

**APPEALS REFORM: WILL VA'S IMPLEMENTATION
EFFECTIVELY SERVE VETERANS?**

HEARING

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

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APPEALS REFORM: WILL VA'S IMPLEMENTATION EFFECTIVELY SERVE VETERANS?

Tuesday, January 30, 2018

COMMITTEE ON VETERANS' AFFAIRS,
U. S. HOUSE OF REPRESENTATIVES,
Washington, D.C.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 334, Cannon House Office Building, Hon. David P. Roe [Chairman of the Committee] presiding.

Present: Representatives Roe, Bilirakis, Coffman, Wenstrup, Radewagen, Bost, Arrington, Bergman, Banks, Walz, Takano, Brownley, Kuster, O'Rourke, Rice, Esty, and Peters.

Also Present: Representative Titus.

OPENING STATEMENT OF DAVID P. ROE, CHAIRMAN

The CHAIRMAN. Good morning. The Committee will come to order. Thank you all for being here today.

To begin with, I ask unanimous consent that a former Member of the Committee, Ms. Titus, be allowed to sit at the dais and ask questions. She has had a great interest in this issue for years.

Hearing no objection, so ordered.

This hearing will focus on VA's implementation of the Veterans Appeals Improvement and Modernization Act of 2017 or, thankfully, we will have the acronym AMA, which substantially reforms VA's appeals process.

This topic is important to each one of us on this panel. In fact, every Member of this Committee is an original cosponsor of the legislation. We all agree that the success of this reform is critical, because the current appeals process is failing veterans miserably.

Right now, VA has a backlog of more than 470,000 appeals and many veterans will end up waiting at least 6 years just for the decision on their appeal. And I can assure you that every one of us in our districts are hearing this and every veteran town hall that I hear there is much focus on this issue. Veterans and their families deserve better. They deserve to have VA decide their appeals accurately and within a reasonable amount of time.

During the previous Administration, then Secretary McDonald brought VSOs and other veterans' advocates together to develop a legislative proposal to address the appeals backlog. Secretary Shulkin continued to work with VSOs to improve the original proposal. This Committee took the current proposal and worked on a bipartisan basis to get it through the House and sent it to the President's desk, but passing the bill was only the first step.

We intend to continue to work closely with VA and the stakeholders to ensure that veterans who file an appeal receive an accurate decision in a more timely manner, and we know this will not be easy.

The AMA makes significant changes to the current process and VA faces challenges implementing the law by the anticipated effective date. But I am hopeful that the Department is up to this challenge and, because it was VA itself that requested the law's February 19, 2019 effective date, to help ensure the VA's implementation of reform uses sound planning processes and practices, and the law requires a high level of transparency from VA.

The first of these reports the comprehensive plan was intended to outline how VA expects to transition to the new system, while at the same time addressing the backlog of pending appeals. On November 23rd, 2017, VA submitted its comprehensive plan outlining its progress and timeline for implementing the new law. Unfortunately, VA's initial report lacked many details.

GAO has reviewed VA's plan and I look forward to hearing the Comptroller General's assessment. In particular, I am looking forward to GAO's input on how VA can better implement the reform so that we can finally have an appeals process that works for our Nation's veterans.

I am also interested in learning whether there are additional efficiencies that VA can leverage to more effectively and timely process the backlog of legacy appeals, a huge deal in most districts.

VA's current plan to reduce the existing backlog is to use the authority we gave it to test the new appeals system. VA's plan is called the Rapid Appeals Modernization Program, or RAMP. Under RAMP, many veterans who have appeals pending are being given the option to withdraw their existing appeal and to transfer to the new system. I have several concerns about RAMP, including why the board, which has more than 170,000 pending appeals, is not included in the program. Another concern is the lack of veteran participation in RAMP. VA has indicated that the data gathered from RAMP will help inform decisions on implementation of the reforms. However, according to VA, only 3 percent of eligible veterans have chosen to participate in the program. Unless more veterans participate in RAMP, it is hard to see how VA will collect enough data to develop an effective plan to successfully implement appeals reform.

Realistically, VA is running out of time to address these issues if the Department hopes to implement the new system by February of 2019. In light of the low participation in RAMP, I am hopeful that VA will share with us some additional ideas for a data-driven approach to prepare for full implementation of the new appeals system.

I hope that we will be able to have a production discussion on ways to assist veterans with legacy appeals and to ensure that the transition to the new system will be seamless.

The Comptroller General, I know that your team has been very involved in considering some of the challenges for implementation; I am looking forward to your expertise on this issue. Everyone here wants the same thing: to develop an appeals process that will give veterans accurate and timely decisions on their claims.

Before we begin the hearing, I want to say that in our last Full Committee hearing I mistakenly credited the wrong veterans service organization for helping with the construction of the new Aurora hospital dedicated to treating veterans with spinal cord injuries. And I recently visited that facility and, of the many things that are not going right at that facility, this is one of the shining stars, I think. It was an incredible visit and I think it is going to be one of the—probably, if not one of the best, the best spinal cord injury treatment facilities in the world, I absolutely believe that. And I wanted to correct the record and personally thank the Paralyzed Veterans of America for their work in Denver and for all they do for our veterans. I want to apologize for misspeaking, and look forward to continuing the invaluable partnerships and friendships we have with our VSO partners.

The CHAIRMAN. I will now yield to Ranking Member Walz for any opening statements that he may have.

OPENING STATEMENT OF TIMOTHY J. WALZ, RANKING MEMBER

Mr. WALZ. Well, thank you, Mr. Chairman, and thank you to all of our witnesses here today for the work that you are doing.

The Veterans Appeals Improvement Modernization Act that passed this Congress is designed to be the most significant reform affecting VA disability compensation appeals in a generation. It also highlights something that all of us that are here are very proud of, is the bipartisan, the bicameral, and this one crossed administrations to get this right for veterans. This is a shining example of when we decide to work together, we decide to put all of our resources towards the care of veterans, how things can work.

I do want to recognize the work of our Subcommittee chair, Mr. Bost, and Ranking Member Ms. Esty, who sponsored the original bill together, put a tremendous amount of time to get us to this point. Both of you are a credit and I, as a veteran, am grateful to see your commitment.

If we get this right, the current, out-of-date system we know is not serving veterans we transformed into one that veterans can trust fairly and timely, perhaps most of all, respectful of their service.

Today's hearing gives us an opportunity for the Committee to take a look at how VA is preparing for that February 2019 launch when the new system officially rolls out, just 12 months from basically tomorrow. I am hoping today that we are going to hear about the plan is on track; performance measures that are in place; one that is near and dear to everyone who has been here for any amount of time, how the IT is being handled and how it is going to interplay with getting this right; authorized staff have been hired and trained; regulations are drafted and being vetted with VSO stakeholders.

I want to thank GAO for the work it has done at our request to assess how the planning is going. Their report makes it clear that key elements are either incomplete or missing. This raises concerns, but I would also like to think that—and we have spoken with this and, Deputy Secretary Bowman, we talked and I really think the attitude on this is right—a positive step forward and op-

portunities exist. That is our job. We are 12 months out, we are providing oversight, you are working with us. GAO is a partner to give us the points. All of those things are how it should work.

Stakeholder groups are here, the VSOs and NOVA, your input has been integral in getting us to this point. Your willingness to form the work group 3 years ago and commit to passage of the Appeals Improvement Modernization Act was unprecedented. Those who are veterans of this process know this is not an easy thing to do and that commitment to getting it right, and I think the Chairman's commitment as making sure the decisions we make here, those most impacted by them, are at the table when we make them, that is an honorable place to be.

The Chairman has held numerous hearings, provided a variety of stakeholder opportunities, making sure that during the entire process it was transparent, it was inclusive. We were working for a common goal and that is something I am grateful for.

If I could, Mr. Chairman, just for 30 seconds, I would like to yield my final bit of time to one of our chief authors, Ms. Esty, the gentlewoman from Connecticut, for 30 seconds.

OPENING STATEMENT OF HONORABLE ELIZABETH ESTY

Ms. ESTY. Thank you, Ranking Member Walz, for yielding me the time to speak a little bit about the Appeals Improvement and Modernization Act.

I was proud to work on this important legislation with my colleague and friend Mr. Bost, and we are all here in the hope that this bill and this process is actually going to allow veterans to receive a decision on their appeals in a fraction of the time that it is currently taking. Whether the news is good or bad, veterans deserve to have certainty about their benefits and they deserve to be served by a process they can trust, timeliness, and accuracy.

And I want to thank the many veterans and advocates who have worked with us in crafting this legislation, and you will be key in ensuring that this is implemented properly. From what I have read from the testimony submitted today, there is a great deal of work left to be done. We are going to have many questions regarding resources, timelines, and goals for successful implementation in this process, but it is my hope that with all of us working together, that is the Committee, that is the VSOs, and that is all of you at the table. We can do right by our veterans, get this process moving, get it timely, and get it accurate.

Thank you and I yield back.

Mr. WALZ. I yield back, Mr. Chairman. Thank you.

The CHAIRMAN. I thank the gentleman for yielding, and I thank the gentlelady.

Joining us on our first panel is the Honorable Thomas Bowman, the Deputy Secretary for the Department of Veterans Affairs, and he is accompanied by Cheryl Mason, the Chairman of the Board of Veterans' Appeals. And welcome to the people's House, Mr. Bowman, from the Senate side.

Also the Chairman of the Board of Veterans' Appeals, David McLena—I will get that right in a second—McLenachen, the Director of Appeals Management Office at the Veterans Benefits Administration; and by David Barrans, Chief Counsel, Benefits Law

Group, of the Office of General Counsel. The Honorable Gene Dodaro, the Comptroller General of the United States Government Accountability Office; he's accompanied by Elizabeth Curda, the Director of Education, Workforce, and Income Security Team for GAO.

Thank you all for being here this morning.

Deputy Secretary, Mr. Bowman, you are to begin. You are now recognized for 5 minutes.

STATEMENT OF THE HONORABLE THOMAS G. BOWMAN

Mr. BOWMAN. Thank you very much, Chairman Roe, Ranking Member Walz, and Members of the Committee.

Just as you indicated, I won't go over the names of the individuals who are accompanying me, you have already done that. Thank you for inviting us to discuss implementation of the Veterans Appeals Improvement and Modernization Act of 2017.

VA, the Congress, VSOs, and veterans said many times before, appeals modernization was long overdue. When legislation was passed after an unprecedented collaboration between Congressional Committees, veterans service organizations, and the Department. We have never seen, at least in my experience, where there has been that degree of intense collaboration over a long period of time that ultimately resulted in this legislation.

The new system is easier to understand. Veterans will be able to tailor reviews to their needs, and it will provide both faster decisions and greater transparency.

As we look forward, VA, we believe, is on track for full implementation by February 2019, as the legislation requires. There is still a lot of work to be done, as was mentioned, and our implementation strategy is synchronizing efforts across the Department.

VA is developing and updating IT systems with our digital service partners. We are hiring and training our people, gathering data for trend analysis and metric reporting. We have drafted and we are reviewing proposed regulations, which I know is of interest to the Committee. We hope to publish those regulations, if we can, and if they have been appropriately processed as soon as possible, but hopefully by the third quarter of the fiscal year.

VA is tracking progress with timelines and goals, milestones and deadlines, that will improve based upon GAO's recommendations. Once implemented, veterans can expect on average processing time of 125 days for higher-level reviews and supplemental claims, and 12 months for appeals to the board when they choose direct review of the issue without a hearing or submitting additional evidence.

The RAMP program: in November we launched our pilot Rapid Appeals Modernization Program, or RAMP. Today, RAMP is giving veterans whose appeals involve compensation issues the choice to opt-in to the new supplemental claim and higher-level review lanes.

With RAMP data, veteran, congressional, and VSO feedback, we can refine the processes and correct the problems before full implementation. Over this next year, that is our obligation to work collaboratively not only with GAO, but with the Committee, veterans service organizations, and veterans themselves.

We are intent on shaping a veteran-centric system that is responsive to their needs and preferences. For instance, RAMP helped us test and refine decision notices so that they are complete and easy to understand. And RAMP will help better estimate workload, design precision metrics to evaluate new processes and forecast resourcing requirements.

Mr. Chairman, we have always seen appeals modernization in two components: needed legislation to look forward and more timely resolution of legacy appeals. So, while implementing the new process, we are still squarely focused on accelerating legacy appeal resolution. It is an effort we began to initiate well before modernization was passed.

Last January, we realigned VBA's administrative appeals program under our Appeals Management Office. The idea being one place, one official, for management oversight and accountability. That senior official in that position is here today and that is Mr. McLenachen.

With that change, VBA increased appeals production by approximately 24 percent and decreased inventory by 10 percent. And VBA resolved over 124,000 appeals during the fiscal year 2017, a 10-percent increase.

For its own part, the board is accelerating legacy appeals resolution also.

They are growing the attorney workforce, re-engineering processes, designing and testing new case review techniques, and issuing timelier decisions after hearings. In fact, today the board will begin piloting a new interactive decision template that will help attorneys in preparing their decisions.

Thanks to those changes, the board is on target to deliver over 81,000 decisions this fiscal year, 28,000 more than last fiscal year.

After implementation, the board will continue maximizing efficiencies and improving technology and processes, and eligible veterans with legacy appeals before the board can choose to opt in to the new system. So, both RAMP now and the opt-in choice later will let veterans choose the more efficient new system, and that will further decrease legacy inventory and provide quicker resolution for all veterans.

In the area of transparency; transparency is fundamental to rebuilding veterans' trust. And it is not only trust of veterans that we are trying to develop and maintain, but also the trust of Congress, VSOs, stakeholders, and the American public. So we will publish metrics for both the new processes and the legacy processes.

In closing, I would like to make two points. First, Mr. Chairman, we want to get this exactly right, as you indicated in your opening. It is a period in time that we believe is seminal. We believe we have turned a corner after the hard work of 2 years that produced this legislation. We will improve during this transition period. There will be needs, there will be adjustments, and there will be changes as we go forward based upon what we learn during the RAMP process. So we welcome recommendations by you, the Committee, and your staffs, any that can be offered.

We encourage you to visit VBA and the Board. We hope that you would see for yourself what they are doing; words don't do it jus-

tice. And we ask that you and your field offices tell veteran constituents about the RAMP option. VBA staff in their field offices are going to be there, available to you when you need them, to help spread the word and educate your constituents.

Secondly, Secretary Shulkin has been very clear about it, appeals modernization is truly transformational because of the greater choice it gives veterans in the appeals process, something that has not existed until the legislation. It is change VA needs and veterans deserve. We also need truly transformational change in regard to benefits more broadly. The Committee will be very involved with this effort as the Secretary looks to the future.

VA benefits should be about helping veterans achieve a lifetime of independence and success; that is economic opportunity, physical and mental well being, and financial security for the severely disabled. And veterans should know exactly what to expect when they leave the military and transition to the veterans status in a very reliable and trustworthy way.

Lincoln's pledge in his second inaugural, "Care for him whom shall have borne the battle, and for his widow and for his orphan," are words that often are mentioned as a starting point. We are, as far as the VA is concerned, the word "care." This is part of a continuing evolution of the word "care" from that point in time and a significant part of the care for veterans is what has been accomplished by this legislation.

We appreciate the leadership that has been demonstrated by this Committee. But before closing, sir, I would like to request formally, as we sit here today, even before we have discussed where we are with respect to progress not only on RAMP towards February of 2019, I would like to request that the Committee invite us back before your August break, so we can give you an update and we can share with you what changes have occurred.

We do expect and we will follow through on the obligation on quarterly updates, but based upon conversations that I had with both the Chairman and the Ranking Member last night, we are going to offer our approach that on a monthly basis we have our staff interact with your staff to make sure that questions are answered as questions arise and not have to await a later point in time.

We are working against the clock; time is of the essence. VA, the Secretary is committed that by February 2019 the implementation of the new program is going to be on track and is going to occur. Veterans deserve it and we are going to give it to veterans.

I look forward to your questions.

[THE PREPARED STATEMENT OF THOMAS G. BOWMAN APPEARS IN THE APPENDIX]

The CHAIRMAN. Mr. Bowman, thank you for your testimony, it is much appreciated.

Mr. Dodaro, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE GENE L. DODARO

Mr. DODARO. Thank you very much, Mr. Chairman. Good morning to you, Ranking Member Walz, Members of the Committee. I

am very pleased to be here today to discuss GAO's analysis of VA's appeals reform plan.

I am very pleased that VA is trying new approaches to this longstanding problem. It has been on our high-risk list since 2003. I also want to commend this Committee and the Congress for passing legislation and including in that legislation a set of requirements to guide VA's planning efforts.

Now, our analysis of the plan against the legislation requirements showed that VA met 17 of the 22 required elements in the plan, partially met four, and did not meet one. Now, some of the areas where we found gaps were in the total resources needed to implement the new reform plan, as well as the legacy plan; detailed metrics to track progress and to identify issues that needed attention; and also a lack of milestones for reducing the legacy appeals in terms of trying to bring down the backlog and the workload.

We also assessed the plan against sound planning practices the GAO has used over the years to evaluate plans across the Federal Government. We found that the VA was using certain sound planning practices, but we found also that there were a number of other areas that could benefit from better planning practices.

For example, in the performance management area, VA had not included timeliness goals for all the options that are going to be used under the new appeals program. Also, there were no measures set in a number of other areas such as the accuracy of the reviews in terms of what was needed to be achieved, the satisfaction of the veterans with the new process, or the cost involved. There was also not clear articulation of how VA was going to compare the new process to the legacy process, and also it was not clear how they were going to align resources between the new system and the old legacy system while both were in operation over time.

In terms of project management, there are a number of areas that were still missing detailed plans. Most notable, there is not yet a complete schedule for implementing the information technology reforms that need to be made to support the appeals decision-making process.

Also, in terms of managing the risk, one area that we think can be improved is that the Rapid Appeals Modernization Program, the RAMP program, only tests appeals that go to VBA and not to the board. And so that is going to leave a big gap in terms of trying to figure out how many veterans might directly appeal to the board and not go through the RAMP process. So we have got some suggestions for things that could be done to test that, so that they will have full information going into detailed implementation later this year.

So we have a series of recommendations that we will be making that will address all these gaps between the law and the plan, gaps between the plan and sound planning practices. We believe and strongly encourage VA to expeditiously and effectively implement our recommendations. We think this will position them to have a greater chance for success in providing more timely and efficient service to the veterans. And we think if those recommendations are not implemented effectively that it increases the risk that this appeals process will not work as intended.

So I want to assure this Committee, Mr. Chairman, Ranking Member Walz, and all Members of the Committee, GAO remains firmly committed to continuing to assess VA's efforts in this regard and continue to offer constructive suggestions, so that we can achieve the outcomes, Mr. Chairman and all share, and that is better service for the veterans.

So I appreciate the opportunity be here today and look forward to responding to questions.

[THE PREPARED STATEMENT OF GENE L. DODARO APPEARS IN THE APPENDIX]

The CHAIRMAN. I thank the gentleman for his testimony.

I will now yield myself 5 minutes for questions and I guess I will start with Mr. Bowman. You just heard what Mr. Dodaro said; do you agree with the GAO's assessments and are you prepared to meet those four or five deficiencies, partial deficiencies and full deficiencies that he mentioned, in a timely fashion?

Mr. BOWMAN. Mr. Chairman, yes, we agree. And I can assure the Committee that we are going to be working closely with GAO at every step along the way where they come up with what they think to be additions to what has already been offered as recommendations. We will follow through unequivocally.

The CHAIRMAN. And the second question, which is incredibly important, is the technology piece. If you can't gather and analyze the data, we are going to just be whistling in the wind. And when we start this, it ramps up full essentially a year from now, this is a massive change in how things are done at VA. And with so few people—I know we talked about this last night—how do we encourage—and I will give you an opportunity to do that for all of our Members—how do we encourage more veterans to switch from a system they know to one right now that is new and is untried, how do we convince them to do that that will help speed up their claims process? Is it to talk to us and let our people at work in our offices talk to the VSOs? The veterans service officers who work out there in the field every day with veterans, are they informed about this?

Mr. BOWMAN. Mr. Chairman, I think all of those are necessary components. I think the heaviest obligation is on the part of the Department of Veterans Affairs; that we need to be able to identify marketing strategies and approaches, make available the resources that are going to be necessary for that marketing approach; working collaboratively with VSOs, Members of Congress, the Hill, veteran and civic organizations out in the community, not just the veterans service organizations.

I think that the approach that we are beginning to see emerge, even though the cohort of veterans that have experienced the benefit under RAMP is very small, I think that with each success story it can breed and demonstrate a message out into the community that more veterans, if you are willing to give what is being offered and explained to you as a new and different approach to resolving your appeal, each one of those can become an echo chambers on its own to further encourage other veterans. And I think that as to marketing, a different marketing approach is needed utilizing not only what we have in the community, but also whatever sugges-

tions might be able to come from Members of Congress and veterans service organizations.

The obligation is for us to message to veterans that this new approach is worth their consideration.

The CHAIRMAN. I agree with that.

And, Mr. Dodaro, just a couple of questions for you. When I was reading your testimony last night, what do you mean by fully addressing risk, what did that mean?

Mr. DODARO. Well, the risk, basically, is try to reduce the number of unknowns that you have going into your full implementation status. And right now, with the approach that is being taken to test, to use the flexibility Congress has given on the RAMP program, they are only testing veterans as it relates to exercising the two options to go to VBA and not directly to the board.

So you really don't have any idea if you don't do more testing, and we think there could be some surveying done of veterans and whether they would pick one option or the other. If you don't know that, you don't know how many resources to allocate to VBA—

The CHAIRMAN. Got it.

Mr. DODARO. —or how many resources to allocate to the board going into this.

And also risk is not having a detailed plan to implement your information technology goals, there is not an integrated plan. There are a lot of things that have to be done that are interrelated. You have to have the IT systems up and running in a period of time, you have to have people brought on board and trained up to date. So there are a lot of pieces that need to come together for this to successfully be implemented.

I am also concerned that in the RAMP exercise, even for the VA option, they are not allowing veterans to appeal the RAMP decision until the new process is going to be implemented in February 2019, and I just don't know and I think VA needs to try to find out whether or not that is deterring anybody from picking the RAMP option even at this early stage because their appeal gets set aside, if they want to appeal. Now, if they are successful, that is a benefit and everybody wins in that case, but if not, then I don't know how that is playing into veterans' thinking.

So there is a lot of risk about how veterans are going to pick among the five options that will be available and how VA will be positioned itself to fully implement this with as low a risk as possible.

The CHAIRMAN. Thank you. My time is expired.

Mr. Walz, you are recognized.

Mr. WALZ. Thank you, Mr. Chairman, and thank you all.

Deputy Secretary Bowman, I do want to say thank you. I am very appreciative of the attitude you have taken of seeing us as partners in this collaborative, your very generous and I think wise decision to continue to loop us in on an ongoing basis, and to view our partners at GAO as partners in excellence of delivering that. It is the right way to go, it is very refreshing, and I think it puts us all on the same page.

And, Chair Mason, welcome to you. I know that amongst this, you haven't got to speak yet, but we know that this is all falling on you and I am grateful for that. I know that you have been out

there, you have helped town halls with your folks before. So I have got just a couple questions maybe coming towards you.

In the early stages here, it has taken about 28 days to process the 47 claims under RAMP. Again, maybe going to that IT piece, it may have been answered, but I would like to hear it from you. If you think that would be ready, say, for example, if the RAMP opt-ins shot up to 20,000, if we get them in, and I know right now we have got 3.5 percent buy-in from the folks. And I think you did this right, you went to the oldest cases first and asked those folks, but I know as a veteran myself, there is no way in hell I'm getting out of line at this point, if you will, if that is the way I think maybe they are viewing it, and now you are going to go to newer claims, which I think there is more of a chance you may see a ramp-up in that. How are you measuring those? How are you going to handle for those?

And I would assume you want to see an influx come, because you are going to have to stress-test this system now, it is the best time to do it.

Ms. MASON. Thank you, sir. And I will let you know that the board is very supportive and collaboratively working with the VBA on the RAMP program, but I am going to hand it over to Mr. McLenachen, because VBA is handling the RAMP—

Mr. WALZ. Is your microphone on?

Ms. MASON. I'm sorry, is it on? Is it—I'm sorry, is that better?

Mr. WALZ. Yes, that's good.

Ms. MASON. Okay, thank you. The board is supporting the RAMP initiative in the Department, and we are collaboratively working with VBA and our VSO partners and GAO. VBA has the lead on the RAMP program, so to answer those specific questions, I am going to let Mr. McLenachen take the lead on those, and I will answer anything that comes back to me.

Mr. WALZ. Great.

Mr. MCLENACHEN. Good morning. I hope that at some point, real soon, we have that problem where we have too many people opting in, I really do. So we are prepared for that.

What our plan is, is that, yes, the initial intake has been lower than we hoped, but as you pointed out, what we started with were absolutely the oldest appeals that we have. Right now I can tell you the average time from initiating an appeal to opt-in, for those that we have received, is an average of 1506 days. So, we are truly starting with the oldest, and those are likely the ones, as we have learned, that may be less likely to opt in. So, as you have said, we are starting this month with about 10,000 new appeals, as well as continuing with the oldest, so a total of about 35,000 invitations going out this month.

Now, to prepare for that, and hopefully we do get an increased workload, we will be rolling out from our Appeals Resource Center here that is processing all of them that we have received so far to regional offices. Just next week, we are starting to train the regional offices that are going to be receiving these RAMP claims first and then we will roll to other offices as the workload increases.

So we have a plan for doing that, and we are kicking it off this month.

Mr. WALZ. Fabulous. Thank you.

Chairwoman Mason, I would go back to you. In September, we received—and this is prior to you—we received a letter from, at that point in time it was about 20 percent of your—it was 100 attorneys, and I believe at that time you had about 550 and now you are up closer to 990 or somewhere about right—expressing concern about what they described as lack of adequate training, poor working conditions, unrealistic expectations. I will say, our team has been out and toured the resources center, I know you have held the town hall; by all accounts, a good, positive feedback. And I think it is worth noting that your background and your family services, you have a deep commitment to this, a father in World War II, a brother in Vietnam, and your husband is in line, I believe, possibly on this.

So could you just give us a little bit of how you are addressing that in just a short amount of time and if you are feeling some of the—maybe the stress of that is starting to be relieved, so that that workforce is prepared, trained, and ready to go.

Ms. MASON. Absolutely, sir. Since being sworn in as Chairman in early December of 2017, I immediately began a series of meetings with my staff, starting with my judges and my attorneys, rolling out to the administrative team, as well as my leadership team.

And the other thing that I am doing on a regular basis is, I believe communication is extremely important, and so weekly I send out emails as to what is going on within the board, as well as what is going on in the rest of VA, so that the staff knows what is happening.

The other piece that I am doing is I am walking around. I am being extremely visible, I am being available to my staff; I think that is extremely important. That was not something that the board had seen regularly with leadership before. If they don't see me and they don't feel they can talk to me, then I am not going to hear their concerns.

As to the specifics of the letter as with respect to training, we have a very robust training program at the board. We are currently bringing on new attorneys starting this next month where we have a very—it is a 3-month program where we train our new attorneys. Our judges are very involved once the attorneys are handed off from the additional training. But in addition to that, we also continue to run regular training at the board to ensure that our attorneys and judges are up to speed on the latest law. We have a quality review team who looks at our quality standards, basically using a statistical standard from across the Government. Our current quality rating is 93.6 percent.

As you did indicate, my staff has grown quite a bit this year. The staff started out the year around 667 attorneys or staff and we are up to 940, about. We are going to 1,050 in fiscal year 2018, to include we are adding some judges to replace those who retired.

So as far as the space issue, we have a very robust telework program, as well as allowing remote work, and I expect to expand and continue that as much as I can.

