



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

VA Developed Reporting
Metrics for Appeals
Modernization Act Decision
Reviews but Could Be
Clearer on Some Veterans'
Wait Times

REVIEW

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Executive Summary

Recognizing that its legacy appeals process was frustrating for veterans and not working as intended, VA collaborated with members of Congress and veterans service organizations to develop a new process for reviewing decisions on benefits claims with which veterans disagree.¹ The collaboration resulted in the Veterans Appeals Improvement and Modernization Act of 2017, also known as the Appeals Modernization Act (AMA), which was signed into law on August 23, 2017.²

On February 19, 2019, VA's Veterans Benefits Administration (VBA) fully implemented the act, designed to offer faster decisions on appeals and give veterans more choice in how to appeal, with three new review options or "lanes."³ The three lanes are a direct appeal to the Board of Veterans' Appeals; a higher-level review conducted by a senior technical expert, in which no new evidence may be presented; and a supplemental claim, in which the veteran presents new evidence.⁴ VA set a goal of 125 days on average each to complete higher-level reviews and supplemental claims.

The VA Office of Inspector General (OIG) reviewed the policy and decision review process established by VA. To fulfill the AMA's requirements, VA must report its performance to Congress and make these reports available on a public-facing website. Given that the act was intended to improve appeals processing, the OIG conducted this review to evaluate how clearly and transparently VA measures and reports its performance under the act—specifically, whether reporting reflects how long veterans wait for resolution of claims that begin as higher-level reviews and, because of errors, are finalized as supplemental claims.⁵

¹ VBA, *Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System*, November 2017, accessed September 7, 2022, <https://benefits.va.gov/benefits/docs/appeals-report-201711.pdf>.

² Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Modernization Act [AMA]), Pub. L. No. 115-55, 131 Stat. 1105 (2017).

³ VA Manual 21-5, "Appeals Modernization Act (AMA) Control and Other Activities," updated August 19, 2020, chap. 4 in *Appeals and Reviews*.

⁴ VA has oversight of the higher-level review and supplemental claim options, while the Board of Veterans' Appeals has oversight of direct appeals. The scope of this review did not include direct appeals to the Board of Veterans' Appeals.

⁵ The OIG acknowledges that supplemental claims encompass various types, including differences of opinion by higher level reviewers (not within the scope of this review), those that are submitted on a prescribed form to have potentially new evidence considered, and those that follow a higher-level review identifying an error in the processing of the previous claim (known as a duty-to-assist error). (See VBA's technical comment 3 on pages 39 and 40.) For the purposes of this report, supplemental claims refer only to those that follow higher-level reviews in which errors are identified in the processing of the previous claim. (The terminology was not revised further throughout the report.)

What the Review Found

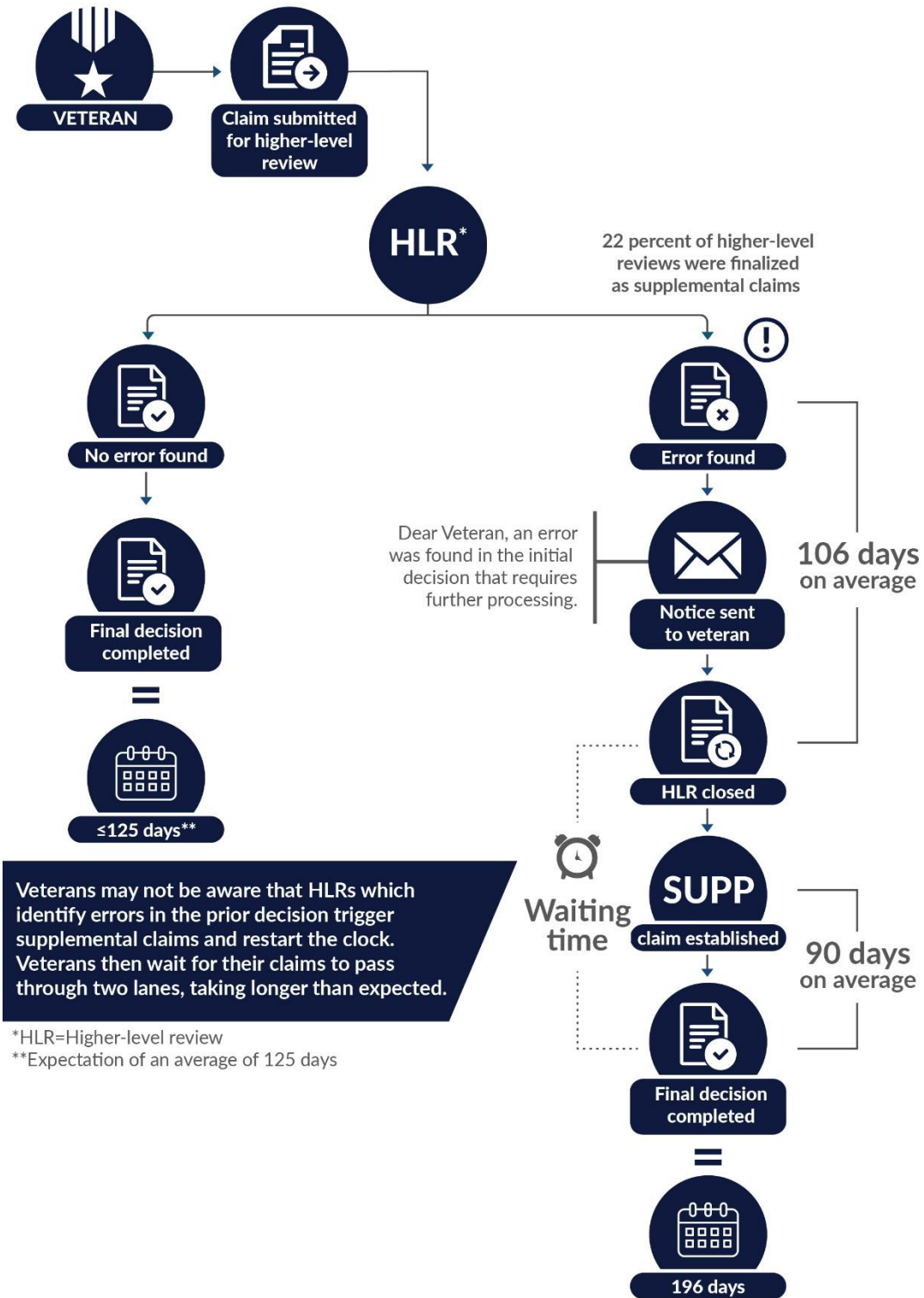
The review team found that VA developed methodologies for reporting on the decision review metrics at issue in this report that are required by the AMA. Additionally, VA devised a new method to process higher-level reviews of claims decisions found to contain errors. The method directs claims processors to close the higher-level review, after which a new supplemental claim is established to address the error. This results in performance reporting (on both timeliness and production) when the higher-level review is completed and again when the supplemental claim is finalized. VA has set a goal of completing each type of claim within an average of 125 days, and VA reports the average wait time for each.⁶ Nevertheless, the OIG found the cumulative wait time for higher-level reviews that are finalized as supplemental claims is not clear or fully transparent to the veteran. The veteran is only informed that an error has been found and will be corrected, not that a new claim has been established and that the clock has been restarted, with a stated goal of another 125-day wait (on average) for a final decision. To learn this, the veteran must navigate through multiple VA web pages to a page containing additional information about higher-level reviews. However, veterans have received no guidance to do so.

The review team analyzed 27,348 supplemental claims finalized from October 1, 2020, through September 30, 2021, that were initially submitted by veterans for higher-level reviews.⁷ This number represents 22 percent of the total higher-level reviews (122,755) reported as completed in fiscal year (FY) 2021. In all cases, an error in the original decision was identified, resulting in the higher-level review being closed and a supplemental claim being established to address the error and provide a final decision on the claim. For these types of claims in the OIG's review period, VA's reporting method would show the average time to complete the higher-level reviews as 106 days and the average time to complete the supplemental claims as 90 days. The review team computed the average time to complete these claims from the beginning of the higher-level review to the end of the supplemental claim. This resulted in an average of 196 days for completion, whereas the expectation for veterans is an average of 125 days.⁸ Summary figure 1 illustrates the average amount of time veterans waited for resolution in these circumstances.

⁶ VBA, *Periodic Progress Report on Appeals, Public Law 115-55, Section 3*, February 2022, accessed June 5, 2022, https://benefits.va.gov/REPORTS/AMA/CMR/2022/appeals_report_202202.pdf.

⁷ These were the most complete fiscal year data available at the time the review started.

⁸ VBA, *Periodic Progress Report on Appeals, Public Law 115-55, Section 3*. The 196 days is the average of the combined number of days to complete the higher-level reviews and supplemental claims.



Summary figure 1. Results for OIG analysis of higher-level reviews, October 1, 2020–September 30, 2021.

Source: VA OIG analysis.

Note: The 196 days is the average of the combined number of days to complete the higher-level reviews and supplemental claims (SUPP in figure).

VBA stated it has taken care to comply with congressional reporting requirements on the decision review process. The OIG has revised the report to note that VA developed methodologies for reporting on decision review metrics at issue in this report that are required by the AMA.

In the September 2021 AMA monthly report, VA reported an average of 83.7 days to complete higher-level reviews and 91.3 days to complete supplemental claims in FY 2021, both well below the 125-day goal for each decision review lane. However, the OIG determined that the reporting can mask the experience of veterans whose claims the team reviewed because it does not reflect the scenario in which a veteran's claim is processed separately through two lanes (the higher-level review and supplemental claim) with a considerably longer combined wait time.

Similarly, the production measure can be misleading without additional explanation as to the number of veterans receiving final decisions. VA separately counted completion of decisions on 27,348 supplemental claims because they were counted first as a completed higher-level review and then counted again when completed as a supplemental claim. VA thus reported 54,696 decisions completed when there were only 27,348 veterans receiving final decisions.

The OIG team uncovered issues with a third metric, required by section 5, subsection M, of the AMA. That subsection directs VA to report "the average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date." (Claimants have one year after the closure of a decision to protect the effective date—that is, they can continue the claim and allow the original filing date to potentially be assigned as the effective date for the granting of benefits.) At the time of this report, VA was not reporting the time from the filing of an initial claim, nor was it reporting the additional time after the claim for processes within their jurisdiction in which claimants could still take action, due in part to issues of interpretation.

Beyond addressing these concerns with greater transparency, VA could make reporting more useful for users. Enhancing readability and making reports more veteran-focused were improvements raised by stakeholders. Moreover, VBA's survey follow-up calls to veterans indicate VA should adjust the timing of the surveys.

What the OIG Recommended

To increase the transparency of VA's performance reported under the AMA, the OIG made two recommendations to the under secretary for benefits.⁹ First, ensure VBA updates the reporting methodology used in public reports to reflect the total time veterans wait for a final claims decision when their higher-level reviews require a supplemental claim to be established and completed due to an error. Second, revise and clearly state the measures used for calculating and

⁹ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

reporting the average duration from the filing of an initial claim until the claim is resolved and claimants no longer take any action under the AMA claim, consistent with subsection M of the act.

VA Management Comments and OIG Response

VBA's senior advisor for policy, then performing the delegable duties of the under secretary for benefits, concurred in principle with the OIG's findings and recommendations.¹⁰ Action plans were submitted for both recommendations. VBA agreed under recommendation 1 to provide a plan for addressing the reporting provided in public reports and "proposes to supplement its current AMA public facing data required by statute by ... reporting timeliness on this subset of AMA claims ..." For recommendation 2, VBA "will more clearly state what is currently being reported publicly under this metric, ensuring that the data described in our report is clearly outlined and explained," with a projected completion date of October 31, 2023. The OIG considers recommendations 1 and 2 open and will monitor implementation of the recommendations until all stated actions are documented as completed. Appendix F provides the full text of the senior advisor for policy's comments.

The senior advisor also provided technical comments addressing work VA has conducted, additional information regarding statutory requirements under the AMA, remarks regarding the OIG's calculation of wait times, and suggested changes. Those comments included requesting that the OIG make clear that VA is compliant with the AMA, the extent to which veterans are notified at each step in the process, that some of the calculations of wait times include multiple processes, and that some data involving work on claims outside VA's jurisdiction would be burdensome to track and is unreliable. In response to VBA's technical comments, the OIG has indicated in the text and in footnotes where revisions have been made and provided explanations as warranted.



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¹⁰ Joshua Jacobs was confirmed as VA's undersecretary for benefits on April 26, 2023.

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Abbreviations

AMA	Appeals Modernization Act
FY	fiscal year
OAR	Office of Administrative Review
OIG	Office of Inspector General
VBA	Veterans Benefits Administration



Introduction

Veterans may submit compensation claims to VA for disabilities associated with active-duty service.¹¹ When they disagree with the decisions VA renders on those claims, veterans may appeal using VA's decision review process. Recognizing that its legacy appeals process was frustrating for veterans and not working as intended, VA engaged members of Congress and veterans service organizations to develop a new one.¹² On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act of 2017 (also known as the Appeals Modernization Act or AMA).¹³ The AMA is meant to streamline and improve the processing of VA decisions on veterans' appeals.¹⁴

VA fully implemented the AMA on February 19, 2019.¹⁵ Between the law's passage and February 2019, VA used a Rapid Appeals Modernization Program to bridge the gap between the legacy appeals program and the new AMA decision review process. The program allowed some claimants who received a decision before the law took effect and had an appeal pending to participate in the AMA process.

