



# **Board of Veterans' Appeals Overview**

**Cheryl L. Mason, Chairman**



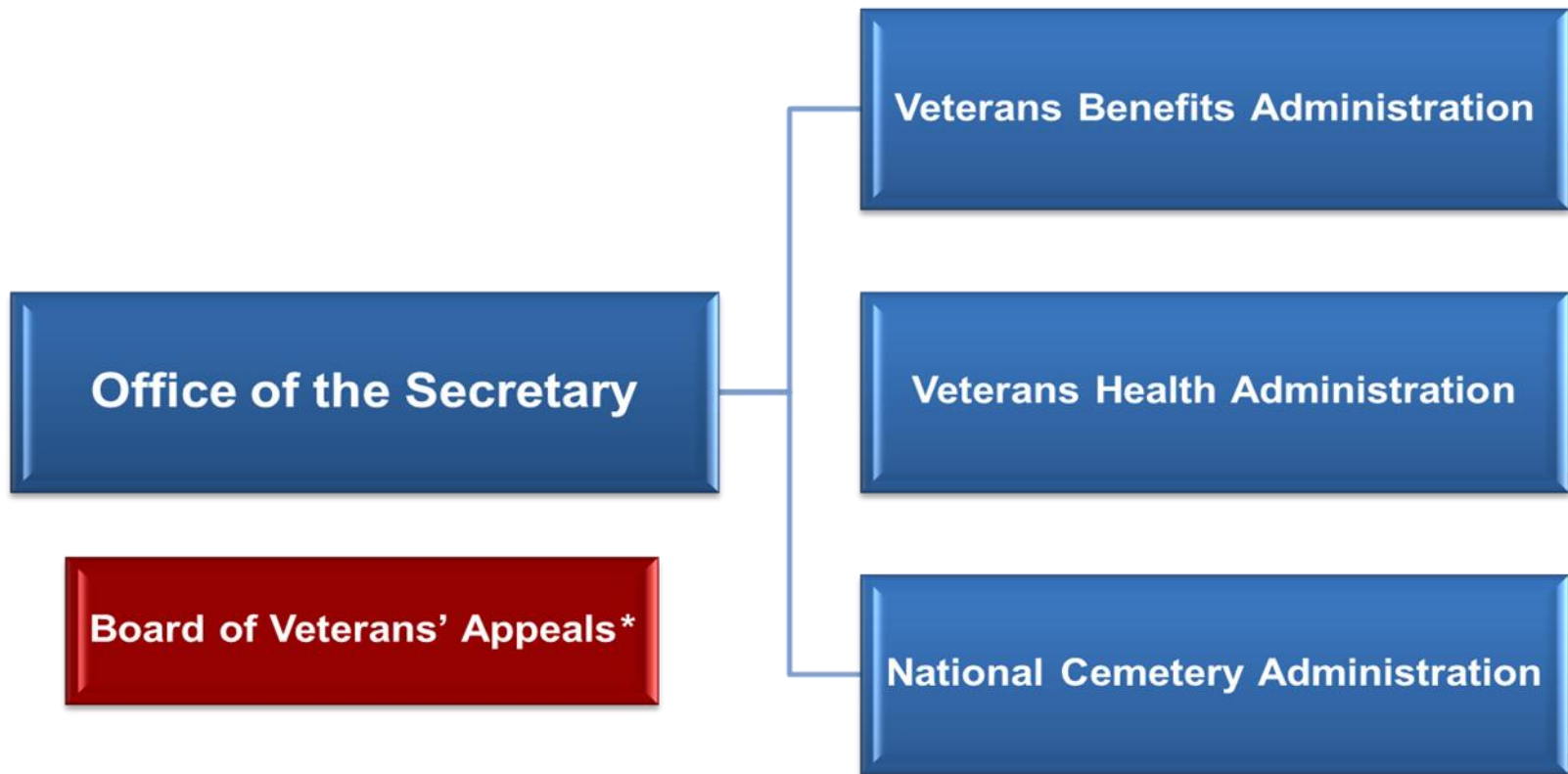
# Overview

---

- **Mission:** The Board's mission is to conduct hearings and decide appeals properly before the Board in a timely manner. *See 38 United States Code (U.S.C.) § 7101(a).*
- **Key Functions and Activities:**
  - The Board is the final appellate body within the Department and is responsible for resolving appeals on behalf the Secretary arising out of VBA, VHA, NCA, and OGC.
  - Resolves appeals and remands issues for further development.
  - Conducts hearings for Veterans.
  - Ensure Appeals Modernization is ready for implementation in February 2019.
- **Background:** All questions in a matter under which 38 U.S.C. § 511(a) is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals are made by the Board.



