetary effect. Our data were obtained from VACOLS.

Table 5 shows the review projections for favorable decisions and monetary effect in Phase 5.

Table 5. Summary of Projections and Confidence Intervals for Phase 5

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Percentage with Favorable Decisions	100%	0%	100%	100%	30
Cumulative Additional Payments	\$120,231,160	\$49,479,157	\$70,752,002	\$169,710,317	30
Recurring Additional Monthly Payments	\$1,632,262	\$646,432	\$985,830	\$2,278,694	30

Source: VA OIG statisticians' projection of favorable decisions and monetary effect. Our data were obtained from VBA's Corporate Database.

Table 6 shows the review projections for favorable decisions and monetary effect in Phases 6 and 7.

Table 6. Summary of Projections and Confidence Intervals for Phases 6 and 7

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Percentage with Favorable Decisions	49.1%	11.3%	37.8%	60.4%	60
Cumulative Additional Payments	\$139,179,124	\$53,072,633	\$86,106,492	\$192,251,757	60
Recurring Additional Monthly Payments	\$3,177,184	\$1,251,076	\$1,926,108	\$4,428,260	60

Source: VA OIG statisticians' projection of favorable decisions and monetary effect. Our data were obtained from VACOLS.

Table 7 shows the review projections for favorable decisions, monetary effect, and appeals records closed due to death in Phases 1 through 7.

**Table 7. Summary of Projections and Confidence Intervals
for Stage 1 through 3**

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Percentage with Favorable Decisions	29.4%	4.7%	24.7%	34.1%	210
Cumulative Additional Payments	\$389,361,215	\$88,188,584	\$301,172,631	\$477,549,800	210
Average Additional Payment Per Appeal with Favorable Decision	\$32,816	\$7,254	\$25,562	\$40,071	210
Recurring Additional Monthly Payments	\$7,741,286	\$1,851,160	\$5,890,125	\$9,592,446	210
Average Recurring Additional Monthly Payments Per Appeal with Favorable Decision	\$652	\$146	\$506	\$799	210
Appeals Records Closed Due to Death	1,623	181	1,442	1,803	210
Pending Over One Year at Death	1,065	181	884	1,245	210
Percentage of Appeals Records Closed Due to Death	7%	0.8%	6.2%	7.8%	210

Source: VA OIG statisticians' projection of favorable decision, monetary effect, and appeals records closed due to death. Our data were obtained from VACOLS and VBA's Corporate Database.

Table 8 shows the review projection for appeals records that were closed prematurely in Phase 2.

Table 8. Summary of Projections and Confidence Intervals for Phase 2

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Appeals Records Closed Prematurely	2,307	1,594	713	3,901	30
Percentage of Appeals Records Closed Prematurely	16.7%	11.4%	5.2%	28.1%	30

Source: VA OIG statisticians' projection of appeals records closed prematurely. Our data were obtained from VACOLS.

Table 9 shows the review projection for appeals records that were incorrectly recertified to the Board without following the Board's remand instructions.

Table 9. Summary of Projections and Confidence Intervals for Phase 7

Results	Projections	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Appeals Records Incorrectly Recertified	631	494	138	1,125	30
Percentage of Appeals Records Incorrectly Recertified	13.3%	10.4%	2.9%	23.8%	30

Source: VA OIG statisticians' projection of appeals records incorrectly recertified. Our data were obtained from VACOLS.

Appendix D Timeliness of the Seven Phases of Appeals Under VBA Control

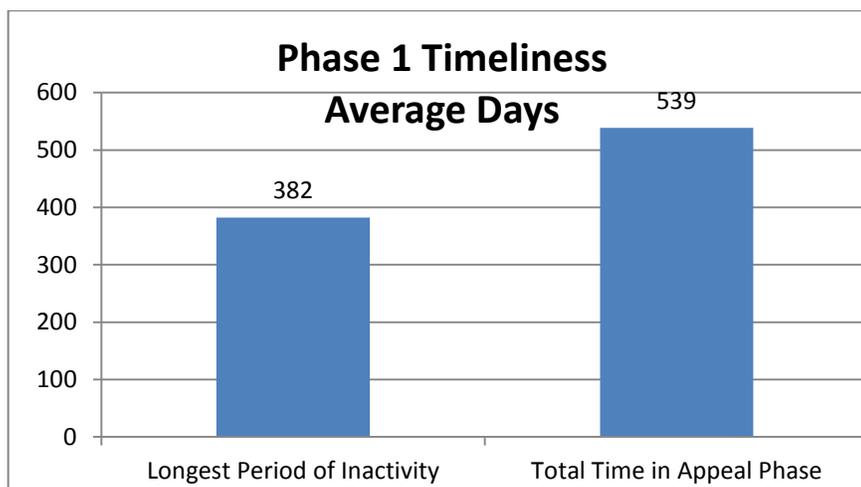
In reporting the timeliness of appeals, not all periods of inactivity were caused by VBA. For example, a claimant has one year to file an NOD from the time he or she is notified of a decision. The time from the decision notification until receipt of the NOD is not within VBA's control. Therefore, the OIG summarized only those periods of inactivity caused by VBA.