The AMA allows veterans to choose from one of three options, called lanes, to seek a review of VA benefits decisions on their prior claims: a direct appeal to the Board of Veterans' Appeals, a higher-level review, or a supplemental claim.¹⁶ Veterans may elect to have a higher-level review when they disagree with VA's decision and desire a reevaluation by a senior technical expert.¹⁷ Within this lane, veterans cannot provide additional evidence for review. The reviewer will

¹¹ VA provides monthly compensation benefits to veterans for disabilities incurred or aggravated during active military service, referred to as "service-connected" disabilities. 38 C.F.R. § 3.1 (2021).

¹² "A legacy appeal is a disagreement with a VA benefits decision made before February 19, 2019, the effective date of *Public Law 115-55, the Veterans Appeals Improvement and Modernization Act of 2017*" (italics in the original). VA Manual 21-5, "Legacy Appeal Procedures," updated May 27, 2022, chap. 7 in *Appeals and Reviews*, sec. A.1.p.

¹³ Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Modernization Act [AMA]), Pub. L. No. 115-55, 131 Stat. 1105 (2017).

¹⁴ "Veterans Appeals Improvement and Modernization Act of 2017" (web page), Veterans Benefits Administration (VBA), accessed August 25, 2021, <https://www.benefits.va.gov/benefits/appeals-about.asp>; VBA, *Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System*, November 2017, accessed September 13, 2021, <https://benefits.va.gov/benefits/docs/appeals-report-201711.pdf>.

¹⁵ VA Manual 21-5, "Appeals Modernization Act (AMA) Control and Other Activities," updated August 19, 2020, chap. 4 in *Appeals and Reviews*, topic 1.a.

¹⁶ Filing an appeal with the Board of Veterans' Appeals is still an option for veterans who do not have a decision review pending for the same issue. Although claimants may opt to appeal a decision directly to the Board of Veterans' Appeals, the scope of this review did not include those direct appeals as the OIG's focus was on VA's reporting on its performance for processing claims that began as higher-level reviews and were finalized as supplemental claims. Under the AMA, the term "appeal" is now generally used to refer to those claims directed to the board. Higher-level reviews and supplemental claims are no longer referred to as "appeals," and those terms are used instead for greater precision.

¹⁷ A claimant may not request a higher-level review of a higher-level review.

conduct a new look at the previous decision.¹⁸ In a supplemental claim, the veteran must identify or submit new and relevant evidence to support the claim. VA will assist in the gathering of evidence, including making reasonable attempts to obtain evidence identified by the veteran.

The VA Office of Inspector General (OIG) conducted this review to evaluate how clearly and transparently VA measures and reports its performance under the act—specifically, whether reporting reflects how long veterans wait for resolution of claims that begin as higher-level reviews and, because of errors, are finalized as supplemental claims.¹⁹ Appendix A presents the review scope and methodology.

Higher-Level Reviews

VA has reported on a public-facing website that higher-level reviews are the fastest option for resolving claims decisions with which veterans disagree. A higher-level review is a closed record, meaning no new evidence may be submitted or reviewed. The higher-level review is conducted only on the evidence that was part of the record at the time the previous claim was decided. These reviews are completed by a decision review officer, who is considered a senior technical expert. If no errors are found, the veteran is notified of the decision and the higher-level review is closed (as shown on the left side of figure 1 on the following page).

Addressing Errors Found during Higher-Level Reviews

The higher-level reviewer may identify deficiencies with the evidence gathered in the previous claim, including missing medical evidence or incomplete medical opinions.²⁰ In these cases, the higher-level reviewer issues guidance to VA staff on how to gather the relevant evidence and completes a decision that notifies the veteran an error was found in the prior decision. Thereafter, the higher-level review is closed. (Appendix B details a higher-level review that found an error.)

¹⁸ Higher-level reviews consist of *de novo* reviews of the issue(s) identified by requesters on a completed prescribed form. *De novo review* means the reviewer reexamines and readjudicates the claim in question without deference to the prior decision. VA Manual 21-5, “Higher Level Review Procedures,” updated April 20, 2022, chap. 5 in *Appeals and Reviews*, topic 1.a.

¹⁹ See VBA’s technical comment 3 on pages 39 and 40. The OIG acknowledges that supplemental claims encompass various types, including differences of opinion by higher-level reviewers (not within the scope of this review), those that are submitted on a prescribed form to have potentially new evidence considered, and those that follow a higher-level review identifying an error in the processing of the previous claim. For the purposes of this report, supplemental claims refer only to those that follow higher-level reviews in which errors are identified in the processing of the previous claim. (The terminology was not revised further throughout the report.)

²⁰ Such deficiencies are called duty-to-assist errors. VA has a “duty to assist claimants in obtaining evidence to substantiate all substantially complete initial and supplemental claims.” 38 C.F.R. §3.159 (c). As stated above, for the purposes of this report, supplemental claims refer only to those that follow higher-level reviews in which errors were identified in the processing of the previous claim. (The terminology was not revised further throughout the report.)

When a higher-level review with an identified error is closed, a new supplemental claim is automatically established to address the error.²¹ Once the error has been addressed—for instance, the missing evidence is gathered—a decision on the supplemental claim is completed by a rating veterans service representative.²² The veteran does not receive a final resolution until the supplemental claim is complete. This process is depicted on the right side of figure 1.

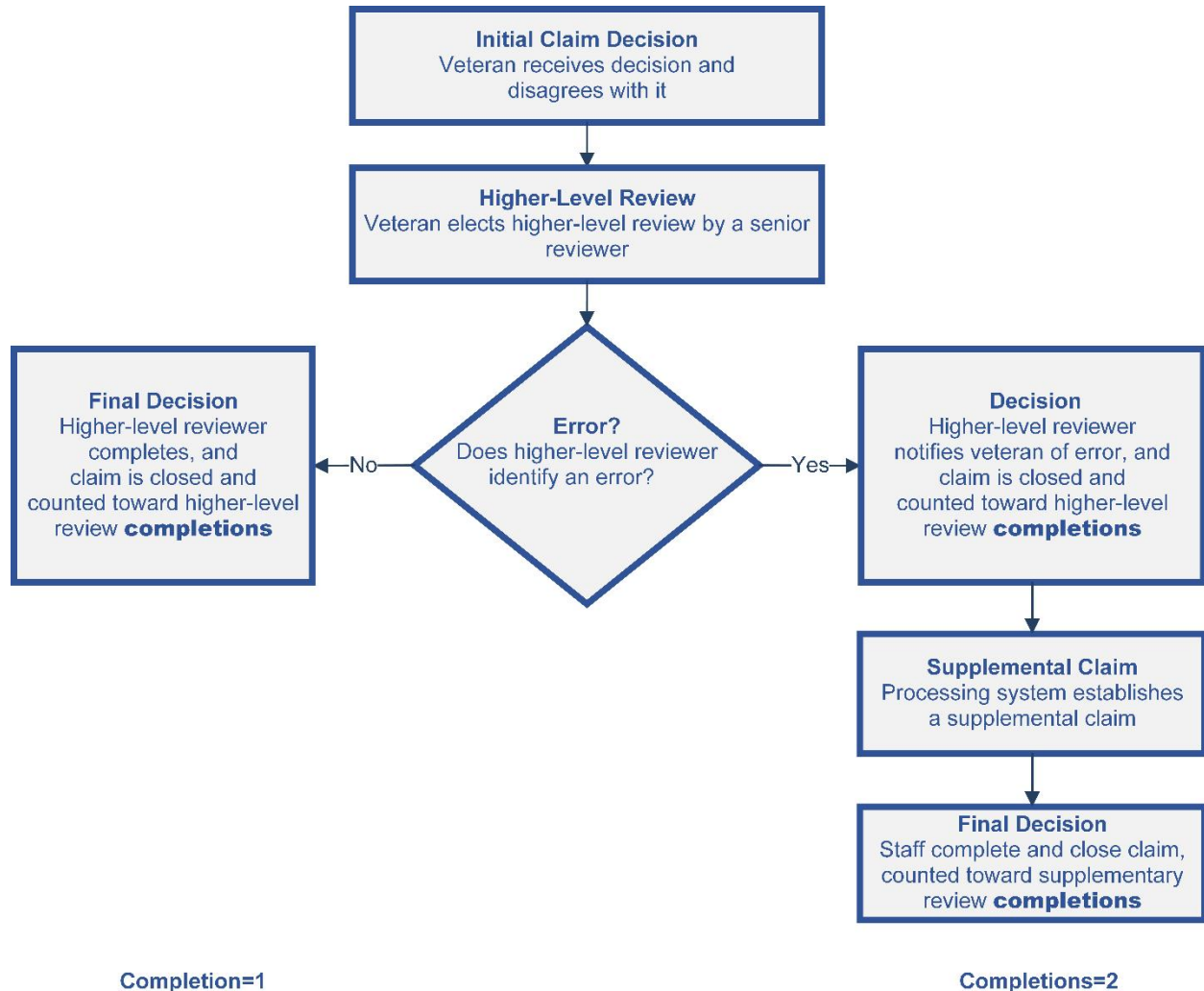


Figure 1. How a higher-level review becomes a supplemental claim.

Source: VA OIG analysis and VA Manual 21-5, “Handling Duty to Assist Errors,” updated March 25, 2021, chap. 5 in Appeals and Reviews, topic 5.e.

²¹ As noted in the report, veterans may also submit a supplemental claim if they identify new and relevant evidence in support of a previously decided claim. Supplemental claims do not always begin as higher-level reviews. An “error” includes when documentation or medical opinions available to VA staff are not considered before a claims decision because they are missing or incomplete.

²² Although decision review officers and rating veterans service representatives perform some of the same decision-making functions, decision review officers are identified as the senior technical experts. They are classified at the GS-13 level, whereas rating veterans service representatives max out at the GS-12 level.

To summarize, veterans can file a claim for higher-level review because they feel there was an error with the previous Veterans Benefits Administration (VBA) decision. There is an expectation that this claim will be completed within an average of 125 days as a higher-level review. However, if VA finds an error in the previous decision, it will close the higher-level review, and a new supplemental claim is automatically established to address the error with another 125-day (on average) completion goal. Veterans receive a notification letter informing them that an error has been found and will be corrected. This letter does not notify veterans that a new claim has been established and that they are subject to another wait for its completion, with a stated goal of 125 days on average. This information is available by navigating through multiple VA web pages to a page containing additional information about higher-level reviews. However, veterans have received no guidance to do so.

Addressing Errors Found in Other Types of Claims

VA follows a different process to address errors identified in claims other than higher-level reviews. When VA identifies an error while processing an initial or supplemental claim, VA creates a deferral and issues guidance to staff on how to gather the relevant evidence to correct the error. After the error has been addressed, VA completes a decision to provide final resolution of the claim. The deferred claim is not counted in performance metrics as finalized until this decision is complete. For example, if additional evidence is needed to decide a claim, staff generate a deferral, which sends the claim back to a previous step in the process to address the identified error. Staff obtain the relevant evidence and resubmit the claim for a decision. A decision-maker then completes a final decision. A claim is not closed until the final decision is complete. The related timeliness calculation begins with the claim submission and ends with the final decision.

Office Responsible for AMA Compliance

Ahead of AMA implementation, the Secretary of Veterans Affairs approved VBA's realignment of appeals policy and operation control under the Appeals Management Office, which is now known as the Office of Administrative Review (OAR).²³ OAR is responsible for implementing the AMA by improving notification of VA decisions and providing earlier claim resolution.²⁴ The executive director is responsible for overseeing VBA's decision review process.²⁵

OAR contains both a Program Administration Office and an Operations Office. The Program Administration Office oversees VA's higher-level review program under the AMA; the Operations Office oversees workload management, data analytics, resource allocation, and

²³ VBA Letter 20-17-02, "Realignment of Appeals Policy and Operation Control," January 4, 2017.

²⁴ "Office of Administrative Review" (web page), VA, accessed August 18, 2021, <https://vbaw.vba.va.gov/oar>. (This web page is not publicly accessible.)

²⁵ "Office of Administrative Review" (web page), VA.

performance targets and measurement. Further information on the roles and responsibilities of OAR staff appears in appendix C.

AMA Reporting Requirements

The AMA requires VA to publish two reports containing performance metrics for the AMA decision review process: a progress report and a metrics report. The progress report—referred to as the “congressionally mandated report,” according to two OAR officials—must be submitted to Congress no less than once every 180 days and must address how VA has implemented the AMA consistent with its plan. This report must be made available to the public on a VA website.²⁶

The second metrics report is referred to as the “AMA monthly report” because, despite the AMA requiring that this report be published “periodically” on a VA website, VA publishes it every month. The report must address multiple performance metrics, named for sections 5(1)(A) through (Z) of the AMA.²⁷

Performance Metrics

The three AMA performance metrics that VA provides in its monthly reports related to this OIG review are (1) average time for completing higher-level reviews and supplemental claims (timeliness), (2) number of higher-level reviews and supplemental claims completed per reporting period (production), and (3) average time from the filing of an initial claim until the claim is resolved and claimants no longer take any action (timeliness).²⁸ VA has established a timeliness goal of an average of 125 days each for completing the higher-level reviews and supplemental claims.²⁹ The AMA does not have an established goal for production or for timeliness from initial claim to resolution. More information on the required metrics for this report is in appendix D.³⁰

Congressionally mandated reports also contain timeliness and production data for higher-level reviews and supplemental claims. Below is an excerpt from the February 2022 report with the related data presented:

During [fiscal year] 2021, overall average timeliness for completed AMA work was 89.0 days. [Average days to complete] for [higher-level reviews] was

²⁶ “Appeals Modernization Act Comprehensive Plan and Reporting” (web page), VA, accessed November 4, 2021, <https://benefits.va.gov/REPORTS/AMA>.