Mr. WALZ. Well, thank you, ma'am, and it is being noticed. So, thank you for that.

Ms. MASON. Thank you.

Mr. BOWMAN. Mr. Walz, if I could offer just two comments based upon earlier questions that you had, especially with General Dodaro.

The concern about not being able to have metrics and an understanding of the impact that a veteran may feel about not being able to exercise an option to go to the Board. I think that is something that during this approach over the next year, that is something that we are going to have to take a stronger look at, because I think it is important. Even though a veteran, at the end of the day, if he has exercised his choice in two lanes under RAMP and they say I want to appeal to the Board, they can appeal. But, the problem is obviously there isn't going to be any action on it until after full implementation.

So I think that we are going to want to take another, stronger look as to how we may be able to somehow do some assessment and testing.

The other has to do with the rollout of invitations to participate in RAMP out into the regional offices. I can tell you that the Secretary's desire is to be aggressive and not pass it. That the preference is going to be we will ask and we will invite more. Because the more that we ask, the greater the cohort or pool of veterans that we are going to be able to assess as to how and when and why they may or may not make a decision to enter it.

So I would like to assure the Committee that it is not going to be a passive approach, it is going to be an overly aggressive one as a way of gaining as much data in a short period of time that we have before full implementation.

The CHAIRMAN. I thank the gentleman for yielding. And I am going to begin to insist, because we have two panels today, to be respectful to our second panel and we are going to hold you to 5 minutes.

I will now yield to our Chairman of the DAMA Subcommittee and a lead sponsor of this bill, Mr. Bost.

Mr. BOST. Thank you, Mr. Chairman.

Deputy Secretary Bowman, the comprehensive plan indicates that the VA would submit the proposed regulations to OMB on January 17th, 2018, you indicated the publication in the third quarter. Has VA submitted the proposed regulations to OMB yet at all? If you have not, why not?

Mr. BOWMAN. The Department, is going to try and have an aggressive approach to get it out of the Department over to OMB. As I indicated, it is a target, it would be the Secretary's target to look at the third quarter, and my effort or my responsibilities as the Deputy is going to make sure that the pressure is felt to see that achieved.

Mr. BOST. And that was going to lead to the second part of my question, because I need to find this out, because when we put the language together we are real clear, we work with everybody to make sure. Will the Department be prepared to fully implement the Appeals Improvement and Modernization Act on February 19th, 2019, including implementation of the regulations?

Mr. BOWMAN. That is my goal, that is the Secretary's goal, and it is our intention to make sure that in February there is full implementation and that there will be regulations in place.

Mr. BOST. I am just watching the clock click very, very rapidly and where we are at isn't necessarily, I feel, where we need to be at this time, but we will work with you every way we can.

So, I would also have a couple questions, Comptroller General. Does the VA comprehensive plan and processing legacy appeals and implementing the modernization appeals system fully satisfy requirements of the mandate?

Mr. DODARO. No, Mr. Bost. As I mentioned, 17 of the 22 elements that were in the plan that were fully addressed, four partially and one not addressed at all, we have pointed out where those areas are and made recommendations that VA fully implement all those different requirements.

Mr. BOST. Did the comprehensive plan include significant information for GAO to effectively evaluate the VA's plan?

Mr. DODARO. No. There are some details that are lacking, which I have talked about and Deputy Secretary Bowman has talked about, they are working on. Those details are really important details and I think there are some areas. One that we pointed out in our testimony is, you know, having defined the end state for where VA wants to be once they have everything implemented, and along the way what are the critical success factors in assessing RAMP and incorporating those lessons into their broader planning efforts.

So there are a lot of details that need to be worked out yet and we have made a lot of recommendations we think can help those gaps, but they have to be expeditiously implemented in order to, you know, have timely, full implementation.

Mr. BOST. Well, let me just, if I can, make a couple statements here, the concerns that I see.

When we put the language together, we worked together in a bipartisan manner, worked on it. Even Congresses before us worked on seeing this issue, knew what we needed. Dates we set working with you to put those dates in place, working with VSOs to put those dates in place. My concern is, is that we are going to run into what the general public and especially our veterans keep seeing is, is that we put plans out in and set timelines throughout legislation and then the implementation through the agency does not occur for whatever reason. And I am extremely concerned, because we have made a commitment to our veterans to get this problem fixed.

And meeting with each one of you, we all have the same goal and I am not going to drag somebody over the coals here, but we must get this done. There is nothing worse than the stress that these veterans feel of sitting and waiting and trying to go through a bog of paperwork and not understanding the process, and an over-burdensome process, that they served their time, they did what they were supposed to do. They are in a situation that they need an answer; either agree or don't agree, but they need an answer. It puts themselves and their families in stress. And I hope that we move forward and that these dates are met.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman for yielding.

Mr. O'Rourke, you are recognized for 5 minutes.

Mr. O'Rourke. Mr. Chairman, thank you. And I want to thank Mr. Bost and Ms. Esty for their work on this. I also want to acknowledge Ms. Titus, who is here, who has worked on this in pre-

vious Congresses and has really been a champion on this issue, and I am so glad to see that she is here today to join us and I am looking forward to her questions.

Mr. Dodaro, I wonder if you might expand a little bit on some of your concerns and give us some guidance on how we can measure progress against them, because I heard you outline some missing aspects of the plan. I heard Secretary Bowman essentially agree with the assessment, and so it seems like conceptually there is agreement there, but I would love for you to help this Committee with its oversight responsibility in measuring progress against the Secretary's commitment.

For example, you mentioned timeliness goals that are missing, and you said perhaps the most important thing, which is we have not defined the end state. So, without that, we will never really know how we are doing. People could say we have hired a bunch of people, we are working really hard, we processed this many more claims, but if we don't have a defined end state, you know, I don't know what the goal is and so I don't know how to measure against that.

Could you expand on that a little bit and perhaps give us some defined goals and when we should be able to expect progress on this?

And the last thing I will say before I allow you to answer, I loved hearing Secretary Bowman ask to be invited back this summer so that we could have this conversation.

So, Mr. Dodaro, I will let you answer.

Mr. DODARO. Yes, thank you very much.

Your articulation of the situation is exactly correct. Some of the timeliness goals, for example, there are goals for the two VBA lanes that people could choose, there is a timeliness goal for the lane to the board where people don't submit additional evidence. But if they want to submit additional evidence and it is either with a hearing or without a hearing, which are the other two options, there are no timeliness goals there set at all.

There are goals that the VA witnesses mentioned they are working on in terms of what is the accuracy, you know. Timeliness is important, but accuracy is as well. Veterans' satisfaction with the process is important. There is no measures of when they are going to bring down the legacy appeal process. You could go into full implementation and still have legacy appeals there and, without those measures, you don't know, you know, at what point do you want to be where you have no more legacy appeals and you are only using the new options going forward.

You don't really know what the resources are going to be yet in order to implement the new process, particularly as it relates to the board, because RAMP is not testing the direct appeals to the board. And I am pleased to see Deputy Secretary Bowman say they are going to try to do that, I think it is imperative.

You know, under the law, the Secretary has to certify that they have all the resources that are available in order to implement the new process and handle the legacy process. And, under the law, they are also supposed to certify that they have all the training and everything done, and he has to articulate what the outcome measures are going to be for the new system as well during that

period of time. And so, right now, I don't think they are prepared, you know, to have all the information they are going to need in order to certify that they are ready to go forward.

So, based on the plan so far, I am not confident that they will be ready by February 2019 unless they deal with these gaps and have a fully informed plan and a fully informed certification.

Mr. O'ROURKE. And, Secretary Bowman, thinking back to a few Secretaries ago, Secretary Shinseki said by this date certain no first-time service-connected claim will languish more than 125 days. And so we knew the number of days, the date by which we were going to try to achieve that goal, and we were all marshaled around that with the resources, the oversight, the authorization, and the performance.

Can you give us a similar goal for the claims that are languishing in appeals right now?

Mr. BOWMAN. What I would like to do is to turn that over to Chairman Mason to speak to the issue of appeals that are relative to the Board and see where your follow-on questions would be. But the only comment I would add is that I do think—and, again, it is in support of where Comtroller General Dodaro is, that there are gaps in the plan. GAO has identified where those gaps exist, we acknowledge they exist, and part of the responsibility and the reason I said that we wish to be invited back is to provide how we are going to address those gaps in an expeditious and timely manner. But I will turn it over—

Mr. O'ROURKE. And I will just note that I am out of time, so unless we have that specific answer to that specific question, I will ask that you give that answer back to the Committee in writing in a reasonable period of time.

Ms. MASON. I will follow up.

Mr. O'ROURKE. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman for yielding.

General Bergman, Chairman of the Subcommittee on Oversight and Investigation, you are recognized.

Mr. BERGMAN. Thank you, Mr. Chairman, and thanks to all of you for being here today.

A question related, but kind of unrelated. We have got some World War II veterans still out there and some Korean War veterans, but especially the World War II folks are getting up there in age. When you plan and try to implement any process, you know you don't do a one-size-fits-all, because then that size fits no one. Is there currently exception for, let's say, an age, a World War II veteran or a Korean War veteran to get expedited handling of their case based on age?

Mr. BOWMAN. The basic answer is, yes, and I will turn it over to Chairman Mason to explain in detail.

Ms. MASON. Yes, sir. Currently at the board we have the advance-on-docket provisions, where any veteran who is 75 or older, has severe health issues or financial issues, there is a provision for other situations as they motion for those, those cases are advanced on the docket and moved forward.

So that is exactly how we are working those cases.

Mr. BERGMAN. When they are advanced, are they advanced—again, could you give me a rough order of, let's say that veteran, as you described, over 75 and is in a dire situation, could they expect any kind of timeline today?

In the last couple of weeks, I have been back in the district and talking with, you know, this group and that question was asked, so I wanted to be able to give them an answer. Expectation timeline?

Ms. MASON. Well, what happens when they make the motion for the advance on the docket, we move those cases directly to the judges. That generally is a 2-week timeline, depending on the complexity of the case, but I would have to respond—

Mr. BERGMAN. No, close enough, that's great.

Thank you, because as one gentleman told me, I know I don't have much time left, but I would really appreciate an answer. And he was not mad, just he was hopeful that he could get that.

I know Deputy Secretary Bowman knows what a sand table is. When we plan, okay, that is what we do, we lay it out. In sand table terms, is it going to be possible for us, Members of this Committee, to see the sand table for what we are talking about here as the RAMP? At some point where we can actually get a chance, whether you put it up here in D.C. and we come over to view it and get a walk-through sooner rather than later?

It can be a prototype of your model for implementation, but that would be, I believe, very helpful, because what I would expect to see on that sand table is, here is the part of the process, whether it is the IT process, whether it is the notification of the veteran process as to how it is going to work.

And alongside that, I would like to see two things: the number of dollars and the number of people that are going to be applied to that particular piece of the sand table, so that now as we add up the people and the dollars necessary to implement this new process for expediting the appeals and getting it right, and the RAMP and the opt-in and the opt-out. So if we just do a process without those numbers attached to it, for us to support you in a fog of how much and how many is a challenge.

So is that something that is possible?

Mr. BOWMAN. Sir, it is possible. And what I would like to commit to is that, if you could give us about 60 days to up with the sand table, and then hopefully within 90 days then speak to Committee staff, indicating that we believe we have a product, and then whether it is in a roundtable or in a group session.

Mr. BERGMAN. You know, the back of it, we have our roundtables here, Mr. Chairman. I think, based upon what you just said, in a roundtable, because we have had roundtables here, sooner rather than later. It doesn't have to be a full-up round, but it has to be that working prototype that I believe would be beneficial for all of us to be able to view.

Mr. BOWMAN. I think that we could provide you a reliable sand table presentation within 60 days easy.

Mr. BERGMAN. Thank you very much.
I yield back.

The CHAIRMAN. Now, Marines speak in different languages. I'm not sure what a sand table—I know what a roundtable is, but maybe he can explain that later.

Ms. Esty, you are recognized for 5 minutes.

Ms. ESTY. Thank you, Mr. Chairman. And again I want to thank our colleague Representative Titus, who really carried the water on this project for a long time and I am glad she is able to be with us here today.

And I want to follow up where the General left off and following up on the Comptroller General's observation. We know you are working hard, but I think none of us have any comfort to say we will be there by April of next year, but we are not going to give you any interim timelines.

Monthly reports is great, but as against what? This has to be broken down and nowhere more in the military do they understand that. You need to have the metrics, you need to have the people and the supplies and the money in place to do that. And it just is stupefying to think that you can know you are on track and we can do our job of oversight with just we will get there. So I think we do need to.

So I want to drill down a little bit, Deputy Secretary, on what you think you can have to us in 60 and 90 days, because I think—and this is not to beat up on you at all, it is to say we have a joint responsibility to get there and it needs to be benchmarked, and we need to see what those indicators are, what those metrics are. And if it is going to take funding or personnel or there is a problem with something, we just aren't doing our job, any of us, if we wait until April of next year and say, oops, we missed the mark on four or five of these.

So can you tell me what you think you can have to us in 60 or 90 days exactly, because I think, again, with all due respect to the General, not everybody understood exactly what was on the sand table. So if you can break that down, what you think you can provide us. Thank you.

Mr. BOWMAN. I think that the approach, using the sand table analogy, is that we do have a starting point right now based upon what we proposed back in January. That obviously was looked at by GAO, found to be deficient in a number of areas, less complete in others. I think that the approach is to start with what has been the assessment and evaluation of the deficiencies of what we are attempting to move forward with. Take a look at those deficiencies, and create a depiction, whether it be fiscal, whether it be FTE, operational, or timelines, and be able to demonstrate where we are against a timeline of February 2019 in those areas.

At the same time what we would be doing, in the monthly assessment discussions that we would have, is to demonstrate how improvement is being made on each of those identified deficiencies, and then improve. If further needs are identified, then they are added to the depiction.

So I think we start against where we know to be the deficiencies as identified. As we progress and those that are additional ones [deficiencies], we add them in, but in each of them we show solutions.

Ms. ESTY. So, if I may, among the things we heard, timeliness, accuracy metrics—I mean, these are fairly fundamental—satisfaction level, cost, I mean, all of those are important. So, let's name—these are not just deficiencies, these are core issues about accuracy and timeliness, which is what we are after, right?

Mr. BOWMAN. Sure.

Ms. ESTY. As well as satisfaction of the veterans, which is the point of having all of this.

On the RAMP question, on doing this outreach, I think all of us are wondering a little bit, the uptake has been only 3 percent. Will you be doing an evaluation to try to figure out those who are choosing to opt in, even with these really old claims—and I agree with Mr. Walz, it is understandable they would be unlikely to get out of line—there must be some reason, is it that VSOs were encouraging them to? Is that because they have despaired of ever getting a decision?

You know, I think that is going to be important for us to understand, because it does go to the backlog. And I think we all share some concern that we have this new process, is the backlog just going to fall off the table, and we have got these people who have been waiting and waiting and waiting. And so I do think it is going to be important and I am mindful of the timeline.

So if you can get back to us on really, seriously thinking what—and what can we do as Members of Congress to assist in that process—

Mr. BOWMAN. Yes, ma'am.

Ms. ESTY. —in our own districts and with the VSOs to encourage uptake, but you are going to need to be ready to accept it, as Mr. O'Rourke said. We want them to accept it, that is our mission, but you need to be ready when that happens.

And I am going to yield back and I appreciate the Chairman's allowing me that time. Thank you.

The CHAIRMAN. I thank the gentlelady for yielding.

General Bergman has asked this old Army Major to yield him 30 seconds to explain what a sand table is from a Marine, so I am going to do that.

[Laughter.]

Mr. BERGMAN. Thank you, Mr. Chairman. Picture this table right here with a border around it and 46 inches deep in sand, that we as the Marine Corps use, and we configure that sand based on the terrain we are going to fight on, disposition of our forces, enemy forces, so we can assess battle plans, assess movement. And then when we are done with that, we just level out the sand and reconfigure it for the next battle.

The CHAIRMAN. Well, I am glad to know what that is.

[Laughter.]

The CHAIRMAN. Mrs. Radewagen, you are recognized for 5 minutes.

Mrs. RADEWAGEN. Thank you, Mr. Chairman.

I too want to welcome the Deputy Secretary and the rest of the panel. Thank you for your service and for appearing here today.

Mr. McLenachen, to date, how many veterans have been contacted by VA about RAMP? How many have elected to participate in the program? And of those veterans who have decided to take

part, are you seeing any trends in terms of which lanes are being selected?

Mr. MCLENACHEN. Yes, actually 15,500 invitations to date. We started out with 500 in November, we went to 5,000 in December, and in January 10,000.

Keep in mind that the invitation says that you have 60 days to get back to us, but more importantly, it also recommends advice from a representative, such as a VSO or attorney that is representing the veteran, which is an important point.

So far, 462 appeals have been withdrawn, that is 332 unique veterans. So, some of those veterans have multiple appeals. The grant rate is 61 percent, which is a very high grant rate. The average time to process them, the ones that we have processed so far, is 37 days. So veterans that have been waiting, as I have said, an average of 1500 days have received answers, whether that is a good answer or a denial, in a very short period of time. We have awarded a million and a half dollars in retroactive benefits so far for this first cohort.

So, yes, we need to get that rate up, but so far there is every indication that veterans that are opting in are both getting a timely decision and a good outcome.

Mrs. RADEWAGEN. So what is the average timeline for a veteran electing to take part in RAMP from start to finish?

Mr. MCLENACHEN. So, good question. This has to do with the issue of goals. We have always said that in the new process in VBA, the two VBA lanes, that our goal is an average of 125 days, and that is our goal for RAMP as well and that has always been our position. So, because we don't have the workload yet to start rolling to regional offices, you are seeing a decision time of about 30 to 40 days, which is very fast.

Mrs. RADEWAGEN. So is the population of veterans being invited to participate in RAMP a statistically valid sample, you think?

Mr. MCLENACHEN. I would not say that. We are not sampling and taking a sample in that way. What we are doing is, and what we have done so far is, in each appeals stage, so there are four stages of appeals that we have in VA, we are taking the very oldest appeals in each of those stages and inviting them to opt in.

What we are going to do in February is, in addition to those oldest within each of those stages, we are going to take all new appeals that have come in over the last month and invite them to opt in as well, just to, again, see what the take rate is for those newer appeals and try to draw some conclusions from that.

Mrs. RADEWAGEN. Thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. I thank the gentlelady for yielding.

Mr. Takano, you are recognized for 5 minutes.

Mr. TAKANO. Thank you, Mr. Chairman.

My question is to the VA and the GAO. In reviewing the testimony, I was disappointed to see that the GAO and VA disagree about whether or not the VA is meeting all of the requirements laid out in the law.

Now, the VA is required to delineate the total resources needed for the VBA and the Board of Veterans' Appeals to implement and

administer the new appeals system. Now, GAO contends that the VA has not addressed this requirement, but the VA disagrees.

Mr. Bowman, first to you. Can you further explain why the VA believes it has met this requirement when the GAO argues otherwise?

Mr. BOWMAN. Sir, is that with respect to the Board or to the VBA?

Mr. TAKANO. Well, it is regarding there seems to be this disagreement between the two entities.

Mr. BOWMAN. Sir, what I am going to ask is that Mr. McLenachen address the question as it relates to the specifics as to whether or not the VA has indicated that it is not going to be able to offer those resources.

Mr. TAKANO. Okay.

Mr. MCLENACHEN. I don't believe that we have a disagreement. What the GAO has done is looked at our initial submission of a plan and is offering us suggestions for improving it and identifying specific improvements, which the Deputy Secretary has committed that we will work with them on.

As far as the resources, currently our goal through the RAMP program is to reduce legacy appeals, and that is going to have a huge impact on how we work with GAO on what future requirements might be. So we are very early in the process on that.

Mr. TAKANO. Excuse me. In the GAO report on page 10, where you lay out your assessment, it says, "VA's appeals plan does not include a delineation of the total resources required by VBA and the board to implement the new system while addressing pending legacy appeals." It is in your own report, you said there is no disagreement. Can you respond to that?

Mr. MCLENACHEN. That is correct. That is the one item, the one requirement that GAO has concluded that we did not address, and we did not address that because we are currently running the RAMP program. GAO is asking us to project in the future what resources might be required, to include future budget formulations, and what might be required from those formulations.

So I don't think we are there yet, but as the Deputy has committed to, we are going to be digging into that issue. We simply don't have that future projection of resources at this point.

Mr. TAKANO. When do you think you will have that projection?

Mr. MCLENACHEN. Well, we will take a look at the report that GAO sends to us with its recommendations and get to work on it right away.

Mr. TAKANO. All right. Well, thank you.

Mr. Dodaro, can you add GAO's perspective on the matter and have you seen any progress from the VA since your report came out?

Mr. DODARO. Well, first, our perspective is they did not meet that requirement and we maintain our position in that area. We have not had any further conversations. I am looking forward to—based on the testimony today, to have further conversations.

What I would say in this area, though, so far VA has not done, from our standpoint, enough scenario planning and assumptions. And while I am not completely familiar with the sand table experience, I think that is what they are talking about in sort of saying,

okay, what is our goal and then what do we need to get to our goal. And so far those two things haven't happened and that is why they don't have total resources yet.

And so, going forward, they are going to have to make some assumptions. At some point we are going to reduce all the legacy appeals, we are going to have these timeliness goals, these measures, and only then and only then can you figure out how many resources you are going to need in order to accomplish those goals. And so there is an interrelationship between all of the findings that we have had in that report.

Mr. TAKANO. I believe you somewhat already answered my followup, which is what are the risks for the program if the VA fails to meet this requirement. Well, obviously, we are not going to be able to solve this backlog.

Mr. DODARO. Yeah, there is great risk that they won't accomplish the goals of their plan or the legislation without this type of planning activity.

Mr. TAKANO. Thank you.

In my remaining time, Mr. Chairman, I just want to also heap praise on our colleague Dina Titus. We know how hard she worked in getting this together and it is just a testament to what can happen when Members work in a bipartisan way and to try to tackle a big problem. So, my congratulations to her, and I am glad to see her today.

Thank you.

The CHAIRMAN. I thank the gentleman for yielding. I second your—associate myself with your comments.

I now yield to Dr. Wenstrup.

Mr. WENSTRUP. Thank you, Mr. Chairman, and thank you all for being here.

I want to kind of build upon something the General talked about and maybe we can call it sort of an appeals triage. Is there a process in place, besides just timeline, like how long the appeal has been out there, but maybe the health of the person that is involved, do you have a process of maybe moving people along because they are in more dire need?

Ms. MASON. Yes, sir, we do. Again, that falls under the advanced-on-docket specific situation where a veteran is in frail or terminal health issues. And we actually had two of those cases this week where the board staff—and we had a lot of these this week, but we had two cases in particular where board staff teamed together to get a decision out the door within a day for a veteran who was in dire need.

Mr. WENSTRUP. How do they get flagged? Do they get flagged immediately when they come or—

Ms. MASON. The age cases are automatically flagged by our current they-call system. The health situation and the financial situation are situations where we work with our VSO and our field people in VBA to let us know what the situation is with the veteran and we communicate in that way, so they have to let us know.

Mr. WENSTRUP. Okay. Another quick question is, you know, as we sit in our offices, we get a lot of our constituents that come forward to us and seek our assistance in the process, where are we in the process, what is going on, or why was I denied, et cetera.

How comfortable are you with the ability to communicate back with us accurately as far as where someone might be in the process?

Ms. MASON. We can communicate with you accurately where that person is if you give us a name or, you know, we can get that to you. We also have been working closely with digital service and do have something rolling out later this month where the veterans will be able to find that out electronically.

Mr. WENSTRUP. Excellent. Thank you.

I would like to yield the balance of my time to Mr. Bost.

Mr. BOST. Thank you. I thank the gentleman for yielding.

I want to add to, Ms. Titus, thank you for what you did before, because it did allow our Committee to be in a position where we were advancing forward.

The only thing that I do want to add and the concerns I have, this goal of the sand table and 60 days, the concern is, many of us feel like that is where we should be right now. Okay? And I don't make that criticism, I just want you to know how vitally important it is that we move forward.

Of course, remember, this old jarhead was a Corporal, not an officer, so I was the guy standing behind the people who were standing at the sand table, which then trying to get the information.

My question is, what are you doing to make sure that the people behind you are getting the information to you, so that we can continue to move forward and do these goals and meet them on time?

Ms. MASON. Sir, we are working very closely with all of our staff, I can tell you, at the board, and working with VBA, I see his staff working very closely, and with our IT component. We are in constant communication. We have several things in work process right now that will be coming out to address some of the concerns GAO has in the next implementation plan.

So the staff is fully engaged and they are not standing behind us, they are at the table.

Mr. BOST. And let me tell you this, because the Chairman and the Ranking Member and others have made this as a commitment that this will be a focus to make sure we keep you on a timeline, we have got to.

So, with that, I yield back.

The CHAIRMAN. I thank the gentleman for yielding.

Ms. Brownley, you are recognized for five minutes.

Ms. BROWNLEY. Thank you, Mr. Chairman.

I wanted to ask, in terms—timeliness, for me, is obviously a very important metric, but based on the claims you have received so far or the appeals that you have received so far, I am also interested in the success rate. So we now know you are showing that the turnaround time so far is 27 or 28 days, I have no sense of what the outcomes are. Are they positive for the veteran, stayed in terms of the previous decision?

Chairwoman Mason, maybe you might be the appropriate person—oh, no. Okay.

Mr. MCLENACHEN. Actually, I would like to take a shot at answering your question. In the current appeal process, the grant rate usually hovers around 25 percent overall for all appeals. What we are seeing—and, again, we all have to keep in mind, this is a

very small sample, but what we are seeing right now is a grant rate that is 61 percent compared to that 25 percent. Now, again, a very small sample.

And I think the one piece of the question that was asked of me before is, as far as the choices that our veterans are making, we are seeing that about two thirds of these veterans are asking for a Higher-Level Review as their first shot as they are coming into the RAMP program. So about two thirds Higher-Level Review, about a third Supplemental Claims, grant rate of 61 percent, and a decision in about 30 to 40 days.

And I might point out that some of our partners in the VSOs and other stakeholders have seen some results as they are representing these people, and I think you will see in some of their testimony and their statements that they also have some very positive outcomes to talk about.

Ms. BROWNLEY. Thank you. For me, as we proceed in this process, I certainly would like to hold onto that metric as well, just to know, particularly when we look at these legacy issues that have been out there outstanding for so long and to hear that 62 percent have been granted, you know, that is a concern for me that they have been waiting for a very long time and finally get a judgment on it. But that is an important piece and I think is an important element to judging veteran satisfaction at the end of the day as well.

I wanted to also ask again as we proceed, why were the Phoenix and Denver regional offices selected as part of the expansion?

Mr. MCLENACHEN. So what we did is we tried to come up with a plan to figure out how much capacity we need as we are sending out these invitations. And so we staged it on a monthly basis, and we built up slowly to where we get to the point we are sending out a certain number every month, because really the issue is here we want to process them as they are coming in. We are not waiting until the end and creating create a backlog—

Ms. BROWNLEY. I just want to know Phoenix and Denver specifically were selected.

Mr. MCLENACHEN. Yes. So, specifically, they had the capacity there in those two stations that we thought at the time when we were first rolling out to the regional offices, it was about the size of appeals team and employees at those stations that would be appropriate for that initial rollout.

Ms. BROWNLEY. So other cities—I am from California, I always think that California probably has a great deal of these appeals, because we are a large state, but by that statement, does that mean that there are other regional offices—

Mr. MCLENACHEN. Yes.

Ms. BROWNLEY. —that you didn't believe had the capacity?