A period of inactivity is the number of days between actions taken by VBA staff to move the appeal to the next step in processing. For example, receipt of evidence does not equate to an action by VBA staff to move the appeal to the next step; however, sending a development letter requesting medical evidence is considered an action moving the appeal to the next step.

For this review, the total time in each phase is the number of days between the beginning and completion of the phase.

Phase 1 includes appeal records closed from receipt of the NODs to when they were resolved without issuing an SOC. Figure 6 reflects the OIG's analysis of the average number of days for the following measures for Phase 1 appeals: the longest period of inactivity and the total time to complete the phase.

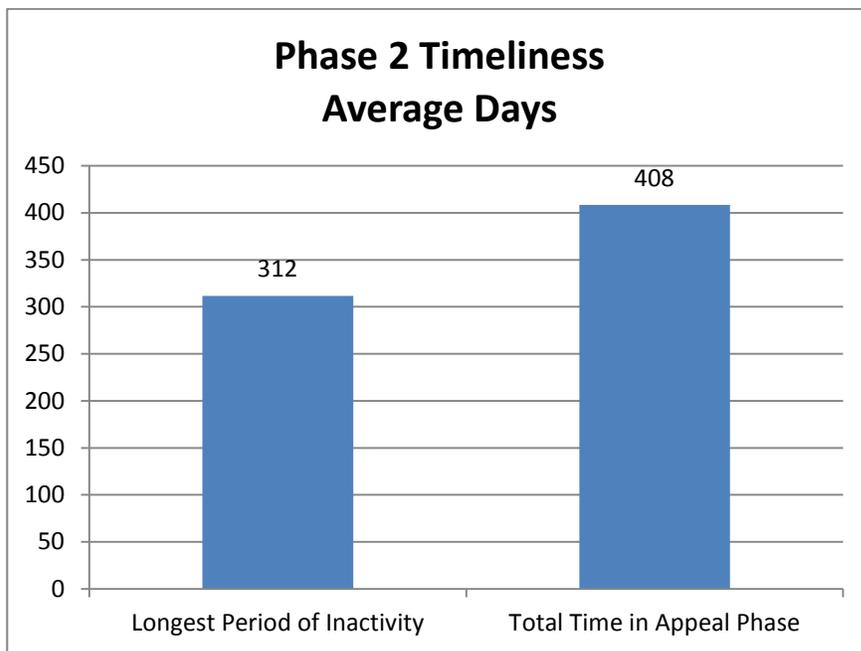
Figure 6. Summary of Average Number of Days for Phase 1 Timeliness



Source: VA OIG analysis of Phase 1 timeliness for first quarter of FY 2016

Phase 2 includes appeal records closed from receipt of the NODs to when they were resolved after issuing an SOC. Figure 7 reflects the OIG’s analysis of the average number of days for the following measures for Phase 2 appeals: the longest period of inactivity and the total time to complete the phase.