²⁷ AMA §§ 5(1)(A) through (Z).

²⁸ AMA §§ 5(1)(C), (D), and (M).

²⁹ VBA, *February 2022 Congressionally Mandated Report*, accessed June 5, 2022, https://benefits.va.gov/REPORTS/AMA/CMR/2022/appeals_report_202202.pdf.

³⁰ “Appeals Modernization Act Comprehensive Plan and Reporting” (web page), VA.

approximately 83.7 days with 122,755 completions. For supplemental claims, to include [higher-level review] associated returns, [average days to complete] was 91.3 days with 276,013 completions.³¹

The AMA monthly report contains timeliness and production data for higher-level reviews and supplemental claims separately (table 1). The table presents data through September 30, 2021, which were the most recent fiscal year-to-date data at the time of the OIG's review.

Table 1. Reported Production and Timeliness, September 30, 2021

(C) The number of compensation and pension AMA claims completed for supplemental and higher-level reviews FY to date, disaggregated by regional office		
(D) The average days to complete requests, disaggregated by regional office		
Type	Number completed FY to date	Average days to complete
Higher-level review	122,755	83.7
Supplemental	276,013	91.3

Source: Excerpted and adapted from the September 2021 monthly AMA report, sections C and D, https://benefits.va.gov/REPORTS/AMA/AMA_2021/AMA_09302021.xlsx.

Note: FY stands for fiscal year.

Table 2 presents an excerpt from the September 2021 monthly AMA report showing the average time from the filing of an initial claim until the claim is resolved.

³¹ VBA, *February 2022 Congressionally Mandated Report*, accessed June 5, 2022, https://benefits.va.gov/REPORTS/AMA/CMR/2022/appeals_report_202202.pdf.

Table 2. Average Time Reported for Fiscal Year (FY) 2021 from Filing through Resolution of Claim, September 30, 2021

(M) The average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date	
(i) of claims under the new appeals system, excluding legacy claims that opt in to the new appeals system	
(ii) of legacy claims that opt in to the new appeals system	
Opt-in type	Average days to complete
AMA No Legacy Opt-in	89.8
AMA Yes Legacy Opt-in	105.9

Source: Excerpted and adapted from September 2021 monthly AMA report, subsection M, https://benefits.va.gov/REPORTS/AMA/AMA_2021/AMA_09302021.xlsx.

Note: Claimants can “take action to protect their effective date” by filing an additional claim during the one-year period after the notification of their decision. This action continues the claim and allows the original filing date to potentially be assigned as the effective date for the granting of benefits. Legacy claims are those filed before February 19, 2019, when VA fully implemented the AMA. Veterans were allowed to opt in to one of the AMA lanes to pursue their legacy appeals.

Results and Recommendations

Finding: VA Developed Reporting Metrics for AMA Decision Reviews but Could Be Clearer on Some Veterans' Wait Times

The review team found that VA developed methodologies for reporting on the decision review metrics at issue in this report that are required by the AMA.³² In the September 2021 AMA monthly report, VA reported an average of 83.7 days to complete higher-level reviews, and 91.3 days for supplemental claims for FY 2021 for 398,768 total claims.³³ Yet additional data analysis revealed that some of the reporting is unclear.

For example, VA's reporting of timeliness is not clear for the claims that the OIG focused on—specifically, the category of claims that went through a higher-level review where errors were found in the previous decisions rendered by VBA and were then finalized as supplemental claims. Of the 398,768 total claims reported as complete, the review team identified 27,348 claims that fell into this category. This number represents 22 percent of the total higher-level reviews (122,755) reported as completed in FY 2021.³⁴ If VA provided performance metrics for this subset of claims, it would separately report an average of 106 days spent in the higher-level review lane and then 90 days in the supplemental claim lane for an overall total of 196 days on average, which some veterans experience.³⁵

Reporting on production is also unclear. VA separately counted completion of decisions on 27,348 supplemental claims that started and were previously counted as higher-level reviews. It therefore reported 54,696 decisions completed, although only 27,348 veterans received final decisions.

Moreover, VA's reporting under AMA section 5, subsection M, applies to the AMA claims process regarding decisions under the jurisdiction of VBA. The law requires VA to report “the

³² See VBA's technical comment 2 on page 39 requesting the OIG to indicate that the monthly AMA metrics on which VBA reports on the Appeals Modernization website are explicitly required by statute and not created independently by VBA. The OIG acknowledges that VBA publishes data and information on the metrics mandated by the AMA and modified the report language accordingly.

³³ See VBA's technical comments 3 and 4 on pages 39 and 40. VA reported 122,755 higher-level review completions and 276,013 supplemental claim completions for FY 2021. In its comments VBA noted that different types of supplemental claims are included in the calculations. The OIG acknowledges that supplemental claims encompass various types, including differences of opinion, those that are submitted on a prescribed form, and those that follow a higher-level review identifying an error in the processing of the previous claim. For the purposes of this report, supplemental claims refer only to those that follow higher-level reviews in which errors are identified in the processing of the previous claim.

³⁴ VA reported 122,755 higher-level review completions for fiscal year 2021 ($27,348 / 122,755 = 22$ percent). See VBA's technical comment 4 on page 40.

³⁵ VBA, *Periodic Progress Report on Appeals, Public Law 115-55, Section 3*. The 196 days is the average of the combined number of days to complete the higher-level reviews and supplemental claims.

average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date.” However, the metric VA reports does not include the time associated with processing the initial claim, nor does it include the time after completion of the decision review in which the claimant may still take action.

Beyond greater clarity and completeness in AMA reporting, stakeholder feedback points to additional ways in which VA could make the information more useful to users. In July 2020, VBA deployed electronic surveys, also known as VSignals customer experience surveys, to capture the end-to-end experience for VBA’s two decision review processes.³⁶ Currently these surveys are deployed to claimants on a weekly basis.³⁷ VA deploys the initial survey when the veteran requests to file a decision review and sends either a higher-level review or a supplemental claim survey at the completion of the selected decision review process.³⁸ However, VA could improve the readability of the AMA reports and fine-tune the timing of surveys to assess veterans’ views of the decision review process. Full disclosure would be valuable to veterans and align with VA’s strategic plan and goals, especially as “VA must understand the impacts veterans experience as a result of services provided by VA.”³⁹

The finding is based on the following determinations:

- The timeliness metric does not fully portray how long some veterans wait for final decisions.
- The production measure counts claims as completed more than once.
- The metric required to be reported under AMA section 5, subsection M, applies to the AMA claims process regarding decisions under the jurisdiction of VBA.
- Stakeholder feedback highlighted how VA could make reporting more useful.

What the OIG Did

The review team analyzed 27,348 claims that were submitted as higher-level reviews but, because of errors, were finalized as supplemental claims from October 1, 2020, through September 30, 2021. Using VA’s Corporate Data Warehouse, the review team obtained a list of these supplemental claims and analyzed the higher-level reviews associated with them to measure the overall timeliness of the decision review process that veterans experience. The team

³⁶ VA, Appeals Modernization Act Slides, <https://vbaw.vba.va.gov/oar/>, August 2021. (As of April 2023, the slides, which were not publicly available, had been removed from the Office of Administrative Review’s home page.)

³⁷ Interview with chief, customer relationship management, Office of Administrative Review, January 26, 2021.

³⁸ VA, Appeals Modernization Act Slides.

³⁹ VA, *Fiscal Year 2018-2024 Strategic Plan*, rev. May 31, 2019, Strategy 1.1.2.

compared these findings against the completion and timeliness metrics reported by VA for higher-level reviews and supplemental claims and assessed VA's reporting under the AMA.

To increase its understanding of VA regulations and procedures for reporting performance under the AMA, the team conducted virtual site visits at OAR, the Office of Performance Analysis and Integrity (generates the data used in AMA performance reporting), the Office of Policy and Oversight (responsible for OAR), and the Office of Program Integrity and Internal Controls (VBA's oversight liaison with the OIG). The team interviewed current and former managers and staff who were involved in VA's reporting of performance measures under the AMA as well as the deputy under secretary for policy and oversight. The team also interviewed representatives from three national veterans service organizations: American Legion, Disabled American Veterans, and Paralyzed Veterans of America.⁴⁰ The team discussed the findings with VA officials and included their comments in the report as appropriate. Appendix A provides a more detailed description of the review scope and methodology.

Timeliness Metric Does Not Fully Portray How Long Some Veterans Wait for Final Decisions

VA has reported on a public-facing website that the higher-level reviews are the fastest option. That is accurate in most cases. However, in more than 20 percent of cases, higher-level reviewers have found errors. In those cases, new supplemental claims were automatically established, requiring veterans to wait for two decision processes to be completed—unbeknownst to some veterans. Veterans may be unaware of this redirection of a higher-level to a supplemental claim and could be expecting to receive decisions within the initial 125 days (on average) specified in VA's completion goal for a single review process.⁴¹

As stated above, VA's goal is to complete higher-level reviews and supplemental claims in an average of 125 days for each claim type. VA computes timeliness by calculating the average days to complete a claim.⁴² The OIG determined and confirmed through interviews that timeliness data were computed for higher-level reviews and supplemental claims separately,

⁴⁰ While numerous veterans service organizations assist veterans with claims, the OIG chose to interview these three based on their previous involvement with AMA issues and their size.

⁴¹ VBA requested in technical comment 5 on pages 40 and 41 that the OIG revise the report statement about the public-facing website and veterans being unaware of the redirection of their higher-level reviews. Some revisions were made for clarity, but not regarding notification. VBA maintains that veterans are notified at every step of the process. The OIG acknowledges that veterans receive a notification letter informing them that an error has been found during their higher-level review and will be corrected with additional action. However, this letter does not inform veterans that a new claim has been established and that they are subject to another wait for its completion, with a stated goal of another 125 days on average.

⁴² Average days to complete is calculated by totaling the days from the date of the claim through the date the claim was closed plus one day (e.g., November 24 minus November 1 equals 23 plus one day to reflect the true number of days the claim spent in process) for all claims in the universe. This total is then divided by the number of completed claims (production) to calculate the average days to complete.

even if the claims started as a higher-level review and ended as a supplemental claim. As a result, the September 2021 AMA monthly report showed 122,755 higher-level reviews were completed in an average of 83.7 days and 276,013 supplemental claims in an average of 91.3 days. However, the OIG found in the group of 27,348 claims reviewed that the timeliness reported does not reflect the total amount of time the affected veterans waited for their claims to be completed.

As previously noted, if VA provided performance metrics for this subset of claims, it would report an average of 106 days to complete the higher-level reviews and 90 days to complete the supplemental claims. The review team computed the average total time to complete these claims from the beginning of the higher-level review to the end of the supplemental claim.⁴³ The reporting that VBA does is required by AMA.⁴⁴ However, it does not make clear that some veterans wait longer for decisions when they are processed through the higher-level review and supplemental claim lanes. As a result, the total time that some veterans wait under the AMA decision review process is not clear in reporting related to the subset of claims analyzed by the OIG. Accordingly, more clarity to enhance current statutorily mandated metrics would improve veterans' understanding of the process and provide greater transparency to external stakeholders. Figure 2 and example 1 that follow illustrate the veterans' wait times.

⁴³ In technical comment 6 (page 41), VBA requested removal of a figure as it appeared in the initial draft and the accompanying text, suggesting the following figure detailing the process and flow provides more context as to various factors involved. The text and graphics were revised to address these concerns and underscore that while VBA has developed methodologies for reporting on the decision review metrics at issue in this report that are required by the AMA, the data reported make it difficult for veterans to assess how long they may have to wait if their claim is subject to processing under the higher-level review and supplemental claim lanes and could be enhanced with additional details.

⁴⁴ AMA §§ 5(1)(C), (D), and (M).