Mr. MCLENACHEN. So keep in mind that each of these regional offices, including our Appeals Resource Center now, is working these nationally. So it is not when we roll out to a regional office, they are not just going to be working the appeals that are from that jurisdiction. It is anybody who opts in to RAMP and that workload is available, they will be doing it at that station. When the workload fills to more than what they can handle, we will roll

to another station. But it is a national workload, it is just not from that jurisdiction.

As far as your question about other ROs, yes, we are looking at about 10 to 15 that we would roll out to in this process.

Ms. BROWNLEY. And when would that happen?

Mr. MCLENACHEN. It depends on the workload. If we get a high number of opt-ins, which is our sincere hope, then it will be more rapid; if it is slower, then not as fast.

Ms. BROWNLEY. And what exactly are we doing to persuade veterans and the VSOs, who some are recommending that their veterans not opt in to this program, what are we doing to—and I have also heard, based on the testimony, that veterans are feeling like it is just a check-off list and maybe not really listening and taking seriously some of their recommendations. So what are we doing to overcome that objection?

And I have zero time left, but maybe I could follow up with you later.

Mr. MCLENACHEN. Yes, I can provide you a detailed answer to that.

Ms. BROWNLEY. I yield back.

The CHAIRMAN. I thank the gentlelady for yielding.

Mr. Banks, you are recognized for 5 minutes.

Mr. BANKS. Thank you, Mr. Chairman.

Mr. Dodaro, I know you have touched upon this already, but do you believe that the VA really has a robust IT plan for implementing the appeals reforms?

Mr. DODARO. No, no, I think they need a much more robust plan. The plan they have goes out about 6 months, it doesn't go out any further than that, and it is not clear when they are going to have the deliverables necessary to improve their IT capacity to accommodate the appeals process. And so I think they need a much more robust plan and that is what we recommended; we recommended it back in March when we did our report and we are recommending it again. They have made some headway, but not as much as needs to be made.

Mr. BANKS. Between you or Deputy Secretary Bowman, how long will that take? How fast can we develop that robust IT plan?

Mr. BOWMAN. I think the approach that we are going to take is based upon how we have looked at our approach over this next year. We are going to probably have to expedite our approach in response to what the [Comptroller] General has indicated, but also as it relates to the plans that both VBA, as well as the Board, have developed. It is not as robust as it needs to be; it is going to become more robust.

We do believe that we have brought people aboard between our IT capability and the resources that we believe we have available to help address that. But it is not where it needs to be, I am not going to tell you any differently, but we believe that we are going to aggressively try to put it there.

One of the things that I have assured the Chairman and Ranking Member Walz is that we will provide a separate briefing as it relates to where we are specifically on our IT capability as we look at it today and then as we want to move forward, based upon an earlier discussion last evening.

Mr. BANKS. Okay. General Dodaro, can you elaborate on the importance of a balanced set of goals and measurements to put in place before testing and implementing the new appeals process?

Mr. DODARO. Yes. And it is very important, because there are obviously resource tradeoffs between timeliness and accuracy, there are tradeoffs between having a good IT system and not having an IT system, but you have to be clear on what your goals are going to be. There has to be a balance between making sure there are enough resources to VBA versus the board. And so you have to have measures in terms of how the board is going to handle things, as well as VBA. So, it is critical. And veteran satisfaction with the process, the communication approach.

So you need all these things in a balanced scorecard to make sure that you are effectively processing timely, getting accurate decisions, people are satisfied with the system, but, importantly, you have the resources allocated properly to achieve those goals. And so, unless you have a balanced scorecard and you have all these goals, you don't really know how much resources you are going to need in order to achieve those goals to have reasonable prospects of success.

Mr. BANKS. So we agree about that. And based upon your testimony throughout the morning, though, can you elaborate on why the VA is failing to do exactly what you just described?

Mr. DODARO. Well, I would defer to them to explain why not but, you know, we are trying to encourage them, strongly encourage them to implement these sound planning practices going forward and to do some scenario planning. You really have to make some assumptions and do scenario planning at this point in order to do it. They have been a little reluctant to do that. They are also reluctant to go out further in their IT plans beyond this six-month kind of rolling plan, they have to. I mean, there are no dates in the plan beyond February 2019 when they anticipate full implementation.

So at this point you have to make some assumptions, you have to set what your end state is, where you would like to be with your balanced scorecard, and then you figure out what kind of resources you need and have detailed metrics that you can check along the way and make progress.

And so these things are all very important. I mean, the approach so far has been, we are going to learn from RAMP and then we are going to make adjustments.

Mr. BANKS. With the 30 seconds I have left, Secretary Bowman, what is it going to take to get there, what the Comptroller just described?

Mr. BOWMAN. I believe we are going to have to adjust the approach that we took to get to where we have presented under the plan and to adjust to what has been identified as the deficiencies in how we have approached things today.

Mr. BANKS. Okay, thank you.

I yield back.

The CHAIRMAN. I thank the gentleman for yielding.

Ms. KUSTER, you are recognized for 5 minutes.

Ms. KUSTER. Thank you, Mr. Chairman. And I too want to thank Representative Dina Titus for her great work on this issue. Thank you for your leadership.

I want to follow up on my colleague Mr. Banks' questions and dig into the training and the IT. So this is to the VA witnesses. Regarding the new case flow program, is training for this program a priority, and are your IT systems able to handle the workload during the RAMP pilot program and the full implementation of the appeals modernization? Where are you at with training?

I understand from the Comptroller General that we don't have the timeline that we need and, I agree with you, we need more specificity so that we can keep track. But where are we with training in terms of this new IT program?

Ms. MASON. I can start to the training issue specifically. We are currently working at the board with building training modules for the new implementation of the appeals modernization program, and we expect to roll out a training timeline of within the next month.

Ms. KUSTER. Could you get back to us and keep our—

Ms. MASON. Sure.

Ms. KUSTER. —committee informed? Because I think, to follow up on Mr. O'Rourke, we need to know where we are going so that we can keep track of whether we are getting there.

Ms. MASON. I can follow up on that and Mr. McLenachen can answer the second part of your question, I believe.

Ms. KUSTER. Thank you.

Mr. McLENACHEN. Specifically, you asked about RAMP and training and related issues. As I mentioned previously—

Ms. KUSTER. Primarily focus on the IT. It is a whole new program, and I want to know how people are going to learn it and implement it.

Mr. McLENACHEN. So, we have already developed and implemented VBMS, which is our program for VBA for processing claims. It doesn't require, the law does not require a new program, it requires some minor tweaks. We actually do have a more refined schedule than was discussed in the implementation plan. In August of 2018, about 75 percent of that functionality will be delivered, with the remainder delivered in December of 2018.

Ms. KUSTER. But aren't you trying to reach your goal January 2019? This seems a little slow. How are you going to reach your goal if you are not even delivering the product, the processes?

Mr. McLENACHEN. August 2018, 75 percent of the functionality that we need for February 2019 will be delivered. So that is far in advance.

Ms. KUSTER. But you just said December 2018—

Mr. McLENACHEN. Yes.

Ms. KUSTER. —what is that date?

Mr. McLENACHEN. That is when the 25 remaining percent is scheduled to be delivered.

Ms. KUSTER. 30 days before the final completion?

Mr. McLENACHEN. Yes.

Ms. KUSTER. Okay. And I have a different question. I want to move on to the VA Central Office, I am concerned about their ability to retain accountability and oversight over regional offices. We have this in the VISNs, we have this in a number of areas that our Committee covers. And we understand, the staff has heard through the old system the likelihood of successfully receiving your dis-

ability benefit varied greatly by geography, and I am wondering is there an explanation for that variance and how are you going to overcome that going forward? Is there any standardization, so that we don't have to be concerned as Members of Congress that when we get the calls it is going to be based upon our geography as to whether or not our veterans are going to have timely appeals?

Mr. MCLENACHEN. And I believe you are asking about claims processing in general, correct?

Ms. KUSTER. Both claims processing and the timeliness and the effectiveness of the appeals.

Mr. MCLENACHEN. So, a few years ago VBA implemented, kind of around the time with VBMS the program was developed, some functionality was added to that to develop our National Work Queue. The National Work Queue assures that there is that consistency nationally rather than geographically. And although I am not the expert to talk to you about that, I am sure that we could arrange for the individuals that run that to come by—

Ms. KUSTER. And is there standardization among the regional offices for how the claims are handled?

Mr. MCLENACHEN. Yes. Every regional office is required to follow the adjudication procedures manual that prescribes specifically how to process a claim in VBA.

Ms. KUSTER. And do you have some kind of internal mechanism for ensuring that consistency?

Mr. MCLENACHEN. Yes. There are internal reviews and quality reviews that are done on a local basis at the regional offices, as well as a national quality review program that is run by our compensation service.

Ms. KUSTER. Okay, thank you.

I yield back just as my time is up.

The CHAIRMAN. I thank the gentlelady for yielding back.

And I just pose this: if there is that standardization that is available, then why are 60 percent of them getting approved now?

I now yield—with great pleasure, I yield 5 minutes to Ms. Titus. Thank you for patiently waiting and thank you for the work you have done on this bill on this Committee previously. Welcome back.

Ms. TITUS. Well, thank you very much, Chairman Roe and Ranking Member Walz, for letting me sit in with you. I miss being on this Committee. It truly was a collaborative effort. And I thank you for the kind words, but we all worked together on that: the VSOs, the VA, this Committee. And I appreciate you all taking this, especially Mr. Bost and Ms. Esty, you improved on our initial work and you followed it through, and now the implementation is so important.

I just had a couple of questions. Now, my concern was always the backlog, the backlog with the initial claims and then the backlog with the appeals. I worry that you have now set up a system where veterans who have chosen this new route can't appeal until it is all put in place in February of next year, aren't we building in a mechanism that is going to create a backlog before we even get started? I think Mr. Dodaro mentioned that possibility.

Have you thought about that or figured out a way to not let that happen?

Ms. MASON. Ma'am, it is a pleasure to have you here today. We are looking very closely at that. The board is currently working very strongly and physically working down the backlog for our current appeals that we have. We do have a goal set this year of 81,000 decisions, which is 28,000 more than we did last year. And with the additional staff, we are showing results; we have already done over 24,000 decisions to date in fiscal year 2018.

But you are correct. I am hearing the GAO's concern and, as the new Chairman, that is something that I do have to take consideration of. I don't want to put us in a situation where we are creating a backlog from the very beginning; however, I do feel that I owe it to those veterans who are waiting currently to ensure that I am working those legacies.

And so we are very much supporting the RAMP program and very much hoping that those veterans—and working together with our VSO partners and our private bar partners to encourage veterans to opt in to get those early resolutions at faster rates before they come to the board. But you are correct, I am looking at that and that is something we will continue to study. And as I get more information around it, you know, it is something that I definitely am going to take under consideration.

Ms. TITUS. Thank you. I think you mentioned that two thirds of those who are in the early program are looking for some kind of review, would those be the ones who have to wait until next February?

Mr. MCLENACHEN. No, ma'am. What I was referring to was the Higher-Level Review at the lower level. So that is where we are getting those.

Ms. TITUS. The higher level at the lower level?

Mr. MCLENACHEN. Yes, exactly. So the Higher-Level Review and the Supplemental Claim lanes are done in the VBA, the third line is the appeal to the Board.

The way we set up this program, we designed it to get as many early resolutions as possible, actually to prevent that backlog that you are concerned about. Where that backlog might develop is at the Board. If we simply let everybody opt in to the Board, then, yes, you will have a huge backlog at the Board. The Board takes, rightfully so, more time to process an appeal than in VBA.

So the intentional design was to get as many resolutions at the lowest level, again, in an average of 125 days, as possible. And that is why you are seeing this rate of about 61 percent—which, Mr. Chairman, by the way, does not relate to quality, but rather the time the veteran has been waiting, because more evidence has been added to the appeal.

So that as the intentional design of the program was——

Ms. TITUS. I recall that——

Mr. MCLENACHEN. —to prevent——

Ms. TITUS. —I was there.

Mr. MCLENACHEN. —to prevent the Board from having that backlog when we start in February 2019.

Ms. TITUS. I just don't want us to create a backlog before we even really get started, because you never catch up, it just continues to build, and it seems to me that that is a problem and the Comptroller recognized that too.

My other question is, because the RAMP is a pilot program and you are only looking at a couple of the lanes and you are not going to open up the full program until the next year, all this data and all this planning and all these metrics are related to what is happening on those lanes, when the whole program opens up, do we start all over from scratch looking at what happens in the new additional lanes, or are we prepared to just move forward?

Mr. MCLENACHEN. Actually, it is true that, veterans cannot opt-in directly to the Board lane, which is the third lane, and as you said, it is not being piloted. But it is not exactly true that we are not getting any information from that.

When a veteran gets a decision in the RAMP Program, they can appeal to the Board. So, the Board will have that information about veterans who are interested in appealing after getting a Higher-Level Review or Supplemental-Claim lane decision.

In addition to that, we are collecting data on which lane at the Board they want to go to. So, we are collecting information that is relevant to the Board lane; it is not an absence of information. The only thing we are not testing is veterans that might want to go directly from an initial VBA decision directly to the Board. That is correct, we are not testing that, but there is a reason.

The Board process, as we said, we are looking at an average of one year in that fastest lane at the Board. We don't have time to pilot the full extent of what the law allows in February of 2019, because it does take time to get through our lanes and then to get to the Board and get through the Board lanes, which will run slower, naturally.

Ms. TITUS. Do you have any concerns about that?

Mr. DODARO. Yes. I think that there is, number one, once the realistic expectation for bringing—resolving all the legacy appeals, you know, there is no timeline for that, how many resources would be required. So I think they need to establish some goals for that kind of process, you know, that kind of outcome, so that they can take the new RAMP process.

The other thing is they could potentially survey some veterans to see if you had the ability to go to VBA or the Board, which way would you go to get some additional information available on that side, because I am concerned that once they open up all the lanes and have—you know, they will have some information, but it is going to be limited—that they are not going to be able to be in a position to create, meet all the expectations that people have for the new process and they will not, from my understanding is they are not going to have all the legacy appeals resolved before they start the new—full implementation and new process, potentially.

And what does that mean for the process? Because veterans can still, you know, appeal, so it is going to keep going. It has the potential for creating additional backlogs.

Ms. TITUS. That is my concern, too.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Arrington, you are recognized.

Mr. ARRINGTON. Thank you, Mr. Chairman. I had a budget hearing and it is the most frustrating thing as a new Member, you want to be available and engaged, and so my apologies. This is incredibly important and I regret not hearing your conversation and

with my colleagues, and so forgive me if I repeat some of the questions or make some comments that have already been made.

The thing that stands out to me is this, is just looking at the numbers. With the overall number of 471,000 pending appeals, but when I look—and Ms. Mason, I am going to direct my question to you—the goal at the Board level is to resolve 81,000—rather—yeah, 81,000, I think, was the stated goal annually.

But when you look at 2017, 90,000 appeals came through the system and 2018, the projection is 93,000. It reminds me of our deficit spending and our national debt, like, I don't know when we will ever get to the \$20 trillion national debt, because we can't even get out of deficit-spending mode.

How are you going to get out of deficit-appeal resolution mode at that rate?

Ms. MASON. Thank you. You are correct, the board's goal this year is 81,000 and we do project approximately 93,000 coming in and that is not an equivalent.

What—the areas that we are looking on—looking at as our efficiencies, the new decisions that we are rolling out today, piloting, we hope will assist the attorneys and the judges in their case review and decision pace, but we are going to look at that very closely to see what that does.

We are also working with our Digital Service team. They have rolled out quite a bit of technology already to date including Reader, the intake piece, Caseflow, and they are getting ready to roll out the queue program and test that, which will be able to handle work on our workload, how we are going to manage our workload across the appeals and the framework.

So, you are right. We are not there yet, but the other part of that is RAMP. If there—if we do have some veterans opting into RAMP, that will take down the number of cases that are coming into the board, at the board, especially with the current 60 percent grant rate.

Mr. ARRINGTON. So, with all the things you mentioned in play, you think you can catch up to that number of incoming and start working down that 471,000 in backlog? So, with all that in play, do you think you can do that or do you need more authority, more resources, more training, more assistance, more—

Ms. MASON. The 470,000 appeals are across the organization, so approximately 200,000 of those are currently at the VBA notice of disagreement level, so if those get resolved in VBA, they don't come to the board. My goal, and my hope for veterans, is that we stop that flow at VBA. So, that is the first piece of that.

As far as needing additional assistance at this time, my team has been working very hard this year and we are seeing amazing results and that as a result of the money that Congress gave us in fiscal year 2017. I really need to see what my team can do as we move into that, into the new system, but, you know, the legacy piece, we are going to be watching that very closely and trying to draw those down as quickly as possible, as well as get ready for the new appeals process.

Mr. ARRINGTON. So, when will we start seeing the amazing results, because I am not sure I am seeing what you are seeing or maybe I am seeing a different scorecard.

Ms. MASON. The board, to date, has done 24,800 decisions, which is a record number for us to date in fiscal year 2017.

Mr. ARRINGTON. Congratulations.

Ms. MASON. Thirteen thousand more than the same period last year.

Mr. ARRINGTON. Okay. What is the biggest factor in your success in solvency this problem?

Ms. MASON. The biggest factor for the—currently to that success is the fact that we added additional people and we are working with our staff very closely to streamline the process.

Mr. ARRINGTON. Do you need anything else from us so that in a year from now, you can show us even more amazing results?

Ms. MASON. I really need your help getting the word out on RAMP and selling that out to our—to your constituents and at the local level to opt-in, because it is a program worth opting in.

Mr. ARRINGTON. Thank you for your remarks.

Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman for yielding.

And Mr. Bowman, Mr. Dodaro, thank you very much. I know you have got to leave. I would like to ask Mr. Bowman to stay around. And just before we introduce our second panel, you know, this issue is not tax reform and funding the military and health care reform and all those glitzy things you go out and stand out in front of a TV camera and explain. But to people in our district, it's incredibly important and to a 90-year-old veteran waiting three or four or five years or a Vietnam veteran who has been exposed and is waiting on a resolution and financial circumstances come into play, it is a huge issue for them.

So, thank you for the work that you are doing to speed up this process. I applaud you for that. Probably of anything that any of us on this dais do that both is rewarding and frustrating is appeals process the VA has. So, anything we can do, and hopefully this legislation that Ms. Titus first started and now Mr. Bost and Ms. Esty have carried through into law, will help this process and speed this process up.

And I hope a year from now when we are having this conversation, that we have even better news. So, thank you, and this panel is dismissed.

Now, I want to welcome our second panel, Jim Marszalek, the national service director for the Disabled American Veterans, welcome; Diane Boyd Rauber, the executive director of the National Organization of Veterans' Advocates; and Steven Henry, the associate legislative director of Paralyzed Veterans of America.

Mr. Marszalek, we will begin with you; you are recognized for 5 minutes.

STATEMENT OF JIM MARSZALEK

Mr. MARSZALEK. Thank you. Chairman Roe, Ranking Member Walz, and Members of the Committee, thank you for inviting DAV to testify on implementation of the Appeals Improvement and Modernization Act. As national service director for DAV, I was pleased to work with VA, the board, and other stakeholders to develop the new framework that led to this legislation. I want to thank this Committee for making comprehensive appeals reform a reality.

Currently, DAV represents over one million veterans or survivors seeking earned benefits, making us the largest veterans' service organization providing claims assistance. In addition, DAV provided representation for 31 percent of all appeals decided by the board in fiscal year 2017.

Mr. Chairman, although the law is not scheduled to become fully effective until February 2019, VA has already initiated a Rapid Appeals Modernization Program, commonly referred to as "RAMP," to begin reducing the backlog of legacy appeals and to test elements of the new system. RAMP allows veterans with pending appeals to choose two new options; higher-level review or a supplemental claim. They cannot elect the board option because the board will not begin processing appeals under the new system until February 2019.

We worked closely with VBA to fine-tune RAMP, which began rolling out last November. Since the program was only offered to a small number of veterans closest to getting a decision from the board, we aren't surprised that most choose to remain in the legacy process; however, based on preliminary data, RAMP is already showing great promise. The average time to complete a RAMP decision is 37 days.

But more importantly, consider how all these decisions are affecting the lives of veterans. One of the first RAMP decisions involved a Gulf War era veteran, represented by DAV, who filed his claim more than a decade ago. After years of appeals and remands from the board, this veteran opted into RAMP on November 16th and just 48 days later, a grant to service-connection with 100 percent evaluation was awarded, which resulted in over \$275,000 in retroactive benefits. RAMP provided a life-changing benefits to this veteran and his family.

Moving forward, as word of RAMP successes begin to spread and as VA and VSOs begin educating veterans, we expect to see participation grow. In addition, we recommend that the program be modified so that any claimant with a pending appeal could opt into RAMP, not just those receiving a formal invitation from VA.

Mr. Chairman, the law requires VA to use a new decision- notification letter starting in February of 2019 to help veterans better understand their decisions as they consider appeal options. We are pleased that VA agreed to use a new letter for all RAMP decisions; however, they currently have to use a manual workaround because their IT system has not been updated to reflect the new letter format. VA was fix this IT issue immediately. In addition, outside of RAMP, we recommend that VA begin using a new notification letter for all claims decisions as soon as the IT system has been updated.

While VBA is mostly on track with its implementation plans, the board has a number of preparations still to be completed before it can begin processing appeals under the new system, including new regulations that must be promulgated. It is critical that they are published in the Federal Register as soon as possible to avoid any delays.

The board must also resolve some open questions about how appeals will be processed on the five new dockets the board will operate in the new system. For example, how will be the board allocate

resources among the various new dockets to ensure both, efficiency, as well as fairness for veterans who choose among their hearing and evidence options, including those legacy appeals who have been waiting for years.

While the board has set a one-year-average goal for processing appeals on the no-hearing, no-evidence docket, no similar targets have been established for the remaining dockets; something the board should consider.

Another issue that is not been adequately addressed is how the board will treat evidence submitted prior to a requested hearing. The law only references evidence submitted at and 90 days following a hearing, however, we contend that any evidence received after the NOD, but prior to a board hearing, should be accepted and made part of the appeal record.

Mr. Chairman, in closing, we believe that the VBA and the board are off to a good start implementing the new appeals system. DAV remains committed to working with this Committee, VA, the board, and all stakeholders to ensure veterans get more timely, accurate and fair decisions on their claims and appeals.

That concludes my testimony. I would be happy to answer any questions you may have. Thank you.

[THE PREPARED STATEMENT OF JIM MARSZALEK APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you.

Ms. Rauber, you are recognized for 5 minutes.

STATEMENT OF DIANE BOYD RAUBER, ESQ.

Ms. RAUBER. Chairman Roe, Ranking Member Walz, and Members of the Committee. NOVA thanks you for the opportunity to testify on whether VA's implementation of appeals reform will effectively serve veterans.

Our Members, a number of whom are veterans themselves, advocate before VA, the Board of Veterans' Appeals, the Court of Appeals for Veterans Claims, and the Court of Appeals for the Federal Circuit.

As an initial matter, NOVA appreciates VA's ongoing engagement of stakeholders in implementation planning. We hope this engagement continues and VA fully considers and deploys stakeholder feedback on proposed regulations, procedures, and forms.

Today, we will address four primary issues: VA's comprehensive plan, concerns regarding RAMP, VA's flawed process for mailing notice, and technology. Like GAO, NOVA is concerned that VA's comprehensive plan does not yet contain sufficient detail. Throughout the plan submitted in November, VA stated it will focus resources first on the implementation of the new system. VA will then allocate "remaining resources" to appeals in the legacy system.

Veterans with legacy appeals cannot become an afterthought. Much more detail is needed to ensure VA processes legacy appeals to their conclusion in a fair and efficient manner while fulfilling its obligations under the new program. For example, how will BVA address the backlog of pending hearing requests, currently nearly 85,000, and provide timely hearings to those in the new system

who wish to be heard? Veterans need more specific answers to questions like these.

VA's primary vehicle for handling legacy appeals is RAMP, a chance for early voluntary opt-in to the new system. We believe this is less a pilot, but rather, a full program for moving veterans into the new system and as noted, there is a gap because there are no lanes to go to the board.

It is critically important that VA continue to provide advocates with data on RAMP so they can evaluate the program and provide the best advice to veterans and their families. At last week's stakeholder meeting, VA stated it planned to set up outbound call centers to contact veterans about RAMP. NOVA opposes such action.

VA is providing veterans with letters, follow-up letters, and emails about RAMP. It is one thing for VA to call a veteran to verify an address or schedule a medical examination; it is another to call to try to explain a new program that could result in a veteran giving up certain rights. However well intended, such calls are bound to lead to confusion and potentially contradict the advice a veteran's representative has already provided. We view this idea as counterproductive, as well as a waste of resources that can be better applied to other aspects of implementation.

Next, we appreciate the RAMP team's work with NOVA to ensure attorneys and agents receive the required mailed notice of VA's actions; however, VA's overall efforts in this regard remain woefully inadequate. As GAO reported several months ago, VA's outgoing mailing systems are seriously flawed. NOVA receives nearly daily complaints that important correspondence and decisions are going unmailed and unreceived.

In spite of the recognized flaws, VA relies on the presumption of administrative regularity when a veteran misses a deadline due to its failure to notify. VA's processes are irregular and it further prolongs the adjudication process due to the need for more appeals.

VA states it is preparing to deploy a centralized outgoing mail system, but too many veterans have been harmed. VA must do better and provide relief for these veterans and we urge the Subcommittee on Oversight and Investigation to continue its leadership in this regard.

Finally, a critical step to full implementation of the new system is updated technology. Congress should continue to ensure that VA receives the resources it needs; in turn, VA must use those resources to design systems that work efficiently. At last week's stakeholder meeting, the U.S. Digital Services team demonstrated some of the work it is doing on Caseflow, which is the replacement for BVA's outdated VACOLS program, as well as other new applications designed to help veterans track their appeals.

These systems must also be made available to all advocates representing our Nation's veterans, so they can provide them with the help they deserve.

Again, we appreciate the opportunity to testify today and I would be happy to answer any questions the Committee might have.

[THE PREPARED STATEMENT OF DIANE BOYD RAUBER APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you, Ms. Rauber.

Mr. Henry, you are recognized for 5 minutes.

STATEMENT OF STEVEN HENRY

Mr. HENRY. Chairman Roe, Ranking Member Walz, and Members of the Committee, Paralyzed Veterans of America would like to thank you for the opportunity to offer our views on the implementation of VA's appeal reform and if, in fact, it will effectively serve veterans.

PVA employs a highly trained force of over 70 service officers who developed veterans' claims for both, member and non-member clients. These frontline flows spend a minimum of two years in specialized training. We maintain a national appeals office staffed by attorneys and legal interns who represent clients at the Board of Veterans' Appeals, otherwise known as "the Board."

We also have attorney who practice before the board, the Court of Appeals for Veterans Claims and the United States Court of Appeals for the Federal Circuit.

While we are open to reform of the appeals process, we cannot support programs, initiatives, or pilot programs that are less advantageous for our members. We believe RAMP is good for VA and the backlog of appeals, but it is not good for our members.

VA will tout their 61 percent grant rate of the first claims that were adjudicated; however, these claims were completed at the appeals management office, not in the field. PVA contacted many of its field offices and found that in many of VA's regional offices, there is a lack of confidence of the effectiveness of the RAMP program by VA employees.

Furthermore, it is a common perception of decision- review officers that the board has more authority on the interpretation of regulations while adjudicating certain claims. Claims such as these are always forwarded to the board.

PVA believes that RAMP is able to be successful, the culture within the VA must change, otherwise, the RAMP program is nothing more than another layer adding more denials and longer wait times for veterans.

We also found after surveying field employees that very few regional offices have received any training materials or tools for its employees. To date, PVA has yet to receive any training materials. The nature of RAMP places a considerable amount of responsibility on service organizations to provide the absolute best advice possible when choosing the proper lanes or to not opt-in.