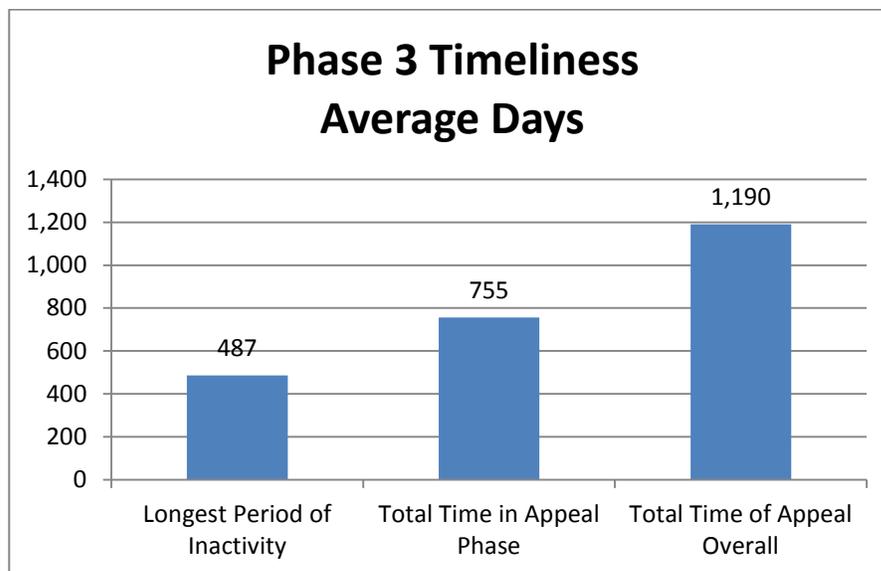
Figure 7. Summary of Average Number of Days for Phase 2 Timeliness



Source: VA OIG analysis of Phase 2 timeliness for first quarter of FY 2016

Phase 3 includes appeal records closed from receipt of the substantive appeals to when they were resolved without certifying them to the Board. Figure 8 reflects the OIG's analysis of the average number of days for the following measures for Phase 3 appeals: the longest period of inactivity, the total time to complete the phase, and the total time of the appeal overall from receipt of the NOD to completion of the phase.

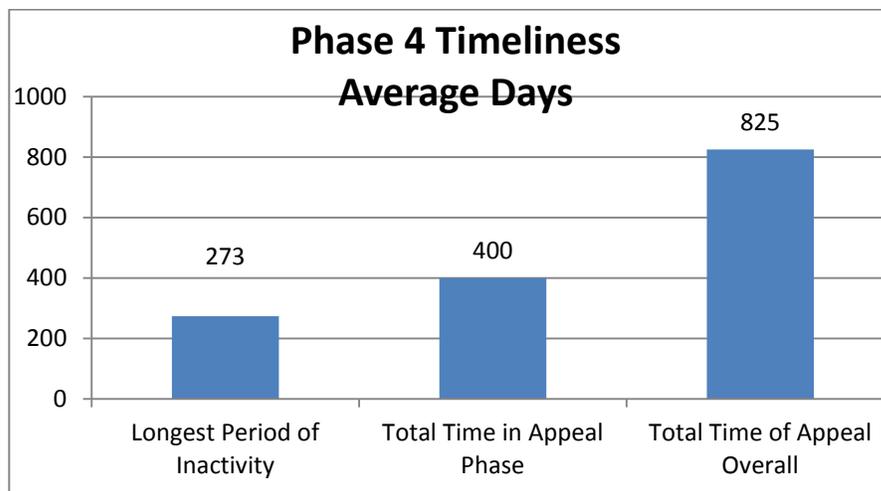
Figure 8. Summary of Average Number of Days for Phase 3 Timeliness



Source: VA OIG analysis of Phase 3 timeliness for first quarter of FY 2016

Phase 4 includes pending appeals from receipt of the substantive appeals to when they were certified to the Board. Figure 9 reflects the OIG’s analysis of the average number of days for the following measures for Phase 4 appeals: the longest period of inactivity, the total time to complete the phase, and the total time of the appeal overall from receipt of the NOD to completion of the phase.

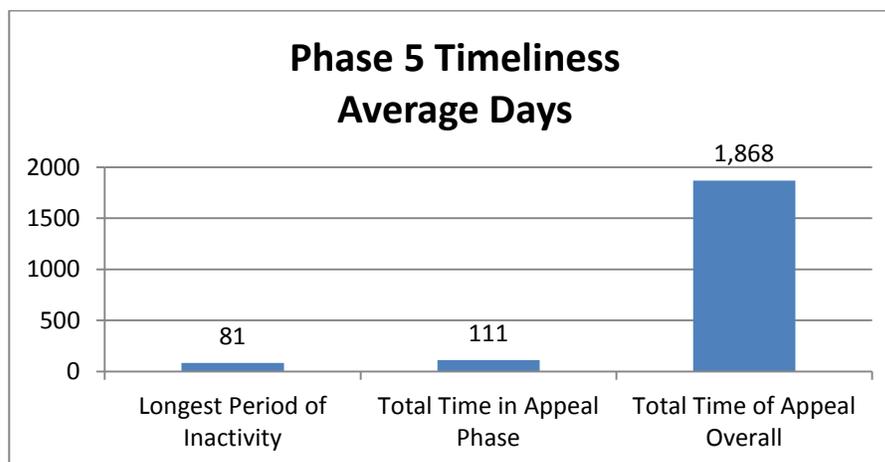
Figure 9. Summary of Average Number of Days for Phase 4 Timeliness



