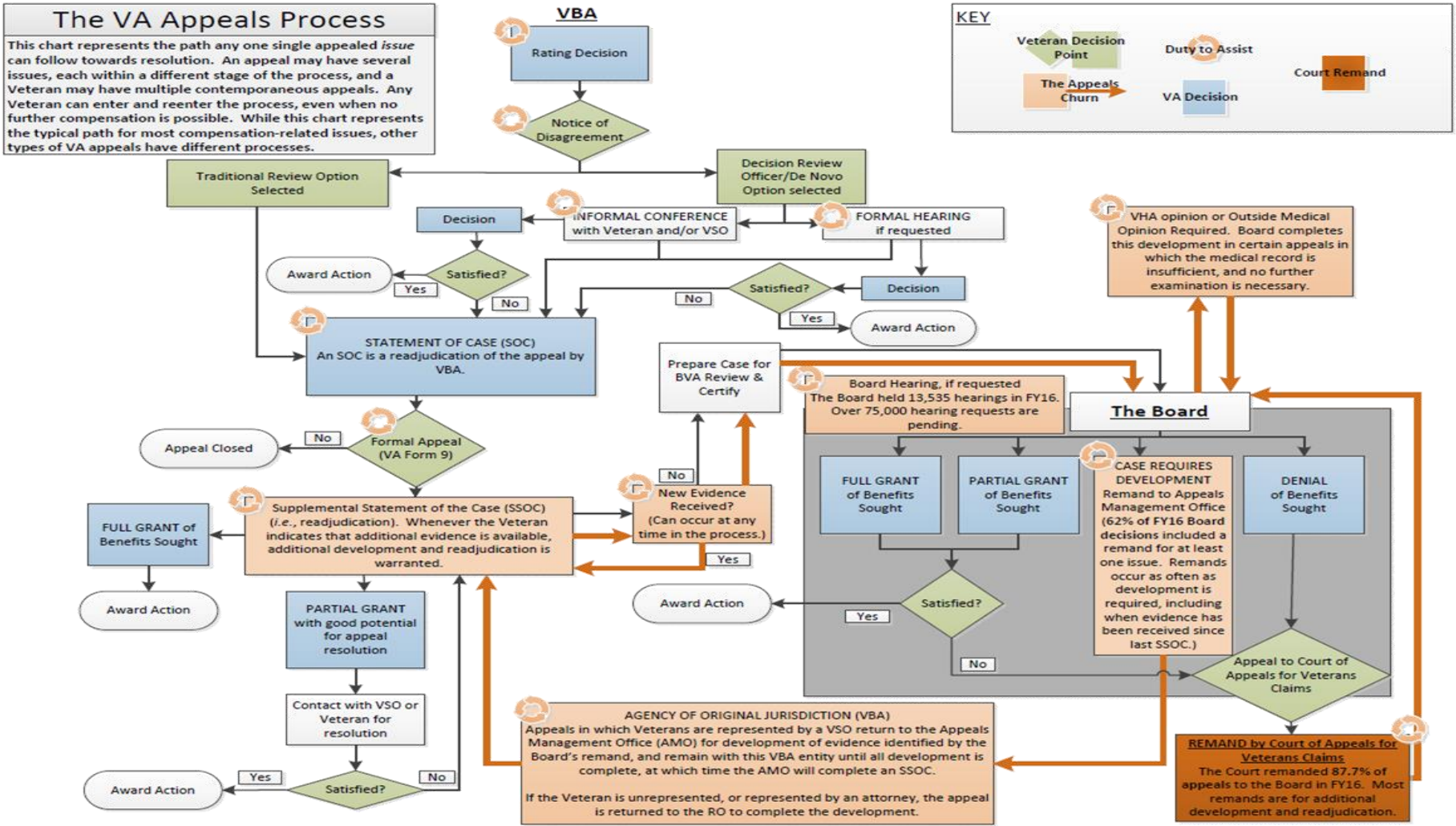# Appeals Modernization

October 2017

Overview of VA Appeal Process

The current VA appeal process, which is set in law, is a complex, non-linear process that is unlike other standard appeals processes across Federal agencies and judicial systems.
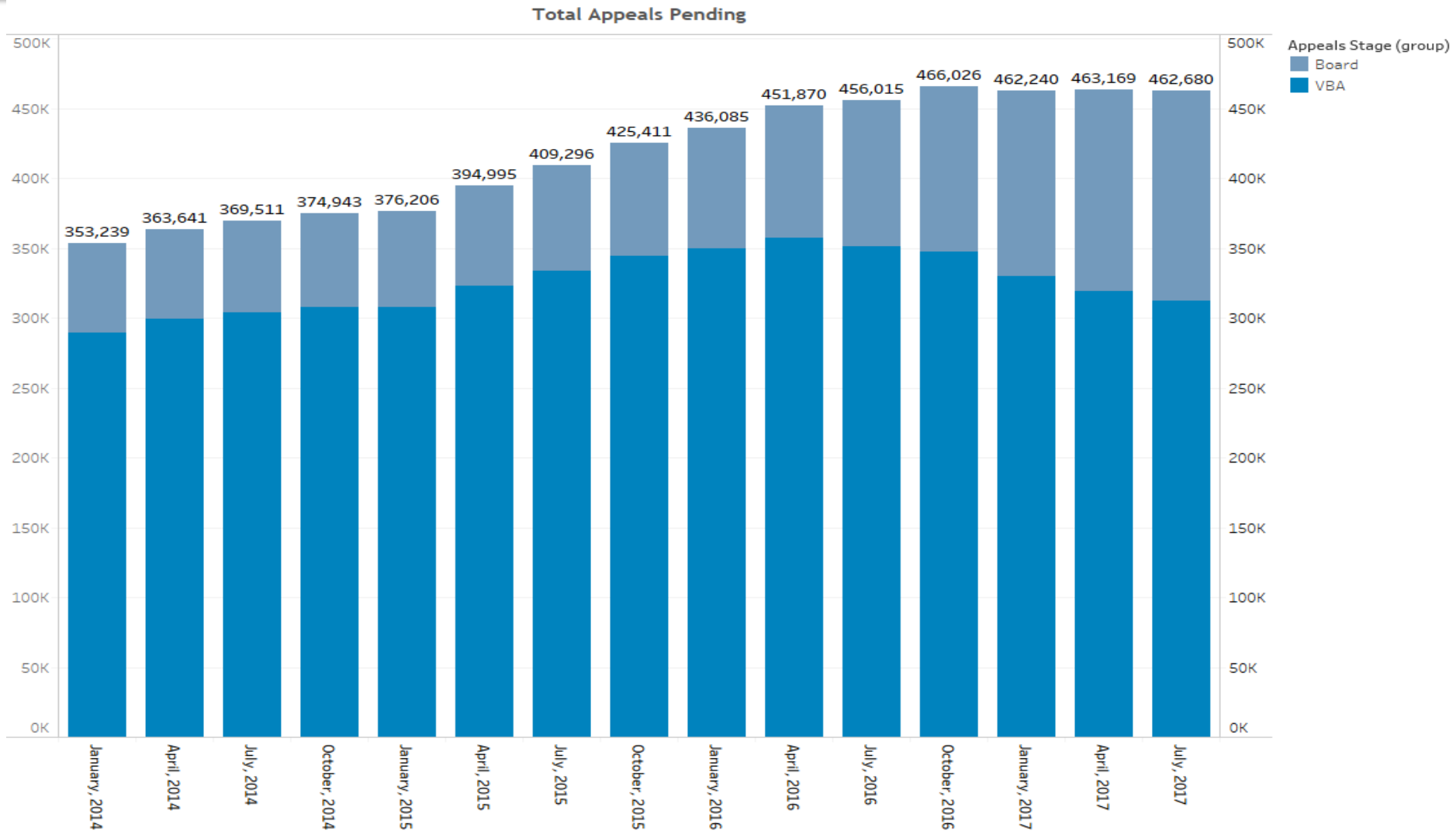
- Process takes _too long_ – There is no defined endpoint or timeframe. Agency cannot manage to a set goal for resolution time.

    o On average Veterans are waiting 3 years for a resolution on their appeal.
    o For those appeals that were decided by the Board in fiscal year (FY) 2016, on average, Veterans waited at least 6 years from filing of their NOD until the Board decision issued that year.

- Process is _too complex_ – Veterans do not understand the process, it contains too many steps and it is very challenging to explain it to them in a way that is understandable.