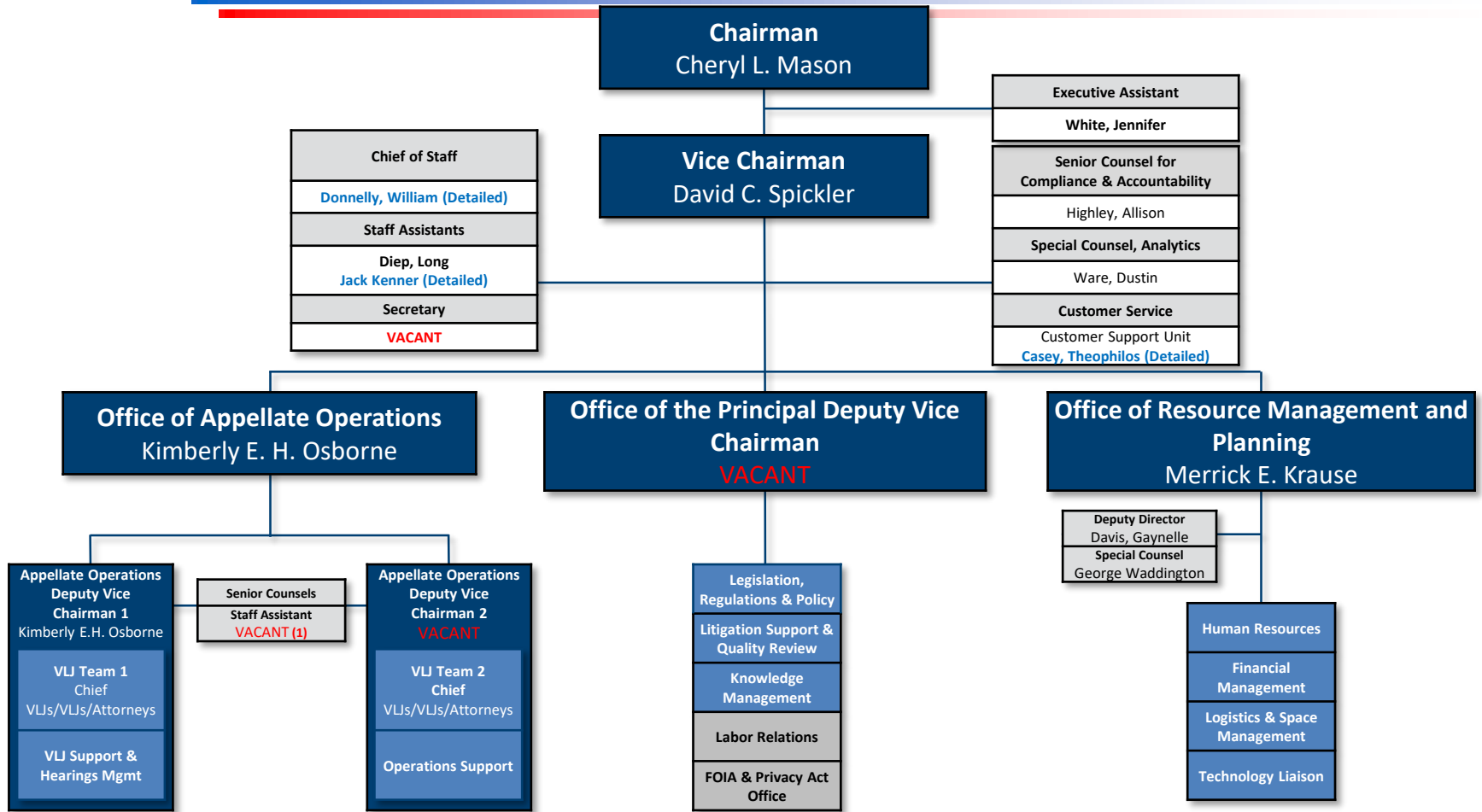
# Department Organization



*\* The Board reports directly to the Office of the Secretary.*

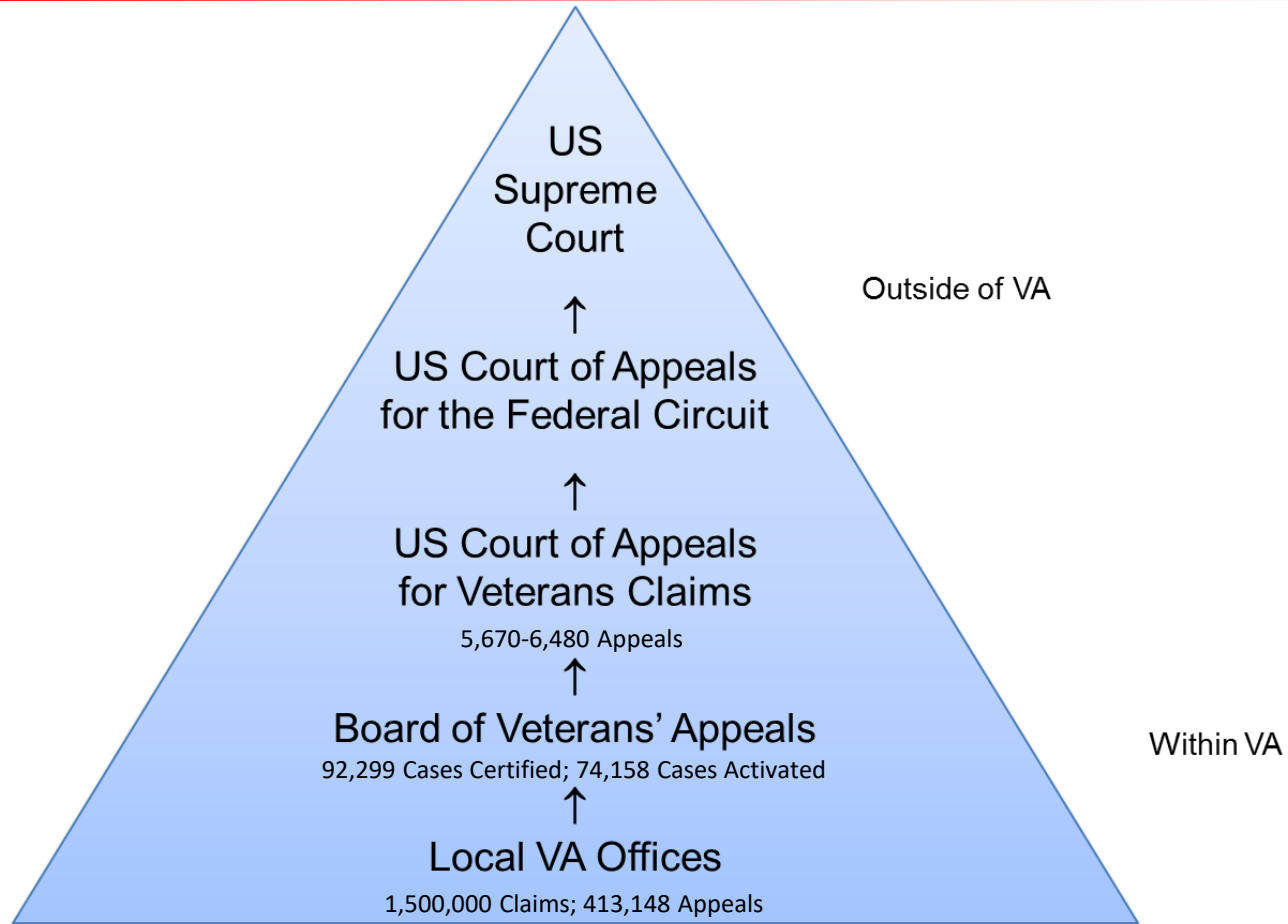


# Board of Veteran's Appeals





# The Appellate Landscape





# Top Priorities

---

- Implement the Veterans Appeals Improvement and Modernization Act of 2017.
  - Collaborate and assist VBA, VHA, NCA, and OGC.
  - Develop new training modules for VSOs and external stakeholders as well as VA staff.
  - Update Standard Operating Procedures at the Board and streamline to make processes as efficient as possible.
  - Collaborate with Digital Service and IT to rollout Caseflow to replace VACOLS (40 yr. old case management system).
- Adjudicate appeals under the current legal system (legacy).
  - 46,675 decisions decided to date toward FY18 goal of 81,033.