PVA members are the most catastrophically disabled veterans and their claims are nothing short of complex. How can we confidently communicate to our members, the benefits of RAMP when the regional office staff is yet to be trained on the program?

When a veteran receives a notice advising them of the RAMP program, they will receive a document many pages long containing legal jargon with the intent of explaining the pros and cons of the program. Buried deep on Page 4 is a statement that notifies the veteran that by opting into the RAMP program, they must withdraw their appeals from the board which will result in the loss of their docket date.

Consequently, if the veteran chooses to return back to the board after RAMP, they will lose their place in line. Furthermore, vet-

erans will not have the option to return to the board until February of 2019.

If a veteran has opted into RAMP and during the adjudication period, the claim is remanded for a new exam or for the development, the veteran is no longer covered by Stegall. There is no longer protection over the remand to ensure the regional office complied with the remand order. Consequently, the claim could be denied, resulting in more waiting for the veteran.

We believe VA is not implementing a pilot program. Pilot programs are small in size; however, to date, VA has contacted 15,000 veterans. On February 1, another 25,000 will be acted and 30,000 in March. This is not a sample size; this is an incredible amount of claims being forwarded to regional offices to limited staffs that have received little to no training on the program. The speed at which RAMP is being implemented is troubling.

PVA appreciates VA's need to reform. PVA, along with other major VSOs help push for appeals reform. Our greatest concern is that VA may be rushing its implementation, as seen by the rapidly increasing number of veterans contacted for the pilot, without time for VA to consider the metrics of the pilot.

PVA stands ready to continue to assist with reforming the appeals process to ensure that our veterans receive the benefits they, too, rightly deserve.

Thank you, and I am happy to answer any questions.

[THE PREPARED STATEMENT OF STEVEN HENRY APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you for your testimony.

And I will start out with just a couple of quick questions and it sort of goes to both ends here. We have two, obviously, two differences of opinion. One believes that it is working pretty well and the other brings up some very good questions.

The question for everybody on the panel is, why do you think the VA has got only a 3 percent intake? I have my own thoughts about that for RAMP, and are your organizations encouraging people to get into it or discouraging people to use it? And I will just start from my left and go to the right.

Mr. MARSZALEK. Yes, thank you. Great question. We are encouraging our service officers. You know, we put our information about RAMP, Hey, this is what the program is all about, here are the advantages of it. And, frankly, I don't see there is a huge downside to participating either, right? I mean you are protected. Once you opt-in to the program, you are effect date is protected.

Why is there such a slow uptake? One is they reached out to the oldest appeals that are pending and, you know, some of our service officers gave us feedback, Well, this veteran has a hearing next week, you know, they have already had their hearing, whatever it may be, so they don't want to get out of line and they don't know much about it either. There hasn't been much advertising by VA about RAMP and what it is all about.

At the last meeting we were at, I did encourage VA, Listen, let's do some, you know, marketing and tell people about this program. We want to do it. We want to help VA. We want to encourage people to participate if it is right for them.

And we have told our service officers, you have to look at the case. Is this the case—the right case to go forward and pick higher-level review or supplemental claim. But the cases that we have opted in, we have gotten some good feedback from the veterans, as well, and there is three in my written testimony alone that received a significant amount of benefits based upon their participation. They have waited almost a decade for their cases.

So, there is some good, but we really, really have to watch as it grows. As we are notifying thirty, 35,000 people, you know, how many people are opting in and can we maintain that workload? And we have to do it together and I think the collaboration has been good thus far.

The CHAIRMAN. Ms. Rauber?

Ms. RAUBER. We have provided training to all of our members, but we believe that is really an individual decision that each representative needs to make with the individual veteran. As we noted in our testimony, there are no lanes at the board, so an advocate is saying to the veteran, You are going to jump out here. You are going to lose your place in line. You are withdrawing your appeals with no opportunity to come back in. I can get you this far and, yes, you will be waiting in line when the process opens and VA says it is going to be ready in February of 2019.

But if they are not ready, you have just instructed a veteran that he might be getting his appeal looked at, and you know we heard some testimony earlier today, I know VA is intending to be on time, but there is a little bit of suggestion here that it is not entirely clear that it is going to happen and I think that gives people some pause as to whether they should recommend this.

The CHAIRMAN. Yeah, I agree with you. I think that is exactly what it is.

Mr. Henry?

Mr. HENRY. PVA, we represent a very specific clientele. Our service officers work with very complex claims involving paraplegia, tetraplegia, MS, and even ALS. And we just don't know if the RAMP program is advantageous for our members.

Like Mr. Marszalek said, it may be good for some veterans, but right now, we don't see it very benefitting our members for PVA, so we are just going to sit back and see what happens with everybody else before we jump in.

The CHAIRMAN. I appreciate that. And I think all of you, I think it is probably correct at being new. It is difficult to jump in something new when you know where you are in line. I couldn't disagree with that at all.

Mr. Henry, and you have probably already answered this, but why the PVA is concerned that VA hasn't established benchmarks during whether RAMP is successful; you mention that in your testimony.

Mr. HENRY. The only benchmarks that we are really made aware of were how many veterans they were looking to opt-in. One of our biggest concerns is VA touts this program as being a pilot program or a test program.

Test programs are used to test. They are used to determine whether or not the resources are there for the final program to really be successful. And with VA not providing these benchmarks,

they have absolutely nothing to measure the effectiveness of the program on. So, we just don't feel that everything is there for RAMP to be successful.

The CHAIRMAN. Okay. Thank you my time is expired.

Mr. Walz?

Mr. WALZ. Thank you, Mr. Chairman.

And thank you to all of you for a lot of years of working these and I do think we take our lead from your service officers. DAV has 4,000 accredited folks out there that have worked on this. There is literally so much wealth of knowledge on how to make this happen, so this feedback today is really helpful.

And I, too, am—the communication piece is it, and I think the Chairman is absolutely right. This is—it is, you know, “the devil I know is better than the devil I don't know” type of thing. And I certainly know how I would view it in the line, but I think there is going to have to be—we are going to have to get to the point where we are encouraging people to get into a system that works, restoring that trust.

Because the ultimate goal is to get fairly adjudicated claims in the most efficient manner possible, to deliver those benefits that are owed. And all of us have that same goal and so—trying to get there.

What I am—this communication piece, I would—Ms. Boyd Rauber, what about all those attorneys and things that are out there and the folks that are doing this? These—little different than the VSO side of things but in the same goal. Are you getting good information? Do they feel well-versed? Do they feel part of this, this process moving forward to implementation?

Ms. RAUBER. I would say that VA has done a better job of including us in the planning. And all the information that VA is giving us, we are disseminating to our members, but, again, I would say that we really feel that it has to be an individual decision based on the specifics of an individual case. And people who are farther along in the process are just much less likely to move in.

Mr. WALZ. Are any of you—anybody have it anecdotally, where someone came up and said, Hey, I haven't been contacted. I want—I really want to get in this thing. How do I do it? Have you heard of that happening?

Mr. MARSZALEK. Yes, we have had veterans contact us and want to be—want to participate, but that is not currently offered at this time. That is why one of our suggestions is for VA to allow that.

If we come across a veteran who has been waiting years and we think the program is going to be advantageous to them, we should be able to opt them in, yeah.

Mr. WALZ. And I—well, I think that is the ultimate goal. I guess maybe in this, there is more of a selective of sending it out, but when we sent it out, we didn't get as much feedback as we wanted. You would sure think that the ones who were voluntarily saying, Put me in this, we would figure out a way to make that happen.

Mr. MARSZALEK. Absolutely.

Mr. WALZ. So—

Ms. RAUBER. I think we would like to hear more information about how VA sees that working, but we are open to discussions.

Mr. HENRY. As far as I know, we have had very few veterans opt-in. And like Mr. Marszalek said, it is a case-by-case basis and, honestly, I am not sure if we told that veteran to opt-in, but I know it is very few at this point.

Mr. WALZ. Well, I think you bring up a very good point and for all of us to understand, there are a multitude of veterans' service organizations for a reason; for specific conflicts, for specific issues, for specific advocacy. And that has served us very well, as long as we have never lost track of we are not leaving anyone behind; we are not cutting anybody out at the expense of someone else.

And I think in this process, you are bringing up a very, very important point about specific claims, specific group of veterans, and making sure that if it is working for one, that may not be for the other. And I don't quite have my mind wrapped around how to make that happen. I don't know exactly where that is, but it is something for us to focus on.

I think we have heard a lot about it, the not testing with the board as being a piece of it, so it probably goes—we probably are there. But, I want to thank you all. I would say now of all of those years of work, all that expertise that is out there processing, we need all of that right now, these 12 months.

And I think we all need to say—and it is something to think about—I am not letting anybody off that date, but we have to be ready on that date. And if there is any indication as we get closer and closer there is not a possibility, we need to be communicating.

So, I thank you all and I yield back.

The CHAIRMAN. I thank the gentleman for yielding.

Mr. Bost, Chairman Bost, you are recognized.

Mr. BOST. Thank you, Mr. Chairman.

And I just—I am really concerned as we see the spectrum of each VSO group that has their different concerns. I—you are from positive to really not, but that is not where I want to go with my questions; I have some specifics.

Ms. Rauber, is NOVA concerned that the veterans, that when they receive the RAMP letters, are not fully understanding them or what the program involves?

Ms. RAUBER. No, I think it is that, you know, our veterans—our members will be expecting to talk to that individual client. VA is sending the notice to the veteran and hopefully, and as I stated, not always consistently sending the notice to the representative, as intended.

But I think in each specific case, they will have that one-on-one together to talk about the specifics of the case and the notice. So, I am not so sure that it is the veteran is not understanding with the help of his counsel, but I think it is, is this the right thing for me as an individual to move into this system or not.

There are concerns that Mr. Henry raised about the remand issue and some of the—in the legacy system, there is more control that the board keeps over the remand and I think there are people who perceive that as maybe being a better route for them.

Mr. BOST. Just as an individual basis?

Ms. RAUBER. Exactly.

Mr. BOST. Okay. Mr. Henry, would you like to expand on that?

Mr. HENRY. From what I heard from field employees, if a veteran receives a letter without consulting their service organization first or afterwards, they are going to be confused. I was a little confused when I read the letter.

So—and plus, there is so much. There is so much just like the whole thing about withdrawing your appeal; that is on Page 4. So I think that in itself and alone, should probably be—it is one of the most important aspects of this program, because once you withdraw all your appeals at the board, you can't go back and you can't go back until February of 2019. So, that is extremely important for a veteran to know and they won't know that if it is on Page 4.

Most veterans, when they receive these letters, they may briefly read through it, but the second they see that this program is quicker, that they are going to receive a notice faster, then they are more likely to jump in. But I think it is important for the veterans to know just what exactly they are jumping into.

And that is why it is so important for the service organizations to be a part of this. And like Ms. Rauber said, it is important for the veterans' representative to receive a copy of this letter, to know that they have been selected for this program, because then they can contact the veteran and say, Look, you have this letter, let me explain it to you.

Otherwise, veterans aren't going to know what they are reading and once they see "quick" they are just going to go and opt-in.

Mr. BOST. So, to all three of you, maybe the concerns I have is how do you advise your VSO, your actual frontline case agent to advise them? Is it uniform between all of our VSOs? Mr. Henry, you have kind of got a larger concern in comparison to the other organizations and is there a uniform among our agents working for the veterans to either give a positive response towards this or a negative response or is it just to keep them informed?

Mr. MARSZALEK. I think the biggest part is the knowledge piece and the training piece. Are they aware of it? Do they know the ramifications of it?

You know, I have asked Dave McLenachen to come to a conference that we had with all of our supervisors and have him get up there and talk about RAMP and what it is all about. They don't need to just hear it from me; they need to hear it from VA, as well.

Our whole theme of our conference is nothing changes if nothing changes, right?

Mr. BOST. Because if it is not working now —

Mr. MARSZALEK. The current process we have today is broken. We all know that. That is why we are here.

So, you know, I did this for 10 years in the field before I came to Washington, D.C. and I have a hard time telling somebody not to opt-in, right, when they are going to get a quicker decision. And let's say they are even close to getting a board decision and they get an unfavorable decision at the local RO. The new letter they get tells them, you know, it is more informative, right? That is one of my favorite pieces of this program is that new decision notification letter, providing more explanation about why you didn't get the benefits you were seeking.

So, now, let's take a look at that. Let's see what evidence we need. We can go back through that claims lane. I am going to be

hard-pressed to tell somebody to go directly to the board unless it is a matter of law, and if it is, let's go get in line right now. You are going to be one of the first to get your cases heard now. You know, that is an advantage. I think if you opted in now and got in line now, you are going to be one of the first to get heard.

Mr. BOST. Well, thanks for your input, and we are going to continue to work on this. Your input is vitally important on this.

With that, I yield back.

The CHAIRMAN. I thank the gentleman for yielding.

Ms. BROWNLEY, you are recognized.

Ms. BROWNLEY. Thank you, Mr. Chairman.

Mr. Henry, I appreciate your testimony and to summarize, it sounds like it is really sort of rolling the dice and your members have very complicated cases, which is extremely understandable.

I am just wondering. We heard the VA testify that at least based on the small population that have gone, that have opted in and have gone through the process, there is a 62 percent success rate. Can you speak to that and do you have any of your members in that population of success?

Mr. HENRY. From what I have been told, no. I think it is important to note that all of the cases that VA has adjudicated so far for the RAMP has been at the appeals management office. Once these claims go out into the field—now, we surveyed our field employees and they told us that basically the feeling they received from VA is, they have very little confidence in this program.

The people or the representatives from VA that are going to be adjudicating these claims are decision-review officers. These are men and women who have spent the majority of their time or they have the most time developing and deciding claims.

There is a common perception within the VA with DROs that they have a very limited authority on how they can develop and basically write claims. I mean that is just not the case, but it is a common perception throughout VA.

So, if you are moving these same men and women to the same positions that are going to decide the RAMP claims, you are really not changing anything. You are going to basically put them in the same position that they were before. And we have heard that from the field. A lot of the decision-review officers have said, This is nothing more than another DRO review.

In that case, the claims that they feel they can't rate, they are just going to push to the board anyway. Now, if this gentleman has jumped into RAMP, that means that they can't appeal their claim to the board. They have to wait until 2019.

And for us, I mean like Mr. Marszalek said, this may work for some veterans. It may work for some of ours, but right now, we haven't seen the specific instance where it will work for one of our veterans. We can't make a—PVA can't use a blanket statement and say, Yes, this will work for PVA. We don't know.

We are going to look at it very carefully on a case-by-case basis until we specifically tell one of our veterans, Yes, opt-in.

Ms. BROWNLEY. And how do you—what is your feeling in terms of interacting with the VA, trying to improve upon the process as we are going through this sort of trial balloon?

Mr. HENRY. I mean, there has been communication within VA and the VSOs, but it has been extremely quick. They are implementing this program very quickly and we don't think it is a pilot program. We don't think it is a test program. They are basically trying to implement—at least, that is how we feel—they are trying to implement appeals reform now. They are trying to do it quicker.

And we think that they are just jumping ahead of themselves, and for us, it is just not advantageous for our members. And I think it is just—I can only speak on behalf of PVA. I can't speak to Ms. Rauber's organization or Mr. Marszalek's organization, but in regards to PVA, it is just not something that we see it as being very advantageous for our members.

Ms. BROWNLEY. Thank you. I need to be in the Capitol at 12:15, so I am going to have to yield back. I did have other questions, but I want people to know that I am leaving because I am already late. So, thank you, I yield back.

The CHAIRMAN. I thank the gentlelady for yielding.

Mr. Takano, you are recognized.

Mr. TAKANO. Thank you, Mr. Chairman.

To any of you who may want to answer this, my first question is, how concerned are you about the fact that RAMP is not being tested at the board level?

Ms. RAUBER. We think that is a concern because we believe that it is difficult to counsel a veteran to go into a system where there is not completion all the way through. And, yes, we understand VA's position that the gates will be open first to those individuals, but without knowing it the whole way through, I think it is difficult and we are relying on the statement that they will be ready.

I think, also, there is concern about how the hearing lanes are going to work. There are several different lanes that are going to be set up at the board, and as I mentioned in my testimony, there are 87,000—85,000 people waiting now already for hearings.

How is that all really going to run? And I think we have concerns about that.

Mr. TAKANO. All right. Anyone else want to add to that?

Mr. MARSZALEK. The biggest piece for us at the board is how they are going to operate those new dockets. You know, they have a goal for the no-evidence, no-hearing lane of one year, but there is no goal established for the hearing lane or hearing any evidence or just evidence and we want to make sure. We are going to pay very, very close attention to that to make sure it is being operated very fairly across the board for even the legacy appeals, as well.

Mr. TAKANO. Great. Mr. Henry, among your concerns in RAMP, if you were to highlight it, what one specific change would you like to see to make RAMP better? Maybe you can't limit yourself to one, but—

Mr. HENRY. I think if anything, it would be to—if the veterans choose to opt-in to RAMP, they don't lose their place. They don't lose their docket date at the board. And they have the chance, if they receive a negative decision through RAMP, they have the opportunity to go back to where they were before and they don't lose their docket date.

Mr. TAKANO. Okay. Thank you. Thank you.

To all of you, have you been receiving calls from veterans who have not sent RAMP enrollment letters, but want to know about RAMP?

Mr. MARSZALEK. Yes, we have received calls from veterans that are inquiring about can they participate, and we have told them no. That is something that was in our written testimony and our oral testimony that we believe VA should open that up. If we do come across a claimant who would be perfect for RAMP, that we be allowed to opt them in at that time.

Mr. TAKANO. Thank you.

Ms. RAUBER. I am not aware of calls our members are getting in that regard, no.

Mr. TAKANO. Mr. Henry?

Mr. HENRY. I am not aware of calls either.

Mr. TAKANO. Thank you. To all of you, how do you feel communication from the VA to VSOs is going in how do you feel your input is being received and what is the average response time from the VA?

Mr. MARSZALEK. You know, in my 17 years of doing this, this is probably the best we have working together ever. You know, I called Dave McLenachen and two days later, we were sitting down and having a meeting about some of the concerns that I had and we wanted to talk about and get an update from him on what was going on.

So, I think today is the best that it has ever been since I have been in this business in 17 years. So, that is great for us to see. We are very, very happy with the collaboration of us all working together.

Mr. TAKANO. That is great to hear.

Ms. RAUBER. I have to say that I obviously represent attorneys and agents and I will say that VA has made a concerted effort during this implementation period to continue to keep us informed. Of course, we would always like a little bit more time to take a look and really consider the things that they are providing to us, and we really do hope that they are going to listen to the feedback and take some of the suggestions that we have made on the regs and other forms.

Mr. HENRY. The communication has been good, but just from our perspective, communication has been all about RAMP. There hasn't been a lot of communication about appeals reform. So, right now, the emphasis is RAMP, RAMP, RAMP.

So, I think that if they put out a little bit more communication in regards to the full reform, that way we are prepared for when it is fully implemented in 2019.

Mr. TAKANO. Well, thank you very much.

Mr. Chairman, that concludes my questions. I don't—I will yield back the balance of my time.

The CHAIRMAN. I thank the gentleman for yielding.

And, first of all, I want to thank the panel. This is a great addition to the—I wish more members could have been here to hear this, but I appreciate your view because you view it at the ground level, not at the thirty-thousand-foot level.

Do you have any closing comments?

Mr. WALZ. No, thank you, all.

The CHAIRMAN. I want to just finish by saying a couple of things. One, I think it was a very productive meeting and one of the focuses of this Committee this year is going to be on appeals reform. We have a couple of other things on choice we have to do and asset review, but one of the major focuses is going to be on getting this right.

And I remember nine years ago, the Ranking Member was here with me—yes, the two of us who have been here the longest—there were a million claims. I remember that number just startled me. In 2009, a million disability claims out there.

And so, to VA's and to your hard work, that's been reduced, but all those numbers are fine, but if there is somebody sitting, waiting on a mailbox or a phone call somewhere, that one person, it is 100 percent of their claim that hasn't been heard and they are waiting years and years and years.

So, I think I heard several things from Secretary Bowman today, that he's willing to come back or willing to give the Committee a monthly report on where they are in this program. Number two, I have learned a new—a sand table. I have learned a new term today. We are going to do that in 60 days and the VA will return, along with you all before the August recess to do another one of these sit-downs to see where we are.

The other thing I like about this program is it is an opt-in program. Maybe the optics of getting a letter are hard for veterans to understand.

The other thing I have learned today is that—and we knew this—that each case is different and what size may fit—it is not a size 10 shoe for everybody. It is a—someone has different, like the issues of Mr. Henry brought up are very complicated cases. Others may be fairly simple, although they have taken a lengthy amount of time to do this.

Again, one of the things I like is you can choose to do this program or not. I think what VA is trying to do is to get enough data to say when they go live in February of 2019 that they are able to—that they have the resources to do that and they are testing it out now on a voluntary basis.

So, I know this entire Committee, and I think I can speak for the Ranking Member, are committed to working on this with the Department of VA, the VSOs, GAO, and anyone else really to help the VA get to a new system that ultimately gets to our goal, which is a timely and accurate adjudication of these claims.

So, again, I want to thank you all, the witnesses, for being here.

I ask unanimous consent. We have several written statements provided for the record, be placed in the hearing record. Without objection, so ordered.

The CHAIRMAN. And also, I ask unanimous consent that all Members have five legislative days in which to revise and extend their remarks and include any extraneous material. Without objection, so ordered.

The meeting is adjourned.

[Whereupon, at 12:22 p.m., the Committee was adjourned.]

A P P E N D I X

Prepared Statement of Thomas G. Bowman

Good morning, Chairman Roe, Ranking Member Walz, Members of the Committee. Thank you for inviting us here today to discuss VA's plans for implementing the Veterans Appeals Improvement and Modernization Act of 2017 (Modernization Act). Joining me today are Ms. Cheryl L. Mason, Chairman, Board of Veterans' Appeals; Mr. David J. Barrans, Chief Counsel, Benefits Law Group, Office of General Counsel; and Mr. David R. McLenachen, Director of the Appeals Management Office, Veterans Benefits Administration.

The Modernization Act

The Modernization Act, enacted on August 23, 2017, is the most significant statutory change affecting VA disability compensation appeals in decades and I wish to thank the Committee for its work on the much-needed comprehensive legislation that will reform an archaic process into one that makes sense for Veterans, their advocates, VA, stakeholders, and taxpayers. I appreciate the opportunity to come before you today to discuss the Department's plans to implement the new claims and appeals process and strategies for managing the legacy appeals inventory.

VA remains committed to timely and full implementation of the Modernization Act by ensuring information technology (IT) systems for the new claims and appeals process are developed or updated; employees are properly trained; and Veterans are fully informed of the changes and their options in seeking review of VA's decisions on their claims. VA has a clearly defined strategy for managing the new process and legacy appeals workload and is committed to transparency in reporting its metrics and goals relating to both implementation plans and these separate workloads.

VA's Implementation Plan

VA has developed a implementation plan that was collaboratively prepared by the Board of Veterans' Appeals (Board) and the Veterans Benefits Administration (VBA) and contains inputs from other components of VA involved in the implementation of the Modernization Act. VA initiated this 18-month plan immediately after the law was enacted, and fully expects to implement the new claims and appeals process by February 2019. VA will utilize the period between now and then to promulgate regulations, establish procedures, hire and train personnel, implement IT system changes, conduct outreach, and gather data for trends analyses and metrics reporting. Due to the magnitude and scope of the statutory changes, VA is employing a governance structure to oversee and document appeals modernization implementation using project management experts to institute key project management tools and deliverables. To track implementation progress, the plan includes timelines, interim goals and milestones, reporting requirements, and established deadlines to ensure timely execution.

Workforce Planning and Human Capital Strategy

In order to ensure smooth implementation, the Board has a workforce plan to recruit, hire, and train new employees. The Board started fiscal year (FY) 2017 with 667 Full Time Equivalents (FTE) and ended the year with 944 FTE. This year, the Board will hire up to 1,050 FTE, with the majority of those being attorneys who are responsible for preparing decisions for Veterans Law Judges. These employees are the core of the Board's Appellate Operations line of business. The Board remains able to attract high-caliber attorneys and administrative personnel because the mission to serve Veterans is one that is particularly desirable to those seeking a career in public service. The Board will also fill several support positions and will continually assess its resources and focus on its core mission.

Beginning in April 2018, training at the Board will commence for both new and existing staff on the legacy system as well as the new statutory framework and proposed regulations. To prepare, the Board will develop specific training materials from January through March 2018. These materials will be authored by an existing group of employees who serve as subject matter experts (SME) on appeals modernization. These trainings will be provided by the SMEs to all legal staff and impacted administrative branches. Once final regulations are published, any changes to the proposed rules will be incorporated into the training materials and additional training will be conducted.

Information Technology Strategy

VA has also undertaken enterprise-wide efforts to modernize the appeals process through improvements in technology. As part of this effort, VA has used information technology funds to develop and optimize paperless functionality in VA appeals processing. With FY 2016 and 2017 IT funding, VA began a multi-phase process of enhancing appeals functionality in the paperless claims environment. These enhancements are necessary to keep pace with the transformation of benefits processing that occurred at the beginning (i.e., claims) of the VA benefits system. Initial key appeals-specific functionalities in the paperless environment will focus on seamless integration of systems, and key accountability and workability features. This investment will best position the Department, from a technological standpoint, to address the VA appeals inventory.

During recent years, Appeals IT modernization efforts have largely been directed and handled within the Board, led principally by the Digital Service at VA (DSVA) team. While these efforts initially focused on retiring the legacy case management system, DSVA is now incorporating new functionality within its roadmap to support the required legislative changes and will begin testing Caseflow Queue in March 2018. In this capacity, DSVA implemented several technology functions in calendar years 2016 and 2017, including Caseflow Dispatch, Caseflow Certification, eFolder Express, Caseflow Reader, and Caseflow Intake.

VBA has also been working to develop information technology system requirements for necessary appeals modernization enhancements within its Veterans Benefits Management System (VBMS). Following the enactment of the Modernization Act, VA has been working to ensure synchronization between DSVA and VBA design efforts in conjunction with necessary prioritization of VA IT resources.

To address how VA will implement the new process while reducing the legacy appeals inventory, VA created an Appeals Processing Metric and Performance Tracking integrated project team to design a process for tracking timeliness of appeals within the legacy process, as well as the new process. VA plans to take a Veteran-centric approach to measuring the success of the new appeals process and will measure average Veteran wait times in the new process as one indicator of success. VA has already held several requirements gathering sessions to ensure that methods for capturing the data to accurately measure, track, and report metrics required by the Modernization Act are developed. Further, to ensure full transparency in reporting to the Congress and the public, VA will periodically publish on its website the results for the comprehensive metrics relating to processing of claims and appeals under the new process, the legacy process, as well as the legacy appeals for which Veterans opt-in to the new system, as delineated in the statute.

Legacy Appeals Strategy

The Modernization Act also authorizes VA to test assumptions in the implementation of the new claims and appeals system. Accordingly, VA has decided to carry out a pilot program during the implementation period, the Rapid Appeals Modernization Program (RAMP). The initiative, which was launched on November 1, 2017, allows eligible participants with disability compensation appeals pending with VBA the voluntary option to have their decisions reviewed in the higher-level or supplemental claim review lanes outlined in the Modernization Act, giving Veterans early access to the benefits of the new system, while also allowing VA to better position itself for full implementation in February 2019. Since disability compensation appeals account for the vast majority of all pending appeals, the program allows most Veterans with pending appeals to participate.