- Splits jurisdiction between VBA and the Board – Accountability does not rest with one appellate body. Also creates inherent competition for resources internally within VBA to process both claims and appeals.

- Features an open record and ongoing duty to assist – Continuous evidence gathering and readjudication prolongs the ability to reach a final decision. The appeal process essentially contains a hidden claims process.

VA Appeal Process Today

Growth in Appeals Inventory

Total Appeals Pending

Appeals Stage (group)
- Board
- VBA

Month	Total
January, 2014	353,239
April, 2014	363,641
July, 2014	369,511
October, 2014	374,943
January, 2015	376,206
April, 2015	394,995
July, 2015	409,296
October, 2015	425,411
January, 2016	436,085
April, 2016	451,870
July, 2016	456,015
October, 2016	466,026
January, 2017	462,240
April, 2017	463,169
July, 2017	462,680

Inventory Projections

Baseline Projections (VBA + Board)

Pending Inventory
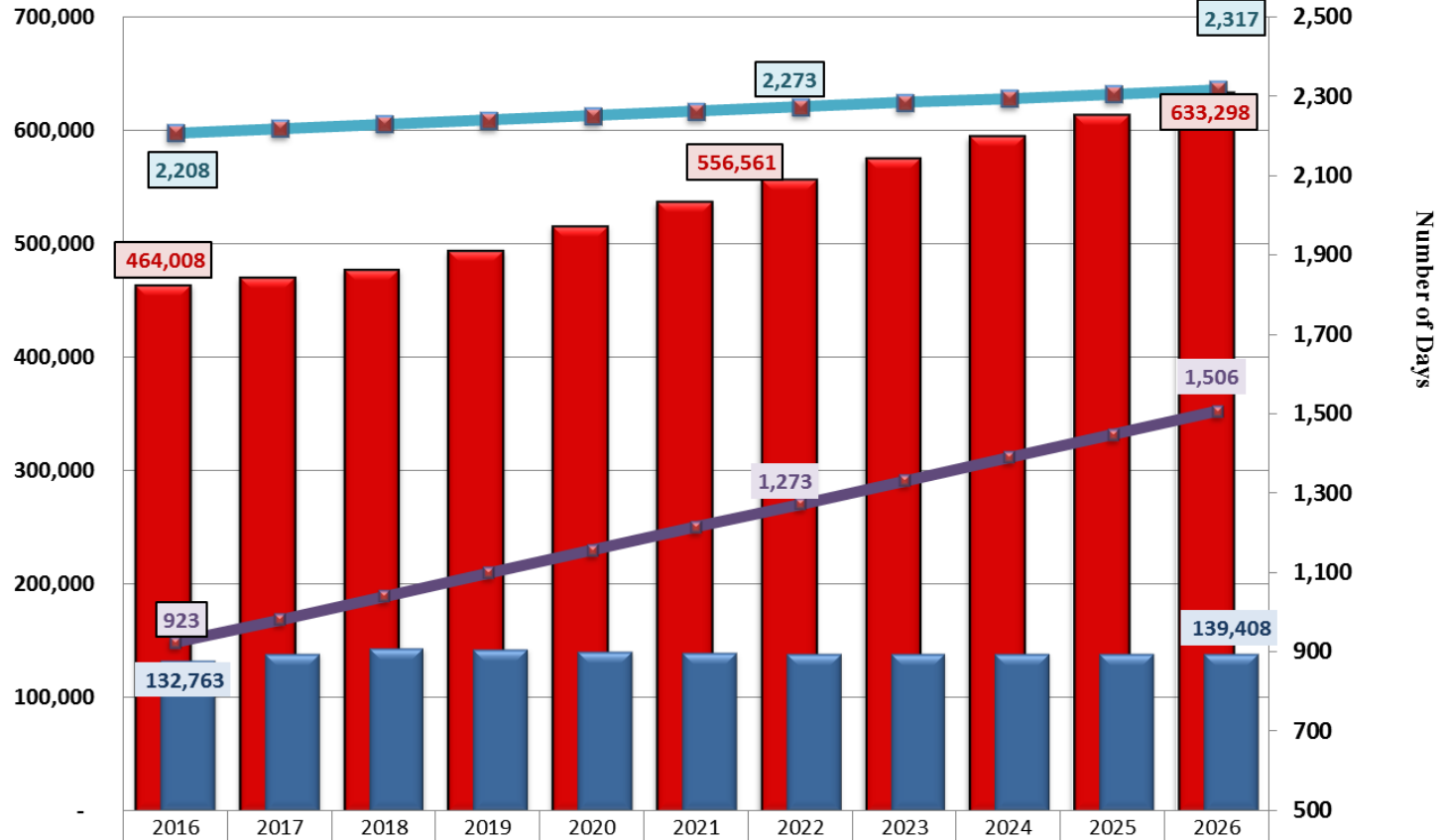
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Pending Inventory (VBA + Board)	464,008	470,874	477,498	494,265	516,086	537,048	556,561	575,742	594,926	614,111	633,298
Appeals Resolved (VBA + Board)	132,763	139,392	144,122	143,258	140,818	139,619	139,416	139,414	139,412	139,410	139,408
Avg.Processing Time All Appeals	923	981	1,040	1,098	1,156	1,214	1,273	1,331	1,389	1,447	1,506
Avg Processing Time (Board only)	2,208	2,219	2,230	2,241	2,252	2,263	2,273	2,284	2,295	2,306	2,317