  - New interactive decision template including Veteran friendly language and providing a more efficient tool for decision drafting.
  - Specialty case team initiative providing additional efficiencies.
  - VA Program Management support to include change management.



# Next 100 Days

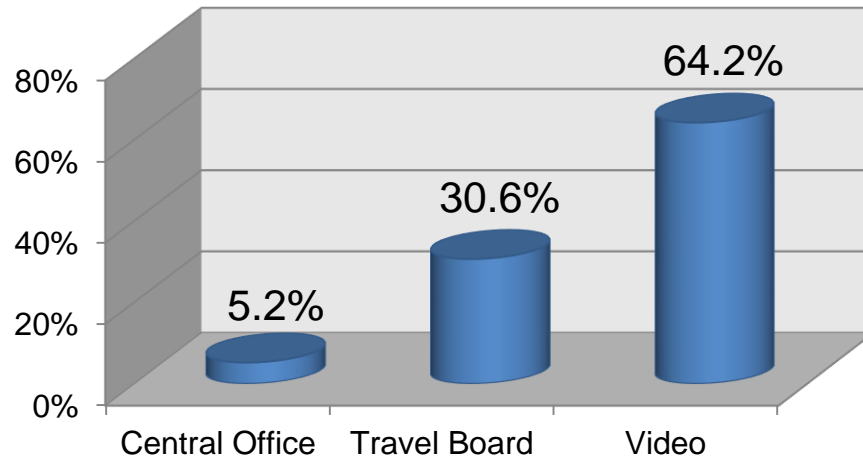
---

- Maintain pace to deliver over 81,000 decisions using technology improvements and efficiency processes.
- Recommend 8 new Veterans Law Judges for SecVA approval and Presidential appointment.
- Launch Board implementation test programs allowing VA to make predictions regarding Veteran behavior, resource allocation, and timeliness in Appeals Modernization.
- Continue Board 2.0 – remaking the Board through a Change Management program to help Board staff quickly adapt to organizational change and practice new techniques by focusing on effective communication, efficiency, and engagement.



# Board Hearings

## Breakdown of Hearings Held During FY 2017



## Percentage of Form 9 Hearing Requests Received During FY\*

FY 2017	46%
FY 2016	47%
FY 2015	53%
FY 2014	58%
FY 2013	59%
FY 2012	58%
FY 2011	55%
<b>Total Pending Board Hearing Requests (1/24/18) 84,658</b>	

- Central Office: VLJ & Veteran sit at Board Offices in Washington, DC
- Travel Board: VLJ & Veteran sit at local RO
- Video Conference: VLJ sits in DC; Veteran sits at local RO





# FY 2017 Appellant Representation

- **Veterans Service Organizations (VSOs)**

Represent approximately **75 percent** of appellants before the Board

1. Disabled American Veterans – 31 percent
2. American Legion – 18 percent
3. State Service Organizations – 15 percent
4. Veterans of Foreign Wars – 6 percent