VBA has created training materials in order to train its employees on the RAMP process. VBA's Appeals Management Office (AMO) is utilizing its Appeals Resource Center (ARC) in Washington, D.C., as the initial site to process the elections received from Veterans who participate in the program. AMO will expand RAMP processing to certain regional offices as the RAMP workload grows. Designated ARC employees received instructor-led training during the month of November 2017. The

AMO is utilizing the feedback received to perfect the training materials prior to expanding the program to regional offices. VBA will incorporate the training materials developed for RAMP into the development of training materials for full implementation.

The new law requires VA to modify its decision notices to Veterans to ensure they are clearer and provide adequate detail. This notice will help Veterans and their advocates make informed choices as to which review option makes the most sense. With RAMP, VA is testing a version of the new decision notice that meets the requirements outlined in the statute. VA worked collaboratively with Veterans Service Organizations (VSO) and other stakeholders in implementing RAMP and the new improved decision notices. RAMP provides VA with an opportunity to receive feedback from participants and their representatives on the notice's ability to meet the needs of all Veterans and make any necessary adjustments prior to full implementation of the new system in February 2019.

Furthermore, data collected during RAMP allows VA to test particular facets of the new process, make refinements based upon actual data that support or disprove assumptions, and make adjustments based upon identified problems prior to full implementation. VA will use several internal metrics to track RAMP's progress. During this program, VA will gather data and conduct trends analyses on aspects of Veterans' behavior, to include their decision to elect to participate in the new process, the distribution of elections among the new process lanes, claims processing timeliness, and individual employee productivity. The data collected during RAMP will allow for forecasting of the reduction of the legacy appeals inventory, as well as ensure adequate resources are directed towards RAMP claims. In addition, the data will inform VA as to appropriate work credit, workload capacity estimates, and processing timeliness metrics for the new process. Appeals that are not converted to the new process under RAMP will continue to be worked under the legacy process. VA will also use the data to assist in developing future resource requirements as part of the annual budget process.

With RAMP, VA has already made great strides toward implementing the new process; for instance, DSVA was able to support VA and to define Caseflow Intake as a solution for managing Veterans' elections to participate in RAMP using agile development technology. In addition, after gathering input from VSOs and other stakeholders, VA has developed, and is in the process of testing, a more detailed decision notice for compensation appeals, as well as the election opt-in notice. Furthermore, with the implementation of RAMP, VA has created enhancements to VBMS that allow higher-level review personnel to capture duty to assist error data.

By February 2019, VA anticipates that requests for review of VA decisions will be processed under the new law and implemented regulations. However, a significant number of legacy appeals may remain in the system pending a final resolution. Beyond the work that VA is doing to develop sound monitoring and workload tracking practices for the new appeals process, VA continues to closely monitor the existing legacy appeals workloads. As part of an effort to streamline and improve performance in legacy appeals processing, in January 2017, VBA realigned its administrative appeals program under AMO. The realignment identified a single office responsible for overseeing VBA's appeals policy and operations, and has resulted in increased accountability for appeals performance. The realignment positions VBA to focus oversight of program operational work, standardize policies and procedures to facilitate consistent benefit delivery, improve customer satisfaction, and increase the ability to make data-driven decisions. The improved focus and prioritization helped increase VBA appeals production by approximately 24 percent, decrease its appeals inventory by 10 percent, and increase its appeals resolutions by 10 percent, resolving over 124,000 appeals during FY 2017.

During the 18-month implementation period, the Board is working to provide resolution for Veterans waiting for an appeal decision under the legacy system by focusing Board resources on its core mission: decisions and hearings. At the beginning of FY 2018, the Board changed its attorney performance standards and projects productivity of 79 decisions per FTE for legacy appeals. The Board is currently on pace to produce over 81,000 decisions during this fiscal year which would represent a historic level of production. The Board's strategy to reduce the pending inventory of appeals is to: 1) continue to grow the organization's attorney force, 2) re-engineer processes to include introducing a new decision template, 3) explore new case review techniques, 4) allow the Board to issue timelier decisions soon after a Veteran has a hearing with a Veterans Law Judge, and 5) use telework to accommodate the growth in personnel.

Following the implementation, the Board will focus its resources on its core mission and will work to maximize efficiencies in appeals processing, to include technological and process improvements. The Board will assign the workload across its at-

torney and Judge corps and manage the workload through Caseflow queue. Caseflow queue will electronically track the incoming cases and ensure accurate case assignment from both the legacy and the new framework lanes. This will assist the Board in meeting timeliness goals in the new system and ensure the continuing processing of legacy appeals.

Additionally, appellants who receive a statement of the case (SOC) or supplemental statement of the case (SSOC) in the legacy system on or after the effective date of the new system will have the opportunity to elect to participate in the new system. Both the RAMP initiative, as well as the SOC opt-in, will directly impact legacy cases and provide early resolution for Veterans.

VA's Appeals Resources

VA projects an average processing time of 125 days to complete higher-level reviews and supplemental claims under the new process, and 365 days to complete appeals to the Board in which there is no additional evidence and no request for a hearing. Average processing time for an appeal on the Board's other dockets will be based on resource allocation, which VA will continually reevaluate and adjust. The RAMP pilot will provide better data and trend analysis for capacity modeling the resources needed for these other dockets prior to the implementation date. The Board will use the actual data obtained regarding appellant behavior in the new system to assist in developing future resource requirements as part of the annual budget process. VA intends to update the model when actual data can be used to replace projected data, when assumptions are shown to be no longer accurate, or based on any change in resources resulting from annual budget appropriations.

Stakeholder Engagement

VA also continues to work collaboratively with a wide spectrum of stakeholder groups, in accordance with Congressional intent, to refine the new VA claims and appeals process. The dedicated engagement of those organizations is providing VA with invaluable feedback, which is being incorporated into VA efforts to: 1) develop new forms, 2) establish internal standard operating procedures, 3) create training materials, and 4) develop communications and outreach products for Veterans. VA is grateful to all of the stakeholders for their continued contributions of time, energy, and expertise in this effort.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or other Members may have.

Prepared Statement of Gene L. Dodaro

VA DISABILITY BENEFITS

Opportunities Exist to Better Ensure Successful Appeals Reform

Chairman Roe, Ranking Member Walz, and Members of the Committee:

I am pleased to be here today to discuss our review of the Department of Veterans Affairs' (VA) plan for implementing a new disability appeals process while processing pending appeals under the current, or legacy, process. VA provides cash benefits to veterans for disabling conditions incurred in or aggravated by military service, paying an estimated \$67 billion to about 4.3 million veterans in fiscal year 2016.¹ If veterans are dissatisfied with VA's initial decision they can appeal—first to the Veterans Benefits Administration (VBA) and then, if not satisfied there, to the Board of Veterans' Appeals (Board), a separate agency within VA. In recent years, the number of appeals of VA's benefit decisions has been rising. For appeals resolved in fiscal year 2017, veterans waited an average of 3 years from the date they initiated their appeal to resolution by either VBA or the Board—and a cumulative average of 7 years for appeals resolved by the Board.² Due in part to the challenges VA faces managing large workloads and deciding disability claims and appeals in a timely manner, GAO in 2003 designated VA disability compensation and

¹ VA Fiscal Year 2018 Congressional Budget Justification.

² VA, Comprehensive Plan for Processing of Legacy Appeals and Implementing the Modernized Appeals System (Washington, D.C.: Nov. 22, 2017).

other federal disability programs as one of the government's highest management risks.³

In a March 2017 report, we examined VA's approaches to address challenges it identified as contributing to lengthy appeals processing times—including VA efforts to hire staff, propose reform legislation to Congress in April 2016, and upgrade its information technology systems—and the extent to which those approaches were consistent with sound planning practices.⁴ We made five recommendations to improve VA's ability to implement its proposed appeals process reform while addressing a growing appeals workload. VA agreed in principle with our five recommendations, which remain open as of January 2018. We recommended, in essence, that VA develop: (1) a detailed workforce plan, (2) a complete schedule of information technology (IT) updates, (3) better estimates of future workloads and timeliness, (4) a robust plan for monitoring appeals reform, and (5) a strategy for assessing whether the new process improves veterans' experiences over the current process.⁵ We also suggested that Congress require VA to pilot test appeals reform.

Enacted on August 23, 2017, the Veterans Appeals Improvement and Modernization Act of 2017 (the Act) will make changes to VA's appeals process.⁶ Specifically, the Act replaces the current appeals process with a process that gives veterans various options to have their claim reviewed further by VBA or to bypass VBA and appeal directly to the Board. The Act also requires VA to submit a comprehensive plan for implementing the new appeals process and processing legacy appeals (appeals that remain pending in the current process prior to fully implementing appeals reform) to the appropriate committees of Congress and GAO.⁷ The Act delineates the required elements of this plan, and required VA to submit its plan within 90 days of enactment. VA submitted its plan on November 22, 2017. The Act also includes a provision for GAO to assess VA's appeals plan, including whether the plan complies with sound planning practices and/or contains gaps.

My testimony today is based on work being conducted for a report that GAO expects to issue pursuant to the Act. This statement focuses on the extent to which VA's appeals plan (1) addresses the required elements in the Act; and (2) reflects sound planning practices identified in prior GAO work.

To assess the extent to which VA's plan addresses the required elements in the Act, we identified the required elements for VA's comprehensive plan under section 3(a) and (b) of the Act; compared the required elements against VA's appeals plan and supplemental materials VA provided at our request; and made a preliminary determination as to whether VA's plan addressed, partially addressed, or did not address each element. We then shared the results of this review with VA officials, and considered their comments in arriving at our assessment.⁸

To address the extent to which VA's plan reflects sound planning practices, we compared the appeals plan and supplemental materials against relevant sound planning practices and other criteria identified in our prior work.⁹ Our analyses focused on the information and elements VA presented in its appeals plan and supplemental materials provided by VA, rather than auditing the underlying information. We conducted the work for this statement in accordance with generally accepted

³GAO, High-Risk Series: Progress on Many High Risk Areas, While Substantial Efforts Needed on Others, GAO 17 317 (Washington, D.C.: Feb. 15, 2017).

⁴GAO, VA Disability Benefits: Additional Planning Would Enhance Efforts to Improve the Timeliness of Appeals Decisions, GAO 17 234 (Washington, D.C.: Mar. 23, 2017).

⁵While agreeing in principle, VA stated in its written comments that all five recommendations should be closed because its efforts to date already addressed the recommendations, or further progress was contingent upon passage of appeals reform legislation. We disagreed and maintained that VA needed to take further action on all recommendations.

⁶Pub. L. No. 115-55, § 2, 131 Stat. 1105, 1105. (2017)

⁷The Act defines "appropriate committees of Congress" to be the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate, and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives.

⁸We developed a checklist and decision rules to determine whether VA's appeals plan addressed, partially addressed, or did not address each required element, or all of the sub-parts of each required element of the Act. Using these tools, an analyst reviewed VA's plan against each required element and documented a judgment about whether that element was addressed in VA's appeals plan. An attorney reviewed the analyst's assessment and documented agreement or disagreement with the initial assessment. Where the attorney and analyst did not agree, a second attorney reviewed and made a final decision. We sent our preliminary assessment to officials at VA for comment and verification, which we considered in arriving at our assessment.

⁹See GAO 17 234. Specifically, that report identified best practices and other criteria through a review of relevant literature, such as federal internal control standards and prior GAO reports where we defined a number of desirable characteristics of an effective, results-oriented plan, or components of sound planning practices. For a list of the sources of sound practices and criteria used to evaluate VA's approaches, see the Related GAO and Other Products section of GAO 17 234 (page 61).

government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

VA's Disability Compensation Claims Process

VA's process for deciding veterans' eligibility for disability compensation begins when a veteran submits a claim to VA. The veteran submits his or her claim to one of VBA's 56 regional offices, where staff members assist the veteran by gathering additional evidence, such as military and medical records, that is needed to evaluate the claim. Based on this evidence, VBA decides whether the veteran is entitled to compensation and, if so, how much.

A veteran dissatisfied with the initial claim decision can generally appeal within 1 year from the date of the notification letter VBA sends to the veteran. Under the current appeals process (now referred to by VA as the legacy process), an appeal begins with the veteran filing a Notice of Disagreement. VBA then re-examines the case and generally issues a Statement of the Case that represents its decision.¹⁰

A veteran dissatisfied with VBA's decision can file an appeal with the Board. In filing that appeal, the veteran can indicate whether a Board hearing is desired. Before the Board reviews the appeal, VBA prepares the file and certifies it as ready for Board review. If the veteran requests a hearing to present new evidence or arguments, the Board will hold a hearing by videoconference or at a local VBA regional office. The Board's members, also known as Veterans Law Judges, review the evidence and either issue a decision to grant or deny the veteran's appeal or refer (or remand) the appeal back to VBA for further work.

New Appeals Process

The 2017 Act made changes to VA's legacy appeals process that will generally take effect no earlier than February 2019, which is approximately 18 months from the date of enactment.¹¹ According to its appeals plan, VA intends to implement the Act by replacing the current appeals process with a process offering veterans who are dissatisfied with VBA's decision on their claim one of five options: two of those options afford the veteran an opportunity for an additional review of VBA's decision within VBA, and the other three options afford them the opportunity to bypass additional VBA review and appeal directly to the Board.¹²

- Under the new appeals process, the two VBA options will be:

1. **Request higher-level review:** The veteran asks VBA to review its initial decision based on the same evidence but with a higher-level official reviewing and issuing a new decision.

2. **File supplemental claim:** The veteran provides additional evidence and files a supplemental claim with VBA for a new decision on the claim.

- The three Board options will be:

3. **Request Board review of existing record:** The veteran appeals to the Board and asks it to review only the existing record without a hearing.

¹⁰ According to VA officials, the veteran can elect either a traditional VBA review or a VBA review by a Decision Review Officer (DRO). Under the traditional review option, the veteran may present new evidence and receive a formal hearing. In general, the review can change VBA's original decision based only on new evidence, or a clear and unmistakable error in the original decision. Alternatively, the veteran may elect a review by a DRO, who reviews the record without deference to VBA's original decision, and can revise that decision based on a difference of opinion. If needed, the DRO may also pursue additional evidence or discuss the appeal informally with the veteran or the veteran's representative.

¹¹ Under the Act, the legal changes to VA's appeals process will generally take effect on or after the later of (1) 540 days (approximately 18 months) after enactment and (2) 30 days after the Secretary of Veterans Affairs submits to the appropriate committees of Congress (i) a certification that VA has the resources, personnel, office space, procedures, and IT required to carry out the new appeals system and to timely address appeals under the new appeals system as well as pending legacy appeals, and (ii) a summary of the expected performance outcomes used in making the certification with respect to legacy claims and a comparison of these expected outcomes with actual program performance with respect to the appeals under the legacy system (before the new system is implemented). Pub. L. No. 115-55, § 2, 131 Stat. 1105, 1105 (2017).

¹² Veterans who are dissatisfied with VBA's decision on their appeal may file another appeal to the Board using one of these three options, according to VA officials.

4. Request Board review of additional evidence, without a hearing.

5. Request Board review of additional evidence, with a hearing.

VA's Appeals Plan

The Act also requires VA to submit to the appropriate committees of Congress and GAO, within 90 days of the date of enactment, a comprehensive plan for (1) processing appeals under the legacy process until there are no more to process, (2) implementing the new appeals process, (3) processing of claims under the new appeals process in a timely manner, and (4) monitoring implementation of the new appeals process. In addition to these four broad elements, the Act lists 18 elements required to be included in the plan that relate to, among other things:

- staffing, information technology (IT), and other resources required to implement the plan;
- estimated timelines for hiring and training VA employees; and
- a description of risks associated with each element of the plan.¹³

The Act also includes a provision for GAO to assess the plan within 90 days after VA submits it.¹⁴

The Act also requires VA to provide progress reports to the appropriate committees of Congress and GAO at least once every 90 days (starting after VA submits its plan), until the date the Act's legal changes to the appeals process generally go into effect and then at least once every 180 days after this date for 7 years.

Rapid Appeals Modernization Program (RAMP)

The Act also authorized VA to carry out a program to test any assumptions relied upon in developing its comprehensive plan and test the feasibility and advisability of any facet of the new appeals process. In its appeals plan, VA reported its decision to pilot test two of the five new options by allowing veterans with pending appeals in the legacy process (known as legacy appeals) to elect the VBA supplemental claim or the higher-level review options beginning in November 2017. This program, which VA refers to as RAMP, is intended to reduce legacy appeals by providing veterans with a chance for early resolution of their claims within VBA while the Board focuses on reducing its inventory of legacy appeals, according to VA. Participation in RAMP is voluntary, but veterans must withdraw their pending legacy appeal to participate, according to VA. Veterans dissatisfied with their RAMP decisions must wait until VA fully implements the new appeals process (in February 2019 at the earliest) before pursuing an appeal with the Board under the new process, according to VA officials.

VA's Plan Addresses Most of the Act's Required Elements for the New and Legacy Disability Appeals Processes

VA's appeals plan addresses 17 of the Act's 22 required elements, partially addresses 4 related to monitoring implementation and workforce planning, and does not address 1 element related to identifying total resources. For example, VA's appeals plan addresses the required elements related to, among others, identifying legal authorities for hiring and removing employees, estimating timelines for hiring and training employees, and outlining the outreach VA expects to conduct. For the elements in the Act that VA's appeals plan partially addresses or does not address, see table 1. For a detailed list of the 22 required elements in the Act, see appendix I.

¹³Pub. L. No. 115-55, § 3(a) and (b), 131 Stat. 1105, 1116. (2017)

¹⁴VA submitted its plan to GAO on November 22, 2017.

1: The Department of Veterans Affairs' (VA) Appeals Plan Partially Addresses or Does Not Address 5 of 22 Required Elements of the Veterans Appeals Improvement and Modernization Act of 2017

Required element in the Act	What VA provides	Our assessment	VA's comments and our response
<p>Section 3(a)(4) A comprehensive plan for monitoring the implementation of the new appeals system, including metrics and goals- (A) to track the progress of implementation; (B) to evaluate the efficiency and effectiveness of the implementation; and (C) to identify potential issues relating to the implementation.</p>	<p>A's plan states that the agency convened an enterprise-wide governance workgroup to oversee implementation and develop metrics and track timeliness of appeals in the legacy system and the new process.. The plan also references VA's intended use of certain metrics, such as average processing time for Veterans Benefits Administration (VBA) options..</p>	<p>Partially addressed: VA's appeals plan does not contain sufficient details about metrics for tracking the progress of implementation (subparagraph (A)) or the metrics and goals for identifying potential issues related to implementation (subparagraph (C)).</p>	<p>VA officials stated that they disagree with our assessment and that their appeals plan addresses this required element. Their comments generally restated what is contained in VA's plan, except they added that the agency is developing more detailed project plans and schedules.. We continue to believe VA's plan partially addresses this required element..</p>
<p>Section 3(b)(2) Delineation of the personnel requirements of the Administration and the Board, including staffing levels during the- (A) period in which the Administration and the Board are concurrently processing- (i) appeals of decisions on legacy claims; and (ii) appeals of decisions on non-legacy claims under the new appeals system; and (B) the period during which the Administration and the Board are no longer processing any appeals of decisions on legacy claims.</p>	<p>VA's plan states the number of personnel required by VBA and the Board of Veterans' Appeals (Board) for concurrently processing legacy and new appeals in fiscal year 2018 (1,495 and 1,050 full-time equivalents, respectively).. The plan also references using data from the Rapid Appeals Modernization Program (RAMP) and the new system-once fully implemented-to inform its personnel needs for when VA is no longer processing legacy appeals.a Further, VA's statements suggest the agency will wait for RAMP results and budget outcomes to estimate future personnel requirements, rather than develop estimates based on a range of assumptions..</p>	<p>Partially addressed: VA's appeals plan does not provide an estimate of personnel required for either VBA or the Board for the period when the agency would no longer be processing legacy appeals. (subparagraph (B)).</p>	<p>VA officials stated that they disagree with our assessment and that their appeals plan addresses this required element.. Their comments generally restated what is contained in VA's plan.. We continue to believe VA's plan partially addresses this required element..</p>

1: The Department of Veterans Affairs' (VA) Appeals Plan Partially Addresses or Does Not Address 5 of 22 Required Elements of the Veterans Appeals Improvement and Modernization Act of 2017—Continued

Required element in the Act	What VA provides	Our assessment	VA's comments and our response
<p>Section 3(b)(12) Projections for the productivity of individual employees at the Administration and the Board in carrying out tasks relating to the processing of appeals of decisions on legacy claims and appeals under the new appeals system, taking into account the experience level of new employees and the enhanced notice requirements under section 5104(b) of title 38, United States Code, as amended by section 2(e).</p>	<p>For VBA, VA provided information on productivity projections for processing legacy appeals in fiscal year 2018 that are not in the plan. Also, VA's plan states VA would use data from RAMP and the new process-once fully implemented-to develop productivity information for the new process.. For the Board, VA's plan provides productivity projections for processing legacy appeals in fiscal year 2018 and projects that productivity will be higher under the new process..</p>	<p>Partially addressed: VA's appeals plan does not contain projected productivity information for VBA processing of appeals under the new process..</p>	<p>VA officials stated that they disagree with our assessment and that their appeals plan addresses this required element. In their comments, VA officials provided additional information on productivity projections that are not in the plan. For VBA, VA provided projections for the legacy process for fiscal year 2018. For the Board, VA restated that productivity will be 79 appeals per full-time equivalent for fiscal year 2018 and projects that productivity will be higher than 79 in the new appeals process.. We continue to believe VA's plan partially addresses this required element due to the absence of projected productivity information for VBA processing appeals under the new process, which VA anticipates will be implemented in fiscal year 2019..</p>
<p>Section 3(b)(17) Delineation of the key goals and milestones for reducing the number of pending appeals that are not processed under the new appeals system, including the expected number of appeals, remands, and hearing requests at the Administration and the Board each year, beginning with the one year period beginning on the date of the enactment of this Act, until there are no longer any appeals pending before the Administration or the Board for a decision on a legacy claim.</p>	<p>VA's plan states that the rate at which the legacy appeals inventory can be resolved depends on numerous factors, such as future funding and the rate that veterans opt into RAMP. VA's plan indicates that the agency would collect information from RAMP and as the Board begins deciding appeals in the new process to develop accurate goals and milestones for reducing the number of pending legacy appeals at VBA and the Board. For the Board, VA provided aggregated information on appeals and remands that were not in the plan..</p>	<p>Partially addressed: VA's appeals plan does not contain milestones for reducing legacy appeals. The plan also does not describe the expected number of appeals, remands, and hearing requests at VBA, or the expected number of hearing requests at the Board each year. Further, the follow-up information VA provided for VBA and the Board does not extend beyond fiscal year 2019, yet VA indicates that the Board will be processing legacy appeals for several years..</p>	<p>VA officials stated that they disagree with our assessment and that this element is addressed in their plan. For the Board, VA also provided updated information that contained aggregated appeals and remands expected in fiscal years 2018 and 2019.. We continue to believe VA's plan partially addresses this required element due to the absence of (1) milestones for reducing legacy appeals; (2) expected number of appeals, remands, and hearing requests at VBA, or the expected number of hearing requests at the Board each year; and (3) key goals and milestones beyond fiscal year 2019..</p>

1: The Department of Veterans Affairs' (VA) Appeals Plan Partially Addresses or Does Not Address 5 of 22 Required Elements of the Veterans Appeals Improvement and Modernization Act of 2017—Continued

Required element in the Act	What VA provides	Our assessment	VA's comments and our response
<p>Section 3(b)(1) Delineation of the total resource requirements of the Veterans Benefits Administration and the Board of Veterans' Appeals, disaggregated by resources required to implement and administer the new appeals system and resources required to address the appeals of decisions on legacy claims.</p>	<p>VA's plan states that the agency will use existing resources devoted to its workforce, IT systems, and performance tracking, among other areas, to implement parts of the new appeals process. VA's plan indicates it will collect and use data from RAMP—for example, on the (1) percentage of veterans who opt-in to this program, (2) veterans' choices within the new VBA options, and (3) VA employees' productivity—to inform future funding requests through the annual appropriations process. In its plan, VA states that it will efficiently allocate resources to the new appeals process and allocate all remaining resources to address legacy appeals..</p>	<p>Not addressed: VA's appeals plan does not include a delineation of the total resources required by VBA and the Board to implement the new system while addressing pending legacy appeals..</p>	<p>VA officials stated that they disagree with our assessment and that this element is addressed in their plan. Their comments generally restated what is contained in VA's plan.. We continue to believe VA's plan does not address this required element..</p>

Source: GAO analysis of VA's November 2017 appeals plan and supporting documents VA provided on or before January 18, 2018, the Veterans Appeals Improvement and Modernization Act of 2017, and agency input by VA. / GAO 18 349T

Note: We identified 22 required elements for VA's comprehensive plan under section 3(a) and (b) of the Act. Specifically, subsection (a) contains 4 elements, and subsection (b) requires the appeals plan to address 18 elements. Although this table shows the required elements that VA's plan partially addresses or does not address, VA's appeals plan addressed most (17 of 22) of the required elements in the Act. In determining that VA's plan addresses these requirements, we assessed the plan and its elements as presented, rather than auditing the underlying information.

aRAMP involves VA inviting certain veterans with pending appeals—starting with those appeals pending the longest—among other eligibility criteria to participate in the higher-level review or supplemental claims options with VBA, which are two of the five options that will be available under the new appeals process to all veterans.

When we provided VA with our preliminary assessment, VA officials said they disagreed with our assessment and that their appeals plan addresses all 22 of the required elements. In general, they said that data are not available, and VA cannot yet forecast the information required by the Act until aspects of the new appeals process are tested or implemented.

We continue to believe the information as presented in VA's appeals plan and supplemental materials addresses 17 of the required elements, partially addresses 4, and does not address 1 element. Without complete information on all 22 of the required elements, Congress does not have the information it needs to fully conduct oversight of VA's appeals plan and the agency's efforts to implement and administer the new process while addressing legacy appeals. VA also is required to provide information on resources, among other areas, before it can certify that the agency is prepared to carry out timely processing of appeals under the new and legacy appeals process.¹⁵ Further, as discussed below, addressing required elements through a more comprehensive plan and underlying analysis is consistent with sound planning practices and would better position VA to implement the new appeals process while attending to legacy appeals; for example, a plan that provides for carefully monitoring the new and legacy appeals processes against balanced goals and metrics,

¹⁵ VA's plan states that the agency intends to begin full implementation in February 2019.

and clearly articulates resources, milestones and other information needed for effective program management.

VA's Appeals Plan Reflects Certain Sound Planning Practices, but Could Improve on Others

VA's appeals plan reflects certain sound planning practices, such as convening a working group on performance tracking; however, the plan could benefit from including important details related to three key planning areas:

1. articulating a balanced set of goals and related measures to monitor and assess the performance of the new appeals process, in conjunction with the legacy process;
2. developing a high-quality and reliable implementation schedule to manage key steps and activities of the project; and
3. assessing key risks in a comprehensive manner, including respective mitigation strategies, and articulating clear criteria and an assessment plan for RAMP, and more fully testing or analyzing all appeal options.