Source: VA OIG analysis of Phase 4 timeliness for first quarter of FY 2016

Phase 5 includes favorable Board decisions to final implementation. Figure 10 reflects the OIG’s analysis of the average number of days for the following measures for Phase 5 appeals: the longest period of inactivity, the total time to complete the phase, and the total time of the appeal overall from receipt of the NOD to completion of the phase.

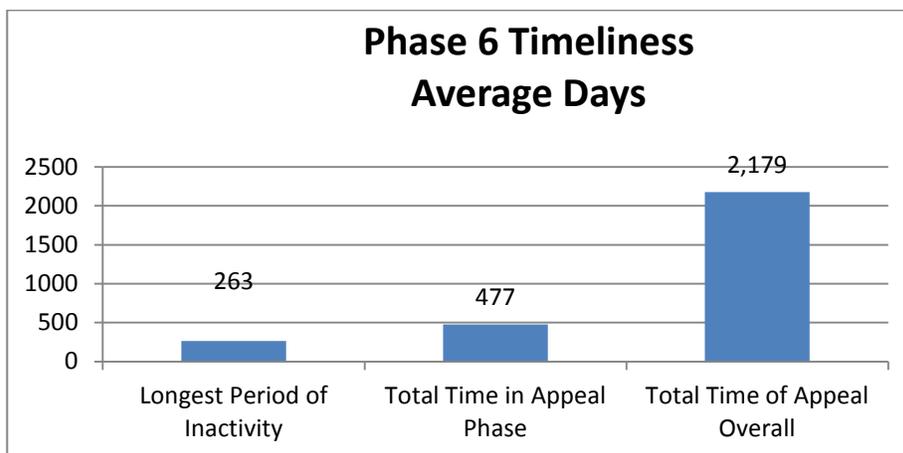
Figure 10. Summary of Average Number of Days for Phase 5 Timeliness



Source: VA OIG analysis of Phase 5 timeliness for first quarter of FY 2016

Phase 6 includes appeal records from receipt of the most recent Board or the U.S. Court of Appeals for Veterans Claims remands to when they were resolved. Figure 11 reflects the OIG’s analysis of the average number of days for the following measures for Phase 6 appeals: the longest period of inactivity, the total time to complete the phase, and the total time of the appeal overall from receipt of the NOD to completion of the phase.

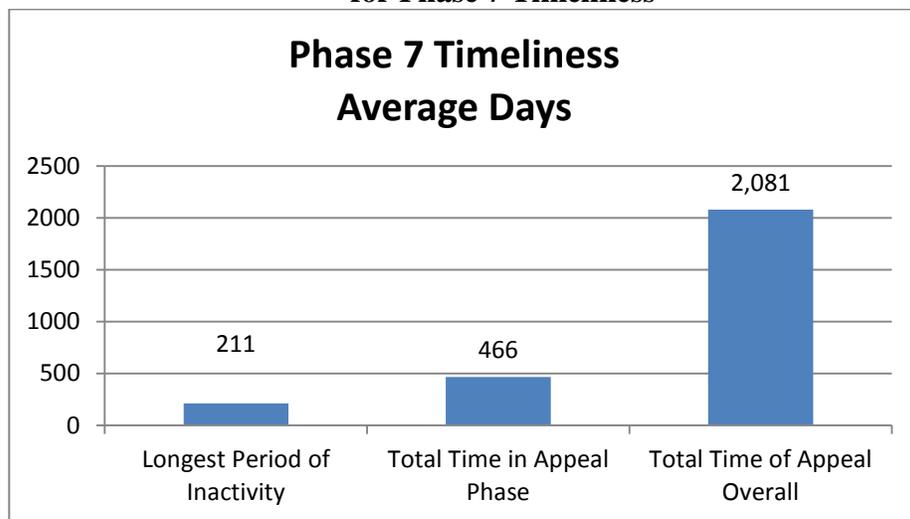
Figure 11. Summary of Average Number of Days for Phase 6 Timeliness



Source: VA OIG analysis of Phase 6 timeliness for first quarter of FY 2016

Phase 7 includes pending appeals from receipt of the most recent Board remands to when they were returned to the Board. Figure 12 reflects the OIG’s analysis of the average number of days for the following measures for Phase 7 appeals: the longest period of inactivity, the total time to complete the phase, and the total time of the appeal overall from receipt of the NOD to completion of the phase.