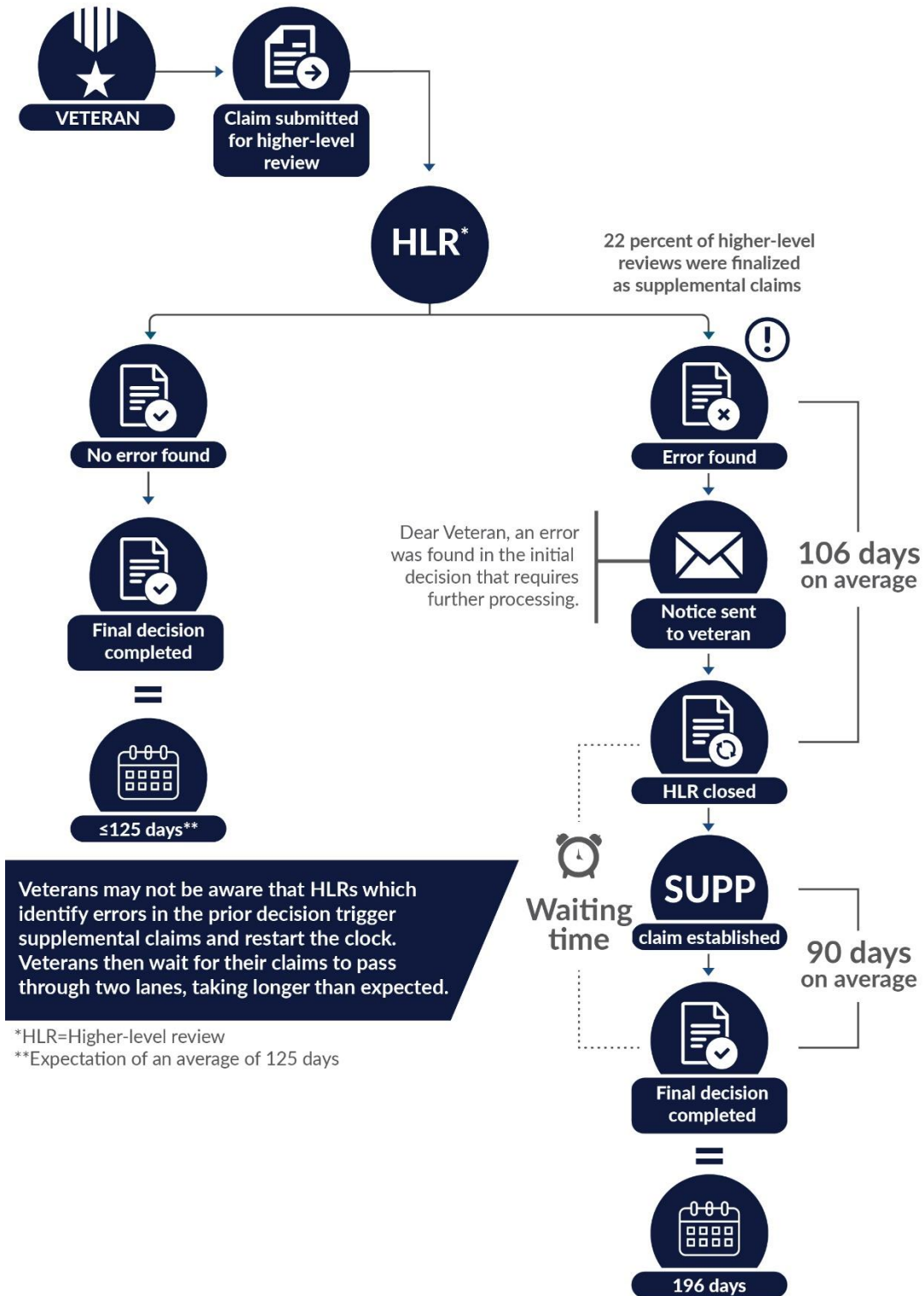


Figure 2. Results for OIG analysis of higher-level reviews, October 1, 2020–September 30, 2021.

Source: VA OIG analysis.

Note: The 196 days is the average of the combined number of days to complete the higher-level reviews and supplemental claims (SUPP in figure).

Example 1

A veteran filed a claim requesting a higher-level review on August 20, 2020. A higher-level review decision was completed on January 8, 2021, informing the veteran that an error was found and required further, separate processing. The completion of this decision closed the claim in 142 days. In accordance with policy, a new supplemental claim was established to address the error. A final decision on the supplemental claim confirming the previous denial of the benefit sought was completed on February 22, 2021. The supplemental claim was completed in 46 days. VA would report that a higher-level review was completed in 142 days and that a supplemental claim was completed in 46 days. Reporting could be clearer to show that veterans whose higher-level reviews have errors identified should expect a longer overall wait time for VA to complete a separate supplemental claim. This veteran waited 188 days for final resolution of the claim.

VA has provided an online tool to assist claimants and accredited representatives with selecting a decision review option that best fits the claimant's situation.⁴⁵ This tool provides information about the available decision review options, including VA's goal to complete higher-level reviews and supplemental claims in an average of 125 days for each claim type. The tool does not, however, specify that if a higher-level review reveals an error, the review will be completed without final resolution and a separate supplemental claim will be established to correct the error, prolonging the wait.

Feedback from VA managers indicated speed is a likely factor for lane selection. For example, the former OAR executive director said some attorneys informed her that they choose a higher-level review based on wait times reported by VA. The review team also interviewed the deputy under secretary for policy and oversight, who stated he had heard from OAR that accredited representatives encourage veterans to select the faster-moving lanes.⁴⁶ He additionally stated the accredited representatives use the AMA reporting data to advise veterans which lanes to follow.

When VA staff created the methodology to report timeliness and production, they did not consider separately reporting claims that began as higher-level reviews but were finalized as supplemental claims. A program analyst in the Office of Performance Analysis and Integrity responsible for generating the AMA monthly report stated it would be possible to report

⁴⁵ "Choosing a Decision Review Option" (web page), VA, accessed June 23, 2022, <https://www.va.gov/resources/choosing-a-decision-review-option/>.

⁴⁶ The Office of Policy and Oversight coordinates initiatives, projects, and procedural changes for 10 business lines and program offices, one of which is OAR. Accredited representatives are generally veterans service organizations. These organizations help veterans understand and apply for benefits.

timeliness and production for this group of claims to improve clarity. However, the chief of business intelligence in the same office felt there was no way to reliably link the two claims for tracking purposes. Although the OIG review team was able to generate average production and timeliness data for higher-level reviews finalized as supplemental claims for this report, VBA indicated in comments that the task is more difficult and that VBA data analysts were “unable to reliably link a completed [higher-level review] to a subsequent ... return at the contention level.” Still, VBA committed to work on “a methodology to best augment current AMA statutorily required reporting.”⁴⁷

VA can increase clarity by reporting one timeliness metric for decision reviews that begin as higher-level reviews but migrate to the supplemental claim lane. The OIG’s first recommendation is for VA to update the methodology and define its measures to reflect the total wait for veterans affected by processing in both lanes.

Production Measure Includes Claims That Are Counted as Completed More Than Once

The number of completed claims (production) is used to calculate the average days to complete a claim (timeliness). If the production number is larger than it should be, the calculation is not accurate. For the decisions the review team analyzed, the total number of days to complete these decisions would be divided by the total production number of 27,348. However, VA would calculate the average days to complete these claims by dividing by twice this number (54,696) because VA considers the higher-level review and supplemental claim different claims and counts them separately. Because VA computes the timeliness of claims reviews using production as the divisor, if that production number is large, it results in a lower timeliness calculation.

Table 3 shows how VA would count the decisions the review team analyzed.

⁴⁷ In technical comment 7 (page 42), VBA requested removal of the report statement regarding the VA OIG’s ability to generate production and timeliness data for higher-level reviews finalized as supplemental claims. VBA requested its removal because the agency’s data analysts were unable to reliably develop a reporting methodology that links higher-level reviews and their subsequent supplemental claims. The statement was revised to provide greater clarity and to integrate VBA’s stated concerns and commitment to work on an enhanced methodology. In addition, notes were added in the report where necessary to clarify averages.

Table 3. How VA Counts Completions

Decision type	Completions
Higher-level reviews	27,348
Supplemental claims	27,348
Total	54,696

Source: VA OIG analysis and VA Manual 21-5, "Handling Duty to Assist Errors," updated March 25, 2021, chap. 5 in Appeals and Reviews, Overview, topic 5.e.

Although VA describes completions as “actions that move claims to the next stage in the process and may include resolutions which are actions that end the appeal,”⁴⁸ this method of measuring production does not reflect the number of veterans receiving final resolution of their claims, nor does it make plain that this level of productivity and the associated timeliness are due to VBA processing errors.

The Metric Required to Be Reported under AMA Section 5, Subsection M, Applies to the AMA Claims Process Regarding Decisions under the Jurisdiction of VBA⁴⁹

Section 5 of the AMA requires VA to periodically publish 26 metrics related to the processing of decisions under the modernized appeals system, labeled as subsections 5(1)A through Z. As mentioned earlier, subsection M directs VA to report “the average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date.”⁵⁰ (Claimants have one year after the closure of a decision to protect the effective date, meaning to continue the claim and allow the original filing date to potentially be assigned as the effective date for granting benefits.) To preserve the earliest date, VA will generally accept a review request from an eligible claimant who makes the request within one year of the date of the decision. Subsection M is meant to illustrate the complete claims process for claimants, from filing the initial claim until they no longer continuously pursue the claim under the decision review process. The OIG review team interprets subsection M to require reporting

⁴⁸ VBA, Periodic Progress Report on Appeals, Public Law 115-55, Section 3.

⁴⁹ In response to VBA’s technical comment 8 on page 42, the OIG has slightly revised this heading and language in this section to reflect that the reporting requirement applies to the AMA claims process regarding decisions under the jurisdiction of VBA. In addition, so as not to imply reporting beyond VBA’s jurisdiction under the decision review process, the OIG has revised the wording in figure 3 and updated footnotes.

⁵⁰ AMA § 5(1)(M).

on the date the initial claim is filed through final resolution of any AMA claim, plus one year after VBA's closure of the last decision on the AMA claim.⁵¹

At the time of this report, VA was not reporting the time from the filing of an initial claim through one year past the closure of any AMA claim. Figure 3 represents what VA reports versus what VA should be reporting in accordance with section 5, subsection M, of the AMA.

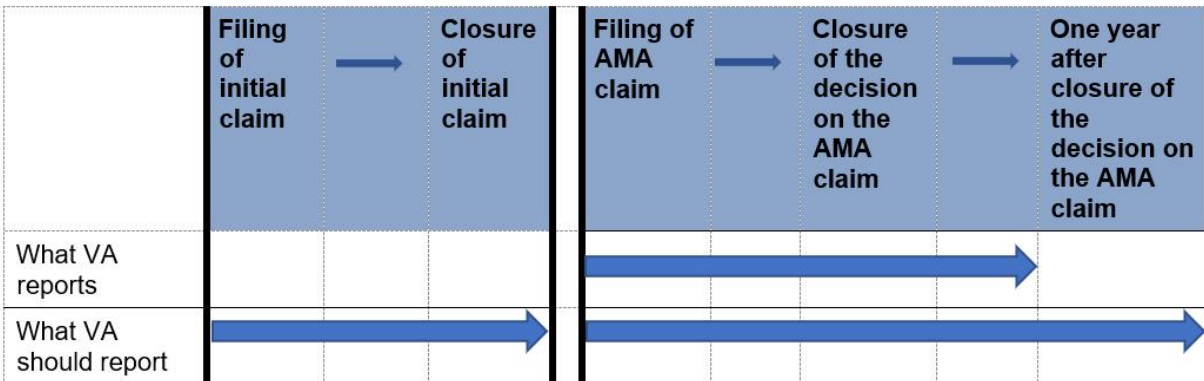


Figure 3. Differing interpretations of subsection M of the AMA.

Source: VA OIG analysis of https://www.benefits.va.gov/REPORTS/AMA/AMA_2021/AMA_09302021.xlsx, Part 1, AMA (M-N).

The review team interviewed members of VA staff and management and inquired about their understanding of the reporting requirement under subsection M. Some members of management agreed with the review team's interpretation, which is supported by the OIG legal team, while others interpreted this requirement to only include resolution of individual AMA claims. Some of the managers could not fully explain how this metric was computed.

The OIG, based on review team and legal analysis, concluded that in order to be in compliance with subsection M, VA must begin reporting from the date the initial claim is filed through one year past the decision on the final AMA claim.

VA needs to report performance clearly and completely as required under the AMA.

Implementing the OIG's first recommendation should help achieve reporting transparency. The second recommendation would clarify the methodology for reporting the average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date, in accordance with subsection M.

⁵¹ VA OIG legal team's interpretation of the requirement under AMA § 5(1)(M). An initial claim is the first time a veteran files a claim for a condition or files for an increased evaluation of a service-connected condition. 38 C.F.R. § 3.1(p)(1) (2022). "Claimants no longer take any action to protect their effective date" is interpreted as one year after the date on which VBA completes the decision on the last AMA claim. AMA § 5(1)(M). This reporting requirement is for the AMA claims process regarding decisions under the jurisdiction of VBA.

Stakeholder Feedback Highlighted How VA Could Make Reporting More Useful

Input from VA staff and other stakeholders indicates VA could enhance readability and make reporting more veteran-focused. Additionally, the review team's analysis of veterans' survey responses indicates VA should adjust the timing of veteran surveys to be more effective. These steps would improve the veteran experience.

Enhance Readability

Interviews with OAR and VA staff members responsible for AMA monthly reporting revealed several concerns about the readability of the reports. The chief in the operations section of OAR said external stakeholders would not be able to understand it without extensive explanation. Additionally, he said he believes the data provided in this report could easily be misinterpreted, though he had not brought these concerns to anyone's attention.

Appendix E presents an AMA monthly report summary and excerpts.⁵² The first page of the excerpts (page 32) illustrates the challenge: to understand the information, the reader must know the terminology and abbreviations in the table. For example, an "EP 030" is a higher-level review.