- **Attorneys**

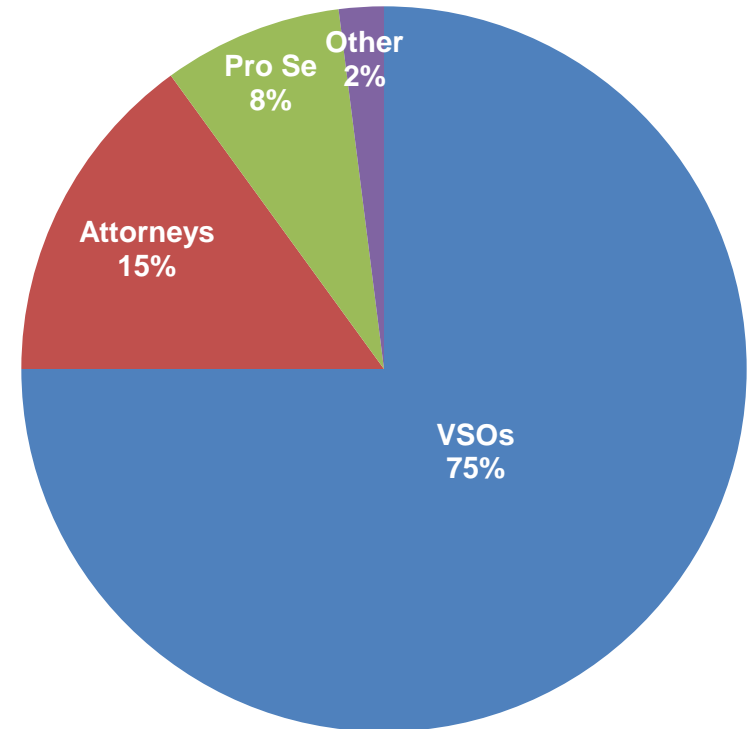
Represent approximately **15 percent** of appellants before the Board

- **Pro se**

Approximately **8 percent** of appellants before the Board elect to represent themselves

- **Other**

Approximately **2 percent** of appellants before the Board are represented by other types of agents.