Figure 12. Summary of Average Number of Days for Phase 7 Timeliness



Source: VA OIG analysis of Phase 7 timeliness for appeals for first quarter of FY 2016

Appendix E Management Comments

Department of Veterans Affairs Memorandum

Date: January 12, 2018

From: Veterans Benefits Administration (20)

Subj: OIG Draft Report – Review of Timeliness of the Appeals Process – VAIQ 7861404

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

1. Attached is VBA's response to the OIG Draft Report: Review of Timeliness of the Appeals Process.
2. Questions may be referred to Margaret Oberlander, Program Analyst, at 461-9271.

(Original signed by:)

Executive in Charge

Attachments

For accessibility, the format of the original documents in this appendix has been modified to fit in this document, to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
Review of Timeliness of the Appeals Process

VBA provides the following comments:

VBA notes that the Office of Inspector General (OIG) report, Review of Timeliness of the Appeals Process, did not assess the statutory features of the Department of Veterans Affairs' (VA) current administrative appeals process for impact on timeliness. Rather, OIG found that there were, "significant periods of inactivity throughout all phases" of appeals, which it defined as, "when VBA staff could have taken action on an appeal to when they actually took an action." However, VBA explained that this finding is misleading because it implies, without further analysis, that VBA could have timely processed appeals, in the current process, with its finite resources. In fact, for the past few years, VA has been clear that the current appeals process is broken and provides Veterans a frustrating experience. To address this problem, VBA and the Board of Veterans' Appeals (Board) worked with Veterans Service Organizations, advocacy groups, congressional staff, and other stakeholders to design a new appeals process that is timely, transparent, and fair. These efforts resulted in the enactment of the Veterans Appeals Improvement and Modernization Act of 2017, which VA will implement in February 2019.

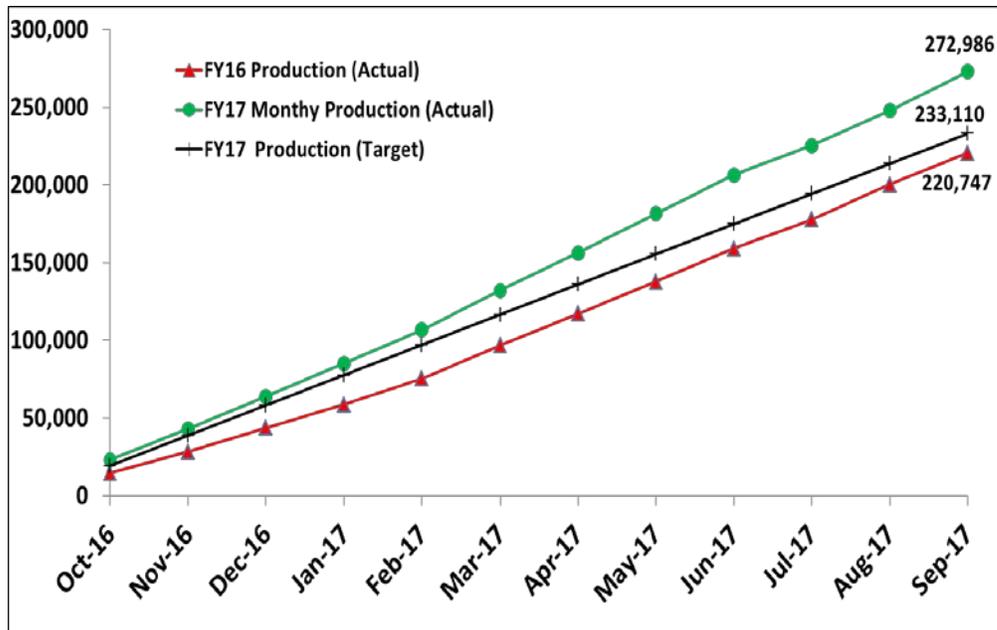
While VBA agrees with OIG's suggestion that VBA had opportunities for improved timeliness in its appeals processing, which VBA has already demonstrated with its realignment of appeals and the resulting 24-percent increase in fiscal year (FY) 2017 production, it does not agree that VBA could have timely processed appeals in the current process with its finite resources. The legacy appeals system does not allow the Agency to drive timeliness. This is a factor of Veterans' choice and the inefficient "churn" inherent in the system.