The OIG team discovered through interviews that VA has not revisited the reporting methodology since it began issuing the reports. In fact, the chief of OAR operations stated that they hardly ever even look at these reports. The chief of business intelligence in the Office of Performance Analysis and Integrity stated that since he had not received feedback on the monthly report from OAR, he assumed the report was serving the intended purpose. By revisiting the reporting methodology, VA could provide more accessible information to stakeholders.

Report in a More Veteran-Focused Way and Keep the Original Claim Open

The OIG team interviewed representatives from three national veterans service organizations—Disabled American Veterans, American Legion, and Paralyzed Veterans of America.⁵³ In these interviews, the OIG team asked representatives whether they felt VA's performance reporting on appeals that began as higher-level reviews and were finalized as supplemental claims was easy to read and understand. Representatives from Disabled American Veterans offered that VA should report production and timeliness in a more veteran-focused way, regardless of the results. They

⁵² VBA, *AMA Metrics Report*, September 2021, accessed February 23, 2022, https://benefits.va.gov/REPORTS/AMA/AMA_2021/AMA_09302021.xlsx.

⁵³ Veterans service organizations offer a range of services for veterans, including helping them understand and apply for benefits.

felt that it would be more appropriate if VA were to keep the original claim open, reporting the total days to finalize the claim and counting the completed claim toward production only once.

Adjust the Timing of Veteran Surveys

To evaluate the efficiency and effectiveness of the implementation of the AMA decision review process, VA administers surveys to measure veteran satisfaction. The goal of these surveys is to understand the veteran experience and identify process improvements. Claimants are surveyed at the point of filing a higher-level review or supplemental claim and after a decision is rendered to evaluate their experience under the decision review process. According to the chief of customer relationship management in OAR, veterans who receive a higher-level review decision that contains an identified error receive a survey only after the higher-level review decision. They do not receive an additional survey once they receive final resolution of their claim with the supplemental claim decision.

VA also conducts follow-up calls to some veterans based on their survey responses.⁵⁴ The OIG team reviewed VA's consolidated list of responses from follow-up calls to veterans who received a higher-level review decision for the last quarter of FY 2021 and the first quarter of FY 2022. Within this group, some veterans said they were content with the processing time for their decisions. However, some expressed concern that their claim should not be considered completed until they receive a final decision. If VA waited until final resolution to send surveys to claimants, it could better understand factors that affect veterans' experience with these VA services.

Conclusion

VA generally reported performance metrics under the requirements of the AMA. There are opportunities, however, to enhance the clarity of reporting metrics to include separate reporting for higher-level reviews that become supplemental claims due to identified errors. The OIG found some 22 percent of claims submitted for higher-level reviews were ultimately finalized as supplemental claims due to VA error and took more time. Additional information about what happens to higher-level reviews when errors are identified and how the average time to complete final decisions is determined would help VA be more transparent in its reporting and reduce the risk of veterans experiencing what they perceive to be excessive wait times. These reported wait times could be relied on by veterans and their representatives in determining which "lane" to choose in having a claims decision reviewed.

The AMA reports also do not explain how timeliness and production totals are reported to ensure users understand this information and how it reflects veterans' experiences. Moreover, regarding subsection M, the reporting would benefit from additional explanation about the measurements.

⁵⁴ VA selects those who expressed overall or partial dissatisfaction as the target groups for follow-up calls.

This includes the period from when the initial claim is filed until that claim is resolved, as well as the period to complete all related claims under the AMA decision review process, and one year after the completion of the last of these claims. To be consistently accountable and transparent to veterans seeking information on claims decision-making and to legislators committed to full AMA implementation, VA could ensure the reporting metrics are complete and clearly explained. Full disclosure so that veterans and veterans service organizations understand that a higher-level review may result in a supplemental claim, and more time to final resolution, would be valuable and align with VA's strategic plan and goals, especially that "VA must understand the impacts veterans experience as a result of services provided by VA and our partners."

Recommendations 1–2

The OIG recommends the under secretary for benefits take the following actions:⁵⁵

1. Update the reporting methodology used in public reports to reflect the total time veterans wait for a final claims decision when their higher-level reviews require a supplemental claim be established and completed due to an error.
2. Revise and clearly state the measures used for calculating and reporting the average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action under the Appeals Modernization Act claim, and ensure consistency with subsection M of the act.

VA Management Comments

VBA's senior advisor for policy, performing the delegable duties of the under secretary for benefits, concurred in principle with the OIG's findings and recommendations. Appendix F provides the full text for the senior advisor of policy's comments.

To address recommendation 1, the senior advisor for policy concurred that "there is an opportunity to complement the already extensive, statutorily mandated AMA reporting requirements with more Veteran-centric measures to support better understanding of AMA claim options and processes." VBA "proposes to supplement its current AMA public facing data required by statute by ... reporting timeliness on this subset of AMA claims ..." The target completion date is October 31, 2023.

To address recommendation 2, the senior advisor for policy noted, "VBA will more clearly state what is currently being reported publicly under this metric, ensuring that the data described in our report is clearly outlined and explained." He also expressed concern that VBA does not have

⁵⁵ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

tracking capabilities outside VBA's jurisdiction: a final AMA decision by the Board may be appealed beyond VA jurisdiction to the Court of Appeals for Veterans Claims, and then to the US Court of Appeals for the Federal Circuit, which would be burdensome to track and unreliable. The target completion date is October 31, 2023.

OIG Response

VBA's senior advisor for policy, performing the delegable duties of the under secretary for benefits, concurred in principle with the OIG's findings and recommendations and provided adequate responses for next steps. The OIG considers recommendations 1 and 2 open and will monitor implementation of the recommendations until all stated actions are documented as completed.

VBA comments assert that the VA OIG does not adequately acknowledge VBA compliance with AMA metrics requirements, needs to clarify terminology, and should consider processes beyond VBA's jurisdiction. These have all been addressed in the revisions made to this final report. The senior advisor also provided technical comments addressing work VA has conducted, additional information regarding statutory requirements under the AMA, remarks regarding the OIG's calculation of wait times, and suggested changes.

The senior advisor requested in technical comment 1 that the OIG modify the report's statement related to transparency and stakeholder input, which he stated implied that VBA was not working to ensure readability and veteran focus in its reports. The OIG made minor edits in response to this technical comment. The OIG acknowledges that VBA conducts surveys and makes follow-up calls to gauge veteran experience and was simply underscoring the importance of addressing stakeholder feedback.

For technical comment 2, it was suggested that the OIG revise the report statement, "The review team found that VA created some reporting metrics for decision reviews in compliance with the AMA." The OIG acknowledges that VBA publishes data and information on the metrics mandated by the AMA and modified report language to state that VA developed methodologies for reporting on the decision review metrics at issue in this report that are required by the AMA.

Technical comment 3 proposed the OIG add language to clarify that VBA reporting includes the entirety of the supplemental claim workload. The OIG added footnotes acknowledging that supplemental claims encompass various types, including differences of opinion, those that are submitted on a prescribed form to have potentially new evidence considered, and those that follow higher-level reviews which identify errors in the processing of the previous claim. For the purposes of this report, supplemental claims refer only to the last category of claims that follow higher-level reviews in which errors were identified in the processing of the previous claim.

The OIG was asked in technical comment 4 to add a parenthetical reference that clarifies the number of higher-level review completions for FY 2021. The OIG added a parenthetical reference and footnote for clarification.

Technical comment 5 suggested that the OIG revise the report statement about the public-facing website and veterans being unaware of the redirection of their higher-level reviews. The senior advisor stated that veterans are notified at every step of the process. The OIG acknowledges that veterans receive a notification letter informing them that an error has been found during their higher-level review and will be corrected with additional action. However, this letter does not notify veterans that a new claim has been established and that they are subject to another wait for its completion.

In technical comment 6, the senior advisor requested removal of figure 2 (in the draft version) and its related text. He stated VBA has taken care to comply with congressional reporting requirements on the decision review process and to maintain visibility of the separate processes. That figure was removed and replaced by an updated figure 2 to improve clarity and provide context. The OIG has revised the report to note that VBA developed methodologies for reporting on the decision review metrics at issue in this report that are required by the AMA. However, VBA reporting does not make immediately clear that some veterans wait longer for decisions when they are processed through both the higher-level review and supplemental claim lanes. As a result, the total time that some veterans wait under the AMA decision review process is not fully reflected in reporting metrics at issue in this report.

For technical comment 7, there was a request to remove the report statement regarding production and timeliness data for higher-level reviews finalized as supplemental claims. VBA requested removal of this statement because it was unable to develop reporting methodology that links higher-level reviews and the supplemental claims that follow them. The OIG did not recommend any specific method for VBA to employ to gather data on reporting metrics for the decision review process. The OIG simply used VBA's current reporting method to illustrate how VBA reports completions and timeliness for higher-level reviews and supplemental claims compared to the average waits that some veterans experience. Language was added to the report specifying VA concerns. In addition, notes were added in the report to clarify averages where necessary.

Finally, technical comment 8 took issue with the OIG's heading that labeled reporting under AMA section 5, subsection M, incomplete. The OIG reiterates that it is not referring to reporting outside of VBA's jurisdiction (such as those appealed to the Court of Appeals for Veterans Claims). To respond to the senior advisor's concerns, the OIG revised the title for this section along with information in figure 3, updated footnotes 49 and 51 to reflect that the reporting requirement is for the AMA claims process, and added language to the text clarifying that the reporting requirement for this subsection is specifically related to the AMA claims process regarding decisions under the jurisdiction of VBA.

Appendix A: Scope and Methodology

Scope

The review team conducted its work from November 2021 through February 7, 2023. The team focused on a universe of 27,348 completed claims from October 1, 2020, to September 30, 2021, under claims processing codes “EP 040HDER” (a supplemental claim that is labeled as “higher-level review duty to assist error”) with previously completed associated claims under “030HLRR” (a higher-level review labeled as “higher-level review rating”).⁵⁶ The team counted the days from the date of the higher-level review through the date the supplemental claim was closed as a single value. On average, these claims were completed in 196 days.

Methodology

To accomplish the review objectives, the team considered applicable laws, regulations, policies, procedures, and guidelines for decision review and reporting under the AMA. The team performed virtual interviews with veterans service organizations and VA’s central offices, including OAR, the Office of Policy and Oversight, the Office of Performance Analysis and Integrity, and the Office of Program Integrity and Internal Controls. The virtual site visits were conducted from September 15, 2021, through May 3, 2022.

The design of the review resulted in the analysis of the 27,348 completed claims described above. The analysis included a computation of the average days to complete. This is the average of the days to complete each end product, computed from the date the claim was received through the date the claim was closed plus one day. The average days to complete was computed for all 040HDER end products, all 030HLRR end products, and a combined computation for both to illustrate the total time veterans waited for a final decision. No projections were made based on this review of completed claims.

The review team used VA’s electronic systems, including the Veterans Benefits Management System, to review veterans’ electronic claim records and relevant documentation required to evaluate how clearly and transparently VA measures and reports performance under the AMA.

Internal Controls

The review team assessed the internal controls significant to the objective. This included an assessment of the five internal control components: control environment, risk assessment, control

⁵⁶ The end-product (EP) system is VBA’s primary workload monitoring and management tool. Its correct use facilitates proper control of pending workload and appropriate work measurement credit. VA Manual 21-4, “Correct EP Use and Work Measurement,” app. B. in *Adjudication Procedures Manual*, November 9, 2020, sec. 1.a.

activities, information and communication, and monitoring.⁵⁷ In addition, the team reviewed the principles of internal control as associated with the objective. The team identified the following two components and six principles as significant to the objective. The team identified internal control weaknesses during this review and proposed recommendations to address the following control deficiencies:

- Component: Control Activities
 - Principle 10: Management should design control activities to achieve objectives and respond to risks.
 - Principle 11: Management should design the entity's information system and related control activities to achieve objectives and respond to risks.
 - Principle 12: Management should implement control activities through policies.
- Component: Information and Communication
 - Principle 13: Management should use quality information to achieve the entity's objectives.
 - Principle 14: Management should internally communicate the necessary quality information to achieve the entity's objectives.
 - Principle 15: Management should externally communicate the necessary quality information to achieve the entity's objectives.

Fraud Assessment

The review team assessed the risk that fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, significant within the context of the review objectives, could occur during this review. The team exercised due diligence in staying alert to any fraud indicators by

- reviewing the OIG hotline complaints and concerns for indicators and
- completing the Fraud Indicators and Assessment checklist.

The OIG did not identify any instances of fraud or potential fraud during this audit.

⁵⁷ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

Data Reliability

The review team used computer-processed data from VA's Corporate Data Warehouse for supplemental claims and higher-level reviews for the period October 1, 2020, through September 30, 2021.

To test for reliability, the team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The team 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 team compared the data received (veterans' names, file numbers, dates of claims, and end-product closed dates) to the Veterans Benefits Management System records reviewed.

Testing of the data sets disclosed they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the veterans' Veterans Benefits Management System records reviewed did not disclose any problems with data reliability.

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 B: Sample of a Higher-Level Review Decision



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

[REDACTED]

VA File Number

[REDACTED]

Represented By:

[REDACTED]

Rating Decision
05/30/2019

INTRODUCTION

You have requested VA provide a higher-level review of the issue(s) addressed in this decision. Our records reflect that you are a veteran of the Peacetime and Vietnam Era. You served in the [REDACTED] from [REDACTED]. We received your request for higher-level review on May 14, 2019. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

A duty to assist error has been identified during the Higher Level Review for basal cell carcinoma (claimed as melanoma), as due to exposure to ionizing radiation.