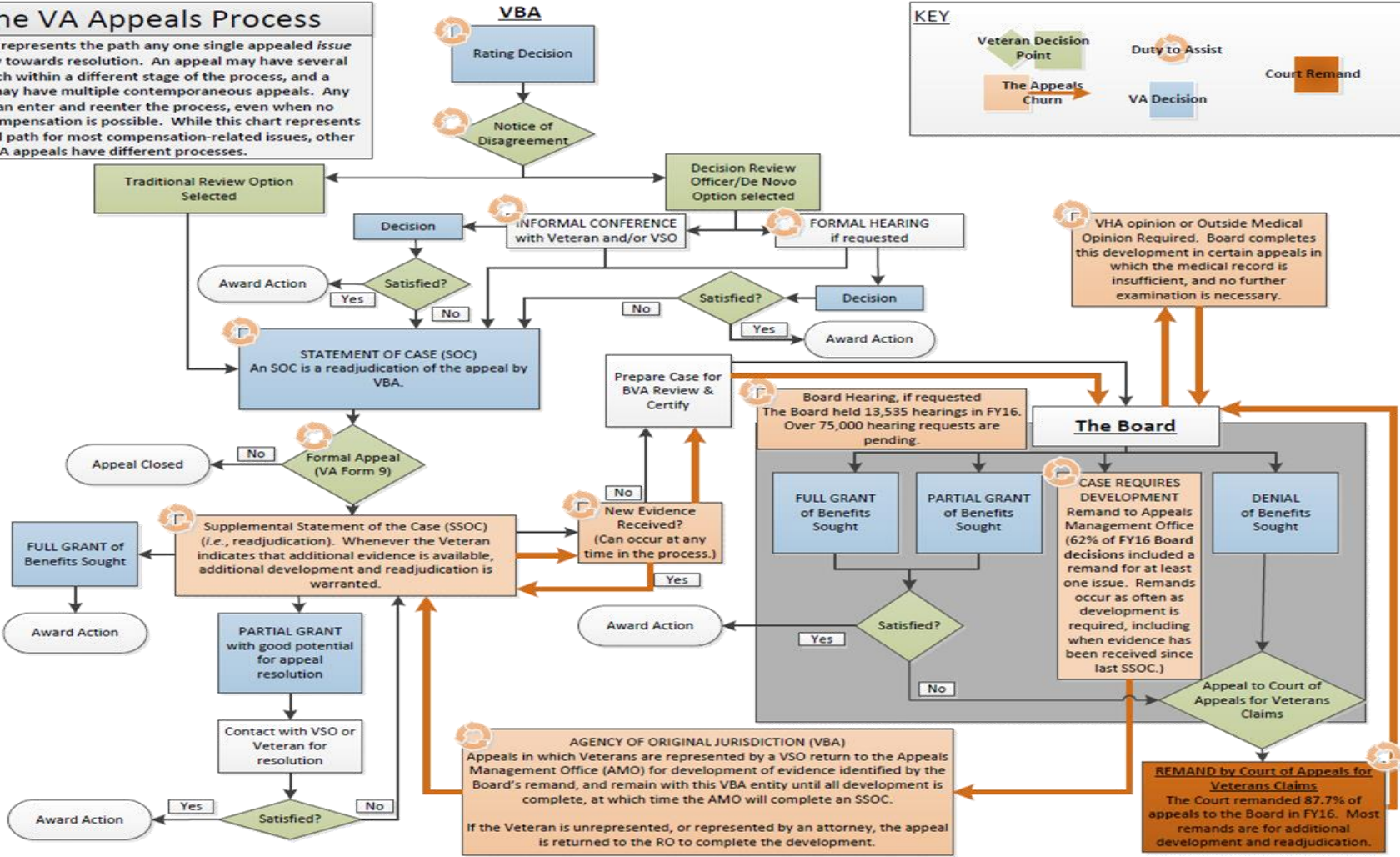


# Current Appeals Process (Legacy)

**The VA Appeals Process**  
 This chart represents the path any one single appealed issue can follow towards resolution. An appeal may have several issues, each within a different stage of the process, and a Veteran may have multiple contemporaneous appeals. Any Veteran can enter and reenter the process, even when no further compensation is possible. While this chart represents the typical path for most compensation-related issues, other types of VA appeals have different processes.

**KEY**

- Veteran Decision Point
- The Appeals Churn
- VA Decision
- Duty to Assist
- Court Remand





# Appeals Modernization Act

---

## Key Changes:

- Choice of one of three lanes to request review of VA's decision
- Improved notification with all VA decisions
- Duty to Assist does not apply after RO adjudication, but DTA errors may be identified during de novo review by AOJ or the Board
- Closed or limited record in some lanes
- Effective dates protected if claim continuously pursued
- Favorable findings binding on VA



# New Appeals Process - VBA

## 3 Lanes

**Higher-Level Review** – New review of the claim by experienced adjudicator

**Supplemental Claim** – Readjudicate in RD if new and relevant evidence is submitted

**Appeal** – Board of Veterans' Appeals (NOD)

Veterans may elect a different review option for each issue within a claim.



# Board Jurisdiction

## Legacy System

- SOC, VA9, SSOC
- NODs received and processed by VBA
- NODs do not need to specify determination disagreed with
- Docket date based on receipt of VA9
- Two dockets