The following comments are submitted in response to the recommendations in the OIG draft report:

Recommendation 1: The OIG recommended the Acting Under Secretary for Benefits continue to monitor the effectiveness of the Veterans Benefits Administration's appeals realignment and increased resources, towards meeting its established targets related to appeals processing timeliness.

VBA Response: Concur. VBA implemented this recommendation. VBA's Executive in Charge - formerly known as the Acting Under Secretary for Benefits (USB) continues to monitor the success of VBA's appeals realignment. In early FY 2017, VBA realigned its appeals policy, and oversight of its national appeals operations, under a single office, the Appeals Management Office (AMO). The realignment positions VBA to focus oversight of program operational work, standardize policies and procedures to facilitate consistent benefits delivery and improve customer satisfaction, and increase the ability to make data-driven decisions. In addition, the realignment promotes accountability for appeals performance by having one VBA office responsible for policy development and implementation. It provides a clear division between appeals and non-appeals work.

As part of an ongoing monitoring process, the Executive in Charge, and other VBA senior leaders, meet monthly to review and assess the status of claims and appeals production in a "STAT" review. The improved focus, prioritization, and oversight helped VBA increase its FY 2017 appeals production by 24 percent (17 percent above FY 2017 target production), decrease its appeals inventory by 10 percent, decrease its VA Form 9 average days pending (ADP) by 27 percent and decrease its remand ADP by 17 percent. During the period July 2017 through August 2017, when appeals personnel were placed on mandatory overtime and tasked with assisting in reducing the rating claims backlog to 70,000, appeals production continued to increase while completing 19,120 backlog-rating decisions. The following graph represents FY 2017 legacy appeals production (appeal actions) compared to FY 2016 production.



Please see the attached USB STAT agendas and slides presented to the USB for the months of October, November, and December 2017 (Attachments A through F).

VBA requests closure of this recommendation.

Recommendation 2: The OIG recommended the Acting Under Secretary for Benefits monitor the effectiveness of the Caseflow application to ensure Board of Veterans' Appeals decisions are timely controlled and assigned to the appropriate VA Regional Office or the Appeals Resource Center.

VBA Response: Concur. VBA actively monitors the Caseflow application and communicates with US Digital Service (USDS), which is the developer of the suite of web-based tools. Caseflow serves to increase timely, accurate, appeals decisions, and improve the Veteran experience. Caseflow Certification certifies 92 percent of paperless appeals transferred to the Board, ensuring all required documents are present and Veterans' hearing requests and representatives are accurate. Appeals certified with Caseflow have a 1.8-percent error rate, down from 40.6 percent, prior to the launch of Caseflow Certification.

Caseflow Dispatch facilitates the Board transfer of appeals back to VBA for the processing of grants of benefits and remands. Prior to Caseflow Dispatch, there was a gap in tracking and managing paperless remands and grants that were being returned to VBA. The Dispatch program establishes an end product (EP) and transfers the EP to the VBA regional office of jurisdiction. This is especially useful in tracking full grants, where the Veterans Appeals Control and Locator System (VACOLS) record is closed once the Board makes the decision. This is a great improvement from the legacy system, which was hindered by inconsistent tracking of these types of appeals and a subset of cases experiencing long delays. In July 2017, the 75th percentile time to full grant or remand establishment in VBA was five days, which was down from 25 days prior to the launch of Caseflow Dispatch.

The attached USDS third quarter product statement outlines some of the data and improvements that VA has seen following the introduction of Caseflow applications (Attachment G). VBA will continue to work with USDS to monitor the effectiveness of the Certification and Dispatch applications. VBA requests closure of this recommendation.

Recommendation 3: The OIG recommended the Acting Under Secretary for Benefits implement a plan to amend Veterans Benefits Administration's procedures for closing appeals records to prevent appeals being closed prematurely.

VBA Response: Concur. OIG notes several circumstances where the VACOLS record was either automatically closed or was closed in error. VACOLS is a database for tracking appeals and monitoring pending appeals workloads that is programmed and maintained by the Board. VBA does not control improvements or changes made to the VACOLS system. Moreover, it is a legacy system and currently the Board is working with USDS to reduce the Board's dependency on, and ultimately replace, VACOLS.