Need for Reform

To ensure that Veterans receive a decision on their appeal that is <u>simple, timely, transparent, and fair,</u> VA needs:

- Sweeping <u>legislative</u> reform

- Additional <u>people</u> to address current workload

- <u>Process</u> improvements (*i.e.*, customer service improvements, outreach, improved claim decision notices)

- Modernization of appeals processing <u>technology</u> (*i.e.,* VACOLS replacement, automation, eFolder Express, eReader, Decision Builder)

Appeals Summit

VA sponsored an "Appeals Summit" – A series of meetings held in March 2016 with VSOs, advocacy groups, and congressional staff to design a new appeal process.

Overview **–** The new model features three lanes:

- **A "*Higher-Level Review*" at the regional office level**
  - Higher-level *de novo* review of the initial claim decision
  - Closed record with no duty to assist, no new evidence, and no hearings
  - Authority to overturn lower-level decision based on higher-level review
  - Return to lower-level for correction of duty to assist errors (quality feedback)

- **A "*Supplemental Claim Lane*" within which all new evidence is submitted**
  - Pre-decisional hearing option is preserved
  - Duty to assist Veterans in gathering evidence

- **An "*Appeal Lane*" for appeals to the Board**
  - NOD filed with the Board
  - No duty to assist
  - Three separate Board dockets
    - Direct review docket with no introduction of new evidence
    - Evidence only docket with limited window for introduction of new evidence
    - Hearing docket with limited window for introduction of new evidence
  - Remands for correction of pre-decision duty to assist errors (quality feedback)

U.S. Department of Veterans Affairs

New Framework – Overview

- Veterans cannot choose multiple lanes concurrently. They may pursue only one lane at a time for the same claimed issue.

- Choosing one lane over another does not preclude Veterans from later choosing a different lane.

- There are no limits to the number of times a Veteran may pursue a claimed issue in any of the given lanes.

- Effective date is protected as long as the Veteran pursues the same claimed issue in any of the lanes within the established timeframes.

- Duty to assist applies only in initial claims and the new framework's supplemental claim lane. It does not apply to the higher-level review or appeal lanes.

- Higher-level review replaces the current *de novo* Decision Review Officer process.