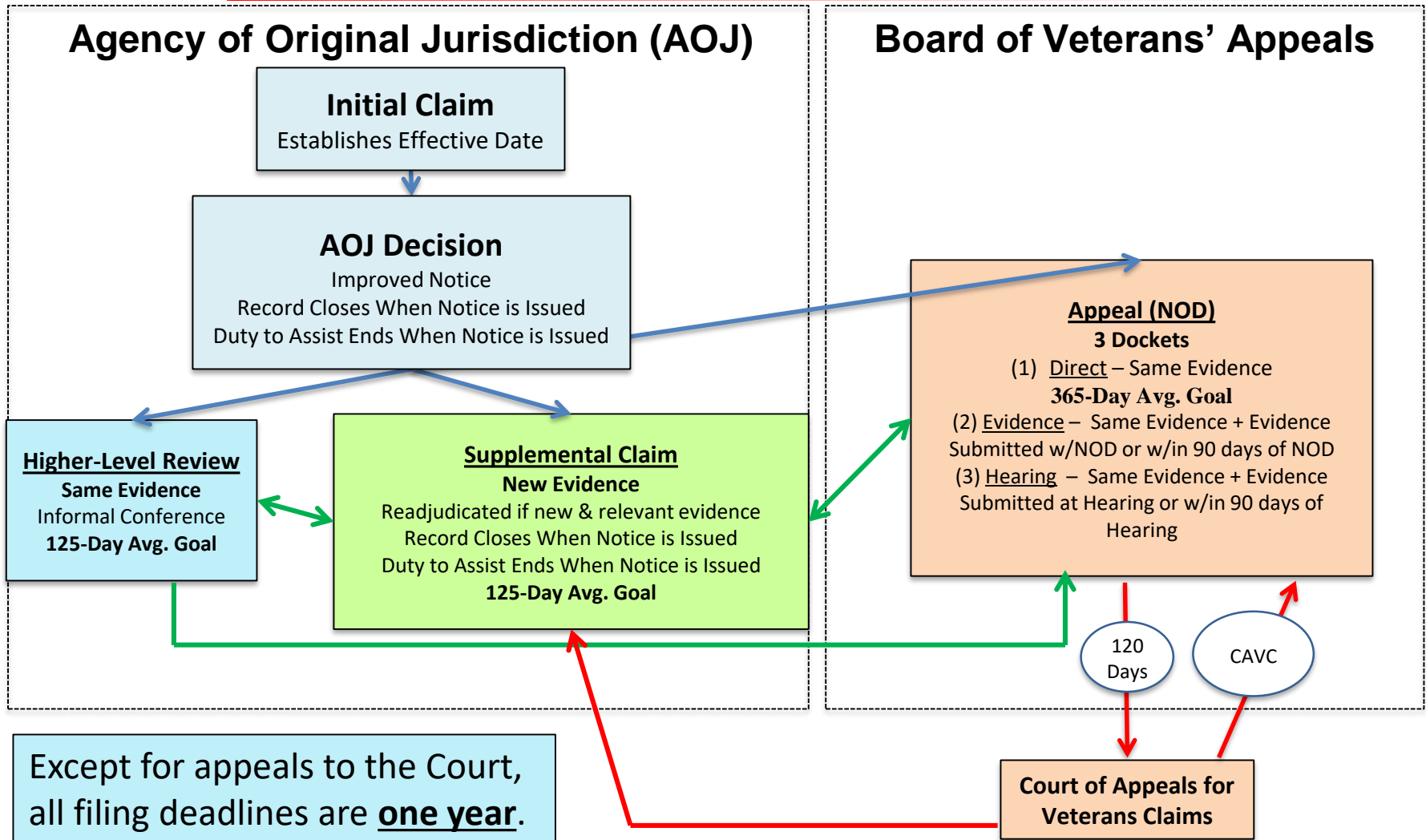
The Board will continue to work appeals from pending legacy claims.

## New System

- SOC, VA9, SSOC, VA8 forms eliminated
- NODs received and processed by the Board
- NODs must specify determination disagreed with and elect direct review, evidence, or evidence w/ hearing
- May modify NODs within 1 year to change dockets unless already submitted evidence
- Docketed in the order of NOD receipt on the respective docket
- Three dockets