VA's Appeals Plan Indicates Steps to Assess Process Changes, but Should Also Include Goals and Measures to Provide Full Picture of Success

VA's appeals plan reflects steps taken to track performance, but it could improve its planning practices related to monitoring and assessing performance on a range of key dimensions of success. Sound planning practices suggest that agencies develop overall goals tied to meaningful and balanced performance measures. These measures include a mix of outcome, output, and efficiency measures to ensure that an organization's priorities—as well as government-wide priorities such as quality, timeliness, and cost of service—are addressed.¹⁶

VA's appeals plan reports that the agency convened a working group to design a process for tracking timeliness of both the legacy appeals and appeals within the new process. In supporting documentation that we requested, VA officials stated they are also determining the best way to measure veterans' satisfaction with the new appeals process. VA's appeals plan and supporting documentation also identify timeliness goals for the two VBA-only options and one of the three Board options. Nevertheless, its appeals plan does not articulate a set of goals and measures that cover all aspects of its new appeals process, such as accuracy of decisions and cost. The plan also does not provide details on the metrics the agency will develop, how it will assess if the new appeals process is an improvement over the legacy appeals process, and how it will monitor the allocation of resources between legacy and new appeals claims. More specifically:

- **VA's reported timeliness measures are incomplete:** VA's appeals plan outlines timeliness goals for the two VBA options (average processing time of 125 days) and for the Board option that does not include new evidence or a hearing (average processing time of 365 days).¹⁷ However, VA's plan does not establish timeliness goals for the other two Board options: Board review of additional evidence without a hearing and Board review of additional evidence with a hearing. In commenting on our assessment, while VA officials indicated they expect the new process to be more efficient than the legacy process (and, therefore, more timely), data to inform goal setting for all Board options will not be available until VA fully implements these options. However, establishing timeliness goals for all options would provide a more complete picture of VA's vision for the new appeals process, and help VA to develop concrete, objective, and observable performance measures to show progress in achieving that vision, as well as inform resource estimates.
- **VA's reported measures lack adequate balance:** Other than including certain timeliness goals, VA's appeals plan does not articulate additional aspects of performance important for managing appeals, such as accuracy of decisions, veteran satisfaction with the process, or cost. We previously reported that VA officials said that they wanted to also use veteran survey results, wait times, and inventories as sources of information to measure progress under the new

¹⁶See GAO, Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures, GAO 03 143 (Washington, D.C.: Nov. 22, 2002). In addition, the Act requires VA's plan to contain goals and related measures that can be used to manage and assess implementation of VA's new appeals process, and key goals and milestones for reducing the number of pending appeals under the legacy process.

¹⁷In supporting documentation, VA indicated that it will measure average veteran wait times in the new appeals system as one indicator of success. For example, an average processing time of 365 days will be the timeliness goal for the option in which the Board reviews the existing record without a hearing. VA indicated it would develop measures and determine appropriate resource allocation for the other options in the future.

appeals process.¹⁸ Further, VA's fiscal year 2018 annual performance plan includes an overall customer satisfaction score for veterans' benefits.¹⁹ However, these and other potential measures of success are not specified in VA's appeals plan for monitoring the new appeals process as compared with legacy appeals. By not articulating a set of comprehensive and balanced goals and measures in its appeals plan, VA could be inadvertently creating skewed incentives by focusing on one area of program performance to the detriment of other areas (e.g., processing claims quickly but inaccurately).

In commenting on our assessment, VA officials recognized the need to develop additional goals and measures and indicated, for example, that they are developing and testing whether the existing quality assurance goal-requiring 92 percent accuracy-is appropriate for the new process. According to VA officials, once they have developed these other goals and measures, VA will communicate this information as part of the required progress reports to the appropriate committees of Congress and GAO.

- **VA's plan does not reflect how it will establish baseline data:** VA's approach for evaluating the efficiency and effectiveness of the implementation of the new appeals process falls short of sound practices for using baseline data to assess performance. Our prior work has demonstrated that by tracking and developing a performance baseline for all measures, including those that demonstrate the effectiveness of a program, agencies can better evaluate progress made and whether or not goals are being achieved.²⁰ However, VA's appeals plan did not provide important details about what aspects of the new appeals process' performance will be compared to what aspects of the legacy process' performance.

In particular, section 5 of the Act lists a number of metrics VA is required to report periodically, including some that could be used as baseline measures.²¹ For example, VA is required to periodically publish on its website the average time that elapsed between the filing of an initial claim and the final resolution of the claim, for legacy appeals as well as appeals under the new system, which is consistent with our prior recommendation.²² However, VA's appeals plan does not explain how or when the agency would collect and use these or other data about the legacy and new processes' performance-such as accuracy, veteran satisfaction, and cost-to-assess their relative performance.

As we had previously reported, VA's business case for reform in some instances relied on unproven assumptions and limited analyses of its legacy process to identify root causes of performance problems.²³ Specifically, VA determined that the open-ended nature of its legacy appeals process, whereby a veteran can submit additional evidence numerous times at any point during the VA appeals process, can cause additional cycles of re-adjudication, a process VA refers to as "churning." According to VA, this re-adjudication can occur multiple times and can add years to the time needed to reach a final decision on an appeal. Without fully articulating a plan for collecting and using baseline and trend data, VA cannot determine the extent to which the new appeals process, which also allows for multiple appeal opportunities, will achieve final resolution of veterans' appeals sooner, on average, than the legacy process.

In commenting on our assessment, VA indicated that it is working toward capturing the metrics listed in section 5 of the Act. VA officials also noted that reporting on the new appeals process will require IT system functionality that currently does not exist, but stated that efforts are underway to add this functionality.

- **VA's plan does not explain how the agency will monitor processing of legacy versus new appeals:** In addition, VA's appeals plan does not fully articulate how the agency will monitor whether resources are being appropriately

¹⁸ 18 GAO 17 234.

¹⁹ Specifically, VA's Voice of the Veteran Customer Satisfaction Survey tracks veterans' and their beneficiaries' overall satisfaction on a 1,000-point scale.

²⁰ Baseline and trend data can also be used to inform and refine performance goals, according to our prior work. See GAO, Agency Performance Plans: Examples of Practices That Can Improve Usefulness to Decisionmakers, GAO/GGD/AIMD 99 69 (Washington, D.C.: Feb. 26, 1999).

²¹ Pub. L. No. 115-55, § 5, 131 Stat. 1105, 1123 (2017).

²² We previously recommended that VA develop a strategy for assessing process reform-relative to the current process-that ensures transparency on the extent to which VA is improving veterans' experiences with its disability appeals process. This includes measuring the average time to reach final resolution of veterans' appeals and reflects the fact that veterans may file multiple appeals under the new appeals process before achieving resolution of their claims. GAO 17 234.

²³ See GAO 17 234.

devoted to both the new and legacy appeals process and how it will track both sets of workloads.²⁴ An appeals plan that does not specifically articulate how VA will manage the two processes in parallel exposes the agency to risk that veterans with appeals in the legacy process may experience significant delays or otherwise poor results relative to those in the new appeals process or vice versa. In commenting on our assessment, VA officials noted that VA was not required under section 3 of the Act to provide a description of its plans to capture metrics listed in section 5. Even if not required by the Act, developing an approach for carefully monitoring the management of new and legacy appeals would help VA track progress being made and achievement of goals.

Until VA establishes complete and balanced goals and measures, identifies baseline data, and develops a plan for monitoring and assessing both the new and legacy processes, VA runs the risk of promoting skewed behaviors, or not fully understanding whether the new process is an improvement or whether veterans with appeals in the legacy process are experiencing poor results.

VA's Appeals Plan Needs a Reliable Implementation Schedule to Manage the Project

VA's appeals plan reflects certain aspects of sound planning practices related to managing the implementation of process change; however, other key components are not addressed. Sound planning practices for implementing process change suggest establishing a transition team.²⁵ Consistent with such practices, VA's appeals plan states that the agency convened an agency-wide governance structure to coordinate implementation of its new appeals process; it is comprised of senior-level employees with authority to make necessary decisions to keep the project on track. VA's appeals plan also includes a copy of a master schedule. In its plan, VA asserts that the master schedule reflects timelines, interim goals and milestones, reporting requirements, and established deadlines, and that it will be used to guide implementation. VA's appeals plan also reports that VA is consulting with project management professionals, who are using the master schedule, among other tools, to monitor implementation. In addition, VA made progress addressing some of the issues we previously identified by developing steps and timetables for updating training in anticipation of implementing the new appeals process.²⁶

However, VA's master schedule for implementing reform is missing elements of a high-quality and reliable implementation schedule for key activities. We have previously reported that having a well-planned schedule is a fundamental management tool. Generally recognized sound practices from the Project Management Institute (PMI) and GAO call for organizations to employ an integrated and reliable master schedule that defines when work activities will occur, who will complete the work, how long they will take, how they are related to one another, and the constraints affecting the start and completion of work elements, as well as whether resources will be available when they are needed.²⁷ Such a project management schedule not only provides a road map for systematic project execution, but also provides the means by which to gauge progress, identify and address potential problems, and promote accountability.

The master schedule VA provided in its appeals plan should have included other sound practices for project management related to a reliable schedule. Specifically:

- **Key activities and their duration are not included:** VA's master schedule does not capture the Rapid Appeals Modernization Program (RAMP) activities, even though this pilot test is occurring at the same time VA is preparing for full implementation of appeals options at VBA and the Board. In addition, specific Board-related activities are missing from the schedule, such as efforts to develop metrics, and the schedule and other project plans we reviewed do not go beyond February 2019. For example, the schedule does not indicate the pe-

²⁴ As noted earlier, we also determined that VA's appeals plan does not contain sufficient details about metrics and goals related to identifying potential issues related to implementing the new appeals system, and therefore only partially addresses the required element at section 3(a)(4) of the Act.

²⁵ GAO, Business Process Reengineering Assessment Guide-Version 3, GAO/AIMD 10.1.15 (Washington, D.C. May 1997). In this testimony, we refer to reengineering as appeals process "redesign."

²⁶ See GAO 17 234.

²⁷ Project Management Institute, Inc., A Guide to the Project Management Body of Knowledge (PMBOK Guide); GAO, GAO Schedule Assessment Guide: Best Practices for Project Schedules, GAO 16 89G (Washington, D.C.: December 2015); and, GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs, GAO 09 3SP (Washington, D.C.: March 2009).

riod of time when VA expects to no longer be processing legacy appeals.²⁸ When all key and necessary activities are not included, it raises questions about whether all activities are scheduled in the correct order, resources are properly allocated, or the estimated completion dates are reliable.²⁹ In addition, if the schedule does not fully and accurately reflect VA's efforts, it will not serve as an appropriate basis for analysis and may result in unreliable completion dates and delays.

- **Sequencing and linkages among activities are not identified:** For the high-level activities VA's appeals plan identifies, VA's master schedule does not indicate whether there were linkages or sequencing among them, which is not consistent with sound scheduling practices. Linkages and sequencing would show, for example, if any of these activities or sub-activities must finish prior to the start of other activities, or the amount of time an activity could be delayed before the delay affects VA's estimated implementation date.³⁰ For example, VA cannot train new employees until after it hires them.

The activities VA identifies also do not appear supported by lower-level project schedules. Specifically, when we requested documentation to support VA's high-level summary of activities and milestones, VA officials did not provide intermediate or more detailed schedules that reflected these practices. In particular, VA's appeals plan lacks a complete schedule for IT modifications that clearly defines what is to be achieved and the time frames for achievement.³¹ We previously recommended that VA develop a schedule for IT updates that explicitly addresses when and how process reform will be integrated into new systems and when these systems will be ready to support the new appeals process at its onset.³² For example, VA's appeals plan references several required IT modifications that do not appear in its master schedule.³³ Schedules that are defined at too high a level may disguise risk that is inherent in lower-level activities.³⁴

- **Interim goals are not reflected:** VA officials stated that they have interim goals and milestones, though VA's appeals plan and supporting documentation generally do not include this information. Sound planning and redesign practices suggest closely monitoring implementation and developing project goals that include a mix of intermediate goals to be met at various stages. VA's appeals plan does not include this information. We previously made a recommendation that VA develop a more robust plan for closely monitoring implementation of process reform, including metrics and interim goals to help track progress, evaluate efficiency and effectiveness, and identify trouble spots—all of which are consistent with sound planning practices.³⁵
- **Resources are not assigned to all identified activities:** The high-level summary schedule that VA provided us also lacks details regarding the assignment of resources for all activities. Specifically, while the plan identifies workgroups responsible for coordinating elements in the plan, such as regula-

²⁸ Sound practices suggest that the schedule should reflect the duration of each activity and have specific start and end dates.

²⁹ In addition, if some necessary activities are missing from an agency's implementation schedule, it is much more difficult for the agency to adhere to other best practices. Our prior work has identified 10 practices associated with developing and maintaining a reliable schedule. These practices are (1) capturing all activities, (2) sequencing all activities, (3) assigning resources to all activities, (4) establishing the duration of all activities, (5) integrating schedule activities horizontally and vertically, (6) establishing the critical path for activities, (7) identifying float between activities, (8) conducting a schedule risk analysis, and (9) updating the schedule using actual progress and logic, and (10) maintaining a baseline schedule. Float is the amount of time an activity can slip before affecting the critical path. The critical path is the longest path through the schedule. If an activity on the critical path slips, the entire project will be delayed. See GAO 16 89G.

³⁰ GAO 16 89G.

³¹ Federal internal control standards state that program managers should define objectives clearly to enable the identification of risks that may impede the achievement of program objectives. This includes clearly defining what is to be achieved and the time frames for achievement. See GAO 14 704G. Additionally, IT investment best practices stress the need for oversight regarding a project's progress toward predefined schedule expectations. See GAO 04 394G.

³² GAO 17 234.

³³ VA's master schedule lists three IT requirements; however, VA's appeals plan references several other requirements not included in the master schedule: eFolder; Caseflow Work Queue, Caseflow Hearings Scheduling, and Reporting Functionality. In supplementary materials, VA provided an IT "road map" that lists nine IT requirements; however, several of these requirements (e.g., Caseflow Dispatch) do not appear in either VA's appeals plan or master schedule. In addition the "road map" reflects 6 months of planning and does not extend to or beyond the end dates reflected in VA's master schedule.

³⁴ GAO 16 89G.

³⁵ GAO 17 234.

tions, training, and outreach, the schedule does not assign resources to the 40 listed activities. As discussed previously, VA's appeals plan also does not provide information on the total resources required for this reform effort. Assigning resources to the listed activities, as well as providing other information, could provide a better indication of the estimated total resources required to implement the new appeals process and address legacy appeals.

In commenting on our assessment, VA officials stated that the agency is developing lower-level project schedules for key activities—such as RAMP and IT requirements—and will provide these schedules as part of the required progress reports to the appropriate committees of Congress and GAO. VA officials also noted that future updates will include additional dependencies and risks, which VBA and the Board are still developing. Until VA has a robust integrated master schedule, supported by detailed project plans that adhere to sound practices, VA's appeals plan does not provide reasonable assurance that decision makers have the essential program management information needed for this complex and important effort.

VA's Plan Addresses Some but Not All Key Risks Related to the New Appeals Process

VA's appeals plan includes an assessment of risks involved in implementing the new appeals system, but could more comprehensively reflect key risks posed by such a significant reform effort.³⁶ VA's appeals plan and supplementary materials include a "risk register" that describes risks associated with many elements of its plan and the remaining level of risk after its planned response to these risks. VA's appeals plan also states that senior leaders will receive regular updates of risks and mitigation strategies. However, because VA has not yet articulated a balanced set of performance goals and measures in its appeals plan, it is hindered in its ability to identify and assess risks.

Federal internal control standards state, and our previous work at VA and other agencies demonstrates, that establishing clear performance goals and objectives is a necessary pre-condition to effectively assessing risk.³⁷ Having, for example, more complete timeliness goals, and goals and measures reflecting other areas of performance, would allow VA to better identify and target risks associated with managing two processes in parallel, including the potential that veterans with appeals in the legacy process may experience significant delays relative to those in the new appeals process.

Importantly, VA is missing an opportunity to fully benefit from RAMP by not testing and assessing other aspects of the new appeals process. The Act authorizes VA to test the feasibility and advisability of any facet of the new appeals process, and VA is taking a positive step to mitigate some risks by testing the two review options available within VBA (review of a claim by a higher-level official based on the same evidence and review of a supplemental claim with additional evidence) through RAMP. In November 2017, VA began RAMP by inviting 500 veterans whose appeals have been pending the longest to participate. According to VA officials, each month VA plans to continue offering RAMP to additional eligible veterans with pending legacy appeals until January 2019—a month before VA anticipates fully implementing the new appeals system. However, as designed, RAMP does not include features that—consistent with a well-developed and documented pilot test program—would provide VA with an opportunity to evaluate fully the soundness of new processes and practices on a smaller scale.³⁸ Specifically:

- **VA's plan does not clearly define success criteria for RAMP:** VA's appeals plan states that the agency will collect certain data from RAMP, such as the rate at which eligible veterans opt into the process, timeliness of claims processing, and individual employee productivity. VA also established an overall average processing time goal of 125 days for the two VBA options; however, the

³⁶ A risk assessment is the identification and analysis of risks related to achieving the defined objectives. This assessment provides the basis for developing appropriate risk responses. GAO, Standards for Internal Control in the Federal Government, GAO 14 704G (Washington, D.C.: September 2014).

³⁷ GAO 14 704G. See the following reports for examples of agencies that did not have measurable performance goals to assess and mitigate risks: GAO, Veterans Justice Outreach Program: VA Could Improve Management by Establishing Performance Measures and Fully Assessing Risks, GAO 16 393 (Washington, D.C.: Apr. 28, 2016); and GAO, Telecommunications Relay Service: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities, GAO 15 409 (Washington, D.C.: Apr. 29, 2015).

³⁸ GAO, Business Process Reengineering Assessment Guide, GAO/AIMD 10.1.15 (Washington, D.C.: May 1997) and GAO, Data Act: Section 5 Pilot Design Issues Need to Be Addressed to Meet Goal of Reducing Recipient Reporting Burden, GAO 16 438 (Washington, D.C.: Apr. 19, 2016).

plan and supporting documentation do not clearly articulate whether RAMP reviews are expected to meet this timeliness goal. The plan also did not identify other success criteria for RAMP or the types of results expected before fully implementing the new appeals process. For example, VA's plan does not articulate the expected number and type of subsequent appeals to the Board that result from RAMP.

In commenting on this assessment, VA noted that its intent in implementing RAMP was to collect data and test aspects of the new process, and that RAMP was not an initiative in and of itself. However, developing performance measures and data gathering procedures and defining success criteria for a pilot test before proceeding to full implementation are sound practices for process redesign and pilot testing. In addition, because RAMP was not included in VA's risk assessment, we asked VA if it had identified any risks or mitigation strategies specific to RAMP. In its supplemental materials, VA stated that the greatest risk to RAMP is a low participation rate among eligible veterans with legacy claims. VA also indicated that it would need 10 percent of eligible veterans to opt into RAMP to yield meaningful results. However, this threshold is not articulated in VA's appeals plan as an explicit success criterion or objective. According to data provided by VA, as of January 22, 2018, 238 veterans opted in.³⁹ Of veterans with pending claims in RAMP, two-thirds chose the higher-level review option. VA also reported that 47 RAMP decisions have been made so far. As of yet, no appeals of RAMP decisions have been filed.

- **VA's plan does not articulate how it will assess RAMP before proceeding with full implementation:** Although VA's appeals plan describes a "close-out" phase in which VA intends to assess the results of RAMP, it does not detail the conditions that would have to be met (or not met) to trigger changes. For example, VA's plan does not explain when or how it might respond to low opt-in rates for RAMP—other than stating it will increase outreach to eligible veterans—or to unexpectedly high appeal rates to the Board resulting from RAMP decisions. Sound redesign and change management practices both suggest that pilot tests be rigorously monitored and evaluated, and that further roll-out occur only after an agency's transition team takes any needed corrective action and determines that the new process is achieving previously identified success criteria. Without fully articulating its plan for deciding how and when to roll out changes more broadly, it is not clear whether VA would be prepared to fully implement a new appeals process that achieves its aim of better serving veterans.
- **RAMP does not test all aspects of the new appeals process:** RAMP provides an opportunity to learn about experiences at VBA under the new system, such as the rate at which eligible veterans choose those options and the resources that will be required to process their appeals. However, RAMP was not designed to test how many veterans would choose to appeal directly to the Board and, therefore, it will not provide comparable information on the Board appeals options. Sound workforce planning practices suggest that agencies identify the total resources needed to manage the risk of implementing new processes and conduct scenario planning to determine those needs.⁴⁰

In addition, although we previously recommended VA conduct additional sensitivity analyses to inform projections of future appeals inventories,⁴¹ VA's appeals plan does not reflect VA's use or intended use of sensitivity analyses when projecting staffing needs for new appeals options at the Board.⁴² In commenting on our assessment, VA officials said they do not plan to conduct additional sensitivity analyses to project future workloads until they have more information from RAMP to inform their assumptions. As a result, VA will lack data on scenarios in which vet-

³⁹ According to VA, as of January 22, 2018, RAMP invitations were sent to 15,500 veterans via three separate mailings—500 in November 2017, 5,000 in December 2017, and 10,000 in January 2018. As of January 22, 2018, VA reported that the opt-in rate was about 3 percent for the November and December mailing, and 1 percent for January.

⁴⁰ GAO 09 3SP.

⁴¹ GAO 17 234. Sensitivity analysis—used in scenario planning to, for example, determine the resources needed for implementing a new process—is an analysis to determine how sensitive outcomes are to changes in assumptions, such as those used to determine resource needs. The assumptions that deserve the most attention should depend on the dominant benefit and cost elements and the areas of greatest uncertainty of the program or process being analyzed. See GAO 09 3SP.

⁴² As noted previously, we determined that VA's plan does not estimate personnel required by either VBA or the Board for the period when they are not processing legacy appeals. Sensitivity analyses could aid VA in forecasting such resources.

erans may overwhelmingly choose options available at the Board over those at VBA when the appeals plan is fully implemented. This presents a risk that VA's early production projections and initial resource allocations may not be properly balanced between the Board and VBA. This, in turn, may result in an unexpectedly large number of appeals pending with the Board, and corresponding lengthy average wait and decision times for some, if not all, Board options.

Having information on the number of veterans who are likely to appeal to the Board is particularly critical, given that similar efforts to create additional review options at VBA did not achieve their goals of reducing the percentage of appeals that continue on to the Board. In 2001, VA established the Decision Review Officer (DRO) process-in which senior staff have the authority to overturn an initial disability claim decision without any new evidence-to resolve more appeals at the regional level and avoid long waits at the Board. However, we reported in 2011 that, although the DRO process helped some veterans get additional benefits at the regional office level, it did not accomplish the program's primary goal of reducing the percentage of appeals continuing on to the Board.⁴³

In responding to our assessment, VA officials reiterated their plans to increase outreach in the event of low opt-in rates for RAMP and indicated they recently began to send follow-up RAMP invitation letters. With respect to assessing all appeal options, VA officials stated that, while no legal bar prevents testing of the Board options, the Board is focused on reducing its inventory of pending appeals while RAMP provides early resolution of appeals within the new VBA-only options. Officials conceded that this approach means they cannot collect data on the rate at which veterans opt to appeal directly to the Board (e.g., bypassing additional VBA review) until the new process is fully implemented. However, they noted that they can collect some data on the rate at which veterans whose appeals go through RAMP file subsequent appeals to the Board, even though the Board will not begin processing those appeals until full implementation.

By pursuing an approach that does not identify or mitigate significant risks associated with implementing a new process, VA is taking a chance that untested aspects will not perform as desired. The Act provides VA authority to pilot aspects of the process and flexibility on the timing of implementing the new process, which could allow some additional time for VA to carefully measure performance under RAMP and determine whether any corrective actions are necessary. If VA does not take full advantage of this authority, it risks moving forward without knowing whether the new appeals process improves experiences for veterans, and potentially implementing a process that is more expensive or results in longer wait times than originally anticipated.

In conclusion, in implementing appeals reform after the enactment of the Veterans Appeals Improvement and Modernization Act of 2017, VA is undertaking a complex endeavor that has the potential to affect the lives of hundreds of thousands of veterans with service-connected disabilities. Such an endeavor demands a commensurate level of planning to be successful. While the Act required VA to submit its plan within 90 days of enactment, VA had proposed and began to plan for appeals reform much earlier, and had our March 2017 recommendations to guide its planning efforts from a foundation of sound practices.

VA's November 2017 appeals plan is a positive step forward. Certain elements of the plan-such as establishing an agency-wide governance structure to oversee implementation and testing aspects of reform prior to full implementation-are notable gains since our March 2017 report. At the same time, the plan partially addresses or does not address five of the required elements called for by the Act, such as delineating the total resources required by VBA and the Board to implement and administer the new appeals process and address legacy appeals. The plan also is not fully responsive to our past recommendations and does not reflect a number of sound planning practices that are essential for gauging progress, establishing accountability, and linking resources to results.

One such key practice is articulating a desired "end state"-a vision for what successful implementation would look like for the new appeals process as well as the wind-down of the legacy process, such as accurate and timely processing of appeals while ensuring veteran satisfaction. Without establishing a complete and balanced set of goals and related performance measures to achieve this end state and monitoring and assessing progress along the way, VA risks falling short of its overarching objective-to improve timeliness of appeals decisions for veterans overall. By not fully articulating how it plans to monitor workloads and devote resources to

⁴³GAO, Veterans Disability Benefits: Clearer Information for Veterans and Additional Performance Measures Could Improve Appeal Process, GAO-11-812 (Washington, D.C.: Sept. 29, 2011).

both the new and legacy processes, VA runs the risk of disadvantaging veterans with legacy appeals relative to those in the new process, or vice versa.

Just as important is establishing a robust integrated master schedule—rather than a high-level timeline—that is built upon and clearly reflects extensive detailed planning and includes all of the activities necessary to execute the program and interdependencies between these activities. Without such a road map, VA’s appeals plan does not provide reasonable assurance that decision makers have the essential information needed to manage this complex and important program.

We are encouraged that VA has taken some steps toward assessing risks, including establishing a risk register and implementing RAMP to collect information on the two VBA appeals options; however, unless VA assesses risks against a balanced set of goals and measures, VA may not be fully aware of risks that may impede successful implementation of appeals reform. Further, although VA will undoubtedly learn from the RAMP experience, it may not learn all that it should from its efforts without (1) establishing clear criteria for what success looks like (or the circumstances that would cause VA to consider making course corrections) and (2) building in time to take stock of the lessons learned before moving to full implementation.

VA’s plan places a lot of weight on RAMP to, among other efforts, mitigate risk and generate estimates of the resources needed for successful implementation after fiscal year 2018, even though RAMP does not fully test options for appealing to the Board that will be available to veterans after full implementation. Unless VA addresses key risks associated with fully implementing appeals reform—by either testing or conducting sensitivity analyses for all five appeals options, to better understand potential workloads at the Board—VA runs the risk of fully implementing the process without knowing if it is improving the process for veterans.

In our forthcoming report, we anticipate making recommendations to address these issues. Specifically, we are preliminarily considering recommending that the Secretary of Veterans Affairs:

- address all of the required elements in the Act in VA’s appeals plan to Congress—including delineating resources required for all VBA and Board appeals options—using sensitivity analyses and RAMP results, where appropriate and needed.
- clearly articulate in VA’s appeals plan how VA will monitor and assess the new appeals process compared to the legacy process, including specifying a balanced set of goals and measures—such as timeliness goals for all VBA appeals options and Board dockets, and measures of accuracy, veteran satisfaction, and cost—and related baseline data.
- augment the master schedule for VA’s appeals plan to reflect all activities—such as RAMP and modifications to IT systems—as well as assigned responsibilities, interdependencies, start and end dates for key activities for each workgroup, and resources, to establish accountability and reduce overall risk of implementation failures.
- ensure that the appeals plan more fully addresses risk associated with appeals reform—for example, by assessing risks against a balanced set of goals and measures, articulating success criteria and an assessment plan for RAMP, and testing or conducting sensitivity analyses of all appeal options—prior to fully implementing the new appeals process.