EVIDENCE

- Service treatment and personnel records for the period of [REDACTED] through [REDACTED] [REDACTED]
- Treatment reports from Health East Care System for the period of [REDACTED] through [REDACTED].
- Treatment reports from VA Medical Center Minneapolis for the period of [REDACTED], [REDACTED] through [REDACTED].
- Treatment reports from Mayo Clinic received November 7, 2017; December 22, 2017; and November 9, 2018, for period of [REDACTED] through [REDACTED].
- Picture of [REDACTED], received March 7, 2018.
- Radiation Risk Activity Information Sheet, received November 13, 2018.
- Treatment report from CDI St. Louis Park received March 15, 2019, dated November 11, 2016.
- Treatment report from Neurological Associates of St. Paul received March 15, 2019, dated September 12, 2016.
- Treatment reports from Fairview Southdale Hospital received August 14, 2017; October 28, 2018; and November 19, 2018, for period from [REDACTED] through [REDACTED].
- Our letter to you dated May 28, 2019.
- VA form 20-0996, Decision Review Request: Higher-Level Review, received May 14, 2019.
- Statement of the Case, issued to you on May 3, 2019.
- VA form 21-0958, Notice of Disagreement, received January 30, 2018.
- Our letter to you dated December 4, 2017.
- VA form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received November 7, 2017.

REASONS FOR DECISION

Higher Level Review for basal cell carcinoma (claimed as melanoma), as due to exposure to ionizing radiation.

The issue of basal cell carcinoma (claimed as melanoma) was returned for correction of a duty to assist error in the prior decision. We failed to get federal records. We will develop for any records that may be available from the service department to confirm occupational exposure to ionizing radiation.

Favorable Findings identified in this decision:

You completed a Radiation Risk Activity Information Sheet on October 28, 2018, stating that from January 1976 through December 1976 you were assigned to [REDACTED] at the

████████████████████ where you gathered radioactive dust from an air vacuum system some 10-12 hours a day.

Service treatment records show you were treated in █████ in █████ and that you were assigned to █████.

Records from Twin Cities Dermatopathology show you were diagnosed with basal cell carcinoma of the sternum (left chest) in █████.

Records from Dermatology Specialists show you were diagnosed with basal cell carcinoma of the left zygoma in █████.

Records from Mayo Clinic show you were diagnosed with basal cell carcinoma of the left shoulder in █████.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.

Appendix C: OAR Responsibilities

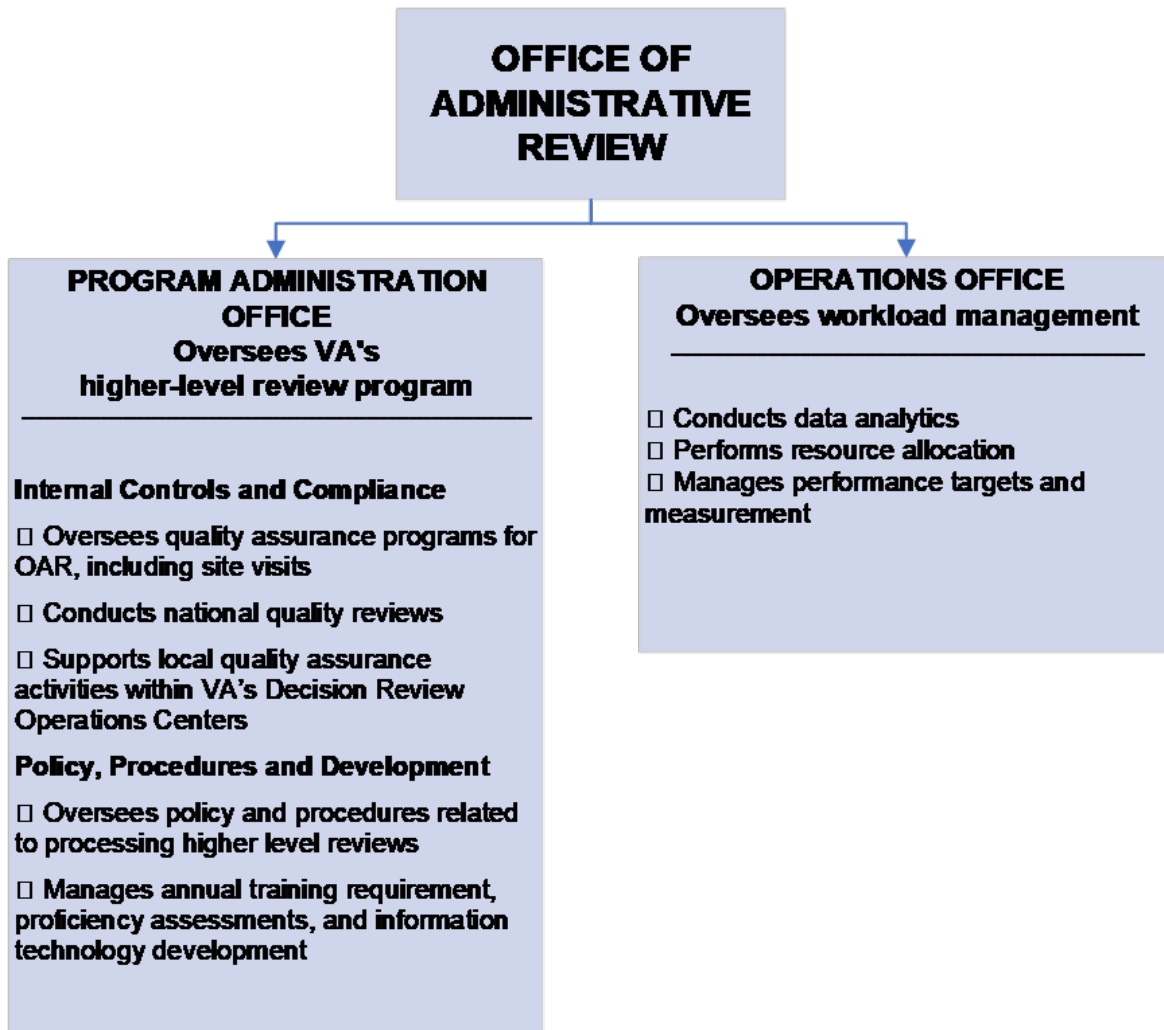


Figure C.1. Roles and responsibilities of staff in VA's OAR.

Source: [OAR Program Administration - Office of Administrative Review \(va.gov\)](https://www.va.gov/oar-program-administration) and [Operations - Office of Administrative Review \(va.gov\)](https://www.va.gov/oar-operations).

Appendix D: Section 5(1) AMA Requirements

SEC. 5. PERIODIC PUBLICATION OF METRICS RELATING TO PROCESSING OF APPEALS BY DEPARTMENT OF VETERANS AFFAIRS.

The Secretary of Veterans Affairs shall periodically publish on an Internet website of the Department of Veterans Affairs the following:

(1) With respect to the processing by the Secretary of appeals under the new appeals system of decisions regarding claims for benefits under laws administered by the Secretary, the following:

(A) For the Veterans Benefits Administration and, to the extent practicable, each regional office of the Department of Veterans Affairs, the number of—

(i) supplemental claims under section 5108 of title 38, United States Code, as amended by section 2(i), that are pending; and

(ii) requests for higher-level review under section 5104B of such title, as added by section 2(g), that are pending.

(B) The number of appeals on any docket maintained under section 7107 of such title, as amended by section 2(t), that are pending.

(C) The average duration for processing claims and supplemental claims, disaggregated by regional office.

(D) The average duration for processing requests for higher-level review under section 5104B of such title, as added by section 2(g), disaggregated by regional office.

(E) The average number of days that appeals are pending on a docket of the Board of Veterans' Appeals maintained pursuant to section 7107 of such title, as amended by section 2(t), disaggregated by—

(i) appeals that include a request for a hearing;

(ii) appeals that do not include a request for a hearing and do include submittal of evidence; and

(iii) appeals that do not include a request for a hearing and do not include submittal of evidence.

(F) With respect to the policy developed and implemented under section 7107(e) of such title, as amended by section 2(t)—

(i) the number of cases moved from one docket to another pursuant to such policy;

(ii) the average time cases were pending prior to moving from one docket to another; and

(iii) the average time to adjudicate the cases after so moving.

- (G) The total number of remands to obtain advisory medical opinions under section 5109(d) of title 38, United States Code, as added by section 2(j).
- (H) The average number of days between the date on which the Board remands a claim to obtain an advisory medical opinion under section 5109(d) of such title, as so added, and the date on which the advisory medical opinion is obtained.
- (I) The average number of days between the date on which the Board remands a claim to obtain an advisory medical opinion under section 5109(d) of such title, as so added, and the date on which the agency of original jurisdiction issues a decision taking that advisory opinion into account.
- (J) The number of appeals that are granted, the number of appeals that are remanded, and the number of appeals that are denied by the Board disaggregated by docket.
- (K) The number of claimants each year that take action within the period set forth in section 5110(a)(2) of such title, as added by section 2(l), to protect their effective date under such section 5110(a)(2), disaggregated by the status of the claimants taking the actions, such as whether the claimant is represented by a veterans service organization, the claimant is represented by an attorney, or the claimant is taking such action pro se.
- (L) The total number of times on average each claimant files under section 5110(a)(2) of such title, as so added, to protect their effective date under such section, disaggregated by the subparagraph of such section under which they file.
- (M) The average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date under section 5110(a)(2) of such title, as so added—
- (i) of claims under the new appeals system, excluding legacy claims that opt in to the new appeals system; and
 - (ii) of legacy claims that opt in to the new appeals system.
- (N) How frequently an action taken within one year to protect an effective date under section 5110(a)(2) of such title, as so added, leads to additional grant of benefits, disaggregated by action taken.
- (O) The average of how long it takes to complete each segment of the claims process while claimants are protecting the effective date under such section, disaggregated by the time waiting for the claimant to take an action and the time waiting for the Secretary to take an action.
- (P) The number and the average amount of retroactive awards of benefits from the Secretary as a result of protected effective dates under such section, disaggregated by action taken.
- (Q) The average number of times claimants submit to the Secretary different claims with respect to the same condition, such as an initial claim and a supplemental claim.
- (R) The number of cases each year in which a claimant inappropriately tried to take simultaneous actions, such as filing a supplemental claim while a higher-level review is

pending, what actions the Secretary took in response, and how long it took on average to take those actions.

(S) In the case that the Secretary develops and implements a policy under section 5104C(a)(2)(D) of such title, as amended by section 2(h)(1), the number of actions withdrawn and new actions taken pursuant to such policy.

(T) The number of times the Secretary received evidence relating to an appeal or higher-level review at a time not authorized under the new appeals system, disaggregated by actions taken by the Secretary to deal with the evidence and how long on average it took to take those actions.

(U) The number of errors committed by the Secretary in carrying out the Secretary's duty to assist under section 5103A of title 38, United States Code, that were identified by higher-level review and by the Board, disaggregated by type of error, such as errors relating to private records and inadequate examinations, and a comparison with errors committed by the Secretary in carrying out such duty with respect to appeals of decisions on legacy claims.

(V) An assessment of the productivity of employees at the regional offices and at the Board, disaggregated by level of experience of the employees.

(W) The percentage of cases that are decided within the goals established by the Secretary for deciding cases, disaggregated by cases that involve a supplemental claim, cases that involve higher-level review, and by docket maintained under section 7107(a) of such title, as amended by section 2(t), or in the case that the Secretary has not established goals for deciding cases, the percentage of cases which are decided within one year, two years, three years, and more than three years, disaggregated by docket.

(X) Of the cases that involve higher-level review, the percentage of decisions that are overturned in whole or in part by the higher-level adjudicator, that are upheld by the higher-level adjudicator, and that are returned for correction of an error.

(Y) The frequency by which the Secretary readjudicates a claim pursuant to section 5108 of such title, as amended by section 2(i), and the frequency by which readjudication pursuant to section 5108 of such title, as so amended, results in an award of benefits.

(Z) In any case in which the Board decides to screen cases for a purpose described in section 7107(d) of such title, as amended by section 2(t)(1)—

(i) a description of the way in which the cases are screened and the purposes for which they are screened;

(ii) a description of the effect such screening has had on—

(I) the timeliness of the issuance of decisions of the Board; and

(II) the inventory of cases before the Board; and

(iii) the type and frequency of development errors detected through such screening.