# New Decision Review Process





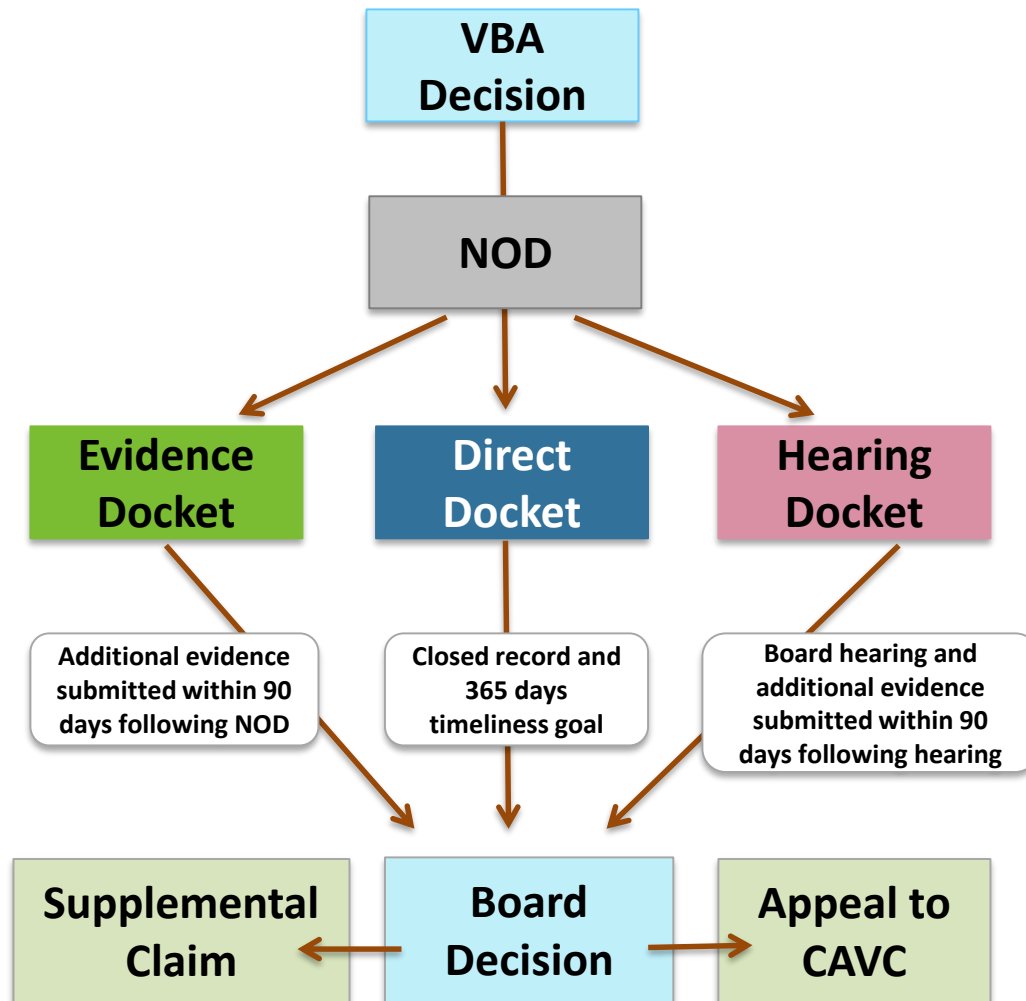
# New Process: Appeal Lane Dockets

## 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. The Board does not have a duty to assist and the record is otherwise closed.

## Direct Docket

When this option is selected on the NOD, the appellant receives direct review by the Board of the evidence that was before VBA in the decision on appeal. The Board has a 365-day timeliness goal for this docket. [Quality feedback loop for VBA.](#)



## 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. The Board does not have a duty to assist and the record is otherwise closed.



# New Process Overview

---

## Multiple options for Veterans/representatives

- Use one lane at a time for a claimed issue
- Choosing one lane does not prevent the Veteran/representative from later choosing a different lane
- No limits to the number of times a Veteran may pursue a claimed issue in any of the lanes

Protected effective date for benefits – For Veterans pursuing the same claimed issue in any of the lanes within one year

Duty to assist and open record – In the Supplemental Claim lane only, not the higher-level review or appeal lanes

Higher-Level Review – *De novo* review with full difference of opinion authority; replaces current DRO review process





# New Process Benefits

---

## New process provides:

- Understandable decision review system
- Multiple review options instead of one
- Improved notice about the reasons for VA's decision and available decision review options
- Early resolution of disagreements
- Each lane with a clearly defined start/end point
- Higher-Level Review and Appeal lanes provide quality feedback to Agency of Original Jurisdiction (AOJ)
- AOJ as claims agency, Board as appeals agency
- Efficient use of VA's and representatives' resources for long-term savings and improved service for Veterans



# Evidentiary Record

## Legacy System

- Record does not close until Board decision is issued
- Claimants may submit evidence at almost any point during an appeal

## New System

- Record **closes** when notice of decision on initial claim is issued
- *Supplemental Claim* – new and relevant evidence, then open until notice of decision is issued
- *Higher-Level Review* – remains closed, argument submitted during informal conference
- *Appeal* – closed, with exceptions
  - Direct Docket – remains closed;
  - Evidence Docket – open for 90 days following NOD;
  - Hearing Docket – open for 90 days following hearing.



# Favorable Findings

## Legacy System

- DRO and Board conduct purely de novo review of evidence
- General practice not to disturb favorable findings

## New System

- Higher-Level Review and Board conduct primarily de novo review of evidence
- Bound by favorable findings made in prior VA decisions
- Favorable findings identified in notice of decision
- Examples:
  - Verified service between April 19, 1983 to September 29, 1988
  - Diagnosis of non-traumatic intracerebral hemorrhage
- Rebuttable by clear and convincing evidence