Chairman Roe, Ranking Member Walz, and Members of the Committee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

For further information about this testimony, please contact Elizabeth Curda at (202) 512–7215 or curdae@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Other key contributors to this testimony include Michele Grgich (Assistant Director), James Whitcomb (Analyst in Charge), and Rachael Chamberlin. In addition, key support was provided by Susan Aschoff, Mark Bird, David Chrisinger, Daniel Concepcion, Clifton Douglas, Alex Galuten, Nisha Hazra, Melissa Jaynes, Benjamin Licht, Patricia McClure, Sheila McCoy, Lorin Obler, Gloria Proa, Almata Spencer, James Sweetman, Walter Vance, and Greg Whitney.

Appendix I: Our Assessment of VA's Appeals Plan Against Required Elements in the Act

To assess the extent to which VA's appeals plan addresses the required elements in the Veterans Appeals Improvement and Modernization Act of 2017 (the Act), we first identified and developed a checklist reflecting each required element for VA's appeals plan (including sub-parts) under section 3(a) and (b) of the Act. To compare the required elements and their sub-parts against VA's appeals plan and supplemental materials provided, we developed decision rules for determining whether the VA's appeals plan addressed, partially addressed, or did not address each required element. Specifically, we concluded that VA's plan addressed (or partially addressed) a required element if the plan included information related to all (or some) subparts of the requirement. We focused on the plan as presented, rather than auditing the information VA relied on in developing the plan. For example, the Act's section 3(b)(10) required VA's plan to include a description of the modifications to the IT systems that VBA and the Board require to carry out the new appeals system, including cost estimates and a timeline for making the IT modifications. We concluded that VA's plan addressed all sub-parts of this element because it provided a description of required IT modifications, a reference to costs included in the Appeals Modernization IT budget, and a timeline. However, our determination that VA addressed this element should not be construed to necessarily mean that VA fully identified or described all IT requirements, or provided complete estimated costs and timelines associated with those requirements, or that the information in VA's appeals plan comported with sound planning practices. This type of assessment was outside the scope of this objective. Table 2 summarizes our assessment of VA's appeals plan against the 22 required elements in the Act.

Table 2: Summary of GAO's Assessment of VA's Appeals Plan Against the Required Elements in the Veterans Appeals Improvement and Modernization Act of 2017 (Act)

Required elements of plan (from sec. 3(a) and (b) of the Act)	Summary of GAO's assessment
Section 3(a)(1) [A comprehensive plan for] the processing of appeals of decisions on legacy claims that the Secretary considers pending.	Addressed.
Section 3(a)(2) [A comprehensive plan for] implementing the new appeals system.	Addressed.
Section 3(a)(3) [A comprehensive plan for] timely processing, under the new appeals system, of- (A) supplemental claims under section 5108 of title 38, United States Code, as amended by section 2(i); (B) requests for higher-level review under section 5104B of such title, as added by section 2(g); and (C) appeals on any docket maintained under section 7107 of such title, as amended by section 2(t).	Addressed.
Section 3(a)(4) [A comprehensive plan for] monitoring the implementation of the new appeals system, including metrics and goals- (A) to track the progress of implementation; (B) to evaluate the efficiency and effectiveness of the implementation; and (C) to identify potential issues relating to the implementation.	Partially addressed.
Section 3(b)(1) Delineation of the total resource requirements of the Veterans Benefits Administration and the Board of Veterans' Appeals, disaggregated by resources required to implement and administer the new appeals system and resources required to address the appeals of decisions on legacy claims.	Not addressed.
Section 3(b)(2)	Partially addressed.

Table 2: Summary of GAO's Assessment of VA's Appeals Plan Against the Required Elements in the Veterans Appeals Improvement and Modernization Act of 2017 (Act)—Continued

Required elements of plan (from sec. 3(a) and (b) of the Act)	Summary of GAO's assessment
<p>Delineation of the personnel requirements of the Administration and the Board, including staffing levels during the-</p> <p>(A) period in which the Administration and the Board are concurrently processing-</p> <p>(i) appeals of decisions on legacy claims; and</p> <p>(ii) appeals of decisions on non-legacy claims under the new appeals system; and</p> <p>(B) the period during which the Administration and the Board are no longer processing any appeals of decisions on legacy claims.</p>	
<p>Section 3(b)(3)</p> <p>Identification of the legal authorities under which the Administration or the Board may-</p> <p>(A) hire additional employees to conduct the concurrent processing described in paragraph (2)(A); and</p> <p>(B) remove employees who are no longer required by the Administration or the Board once the Administration and the Board are no longer processing any appeals of decisions on legacy claims.</p>	Addressed.
<p>Section 3(b)(4)</p> <p>An estimate of the amount of time the Administration and the Board will require to hire additional employees as described in paragraph (3)(A) once funding has been made available for such purpose, including a comparison of such estimate and the historical average time required by the Administration and the Board to hire additional employees.</p>	Addressed.
<p>Section 3(b)(5)</p> <p>A description of the amount of training and experience that will be required of individuals conducting higher-level reviews under section 5104B of title 38, United States Code, as added by section 2(g).</p>	Addressed.
<p>Section 3(b)(6)</p> <p>An estimate of the percentage of higher-level adjudicators who will be employees of the Department of Veterans Affairs who were Decision Review Officers on the day before the new appeals system takes effect or had experience, as of such date, comparable to that of one who was a Decision Review Officer.</p>	Addressed.
<p>Section 3(b)(7)</p> <p>A description of the functions that will be performed after the date on which the new appeals system takes effect by Decision Review Officers who were Decision Review Officers on the day before the date the new appeals system takes effect.</p>	Addressed.
<p>Section 3(b)(8)</p> <p>Identification of and a timeline for-</p> <p>(A) any training that may be required as a result of hiring new employees to carry out the new appeals system or to process appeals of decisions on legacy claims; and</p> <p>(B) any retraining of existing employees that may be required to carry out such system or to process such claims.</p>	Addressed.
<p>Section 3(b)(9)</p> <p>Identification of the costs to the Department of Veterans Affairs of the training identified under paragraph (8) and any additional training staff and any additional training facilities that will be required to provide such training.</p>	Addressed.
<p>Section 3(b)(10)</p> <p>A description of the modifications to the information technology systems of the Administration and the Board that the Administration and the Board require to carry out the new appeals system, including cost estimates and a timeline for making the modifications.</p>	Addressed.
<p>Section 3(b)(11)</p>	Addressed.

Table 2: Summary of GAO's Assessment of VA's Appeals Plan Against the Required Elements in the Veterans Appeals Improvement and Modernization Act of 2017 (Act)—Continued

Required elements of plan (from sec. 3(a) and (b) of the Act)	Summary of GAO's assessment
<p>An estimate of the office space the Administration and the Board will require during each of the periods described in paragraph (2), including-</p> <p>(A) an estimate of the amount of time the Administration and the Board will require to acquire any additional office space to carry out processing of appeals of decisions on legacy claims and processing of appeals under the new appeals system;</p> <p>(B) a comparison of the estimate under subparagraph (A) and the historical average time required by the Administration and the Board to acquire new office space; and</p> <p>(C) a plan for using telework to accommodate staff exceeding available office space, including how the Administration and the Board will provide training and oversight with respect to such teleworking.</p>	
<p>Section 3(b)(12)</p> <p>Projections for the productivity of individual employees at the Administration and the Board in carrying out tasks relating to the processing of appeals of decisions on legacy claims and appeals under the new appeals system, taking into account the experience level of new employees and the enhanced notice requirements under section 5104(b) of title 38, United States Code, as amended by section 2(e).</p>	Partially addressed.
<p>Section 3(b)(13)</p> <p>An outline of the outreach the Secretary expects to conduct to inform veterans, families of veterans, survivors of veterans, veterans service organizations, military service organizations, congressional caseworkers, advocates for veterans, and such other stakeholders as the Secretary considers appropriate about the new appeals system, including-</p> <p>(A) a description of the resources required to conduct such outreach; and</p> <p>(B) timelines for conducting such outreach.</p>	Addressed.
<p>Section 3(b)(14)</p> <p>Timelines for updating any policy guidance, Internet websites, and official forms that may be necessary to carry out the new appeals system, including-</p> <p>(A) identification of which offices and entities will be involved in efforts relating to such updating; and</p> <p>(B) historical information about how long similar update efforts have taken.</p>	Addressed.
<p>Section 3(b)(15)</p> <p>A timeline, including interim milestones, for promulgating such regulations as may be necessary to carry out the new appeals system and a comparison with historical averages for time required to promulgate regulations of similar complexity and scope.</p>	Addressed.
<p>Section 3(b)(16)</p> <p>An outline of the circumstances under which claimants with pending appeals of decisions on legacy claims would be authorized to have their appeals reviewed under the new appeals system.</p>	Addressed.
<p>Section 3(b)(17)</p> <p>A delineation of the key goals and milestones for reducing the number of pending appeals that are not processed under the new appeals system, including the expected number of appeals, remands, and hearing requests at the Administration and the Board each year, beginning with the one year period beginning on the date of the enactment of this Act, until there are no longer any appeals pending before the Administration or the Board for a decision on a legacy claim.</p>	Partially addressed.
<p>Section 3(b)(18)</p> <p>A description of each risk factor associated with each element of the plan and a contingency plan to minimize each such risk.</p>	Addressed.

Source: GAO analysis of VA's November 2017 appeals plan and any supporting documents VA provided on or before January 18, 2018, the Veterans Appeals Improvement and Modernization Act of 2017, and agency input by VA. / GAO 18 349T

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ATTACHMENT

GAO HIGHLIGHTS

Highlights of GAO-18-349T, a testimony before the Committee on Veterans' Affairs, House of Representatives

Why GAO Did This Study

VA's disability compensation program pays cash benefits to veterans with disabilities connected to their military service. In recent years, the number of appeals of VA's benefit decisions has been rising. For decisions made on appeal in fiscal year 2017, veterans waited an average of 3 years for resolution by either VBA or the Board, and 7 years for resolution by the Board. The Veterans Appeals Improvement and Modernization Act of 2017 makes changes to VA's current (legacy) appeals proc-

ess, giving veterans new options to have their claims further reviewed by VBA or appeal directly to the Board. The Act requires VA to submit to Congress and GAO a plan for implementing a new appeals process, and includes a provision for GAO to assess VA's plan.

This testimony focuses on the extent to which VA's plan: (1) addresses the required elements in the Act, and (2) reflects sound planning practices identified in prior GAO work. GAO's work entailed reviewing and assessing VA's appeals plan and related documents against sound planning practices, and soliciting VA's views on GAO's assessments.

What GAO Recommends

In its forthcoming report, GAO is considering recommending that VA: fully address all legally required elements in its appeals plan, articulate how it will monitor and assess the new appeals process as compared to the legacy process, augment its master schedule for implementation, and more fully address risk.

View GAO-18-349T. For more information, contact Elizabeth Curda at (202) 512-7215 or curdae@gao.gov.

VA DISABILITY BENEFITS

Opportunities Exist to Better Ensure Successful Appeals Reform

What GAO Found

The Department of Veterans Affairs' (VA) plan for implementing a new disability appeals process while attending to appeals in the current process addresses most, but not all, elements required by the Veterans Appeals Improvement and Modernization Act of 2017 (Act). VA's appeals plan addresses 17 of 22 required elements, partially addresses 4, and does not address 1. For example, not addressed is the required element to include the resources needed by the Veterans Benefits Administration (VBA) and the Board of Veterans' Appeals (Board) to implement the new appeals process and address legacy appeals under the current process. VA needs this information to certify, as specified under the Act, that it has sufficient resources to implement appeals reform and make timely appeals decisions under the new and legacy processes.

VA's appeals plan reflects certain sound planning practices, but it could benefit from including important details in several key planning areas:

Performance measurement: VA's plan reflects steps taken to track performance, but could articulate a more complete and balanced set of goals and measures for monitoring and assessing performance on a range of dimensions of success. Specifically, the plan reports that VA is developing a process to track timeliness of the new and legacy processes. However, contrary to sound planning practices, the plan does not include timeliness goals for all five appeals options available to veterans, does not include goals or measures for additional aspects of performance (such as accuracy or cost), and does not explain how VA will monitor or assess the new process compared to the legacy process. Unless VA clearly articulates a complete and balanced set of goals and measures, it could inadvertently incentivize staff to focus on certain aspects of appeals performance over others or fail to improve overall service to veterans.

Project management: VA's plan includes a master schedule for implementing the new appeals plan; however, this schedule falls short of sound practices because it does not include key planned activities-such as its pilot test of two of the five appeals options. In addition, the schedule does not reflect other sound practices for guiding implementation and establishing accountability-such as articulating interim goals and needed resources for, and interdependencies among, activities. Unless VA augments its master schedule to include all key activities and reflect sound practices, VA may be unable to provide reasonable assurance that it has the essential program management information needed for this complex and important effort.

Risk assessment: VA has taken steps to assess and mitigate some risks related to appeals reform by, for example, pilot testing two of the five appeals options through its Rapid Appeals Modernization Program (RAMP). However, as designed, RAMP does not include key features of a well-developed and documented pilot test. For example, VA has not articulated how it will assess RAMP before proceeding with full implementation. In addition, RAMP is not pilot testing three options and, as a result, VA will not have data on the extent to which veterans will appeal directly to the Board when given the option. Unless VA identifies and mitigates key risks associated with implementing a new process, VA is taking a chance that untested aspects will not perform as desired.

Prepared Statement of Jim Marszalek

Mr. Chairman and Members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this hearing of the House Veterans' Affairs Committee concerning the implementation of the Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55).

As National Service Director, I want to thank this Committee for its dedication and efforts to modernize and improve the VA appeals process for all veterans and claimants. As one of the key stakeholders who helped develop the Veterans Appeals Improvement and Modernization Act of 2017, DAV strongly supports and is fully committed to its timely and faithful implementation.

Mr. Chairman, as you may know, DAV is a congressionally chartered national veterans' service organization of more than one million wartime veterans, all of whom were injured or made ill while serving on behalf of this Nation. To fulfill our service mission to America's injured and ill veterans and the families who care for them, DAV directly employs a corps of more than 260 National Service Officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the Nation. Together with our Chapter, Department, Transition and County Veteran Service Officers, DAV has over 4,000 accredited representatives on the front lines providing free claims and appeals services to our Nation's veterans, their families and survivors.

In 2017, DAV NSOs interviewed over 300,000 veterans and their families and filed over 192,000 new claims for benefits for the injured and ill veterans we represented before the VA. We currently represent over one million veterans or survivors, making DAV the largest veterans service organization (VSO) providing claims assistance. In addition, DAV has a National Appeals Office that represents veterans, dependents and survivors in their appeals before the Board of Veterans' Appeals (Board). In fiscal year 2017, DAV provided representation for 31 percent of all appeals decided by the Board, a caseload of 16,400 appeals, more than any other VSO. This testimony reflects the collective experience and expertise of our thousands of dedicated and highly trained service officers who provide free claims and appeals assistance to hundreds of thousands of veterans and survivors each year.

In 2014, DAV organized a workgroup consisting of subject matter experts from VA, the Board and other VSO stakeholders, to seek consensus on commonsense ways to help reform and improve the appeals process. This collaboration led to development of the Fully Developed Appeals pilot proposal, which was introduced and made progress as legislation in both the House and Senate. In 2016, VA convened a new workgroup with a much more ambitious goal: overhaul the entire appeals process. The resultant appeals modernization legislation was produced through a remarkable collaboration between the VA, Board and VSO stakeholders representing veterans, including DAV.

Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55)

On August 23, 2017, the Veterans Appeals Improvement and Modernization Act of 2017 was signed into law. The legislation comprehensively reforms the VA appeals system, fully protecting the due process rights of veterans while creating multiple options for them to receive their decisions in a more timely and judicious manner. The critical core of the new system provides veterans multiple options to address unfavorable claims decisions, introduce new evidence at both the Board and VBA, and protect their earliest effective dates without having to be locked into the current long and arduous formal appeals process.

In general, veterans unsatisfied with their claims decision will have three main options. First, there will be an option for a local Higher Level of Review of the original claim decision based on the evidence of record at the time of the claim decision. Second, there will be an option for a Supplemental Claim when new and relevant evidence is presented or a predetermination hearing requested. Third, there will be an option to pursue an appeal, via Notice of Disagreement (NOD), to the Board, with or without new evidence or a hearing. Veterans must elect one of these three options within one year of the claims decision to protect their effective date.

The central dynamic of the new system is that a veteran who receives an unfavorable decision from one of these three main options may then pursue another option. As long as the veteran continuously pursues a new option within one year of the last decision, they would be able to preserve their earliest effective date, if the facts so warrant. Each of these options, or "lanes," as some call them, have different ad-

vantages that allow veterans to elect what they and their representatives believe will provide the quickest and most accurate decision.

For the higher-level review option, the veteran can choose to have the review done at the same local VARO that made the claim decision, or at another VARO, which would be facilitated by VBA's electronic claims files and the National Work Queue's ability to instantly distribute work to any VARO. The veteran does not have the option to introduce any new evidence, nor have a hearing with the higher-level reviewer, although a veteran or the appointed representative can choose to have informal conferences with the reviewer in order for them to point out errors of fact or law. The review and decision will be de novo and a simple "difference of opinion" by the higher-level reviewer will be enough to overturn the decision in question. If the veteran is not satisfied with the new decision, they can then elect one of the other two options.

For this higher-level review, the "Duty to Assist" (DTA) will not apply because it is limited to the evidence of record used to make the original claims decision. If a DTA error is discovered that occurred prior to the original decision, unless the claim can be granted in full, the claim will be sent back to the VARO to correct any errors and readjudicate the claim. If the veteran is not satisfied with that new decision, they can still elect the other appeal options.

For the supplemental claim option, veterans will be able to request a pre-determination hearing and present new evidence that would be considered in the first instance at the VARO. VA's full DTA will apply, to include development of both public and private evidence. This will be a de novo review of all the evidence presented both before and after to the claim decision, until the new decision is issued. As with a higher level review, if the veteran is not satisfied with the new decision, they can then elect another option to continue pursuing the contested claims.

For the third option, appeal to the Board, there will be three separate dockets: one that does not allow hearings and new evidence to be introduced; one that allows both new evidence and hearings, and one that allows new evidence with no hearing. For each of these dockets, the appeal would be routed directly to the Board with no processing steps at VBA. In conjunction with the continuing legacy appeals docket, the Board will now have to manage four different dockets.

For the Board docket that allows hearings, veterans can choose either a video conference hearing or an in-person hearing at the Board's Washington, DC offices; there will no longer be travel hearing options offered to veterans. New evidence will be allowed, but limited to specific timeframes: if a hearing is elected, new evidence could be presented at the hearing or for 90 days following the hearing; if no hearing is elected, new evidence could be presented with the filing of the NOD or for 90 days thereafter.

If the veteran is not satisfied with the Board's decision, they can elect to continue with a Supplemental Claim, and if filed within one year of the Board's decision, it would continue to preserve their earliest effective date. The veteran also has 120 days to file a notice of appeal to the Court of Appeals for Veterans Claims (Court). If the Court's decision does not satisfy the veteran, they can file another Supplemental Claim within one year with new evidence. They also retain the right to appeal the Court's decision to the Federal Circuit Court of Appeals.

If the Board discovers that a DTA error was made prior to the original claims decision, unless the claim can be granted in full, the Board would remand the case back to VBA for it to correct the errors and readjudicate the claim. Again, if the veteran was not satisfied with the new claim decision, they could choose from one of the three appeals options available to them, and as long as they do so within one year of the decision, they would continue to preserve their earliest effective date. The new statute does not impose a limit on the number of times a veteran could choose one of these three options, and as long as they properly elect a new one within a year of the prior decision, they continue to protect their earliest effective date.

Improving Claims Decision Notification

P.L. 115-55 mandates that the contents of notification letters must be clear, easy to understand and easy to navigate. The notice must convey not only VA's rationale for reaching its determination, but also the options available to claimants after receipt of the decision. It requires that in addition to an explanation for how the veteran can have the decision reviewed or appealed, all decision notification letters must contain the following information to help them in determining whether, when, where and how to appeal an adverse decision:

1. A list of the issues adjudicated;
2. A summary of the evidence considered;
3. A summary of applicable laws and regulations;

4. Identification of findings favorable to the claimant;
 5. Identification of elements that were not satisfied leading to the denial;
 6. An explanation of how to obtain or access evidence used in making the decision;
- and
7. If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation for the benefit sought.

The new decision notification will provide a more thorough and complete explanation of the VA decisions and will require a denial to describe the type of evidence that is required. The decision notification letter should be used in all decisions being conducted during implementation of the new appeals system.

Rapid Appeals Modernization Program (RAMP)

Starting in September 2017, the Appeals Management Office (AMO) and the Board began discussions with VSOs and other stakeholders about the Rapid Appeals Modernization Program (RAMP), which was authorized by the pilot program authority in P.L. 115-55. RAMP is intended to address the backlog of legacy appeals while also serving as a mechanism for testing elements of the new appeals system.

At the beginning of October 2017, there were approximately 340,000 pending appeals at the VARO in various stages. There were roughly 88,000 appeals at the Board. RAMP will give the oldest pending legacy appeals the first opportunity to opt-in to the program, which allows claimants to choose two of the new options: Higher Level of Review and Supplemental Claims. Claimants are required to withdraw their legacy appeal to opt into RAMP, but will be able to retain their earliest effective dates. The Board option is not offered through RAMP, as this option will not become effective until full implementation of the law in February 2019.

Prior to initiating RAMP, and in consultation with DAV and other VSOs, the AMO addressed concerns and suggestions for the implementation and options under the program. The draft RAMP opt-in letters were provided to VSOs and other stakeholders for review and comments. However, although the new decision notification letter requirements in P.L. 115-55 will be applied to all RAMP decisions, VA's IT system is currently unable to seamlessly support the new notification requirements so VA is using a "work-around" for new decision and notification letters.

In November 2017, VA launched the first phase of RAMP, offering the 500 oldest appeals the opportunity to opt into the program, providing claimants 60 days to respond. On December 1, 2017, an additional 5,000 legacy appellants were invited to opt-in to RAMP, and in January 2018, 10,000 more were invited.

Although RAMP is still in its infancy, the earliest returns as of January 25, 2018, resulted in 309 appellants electing to opt-in, a 3 percent opt-in rate, with 225 choosing Higher Level of Review. Of those cases, the decisions were completed in an average of 27 days.

Of those initial claimants opting in to RAMP, 58 are represented by DAV, the largest of any accredited representative; nine of those cases have already been decided in an average of 31 days. Those nine decisions resulted in two cases being completely denied and the other seven with favorable decisions. A total of 29 issues were granted and 25 issues denied. Those seven cases resulted in an amazing total of retroactive compensation payments of \$520,693.09. Some of the exceptional results were:

1. Gulf War Era veteran receives 100 percent evaluation in less than two months. This veteran submitted new and material evidence in June 2008 but his claim for mental health disorder was denied. After many years of appealing to the VARO and remands from the Board, the veteran opted into RAMP on November 16, 2017. Based on the de novo review by the AMO, a grant of service connection with a 100 percent evaluation was completed in 48 days. The decision was established effective June 2008 and resulted in \$276,489.68 in retroactive benefits. After 10 years of appealing, RAMP was able to grant benefits in less than two months.

2. Veteran receives Total Evaluation retroactive for seven years in 41 days. In 2014, this Vietnam Era veteran was denied an increased evaluation in his wartime connected mental health disorder and entitlement to a total evaluation based on individual unemployability (TDIU). The veteran was offered to opt-in to RAMP on December 1, 2017, and returned the election on December 18, 2017. The AMO decision of January 11, 2018, granted TDIU effective September 2011. RAMP yielded a favorable grant of benefits totaling \$124,777.44 in retroactive payments. After waiting five years for action from his claim, he received a grant of benefits in 41 days after being offered RAMP.

3. MST veteran receives full grant in less than 30 days after waiting seven years. A Vietnam Era veteran filed a claim for a mental health disorder due to mili-

tary sexual trauma (MST) in June 2010. The claim was denied and the veteran continued to pursue evidence after being repeatedly denied. The veteran submitted a NOD in March 2014 and was offered to opt-in to RAMP on December 1, 2017, and returned the election on December 11, 2017. The AMO decision of December 28, 2017, granted service connection for the mental health disorder and established a 100 percent evaluation effective June 2010, yielding a total of \$104,484.70 in retroactive benefits. After seven years, under RAMP, a grant was made in less than 30 days.

These early cases establish the tremendous impact of RAMP and its potential in reducing the legacy appeals backlog. RAMP is showcasing two of the three options of the Veterans Appeals Improvement and Modernization Act and its impact on timeliness.

Currently, only the AMO is adjudicating those opt-in cases under RAMP. The next phase of RAMP will include expanding the program to two additional VA Regional Offices, Denver and Phoenix, to process RAMP cases. The AMO will provide all RAMP on-site training to both VAROs. The next release of opt-in letters will be February 1, 2018, to 25,000 legacy appeals claimants and 12,000 NODs received in December and January.

DAV has provided this information and training to our NSO Corps for their knowledge in providing assistance on RAMP to our clients. RAMP provides claimants with extremely old legacy appeals to have an option for relative immediate adjudicative action that protects their effective dates. If the Higher Level of Review or the Supplemental Claims options do not result in their desired outcome, beginning in February 2018, they can also elect the Board option under RAMP, although these appeals will not begin to be addressed until February 2019, when the law is fully implemented.

As mentioned, DAV's represented veterans have benefited from RAMP and we believe it is a great testing environment for the new appeals system. We understand it is early in the program and improvements and adjustments will be made throughout the process. Below are specific comments and recommendations in reference to RAMP.

RAMP Comments and Recommendations

1. Early Opt-in Rates of RAMP. As RAMP was offered to the oldest appeals, many claimants may be under the impression that they are too close for a decision and choose not to opt-in. In addition, at this point there has been very little communication or education by VA or VSOs about the potential benefits of RAMP for veterans with pending appeals. We believe it is too early and there is not adequate data to draw conclusions about the program.

2. Resolution of IT Issue to support new decision notification letters. The AMO committed to provide all RAMP participants with decision/notification letters as will be required upon full implementation of P.L. 115-55. However, VA IT systems have not been updated to allow for automatic generation of the new letter format, thereby forcing the AMO to use a manual work-around. We believe this can have a negative impact on the timeliness of these decisions and urge VA to fix this issue prior to the expansion of RAMP to VAROs in Denver and Phoenix.

3. Allow all claimants with pending appeals to opt-in to RAMP in the future. The early results of RAMP indicate this program can significantly benefit many veterans who have waited years for favorable claims decisions. As VA and VSOs begin sharing these early success stories, many appellants who learn about RAMP, but who have not yet been invited by VA, may seek to opt-in to the program to bypass considerable delays in the current legacy appeals processing system. As the representatives of over 1 million veterans and families, we see tremendous potential benefit by allowing all veterans to have the choice to opt-in to RAMP as soon as possible.

4. Opt-in Election Letter submission. Opt-in Elections completed by the claimant are required to be submitted only via fax to the Appeals Resource Center (ARC) with the ARC Coversheet. DAV has over 260 National Service Officers nationwide providing representation and utilizing the VA Direct Mail Upload for evidence and record submissions, which provides a more efficient way to transmit the information. DAV believes we should be able to submit RAMP Opt-in Elections through the same means, rather than solely by fax.

Implementing the Modernized Appeals System.

The Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55) requires VA to complete a Comprehensive Plan for Processing Legacy Appeals and

Implementing the Modernized Appeals System. The Plan was released in November 2017 and was discussed at the House Veterans' Affairs Subcommittee on Disability and Memorial Affairs Roundtable on November 30, 2017. Overall, DAV believes that the proposal provides a reasonable path forward for VBA and the Board to implement the new system. Key comments and recommendations for specific issues are noted below:

1. Section 3(a)(3)-Timely Processing Under New Appeals System. Supplemental claims and Higher Level of Review case completion is projected as an average of 125 days. To ensure that the new appeals system is successful, these average days to completion projections must be given the appropriate resources to ensure that quality and timely decisions are produced.