Appendix E: AMA Monthly Report Summary and Excerpts from September 2021 Report

Report Summary

Veterans Benefits Administration
Office of Performance Analysis & Integrity (PA&I)
The Office of Performance Analysis & Integrity provides the following data in response to the legislative reporting requirements per the Veteran Appeals Improvement and Modernization Act.
<p><i>* Data on past decisions or pending totals in this report reflects data on decisions completed or pending decisions as of the month of the referenced file date.</i></p> <p>Summary</p> <p>The Appeals Modernization Act serves to revamp the entire VA disability appeals process in order to provide veterans, their families, and their survivors with increased choice in handling disagreements with VA's decisions. Furthermore, it sets forth specific elements that must be addressed in VA's comprehensive plan, including: implementing the new appeals system; timely processing under the new appeals system; and monitoring the implementation of the new appeals system to include regular progress reporting of AMA metrics and goals.</p> <p>Responses</p> <p>Part 1 (A-D)- AMA Claims: The data on this tab summarizes the total number pending/completed and average days pending/average days to complete of all 030 and 040 related End Products broken down by regional office and for the nation as of the end of the prior month and Fiscal Year to Date. IMPORTANT NOTE: 030-series end products include higher level reviews and Board grants. 040-series end products include supplemental claims, Board AMA remanded appellate decisions and higher-level review returns.</p> <p>Part 1 (E, G, J)- AMA Claims: The data on this tab summarizes the average days pending per board docket, the number of remands for advisory medical opinion and the number of appeals granted, remanded, and denied by the Board per docket.</p> <p>Part 1 (K-L)- AMA Claims: The data on this tab summarizes the number of claimants each year that take action within the period under 38 USC 5110(a)(2) to protect their effective date broken out by power of attorney. This tab also displays the total number of times on average each claimant files under 38 USC 5110(a)(2) to protect their effective date broken down by Higher-level review, Supplemental claim following AOJ decision, NOD, Supplemental claim following a Board Decision, Supplemental claim following a CAVC decision.</p>

Part 1 (M-N)- AMA Claims: The data on this tab summarizes the average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date broken down by opt-in response. This tab also displays how frequently an action taken within one year to protect an effective date leads to additional grant of benefits broken down by action taken.

Part 1 (O-P)- AMA Claims: The data on this tab summarizes the average of how long it takes to complete each segment of the claims process while claimants are protecting their effective date broken out by the time waiting for the claimant to take action, and the time waiting on the Secretary to take action. This tab also summarizes the number and average amount of retroactive awards of benefits from the Secretary as a result of protected effective dates broken down by action taken.

Part 1 (Q-S)- AMA Claims: The data on this tab summarizes the average number of times claimants submit different claims with respect to the same condition. This tab also summarizes the number of cases each year in which a claimant inappropriately tried to take simultaneous actions and the number of actions withdrawn and new actions taken pursuant to the policy for switching lanes.

Part 1 (T-V)- AMA Claims: The data on this tab summarizes the number of times the Secretary received evidence relating to an appeal or higher-level review at a time not authorized under the new appeals system. This tab also summarizes the number of Errors committed by the Secretary in carrying out the duty to assist (DTA) under 38 USC 5103A that were identified by higher-level review and by the Board. In addition, this tab provides an assessment of the % of employees meeting/exceeding their production standards at the two DROCs.

Part 1 (W-Y)- AMA Claims: The data on this tab summarizes the percentage of cases that are decided within the goals established by the Secretary for deciding cases - Disaggregated by cases that involve a supplemental claim, cases that involve a higher-level review, and by Docket. This tab also summarizes the percentage of higher-level reviews that are overturned, upheld, or returned for correction. In addition, this tab displays the frequency by which the Secretary readjudicates a claim under 38 USC 5108 {where new and relevant evidence is presented or secured with respect to a supplemental claim}, and the frequency by which the readjudication results in an award of benefits.

Part 2 (A-H)- Legacy Appeals: The data on this tab summarizes appeals initiated prior to the implementation of the Appeals Modernization Act on February 19th, 2019. Data is provided on the current inventory and status of legacy appeals, productivity assessments of employees, as well as the results of past decisions and simultaneous actions taken. Data on past decisions reflects data on decisions completed in the month of the referenced file date.

Part 3 (A)- AMA Claims: This tab displays the cumulative number of legacy appeals that chose to have their appeals processed under AMA broken down by Opt-In Month and the number that opted in per month.

Part 3 (C)- AMA Claims: This section displays the total opt-ins to date per regional office to include the average days it took to opt-in and the average days to complete since opt-in cumulatively.

Sources

VACOLS, Corporate Data Warehouse

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This communication is intended only for the person or entity to which it is addressed, and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination, distribution, or copying of this report or the information herein by anyone other than the intended recipient is prohibited. If you are unsure of your responsibilities to safeguard confidential information, please review the Privacy Act of 1974 available on the Internet at:

<http://www.justice.gov/opcl/privacyact1974.htm>

Questions

If you have any questions, please contact the Office of Performance Analysis & Integrity at

PAI.VBACO@VA.GOV

PAI.VBACO@VA.GOV

VA Developed Reporting Metrics for Appeals Modernization Act Decision Reviews
but Could Be Clearer on Some Veterans' Wait Times

Report Excerpts⁵⁸

(C) The number of Compensation and Pension AMA claims completed for Supplemental and Higher Level Reviews for the month, Disaggregated by RO (D) The Average Duration for Processing (ADC) requests, Disaggregated by RO						(C) The number of Compensation and Pension AMA claims completed for Supplemental and Higher Level Reviews FYTD, Disaggregated by RO (D) The Average Duration for Processing (ADC) requests, Disaggregated by RO							
File Date	EPs	SOJ	Number Completed for Month		ADC	File Date	EPs	SOJ	Number Completed FYTD		ADC		
9/30/2021	030 EPs	USA	11,485		48.8	9/30/2021	030 EPs	USA	122,755		83.7		
9/30/2021	040 EPs	USA	18,866		108.4	9/30/2021	040 EPs	USA	276,013		91.3		
File Date	EPs	SOJ	Station Name	Number Completed for Month		ADC	File Date	EPs	SOJ	Station Name	Number Completed FYTD		ADC
9/30/2021	030 EPs	317	St. Petersburg RO	5,088		47.4	9/30/2021	030 EPs	301	Boston RO	1		68.0
9/30/2021	030 EPs	323	Jackson RO	1		59.0	9/30/2021	030 EPs	306	New York RO	1		3.0
9/30/2021	030 EPs	327	Louisville RO	19		52.2	9/30/2021	030 EPs	310	Philadelphia RO	846		93.5
9/30/2021	030 EPs	335	St. Paul RO	71		49.2	9/30/2021	030 EPs	311	Pittsburgh RO	1		28.0
9/30/2021	030 EPs	345	Phoenix RO	1		91.0	9/30/2021	030 EPs	314	Roanoke RO	1		13.0
9/30/2021	030 EPs	346	Seattle RO	6,271		49.9	9/30/2021	030 EPs	316	Atlanta RO	1		99.0
9/30/2021	030 EPs	358	Manila RO	18		20.2	9/30/2021	030 EPs	317	St. Petersburg RO	59,116		86.0
9/30/2021	030 EPs	699	Automation Completion Sta	16		41.4	9/30/2021	030 EPs	318	Winston-Salem RO	1		134.0
							9/30/2021	030 EPs	319	Columbia RO	4		33.3
							9/30/2021	030 EPs	322	Montgomery RO	1		149.0
							9/30/2021	030 EPs	323	Jackson RO	28		106.0
							9/30/2021	030 EPs	327	Louisville RO	209		97.9
							9/30/2021	030 EPs	328	Chicago RO	1		5.0
							9/30/2021	030 EPs	330	Milwaukee RO	826		85.6
							9/30/2021	030 EPs	331	St. Louis RO	5		34.2
							9/30/2021	030 EPs	335	St. Paul RO	1,441		65.3
							9/30/2021	030 EPs	339	Denver RO	14		54.9
							9/30/2021	030 EPs	341	Salt Lake City RO	8		66.8
							9/30/2021	030 EPs	345	Phoenix RO	1		91.0
							9/30/2021	030 EPs	346	Seattle RO	59,835		82.0
							9/30/2021	030 EPs	349	Waco RO	1		84.0
							9/30/2021	030 EPs	351	Muskogee RO	19		82.3
							9/30/2021	030 EPs	354	Reno RO	1		11.0
							9/30/2021	030 EPs	358	Manila RO	96		17.8
							9/30/2021	030 EPs	377	San Diego RO	2		16.5
							9/30/2021	030 EPs	397	Appeals Management Center	1		23.0
							9/30/2021	030 EPs	499	National Work QueueRO	29		50.0
							9/30/2021	030 EPs	699	Automation Completion Stat	265		65.7

⁵⁸ VBA, AMA Metrics Report.

VA Developed Reporting Metrics for Appeals Modernization Act Decision Reviews
but Could Be Clearer on Some Veterans' Wait Times

1	(M) The average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date (i)			
2	of claims under the new appeals system, excluding legacy claims that opt-in to the new appeals system (ii) of legacy claims that opt-in to the new appeals system			
3	Opt-In Type	FY	Month	ADC
4				
5	<i>Monthly Breakdown</i>			
6	AMA 030/040 EPs No Legacy Opt-In	2019	5/31/2019	117.5
27	AMA 030/040 EPs No Legacy Opt-In	2021	2/28/2021	104.8
28	AMA 030/040 EPs No Legacy Opt-In	2021	3/31/2021	95.7
29	AMA 030/040 EPs No Legacy Opt-In	2021	4/30/2021	86.3
30	AMA 030/040 EPs No Legacy Opt-In	2021	5/31/2021	80.2
31	AMA 030/040 EPs No Legacy Opt-In	2021	6/30/2021	81.9
32	AMA 030/040 EPs No Legacy Opt-In	2021	7/31/2021	79.6
33	AMA 030/040 EPs No Legacy Opt-In	2021	8/31/2021	52.8
34	AMA 030/040 EPs No Legacy Opt-In	2021	9/30/2021	89.8
35				
57	AMA 030/040 EPs Yes Legacy Opt-In	2021	2/28/2021	116.1
58	AMA 030/040 EPs Yes Legacy Opt-In	2021	3/31/2021	108.0
59	AMA 030/040 EPs Yes Legacy Opt-In	2021	4/30/2021	103.8
60	AMA 030/040 EPs Yes Legacy Opt-In	2021	5/31/2021	94.1
61	AMA 030/040 EPs Yes Legacy Opt-In	2021	6/30/2021	104.8
62	AMA 030/040 EPs Yes Legacy Opt-In	2021	7/31/2021	101.7
63	AMA 030/040 EPs Yes Legacy Opt-In	2021	8/31/2021	53.2
64	AMA 030/040 EPs Yes Legacy Opt-In	2021	9/30/2021	105.9
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Appendix F: Management Comments

Department of Veterans Affairs Memorandum

Date: March 20, 2023

From: Senior Advisor for Policy, Performing the Delegable Duties of the Under Secretary for Benefits (20)⁵⁹

Subj: Office of Inspector General (OIG) Draft Report -- VBA Developed Reporting Metrics for Appeals Modernizations Act Decision Reviews but Could be Clearer on Some Veterans' Wait Times [Project No. 2022-00488-AE-0029] — [VIEWS 09441611]

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

1. Attached is VBA's response to the OIG Draft Report: VBA Developed Reporting Metrics for Appeals Modernization Act Decision Reviews but Could be Clearer on Some Veterans' Wait Times.

The OIG removed point of contact information prior to publication.

(Original signed by)

Joshua Jacobs

Attachment

⁵⁹ Joshua Jacobs was confirmed as VA's undersecretary for benefits on April 26, 2023.

Attachment

**Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
VBA Developed Reporting Metrics for Appeals Modernizations Act Decision Reviews but
Could be Clearer on Some Veterans' Wait Times**

The Veterans Benefits Administration (VBA) concurs in principle with the Office of Inspector General's (OIG) draft report findings and provides the following general comments:

VBA appreciates the opportunity to collaborate with the OIG regarding opportunities to supplement VBA's current Appeals Modernization Act (AMA) statutorily required reporting metrics with additional information; however, throughout the report, OIG fails to adequately acknowledge that the manner in which VBA currently reports AMA metrics, including for supplemental claims and duty to assist claims, is in accordance with AMA statutory requirements set forth by Congress. To the extent this report incorrectly suggests otherwise, it should be corrected throughout by making clear that current public reporting of supplemental claims and duty to assist claims timeliness is in accordance with existing statutory requirements.

Furthermore, clarification is needed regarding terminology used in the report. Although those internal to the process understand the terminology, the terminology used could be easily misunderstood by those unfamiliar with the process. The terms "duty to assist claim" and "supplemental claim" reference two independent processes. A supplemental claim is a claim in which a claimant applies for a benefit with new and relevant evidence by submitting a VA Form 20-0995, Decision Review Request: Supplemental Claim. Higher-Level Reviews (HLR) are filed on a VA Form 20-0996, Decision Review Request: Higher-Level Review, and may result in the need to obtain additional evidence under one of two categories: a duty to assist (DTA) error, which is an error identified by a senior adjudicator after a review of the closed record, or a difference of opinion when the senior adjudicator determines that a more favorable outcome is likely warranted (these two outcomes are collectively known as "HLR returns"). OAR acknowledges that OIG included a footnote defining these terms on page i; however, throughout the report, the distinction between the two separate workloads is unclear and may result in a layperson misunderstanding the information in this report.