New Framework Process
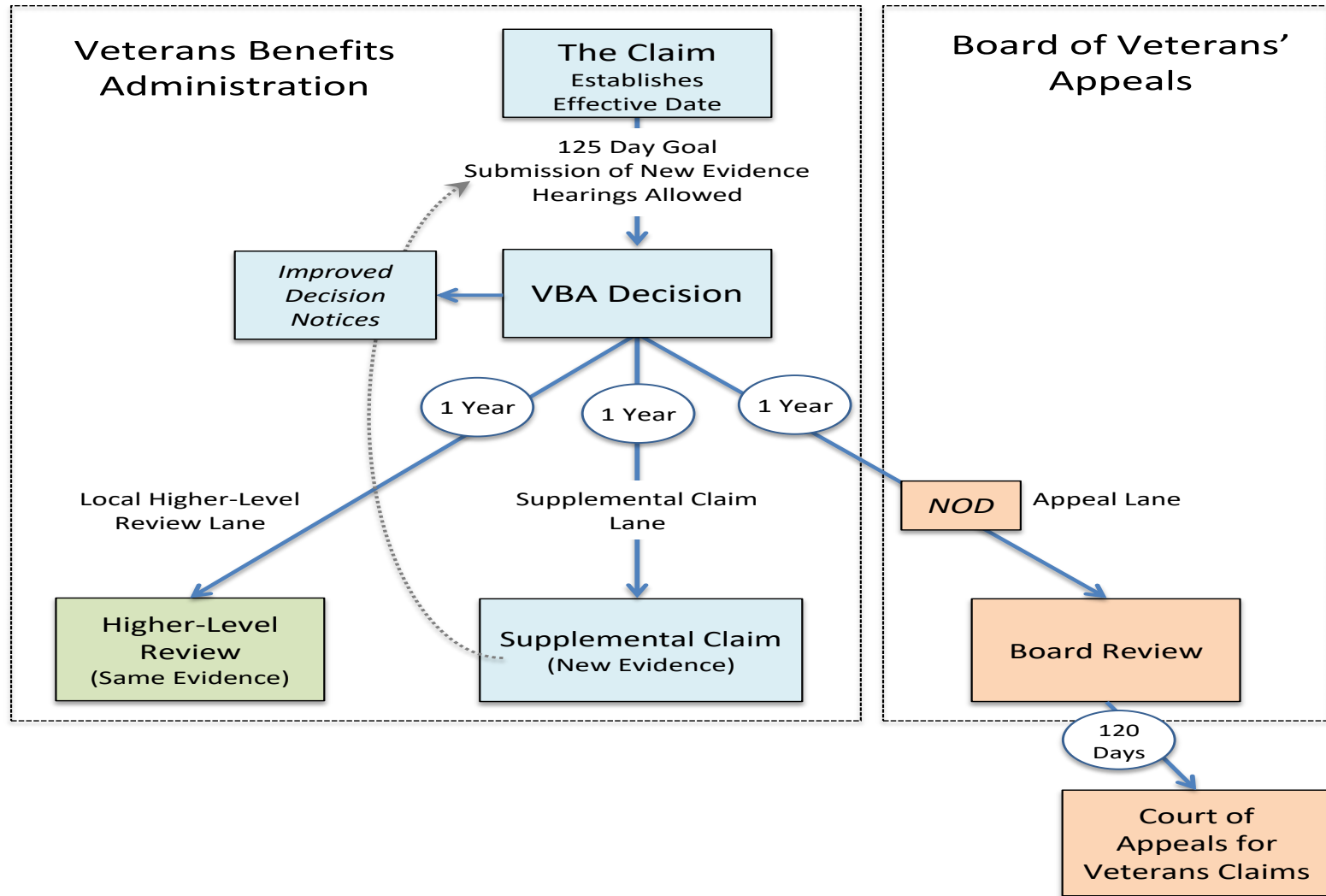
New Framework – Appeal Lane
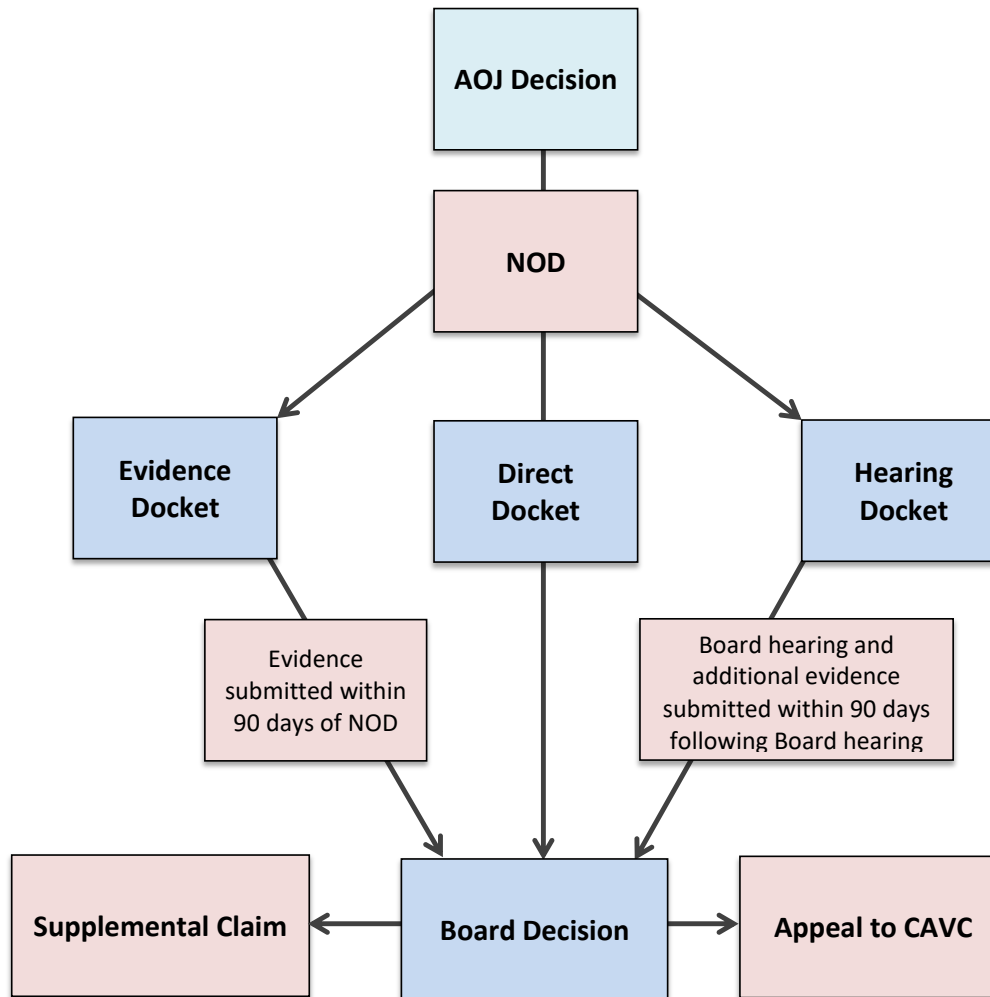
Evidence Only Docket