However, to reduce reliance on VACOLS and to reduce errors, such as the inappropriate closure of appeals records, AMO worked with Compensation Service to design a new EP framework for appeals. The new EP structure more efficiently captures each stage of an appeal as it progresses through the VBA appeals process. It also distinguishes appeals pending in VBA before and after Board review. Moreover, as each major stage of the appeals process has corresponding EP control, with an identifying claim label, VBA is able to more accurately determine where there are workload difficulties. It also made the creation and tracking of EPs in Veterans Benefits Management System mandatory, as older policy made EP creation and tracking optional in some stages of the process. AMO implemented this new EP structure nationwide on May 15, 2017. Attached is the M21-4 transmittal letter outlining the EP changes (Attachment H).

Beyond the changes that VBA has already made to its EP procedures, VBA is in the process of updating the pre-site visit protocol, to include a review of closed appeals records.

VBA requests closure of this recommendation.

Recommendation 4: The OIG recommended the Acting Under Secretary for Benefits remind staff of their responsibilities when processing remands and recertifying appeals to the Board of Veterans' Appeals, and implement a plan to ensure compliance.

VBA Response: Concur in part. VBA implemented this recommendation. The OIG report noted that VBA Claims Assistants (CA) did not verify that remand instructions were followed before administratively returning appeals to the Board. In addition, the report noted that CAs were not held to a quality standard.

While VBA agrees that remands instructions should be properly addressed, it does not agree that this is the responsibility of a CA. Determining whether the legal requirements of a remand have been followed require a review of the claims folder and the accompanying documents. These kinds of reviews are not suited to the CA position; however, a CA can perform the administrative task of returning an appeal to the Board once routed to that claims element for the next appropriate action. It is the responsibility of other claims processors to ensure that remand steps have been followed or addressed prior to routing to the CAs for recertification of the appeal to the Board. The attached quality and error trends for Rating Veterans Service Representatives (RVSRs) and Veterans Service Representatives (VSRs), the employees responsible for ensuring that remand instructions have been followed, show that the current quality process addresses errors for failure to follow remand instructions.

Accordingly, VBA agrees that remand instructions should be properly addressed. In early FY 2017, VBA realigned its appeals policy and oversight of its national appeals operations under a single office, the AMO. Appeals program administration matters, such as appeals-related training and quality assurance, now reside under the AMO, and the Appeals Resource Center (ARC) aligns under the oversight of the AMO Director. As such, during June 2017, Quality Review Specialists (QRSs) conducted more than eight hours of training for ARC employees during a VSR "Boot Camp," that focused on properly reviewing and complying with remand instructions, prior to the administrative return to the Board by the CAs. Additionally, during ongoing monthly error trend training and weekly team huddles, QRSs reiterate the importance of paying attention to detail when reading remands, to ensure compliance with remand directives, and discuss errors identified on reviews completed the prior week. The AMO intends to

continue with this existing process for conducting error-trend training if/when quality data supports negative trends in this area. Moreover, the AMO reminded appeals staff of their responsibilities, when processing remands, on the January 10, 2018, national Appeals Monthly Conference Call. Additionally, regarding the administrative tasks performed by CAs, in FY 2017, the AMO revised its CA performance standards to emphasize production, quality, and training.

Please see the attached supporting documentation:

- Attachment I – FY 2017 Error Trend Analysis CA
- Attachment J – FY 2017 Error Trend Analysis VSR
- Attachment K – FY 2017 Error Trend Analysis RVSR
- Attachment L - Data from VACOLS for Re-Remand Rates
- Attachment M - Quick Reference Guide - Rating Checklist (Old Standards)
- Attachment N - RVSR Task Based Checklist (New Standards)
- Attachment O - Quick Reference Guide - VSR Checklist (Old Standards)
- Attachment P - VSR Task Based Checklist (New Standards)

VBA requests closure of this recommendation.

*OIG Note: The attachments were not included in this report. Copies may be obtained from the
OIG Information Officer.*

Appendix F Contact and Staff Acknowledgments

OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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Acknowledgments	Dana Sullivan, Director Jason Boyd Orlan Braman Daphne Brantley Brett Byrd Michelle Elliott Jeff Myers David Piña Michele Stratton Nelvy Viguera Butler
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Appendix G Report Distribution

VA Distribution

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