In addition, the OIG interpretation of the claims process includes information, processes and data that are beyond VA jurisdiction. The OIG interprets subsection 5(1)(M) of the AMA to "require reporting on the date the initial claim is filed through final resolution of any AMA claims, plus one year after the closure of the last AMA claim." In many cases, a claim is appealed beyond the Board of Veterans' Appeals (the Board) to the Court of Appeals for Veterans Claims, and may later be appealed to the U.S. Court of Appeals for the Federal Circuit. In this situation, VBA no longer has access to current claim information and disposition and cannot accurately report claims data once the claim is moved outside VA jurisdiction. Subsection (5)(1)(M) states: "(M) The average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action to protect their effective date under section 5110(a)(2) of such title, as so added— (i) of claims under the new appeals system, excluding legacy claims that opt in to the new appeals system; and (ii) of legacy claims that opt in to the new appeals system." The intergovernmental infrastructure required to follow specific AMA claims and appeals outside VA through the Federal court system does not currently exist without tracking every, single appeal filed with the Court of Appeals for Veterans Claims and the U.S. Court of Appeals for the Federal Circuit. To track this level of information would require significant manual effort, amount of time, and manpower, and it would be unreliable compared to automated data deliveries. VBA is actively working to develop technical requirements to improve reporting with VA's available data.

VBA thanks OIG for partnering with OAR to ensure the information provided is clear.

VBA provides the following technical comments:[⁶⁰]

[Comment 1:]

Page iv, Paragraph 1,:

“Beyond addressing these issues with greater transparency, VA could make reporting more useful by responding to stakeholders’ input. Enhancing readability is one area for improvement raised by internal and external stakeholders, including follow-up to veteran surveys, as well as making reports more veteran-focused.”

VBA Comment: The statement is misleading as it implies VBA is not working to ensure readability and Veteran-focus in our reports. VBA is requesting a change in language to better reflect the work VBA has done. VBA is currently conducting surveys of Veterans who file AMA claims, referred to as VSignals surveys. VBA has partnered with VA's Veterans Experience Office (VEO) to develop and conduct three Customer Experience (CX) VSignals surveys. One survey focuses on the decision review process and the other two surveys address the end-to-end process of the two decision review lanes managed by VBA: the HLR and the Supplemental Claim lanes.

The AMA VSignals surveys allow VBA to assess customer satisfaction and experience associated with a review lane. VBA utilizes these reports to research individual cases to provide a more positive experience for the Veteran, and to identify and explore opportunities for process improvements to provide a better experience for all customers.

VBA recommends the statement be revised as follows:

“Beyond addressing these issues with greater transparency, VA could make reporting more useful. Enhancing readability is one area for improvement raised by internal and external stakeholders, as well as making reports more veteran-focused.”

[Comment 2:]

Page 7, Paragraph 1, Sentence 1:

“The review team found that VA created some reporting metrics for decision reviews in compliance with the AMA”

VBA Comment: The monthly AMA metrics provided for external reporting and published on the [Appeals Modernization](#) website are explicitly required by statute and not created independently by VBA.

Recommended language:

“VBA publishes data and information based on the metrics mandated by the AMA statute.”

[Comment 3:]

Page 7, Paragraph 1, Sentence 2:

“In the September 2021 AMA monthly report, VA reported an average of 83.7 days to complete higher-level reviews, and 91.3 days for supplemental claims for fiscal year 2021 for 398,768 total claims.”

⁶⁰ Because of the OIG’s revisions or clarifications made in response to VBA technical comments, the page and paragraph references from VBA may no longer align with the final text.

VBA Comment: Clarification is needed in this statement to identify that the supplemental claims referenced here include distinctly separate categories: supplemental claims filed on VA Form 20-0995, and HLR returns. This metric is not only reflective of the average days to complete a supplemental claim filed on a VA Form 20-0995, but includes the categories listed above which encompass the entirety of the 040 end product. VBA's reporting in the cited document is consistent with statutory requirements.

Recommended language:

"In the September 2021 AMA monthly report, VA reported an average of 83.7 days to complete higher level reviews and 91.3 days for supplemental claims for fiscal year 2021 for 398,768 claims. The 91.3 days for supplemental claims include the entirety of the 040 end product, including supplemental claims filed on a VA form 20-0995 and HLR returns."

[Comment 4:]

Page 7, Paragraph 2, Sentence 2:

"Of the 398,768 total claims reported as complete, the review team identified 27,348 claims that fell into this category. This number represents 22 percent of the total higher-level reviews reported as completed in FY 2021."

VBA Comment: To ensure the reader understands the full context of the information reported in the sentence above, VBA recommends adding, at a minimum, a parenthetical to reference the number of HLRs completed in fiscal year (FY) 2021. This will allow the reader to better connect the percentage with the proper population of completions. Requiring the audience to review the footnote could result in the information being missed and a misunderstanding of the data.

Recommended language:

"Of the 398,768 total claims reported as complete, the review team identified 27,348 claims that began as higher-level reviews but were completed under the 040 end product as either a duty to assist error or difference of opinion return, and included with the supplemental claim metrics reported. This number represents 22 percent of the total number (122,755) of higher-level reviews reported as completed in FY 2021."

[Comment 5:]

Page 9, Paragraph 1:

"VA has reported on a public-facing website that the higher-level reviews are the fastest option. That is accurate in most cases. However, in more than 20 percent of cases, claims filed as higher-level reviews were found to have errors and—unbeknownst to some veterans—closed, and reopened as supplemental claims, requiring veterans to wait for two decisions. Veterans may be unaware of this redirection and could be expecting to receive decisions within the 125 days (on average) specified in VA's completion goal."

VBA comment: VBA notifies the Veteran at every step of the process. In instances where a HLR return is warranted, VBA sends a notification letter to the Veteran. The notice states that the HLR decision has been made and additional action will be taken. VBA then sends a subsequent letter to impacted Veterans advising them of the actions VBA is taking, such as requesting an exam or obtaining additional documentation. There is a 125-day completion goal for HLR decisions, as requested by the claimant for a review based on a closed evidentiary record. This goal does not, and should not, include the time required to complete any subsequent HLR return, as this action is separate and distinct process where the record is subsequently reopened, and additional development must occur.

Recommended language:

“VA has reported on a public-facing website, [AMA Metric Reports](#), the higher-level reviews are the fastest option. That is accurate in most cases. However, in more than 20 percent of cases, a higher-level reviewer finds a duty to assist error in the underlying claim. In those instances, VBA will reopen the claim on its own initiative, develop for additional evidence, and provide the claimant with a second decision by a different decision-maker. VBA sends the Veteran a letter when the higher-level reviewer makes the determination of error, and a subsequent letter advising of the actions VBA is taking to resolve the issue.”

[Comment 6:]

Pages 9, Paragraph 3 to Page 10, Paragraph 1, including Figure 2.

“By the OIG’s calculation, this group of veterans received the final decision in an average of 196 days—significantly higher than VA’s 125-day on average goal. Figure 2 illustrates the difference between what VA would report for this group and the time veterans waited for final resolution.

VA’s reporting method results in counting two separate claims as completed with two separate timeliness computations. However, VA only ever received one claim from the veteran. In this scenario, VA separates one filed claim into the equivalent of two filed claims, reporting the completion and timeliness as two separate values. Meanwhile, the veteran waits for the final resolution of the filed claim, which does not arrive until the completion of the supplemental claim.”

VBA Comment: The data and reporting methodology currently published on VBA’s [Appeals Modernization](#) website, reported to external stakeholders as part of VBA’s [Monday Morning Workload Report](#), and included in VBA’s recurring [AMA Congressionally Mandated Report](#) is required by AMA section 5, subsections (1)(C), (D), (O), and (W).

VBA has taken care to comply with congressional reporting requirements to maintain visibility on the time it takes for Veterans to receive an initial decision review based on a closed evidentiary record under the HLR process, and separately, how long it takes VBA to develop and decide supplemental claims and HLR returns where the evidentiary record is subsequently reopened. In such cases, additional development is required, and a new decision-maker decides the case. VBA understands the congressional intent of this methodology is to maintain visibility and set Veterans’ expectations for both the time it takes to receive a closed record decision review (achieved with the release of the HLR decision itself) and, additionally, how long it takes to decide that broad category of AMA claims (supplemental claims and HLR return decisions all tracked under the 040 end product) where the evidentiary record is open or reopened for development. Further, no goal exists to complete both the HLR decision and any subsequent HLR return in 125 days total. Regardless, VBA cannot discontinue its current AMA statutorily mandated reporting requirements without legislative change.

Recommended language: Strike both of the identified paragraphs, strike Figure 2, and replace with the following language:

“The data and reporting methodology currently published on VBA’s [Appeals Modernization](#) website, reported to external stakeholders as part of VBA’s [Monday Morning Workload Report](#), and included in VBA’s recurring [AMA Congressionally Mandated Report](#) is required by AMA section 5, subsections (1)(C), (D), (O), and (W).

However, Figure 3 [rename Figure 2] and example 1 illustrate that the outcome of a HLR depends on various factors and may result in the need for further development to obtain evidence. Because of this, additional reporting to enhance current statutorily mandated metrics may improve Veterans’ understanding of the process and provide greater transparency to external stakeholders.”

[Comment 7:]

Page 13, Paragraph 1, Sentence 2:

“The OIG review team, however, was able to generate production and timeliness data for higher-level reviews finalized as supplemental claims.”

VBA Comment: VBA requests removal of this statement. Previous research by VBA data analysts has been unable to reliably link a completed HLR to a subsequent HLR return at the contention level. The OIG methodology bifurcated workloads and summed averages without calculating a true sum of days between HLR receipt and HLR return for impacted claims. The OIG data as reported does not appear to be a true weighted average of the days pending decision for a combined HLR and associated return. VBA will work with the OIG on a methodology to best augment current AMA statutorily required reporting.

[Comment 8:]

Page 14, Section Titled “The Metric Required to Be Reported under AMA Section 5, Subsection M, Is Incomplete”

VBA Comment: The determination of incomplete is not accurate. OIG’s proposed interpretation of the reporting requirements under AMA section 5, subsection (1)(M), if adopted, would fall partly outside of VA’s jurisdiction. Following a final decision by the Board, Veterans may appeal to the Court of Appeals for Veterans Claims within one year.

Recommended language:

“The Metric Required to be Reported under AMA section 5, subsection (1)(M) Requires Reporting That Is Outside of VA’s Jurisdiction.”

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

Recommendation 1: Update the reporting methodology used in public reports to reflect the total time veterans wait for a final claims decision when their higher-level reviews require a supplemental claim be established and completed due to an error.

VBA Response: Concur in principle. VBA concurs that there is an opportunity to complement the already extensive, statutorily mandated AMA reporting requirements with more Veteran-centric measures to support better understanding of AMA claim options and processes. VBA prefers to take a holistic approach to this effort to offer important context in public reports, without inadvertently contributing to confusion among potential claimants, by continuing to provide the robust reporting already required under the AMA statute as well as any additional metrics recommended by OIG. VBA expects to have a plan in place by September 30, 2023, to address this recommendation.

To date, VBA has been unable to develop a reporting methodology that reliably links a completed HLR to a subsequent HLR return at the contention level. The OIG’s recommended methodology bifurcated workloads and summed averages without calculating a true sum of days between HLR receipt and subsequent return for impacted claims. VBA does not concur that the OIG’s recommended methodology would result in a better representation of timeliness within AMA reporting. Rather, VBA proposes to supplement its current AMA public facing data required by statute by breaking out the subset of claims resulting from HLR returns stemming from HLR, and reporting timeliness on this subset of AMA claims separate from supplemental claims filed by claimants on VA Form 20-0995, Decision Review Request: Supplemental Claims. As noted, AMA statutory requirements and, therefore, VBA’s public facing metrics,

currently report timeliness for all supplemental claims and HLR returns as part of the same AMA work-type.

Of note, the data and reporting methodology currently published on VBA's [Appeals Modernization](#) website, reported to external stakeholders as part of VBA's [Monday Morning Workload Report](#), and included in VBA's recurring [AMA Congressionally Mandated Report](#) is required by AMA section 5, subsections (1)(C), (D), (O), and (W). VBA has taken care to comply with this congressional reporting requirement to maintain visibility on the time it takes for Veterans to receive an initial decision review based on a closed evidentiary record under the HLR program, and separately, how long it takes VBA to develop and decide supplemental claims, and HLR returns, where the evidentiary record is open and additional development may be required. VBA understands the congressional intent underpinning this statutory requirement is to maintain visibility and set Veterans' expectations for both the time it takes to receive a closed record decision review (achieved with the release of the HLR decision itself) and, additionally, how long it takes to decide those AMA claim actions (supplemental claims and HLR returns) where the evidentiary record is open or reopened for development.

Target Completion Date: October 31, 2023

Recommendation 2: Revise and clearly state the measures used for calculating and reporting the average duration, from the filing of an initial claim until the claim is resolved and claimants no longer take any action under the AMA claim and ensure consistency with subsection M of the Appeals Modernization Act.

VBA Response: Concur in principle. The proposed data reporting measures identified in the report, if adopted, would partly fall outside of VA's jurisdiction. Following a final decision by the Board, an AMA claim may be appealed beyond VA jurisdiction to the Court of Appeals for Veterans Claims, and then to the U.S. Court of Appeals for the Federal Circuit. Currently, VBA is unable to report final resolution of AMA claims appealed beyond VA as intergovernmental tracking measures between VBA and appeals courts outside VA, do not exist. VBA cannot accurately assess the metrics noted if the claim is appealed to the Judiciary. By October 2023, VBA will more clearly state what is currently being reported publicly under this metric, ensuring that the data described in our report is clearly outlined and explained.

Target Completion Date: October 31, 2023

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

OIG Contact and Staff Acknowledgments

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