When this option is selected on the NOD, the appellant may submit evidence within the 90 day window following submission of the NOD.

Direct Docket

When this option is selected on the NOD, the appellant receives direct review by the Board of the evidence that was before the AOJ in the decision on appeal. VA has established a 365-day timeliness goal for the Direct Docket.

Hearing Docket

When this option is selected on the NOD, the appellant will be scheduled for a Board hearing. Additionally, the appellant may submit evidence within the 90 day window following the scheduled hearing.

AOJ Decision

NOD

Evidence Docket

Direct Docket

Hearing Docket

Evidence submitted within 90 days of NOD

Board hearing and additional evidence submitted within 90 days following Board hearing

Supplemental Claim ← **Board Decision** → **Appeal to CAVC**

New Framework – Benefits

New framework provides:

- Understandable process
- Multiple options for Veterans instead of one
- Improved notice as to which option might be best
- Early resolution of disagreements
- Each lane with a clearly defined start/end point
- Higher-Level Review and Appeal lanes provide quality feedback to VBA
- Workload transparency for better workload/resource projections
- VBA as claims agency, Board as appeals agency
- Efficient use of resources for long-term savings

Current Status

- The new framework legislative proposal was introduced in the 115th Congress as H.R. 2288, which passed the House on May 23, 2017, and in the Senate as S. 1024.

- On August 1, 2017, the Senate amended and passed H.R. 2288. The bill was returned to the House for a vote and passed on August 11, 2017. The amendment substituted the Senate version (S. 1024) for the House version.

- President Trump signed the bill into law on August 23, 2017, as Public Law 115-55.

Taking Down the Legacy Appeals Inventory

- The sizable inventory of appeals from decisions issued prior to the effective date of the new law must be completed under legacy procedures.
  - VA worked with VSOs and other stakeholders to develop opt-ins to the new framework, which are in Public Law 115-55.
  - VA continues to assess the current and future allocation of its employees to work appeals to ensure that the pending legacy appeals inventory is addressed in a timely and efficient manner.

- VA is also working with VSOs and other stakeholders to design expanded opt-in opportunities in a Rapid Appeals Modernization Program (RAMP).
  - Allow most Veterans with legacy compensation appeals to convert to the new process before Public Law 115-55 is fully implemented
  - Early access to the benefits of the new process
  - Opt-in to one of the VBA lanes
  - Oldest first by appeal stage (NOD, Form 9, Remand, certified to the Board but not activated)