

Notes from:
G+D NEC 1-22-16

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Fully Developed Appeals (FDA) Overview

December 2015

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FDA Overview

INTRODUCTION

- **FDA proposal is the result of an informal workgroup composed of key stakeholders seeking improvements to the appeals process:**
 - VBA (Veterans Benefits Administration)
 - BVA (Board of Veterans Appeals)
 - VSOs (Veteran Service Organizations)
 - Congress
 - SVAC (Senate Veterans Affairs Committee)
 - HVAC (House Veterans Affairs Committee)
- **Consultation with additional stakeholders has also occurred and will continue until enacted into law.**

FDA Overview

BACKGROUND

- **VBA focus on claims backlog neglected appeals**
 - Currently over 400,000 appeals pending and a surge of appeals is expected.
- **Workload at Board is continuing to grow**
 - More claims decisions → More appeals to Board
 - Historically 11-12% of claims decisions are appealed *5% of appeals are successful*
- **Time to receive appeals decisions far too long**
 - 3+ years from filing NOD just to get to Board

NOD

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TO THE MEN AND WOMEN WHO SERVED

ISSUE BRIEF: FULLY DEVELOPED APPEALS (FDA) PROCESS

The Situation

- In 2011, former VA Secretary Shinseki established an ambitious goal of zero claims pending more than 125 days and all claims completed with 98 percent accuracy by 2015.
- As of January 22, 2015, there were over 350,000 appeals pending before the Department of Veterans Affairs (VA). Roughly 65,000 of these appeals are within the jurisdiction of the Board of Veterans Appeals (Board) and the remainder within the jurisdiction of Veterans Benefits Administration (VBA).
- The VA repurposed much of its personnel to realize their 2015 goal, including much of its appellate workforce.
- The President's FY 16 budget request proposes hiring 770 new staff for VBA and plans to direct 200 of these new hires towards the appeals effort.
- The President's FY 16 budget request proposes to reduce the Board's staffing level from 676 to 669.

The Challenge

- With such an emphasis placed on reaching VA's 2015 goal, appeals have been viewed as less of a priority which in turn has led to such a high volume of pending appeals. On average, an appeal can now take anywhere between 2-5 years, or longer to resolve.
- Those veterans, dependents and survivors that choose to appeal decisions made by the VBA must all follow the same process that begins at the local VA Regional Offices (RO's), where most of the delay takes place. If the appeal is not resolved at the RO, then appellants have the opportunity to appeal to the Board.
- Although the President's FY 16 budget request proposes to hire a total an additional 770 new staff for appeals processing, non-rating processing, fiduciary services and for support personnel this falls far short of the VSO Independent Budget recommendation to hire 1700 additional staff, half consisting of full-time permanent hires and the remainder hired on a temporary basis.
- For the Board, the VSO Independent Budget recommended hiring an additional 120 employees, not a reduction in personnel.
- On average there roughly 10 percent of all VA rating decisions are appealed. If historical trends persist, there will be roughly 150,000 appeals filed in FY 15.

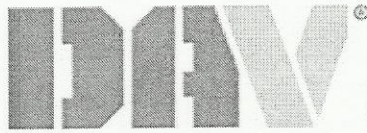
Consider "Reconsideration" 526-EZ

The Solution

- DAV and our Independent Budget partners believe that one way forward is for Congress to enact legislation to authorize a FDA pilot program. New and innovative solutions must be examined to provide appellants with safe alternatives to bypass some elements of the standard processing requirements currently in place for appeals.

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- Appellants would have the opportunity to submit additional evidence when filing their notice of disagreement, would waive the issuance of the statement of the case and hearings before the VBA and Board; could opt out of the FDA process at any time, preserving all options offered in the standard appeal processing model and in instances where the Board procures additional evidence, the appellant would receive a copy of this information and could supply evidence at that time without being excluded from the FDA.
- Other alternatives to claim filings already exist, including the Fully Developed Claims (FDC) process. The FDA would look to incorporate some features of the FDC process.
- Appellants would make an election to participate in the FDA by waiving some current processing requirements established within the current appeal processing framework.

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Note:

Appeals w/out new evidence are frivolous