2. Section 3(a)(3)-Timely Processing Under New Appeals System. For appeals in which there is no additional evidence and no request for hearing, the projected average processing time is 365 days. The plan notes that the average processing time for the two other dockets will be contingent upon what resources remain and how they are allocated among the dockets. DAV is concerned that resources may be shifted to ensure that the no-evidence/no-hearing docket meets its 365-day average goal, leaving the other two dockets and the legacy appeals docket to suffer unacceptable delays. To assure timeliness and provide fairness and equity to veterans on all dockets, we urge VA to provide adequate resources and consider establishing projected average time processing standards for all four dockets.

3. Section 3(b)(10)-Modifications to Information Technology Systems. As noted above, the Board will now be maintaining four separate appeals dockets; three for the new appeals and one for legacy appeals. At the November 30th Roundtable, VA's office of Digital Services indicated that 30 employees were assigned to rebuild the Board's existing appeals tracking system (VACOLS) to include RAMP. The design and completion of this new appeals tracking system is an integral part of the implementation plan. The targeted goal is for the complete integration of this system in the Veterans Benefits Management System (VBMS) by August 30, 2018. We urge VA to provide sufficient resources for the completion and launch of this new system prior to the targeted date.

4. Section 3 (b)(15)-Timeline for Promulgating Regulations. We received and provided preliminary comments and requests for clarification of the Proposed Regulations. However, our main concern is the time frame for the Proposed Regulations. We understand that these are currently being reviewed by VA Counsel before being sent to the Office of Management and Budget. We urge the VA to have these numerous Proposed Regulations submitted to the Federal Register as soon as possible to avoid any delays in publishing these regulations prior to February 2019.

5. Legacy Appeals and Pending Hearings. While the RAMP Program can address a portion of the legacy appeals, we are concerned with the overall processing time for legacy appeals, specifically the timeliness and volume of hearings that are pending. As of January 24, 2018, there are 84,658 total hearings pending with the Board; 65,550 video conference hearings, 17,241 travel board hearings, and 1,867 in-person hearings in Washington DC. Currently, the Board is only conducting in-person hearings in Washington DC one day a week. We do not feel this will adequately address the pending in-person legacy appeal hearing backlog. We urge the VA put forward a plan to address the overwhelming number of pending hearings for legacy appeals and to provide the necessary resources to reduce the over 84,000 pending hearing requests.

6. Evidence Submission for Hearings. Under P.L. 115-55, when a veteran submits a NOD to the Board, they can opt to have a hearing and/or opt to submit new evidence. If a veteran elects to have a hearing and chooses to submit new evidence, it is required to be submitted at the hearing or within 90 days after the hearing. An issue that has not been adequately addressed is, "what will happen to evidence submitted prior to the requested hearing?" We contend that any evidence received after the NOD but prior to the Board hearing, should be accepted and made part of the appeal record.

Mr. Chairman, to reiterate, DAV strongly supports the Veterans Appeals Improvement and Modernization Act the Rapid Appeals Modernization Program (RAMP). We are grateful for the opportunity to continue our partnership with the VA and our fellow VSOs and our stakeholder partners. We look forward to continued collaboration on these programs to ensure that P.L. 115-55 results in the modern appeals processing system this grateful nation owes to our deserving veterans and their families.

This concludes my testimony. Thank you for the opportunity to appear at today's hearing. I would be pleased to answer any questions you or members of the Committee may have.

Prepared Statement of Diane Boyd Rauber, Esq.

Chairman Roe, Ranking Member Walz, and members of the Committee, the National Organization of Veterans' Advocates (NOVA) would like to thank you for the opportunity to testify on the topic of "Appeals Reform: Will VA's Implementation Effectively Serve Veterans?" We appreciate the Committee's leadership in exercising its oversight authority over VA's implementation of appeals reform.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents nearly 600 attorneys and agents assisting tens of thousands of our nation's military veterans, their widows, and their families seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for all persons seeking VA benefits. NOVA members represent veterans before all levels of VA's disability claims process, and handle appeals before the U.S. Court of Appeals for Veterans Claims (CAVC) and U.S. Court of Appeals for the Federal Circuit (Federal Circuit). In 2000, the CAVC recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award. NOVA operates a full-time office in Washington, DC.

Attorneys and agents handle a considerable volume and growing number of appeals at the Board of Veterans' Appeals (BVA). In FY 2015, for example, attorneys and agents handled 14.9% of appeals before BVA. This number was fourth only behind Disabled American Veterans (28.1%), State Service Officers (16.5%), and American Legion (15%). U.S. Department of Veterans Affairs, Board of Veterans' Appeals Annual Report Fiscal Year 2015 at 27. In FY 2016, this number grew to 15.9%, third only to Disabled American Veterans (28.1%) and American Legion (19.6%). U.S. Department of Veterans Affairs, Board of Veterans' Appeals Annual Report Fiscal Year 2016 at 26. Similar statistics are available for FY 2017, with attorneys and agents representing appellants in 17% of cases, again third behind Disabled American Veterans (31%) and American Legion (18%).

NOVA members have been responsible for significant precedential decisions at the CAVC and Federal Circuit. In addition, as an organization, NOVA has advanced important cases and filed amicus briefs in others. See, e.g., *Henderson v. Shinseki*, 562 U.S. 428 (2011)(amicus); *NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013)(addressing VA's failure to honor its commitment to stop applying an invalid rule); *Gray v. Secretary of Veterans Affairs*, No. 16-1782 (Jan. 3, 2018)(amicus in support of petition for rehearing before the Federal Circuit); *Robinson v. McDonald*, No. 15-0715 (July 14, 2016)(CAVC amicus).

We detail below concerns that should be addressed to ensure implementation of the appeals reform legislation preserves the long-standing intent of Congress: that the VA benefits adjudication and appeals process be veteran friendly and nonadversarial.

OVERVIEW

NOVA appreciated the opportunity to participate in the discussion of appeals reform that led to the passage of the Veterans Appeals Improvement and Modernization Act of 2017. We also applaud VA's ongoing inclusion of stakeholders in the discussion of its implementation plans, which has included opportunities to review draft regulations and documents related to its Rapid Appeals Modernization Program. NOVA remains committed to providing constructive feedback in response to these opportunities, and urges VA to consider and implement the recommendations of the stakeholder community.

As we have previously noted, successful implementation will be key if appeals reform is truly to be the positive change veterans deserve and VA promises. Effective implementation hinges on VA's ability to consistently meet its goals of adjudicating and issuing decisions in the 125-day window identified for supplemental claims and deciding appeals within the one-year period before BVA. As demonstrated with the prior backlog of original claims and scheduling of medical appointments, VA often struggles to meet its own internal goals to the detriment of veterans.

RAPID APPEALS MODERNIZATION PROGRAM (RAMP)

Relying on section 4 of P.L. 115-55, VA implemented the Rapid Appeals Modernization Program (RAMP) in November 2017. According to the Standard Operating Procedures (SOP) designed for RAMP, the Veterans Benefits Administration (VBA) "will administer this pilot during the 18-month period after enactment allowed for full implementation of the new process and continue processing elections by Veterans as long as necessary thereafter to continue to accelerate resolution of legacy appeals." SOP at 1. Based on VA's proposed rollout of this program, as of January 1, 2018, VA sent approximately 15,500 letters to veterans with appeals eligible for acceptance into RAMP. Last week, Secretary Shulkin testified before the Senate Committee on Veterans' Affairs that approximately three percent of invited veterans have elected to opt into RAMP, and 75 percent of those who received decisions were awarded a grant.

As an initial matter, stakeholders need information and statistics on a regular basis. Such data is important to stakeholders to understand the current state of RAMP and provide the best advice to veterans and their families. Data is also a critical component of any true pilot program to measure its success, and VA must commit to regular updates so stakeholders can gauge progress and suggest improvements. We hope the recent meeting that took place on January 25th will be the first of many. Furthermore, VA should ensure its field staff is receiving regular communications and training on RAMP operations, as well as updates on its progress.

From NOVA's perspective, there are a few reasons why there is a low opt-in rate to RAMP. First, VA chose not to extend the program through to BVA. Therefore, a veteran who withdraws his or her pending appeals (with no opportunity to return to the legacy system), is denied after either a higher-level review or supplemental claim, and wishes to appeal to BVA must now wait until the system is fully implemented - at the earliest in February 2019 - to obtain BVA review. While VA has stated those veterans will be first in line for BVA review upon full implementation of the system, many representatives are reluctant to counsel an appellant to move into a program that does not extend to BVA and does not provide a full understanding of how the procedure will ultimately operate at BVA. Furthermore, VA's recently submitted implementation plan indicates that the "average processing time goal for appeals under § 7107 does not apply to appeals submitted to the Board in response to a decision under VBA's RAMP." U.S. Department of Veterans Affairs, Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System 8 (November 2017).

Second, VA is targeting the oldest appeals. While we understand this strategy is designed to be fair to those who have been waiting the longest, many veterans currently receiving invitations are close enough to a BVA decision that they do not wish to move into something new, particularly in light of Secretary Shulkin's recent statement that BVA intends to decide 81,000 appeals in FY 2018.

In addition, veterans with cases in remand status may be more likely to stay in the legacy system because BVA will retain jurisdiction over the appeal. The veteran will be entitled to expedited consideration upon return to BVA if he or she is not satisfied with the action taken on remand, as well as enforcement of the prior order.

Finally, although NOVA appreciates VA efforts to ensure attorneys and agents receive copies of RAMP correspondence sent to veterans (required under its M21-1 Adjudication Procedures Manual for all correspondence), VA's mailing systems remain seriously flawed both for RAMP and overall adjudication procedures. NOVA receives nearly daily complaints from members that copies of correspondence are not being received. While VA has stated it plans to launch a centralized outgoing mailing system to rectify these issues, far too much correspondence has gone unmailed and unreceived. When VA fails to properly notify, important deadlines are missed and additional claims and appeals must be pursued to address VA's failures, resulting in yet more delay in the process.

It is clear that VA is not fulfilling its responsibilities in this regard. In July 2017, the Government Accountability Office (GAO) completed a report addressing VA's outgoing mail deficiencies. United States Government Accountability Office, Report to the Chairman, Committee on Veterans' Affairs, House of Representatives, Veterans Affairs: Actions Needed to More Effectively Manage Outgoing Mail, GAO-17-581 (July 2017). The Subcommittee on Oversight and Investigations subsequently held a hearing on this report. House Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, VA Mail Management: The Case of the \$11,257 Package (hearing held September 12, 2017). In addition to finding VA has an outdated mail management policy directive and handbook, GAO noted that "VA cannot ensure consistent mailing practices in its administrations and facilities because it has not provided mail managers with appropriate authority and responsibilities to

oversee mail operations across the agency.” GAO Report at 7; see also GAO Report at 15. VA must improve its mailing practices, so veterans and their representatives receive proper notice of claims and appeals processing, and we urge the Subcommittee to continue its oversight of this issue.

IMPLEMENTATION OF THE VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

As part of the reporting requirements imposed under P.L. 115–55, in November 2017, VA submitted its first report, Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System (hereinafter Comprehensive Plan). VA does not provide sufficient details for how it will handle legacy appeals in relation to modernized appeals once the new system is implemented. Based on several statements made in the report, it appears VA intends to devote resources first to modernized appeals and allocate “leftovers” to legacy appeals. See, e.g., Comprehensive Plan at 4 (“VA will allocate available resources to meet the timely processing goals in the new system, as outlined in section 3(a)(3), and remaining resources are then employed to process legacy appeals.”); Comprehensive Plan at 9 (“VA intends to allocate resources in an efficient manner that will establish timely processing in the new process and will allocate all remaining appeals resources to address the inventory of legacy appeals.”); Comprehensive Plan at 10 (“VBA intends to allocate field resources in an efficient manner that will establish timely processing in the new process and will allocate all remaining resources to address the inventory of legacy appeals.”). VA needs to provide more details about how it will continue to process legacy appeals in a fair and timely manner while fulfilling its obligations under the new legislation, to include how it will address the substantial backlog of BVA hearing requests.

Furthermore, in its implementation plan, VA stated it needs enhancements to the Veterans Benefits Management System (VBMS) to meet the statute’s specifications. Comprehensive Plan at 15. Secretary Shulkin also testified to VA’s “enterprise-wide efforts to modernize the appeals process through improvements in technology.” Statement of the Honorable David J. Shulkin, M.D., Secretary of Veterans Affairs, for Presentation Before the Senate Committee on Veterans’ Affairs, *The State of VA: Progress Report on Implementing 2017 VA Reform Legislation 3* (January 17, 2018). Congress must ensure VBA and BVA continue to receive sufficient resources to implement necessary technological upgrades to its systems, particularly VBMS and Caseflow. VBMS was not designed with appeals processing in mind, and it lacks many features that would make work for VBA employees, BVA employees, and representatives easier and more efficient. VA should ensure VBMS enhancements continue, Caseflow is fully operational, and all representatives have access to as many features as appropriate to help them represent veterans as effectively as possible.

CONCLUSION

NOVA is committed to continue working with this Committee, VA, and fellow stakeholders to ensure the appeals process for veterans is fair, timely, and preserves veterans’ due process rights. We again thank the Committee for allowing us to provide our views on implementation of appeals reform, and I would be happy to answer any questions the Committee members might have.

For more information:

NOVA staff would be happy to assist you with any further inquiries you may have regarding our views on this topic. For questions regarding this testimony or if you would like to request additional information, please feel free to contact:

Diane Boyd Rauber, Esq.
Executive Director
National Organization of Veterans’ Advocates, Inc.
1775 Eye Street, NW
Suite 1150
Washington, DC 20006
(202) 587-5708
drauber@vetadvocates.org

Prepared Statement of Steven Henry

Chairman Roe, Ranking Member Walz, and members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to offer our views on the implementation of the Department of Veterans Affairs' (VA) appeal reform and if in fact it will effectively serve veterans.

PVA employs a highly-trained force of over 70 service officers across the nation who develop veterans' claims for both member and non-member clients. These front-line employees spend a minimum of two years in specialized training. We maintain a national appeals office staffed by attorneys and legal interns who represent clients at the Board of Veterans' Appeals (Board). We also have attorneys who practice before the Board, the Court of Appeals for Veterans Claims (CAVC), and the United States Court of Appeals for the Federal Circuit. Of all the major Veteran Service Organizations (VSO), only PVA offers such continuity of representation throughout subsequent appellate review.

Our most important attribute, though, is that our service officers and attorneys consistently advocate for catastrophically disabled veterans. Complex claims are the norm, not the exception. As we attempt to bring greater efficiency to the claims and appeals system, our perspective is geared toward ensuring that the due process rights of the most vulnerable among us—those most deserving of benefits—are not watered down for the sake of expediency.

In July 1933 the Board of Veterans Appeals, often referred to as the Board, was established providing veterans with appeals rights. Members of the Board of Veterans Appeals were appointed by the Administrator with the approval of the President. The Board's mission is to conduct hearings and to provide decisions on veteran's appeals in a timely manner. The Board's jurisdiction extends to all questions in matters involving a decision by the Secretary of Veterans Affairs under a law that affects a provision of benefits by the Secretary to veterans, their dependents or their survivors.

The appeals process for VA benefits is a complex, non-linear process, which is set in law and is unique from other appeals processes across the federal and judicial systems. Notably, the current VA appeals process is a continuous open record that allows the claimant to submit new evidence or make a new argument at any point throughout the process. Furthermore, VA's duty to assist requires VA to assist with the development of additional evidence submitted by the claimant to assist with the adjudication of their claim. Generally, VA must issue another decision specifically addressing the newly submitted evidence.

When a claimant exhausts their appeal rights at the local Regional Office (RO) they may choose to appeal their claim to the Board. To do so they must file a Form 9 which certifies their case to the Board and provides their claim with a docket date. All cases at the Board are heard in docket date order.

In fiscal year 2015, the Board received and docketed 69,957 appeals and anticipated the docketing of 88,183 appeals in fiscal year 16. The Board's cycle time which measures the average time from the date an appeal is certified to the Board until a decision is rendered was 160 days in FY15. This does not include the time spent with service organizations who represent the veterans and assist them with their appeal.

In reaction to the increasing backlog of appeals claims, instead of addressing the lack of proper development and adjudication at the local Regional Offices, VA instead chose to modify the appeals process at the Board. VA did so through a collaboration with Congressional leadership by introducing the Veterans Appeals Improvement and Modernization (VAIMA) Act of 2017. In the legislation, Congress introduced language that provided VA with the authority to establish a test program, or pilot, to assist with the implementation of the VAIMA. VA's pilot, already in effect, is called the Rapid Appeals Modernization Program (RAMP).

PVA has several concerns with RAMP. First and foremost is the fact that it is not a pilot because of VA's plan to extend RAMP to all veterans in varying stages of appeals. It is clear that RAMP is an effort by VA to facilitate implementation of the VAIMA in an effort to reduce the appeals backlog. In general, a "pilot program" is defined as a small scale preliminary study conducted in order to evaluate feasibility, time, cost, adverse events, and effect size (statistical variability) in an attempt to predict an appropriate sample size and improve upon the study design prior to performance of a full-scale program. To date, VA has distributed thousands of notices to veterans proposing the choice to "opt-in" to the RAMP program.

RAMP is not a small scale project. Furthermore, VA did not share any benchmarks for which the project will be tested prior to its implementation. How will the pilot be determined a success? In actuality, there was very little communication with VSOs in regards to when and how the program was going to be implemented.

With this new program claimants will have the ability to opt in if they receive a less than favorable decision on their original claim. The RAMP program provides the veterans with three lanes:

- Supplemental Claim Lane: Veterans will select this option if they have additional evidence that is “new and relevant” to support granting their claim.
- Higher Level Review Lane: Veterans will select this option if they have no further evidence to submit but believe there was an error in the initial decision.
- The last choice is to have your claim recertified to the Board.

The RAMP process is completely separate from the Board. It is not clear how opting into RAMP will affect their docket date if they later elect to go to the Board.

PVA has serious concerns with the claimants having to withdraw their appeals particularly with veterans who choose to participate in RAMP although their appeals have been remanded for further development by the Board. In 1988 the Court of Appeals for Veterans Claims often referred to as the Court, was established for exclusive jurisdiction to review decisions of the Board of Veterans Appeals. Decisions rendered by the Court can establish precedent. One decision in particular was *Stegall v. West*. In *Stegall* the Court held that any remand instructions by the Board must be adhered to by the Regional Office and that the Board must ensure that its remand instructions are complied. This protection is important as it further compels VA to comply with its duty to assist.

If a veteran withdraws their appeal(s) they will no longer have the protection under *Stegall* because the Board will no longer have jurisdiction over the claimants claim. This puts increased responsibility on the veteran or their representative to ensure VA has fully complied with its duty to assist. Unfortunately, most veterans do not have the knowledge, access to records, or wherewithal to scrutinize whether the Board's remand instructions have been complied with.

Ensuring that VA provide adequate exams by the proper specialist is a common error in claims that face continued denial in the current appeals process. PVA represents veterans who are the most catastrophically disabled and whose claims are often extremely complex. More often than not, veterans with complex claims that include any aspect of Special Monthly Compensation (SMC), must be seen by specialists, most likely a neurologist, not nurse practitioners or physicians practicing general medicine. Without a specialist conducting the exam it is quite possible the most important details will be overlooked which could result in a significant monetary loss for the veteran.

As part of the pilot, VA is sending notices to veterans across the country giving them the option to opt-in to the new program that would provide them a quicker decision. PVA is concerned that many veterans will make the choice to opt-in based on the fact that the basis of the program is to provide quicker decisions. Unfortunately this program is not for everyone and could actually have a very detrimental effect on the veteran's claim. There have been instances where a PVA Service Officer (SO) was contacted by a veteran who informed them that they had opted-in to the RAMP program.

Another of PVA's concerns is VA's intention to implement the program as quickly as possible without determining resources needed for the program to be successful. An example would be the fact that if a veteran opts-in to the RAMP program, exhausts all of their lanes and still receives an unfavorable decision, the veteran is unable to appeal their claim to the Board until February, 2019. It is possible that veterans will be angry that they must wait until 2019 to certify their appeal to the Board even though this was explained in the initial letter to the veteran explaining the process. Unfortunately, the explanation was found half way down on page four. Even the most experienced advocate could easily miss this notification. VA must improve their means of notifying the veterans of these regulations that could have a serious detriment to their claims. Furthermore, legal action against VA could be possible for failing to adhere to current due process regulations.

It's no secret VA has a very difficult job. At the end of the day there are many stakeholders VA must answer to. Unfortunately with this responsibility VA will often make kneejerk decisions and will implement programs prior to having the resources in place to ensure the program's success. The RAMP program is no different. VA is pushing RAMP out so quickly that even VA employees in Regional Offices across the country have very little confidence in the effectiveness of the program. Furthermore, there has been little to no communication between VA and VSO's in regards to providing the necessary training and tools to our field employees to assist them with providing accurate information to their clients. Like all other VA programs and initiatives there must be constant communication between VA and VSO's to ensure the veteran's needs are met and their voices are heard.

PVA is also concerned with the stages of appeals that VA is targeting with RAMP. PVA has received notice that for the month of February 2018, 120 veterans represented by PVA will receive opt-in notices. Out of those, 76 were in the Notice of Disagreement (NOD) stage, 16 had submitted their Form 9's, 20 had been certified advanced and 7 are in remand status. Veteran's whose cases are in remand status should absolutely not be contacted nor should they be provided the option to opt-in because they are already in such an advanced stage in their appeal.

PVA is certain that the RAMP program has not been implemented for the veteran's benefit but for VA's. When asked to opt-in to the RAMP program the veteran must agree to withdraw all appeals that would have been appealed to the Board. By doing so it would give the impression that appeals were being reduced, when in reality they are just on hold.

As you know, PVA has an extensive national network of SO's who work with our members and other veterans to prosecute their VA claims. Some of our SO's report a culture in their Regional Offices where adjudicators are not comfortable favorably exercising their full authority in the current system. Changing a law is hard, but changing a culture is much harder. If VA does not work to change the culture of its decision makers, and if VA managers do not allow their decision makers to exercise their full authority, then it won't matter whether you call it a Decision Review Officer, a Higher Level Review, an appeal or anything else. To get the benefits of appeals modernization, VA must change more than titles and regulations, it must also change the proverbial hearts and minds of its employees.

We are concerned that, in its rush to implement RAMP, VA has not fully complied with Congress's intent. The act envisioned a comprehensive plan followed by a pilot to test assumptions used in the plan, but the RAMP program began before the comprehensive plan was fully developed. We urge continued oversight to ensure the congressional intent is followed.

Chairman Roe, Ranking Member Walz, and members of the Committee, thank you for the opportunity to submit our views on the RAMP and Appeals Modernization Programs. I would be happy to answer any questions the Committee may have.

Statements For The Record

THE AMERICAN LEGION

Chairman Roe, Ranking Member Walz, and distinguished members of the House Committee on Veterans Affairs, on behalf of Denise H. Rohan, National Commander of The American Legion, the country's largest patriotic wartime service organization for veterans, comprising 2 million members and serving every man and woman who has worn the uniform for this country; we thank you for the opportunity to testify on the topic of "Appeals Reform: Will VA's Implementation Effectively Serve Veterans?"

The American Legion is a primary Veteran Service Organization (VSO) stakeholder and fully supports the Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55), which is commonly referred as "Appeals Modernization." The Department of Veterans Affairs' (VA) appeals modernization has always had two components: (1) the legislation establishing "Appeals Modernization" and (2) the efforts to resolve the legacy appeals inventory. We fully support Appeals Modernization and the Department's early efforts to resolve the legacy appeals inventory through the Rapid Appeals Modernization Program (RAMP).

The American Legion has the following comments regarding VA's 11-20-2017 Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals system ('the plan').

I. ENHANCING EXISTING INFRASTRUCTURE

The American Legion looks forward to learning about the U.S. Digital Service's plan to build an enhancement in VA's Veterans Benefits Management System (VBMS) so that previously adjudicated "favorable findings of fact" are tracked in a manner enabling VA claims examiners in the future to avoid undertaking unnecessary claims development and making erroneous decisions. This will support a key provision in the legislation designed to protect the best interests of our veterans while also streamlining VA's adjudication process.

II. VA's OUTREACH PARTNERSHIP WITH VSOs

The American Legion supports the VA's Veterans Benefits Administration's (VBA) outreach efforts in promoting Appeals Modernization. One example of the benefits

of this flourishing partnership, the October 2017 issue of The American Legion magazine, featuring Appeals Modernization as the cover story, reached over 2 million member-readers. The purpose of the extended article was to provide useful information to our members and explain the benefits VA and The American Legion recognize for our veterans by virtue of the options offered pursuant to the legislation. The American Legion has worked cooperatively with VA to get monthly lists of veterans for whom we hold power of attorney to the appropriate state department so that our Department Service Officers can explain the benefits of each option offered under the legislation for those who “opt in” to the new system.

III. THE EFFECTIVENESS OF RAMP AS A PROGRAM DESIGNED TO TEST THE NEW FRAMEWORK

While we note some criticism has been directed to RAMP, The American Legion believes VBA’s efforts are completely appropriate given the complexities inherent in the transition from the legacy appeals system to the Appeals Modernization framework.

Although the veterans whose appeals will be adjudicated under RAMP will not have had the benefit of an enhanced notice letter based on the decision which gave rise to the appeal, VA is addressing this by ensuring that any decision rendered after the veteran opts in to RAMP will include an enhanced notice letter fully in compliance with the statutory requirement.

Moreover, criticism that RAMP does not offer an Expedited Lane to the Board of Veterans Appeals (BVA) can be countered by noting that veterans can make that election, though the law will not allow the expedited BVA review before February 2019. So in both instances, VBA is adopting the only procedures lawfully available during this transitional period.

A. CAUTION ABOUT DATA PRODUCED BY RAMP

The American Legion offers comments regarding the fifth and sixth paragraphs in VA’s plan, as shared in VA Secretary Shulkin’s Senate statement on January 17, 2018, which suggest that RAMP will generate data that allows VA to model what choices veterans will make in the new appeals framework and how much effort it will take to process reviews in the new framework.¹ RAMP does not give veterans all the options that will be available in the new framework. This is because a veteran will not be able to choose the Expedited Lane to BVA until full implementation of the statute in February 2019, although as noted a veteran could choose this option knowing it would not be operational for more than a year. In addition, the veterans whose appeals are processed under RAMP unavoidably have not had the benefit of the enhanced decision notice. Without the benefits of the enhanced decision notice and without all options being available, the choices made in RAMP will produce information about what veterans will do in the new framework that is of only limited value. Therefore, The American Legion urges caution in relying on the data compiled under RAMP as a predictor of future behavior after the legislation is fully implemented.

B. HIGHER LEVEL REVIEWS UNDER THE LEGISLATION

The American Legion looks forward to learning of VBA’s plans to ensure that the higher level reviews are done in an appropriate manner, looking carefully for any reasonable basis for granting the issue sought on appeal. We trust that the issue of work measurement credit will be carefully addressed in such a way that VA employees conducting the higher level reviews are totally indifferent to whether the decision is a grant or an affirmation of the prior denial based on work credit considerations. We also encourage VBA to have as many higher level reviews as possible done by a station other than the one which made the decision on appeal. This is to promote objectivity and eliminate the possibility the higher level reviewer might be influenced by a personal relationship with the VA employee who made the decision under appeal. One additional comment would be for VBA and the BVA to consider engaging in joint training to the extent feasible to foster a common understanding as to how appeals decisions should be addressed under the new appeals framework. For example, the American Legion staff notes that the BVA routinely gives probative value to lay evidence where appropriate and all due consideration to non-VA medical evidence, whereas this is sometimes not the case with VBA claims examiners.

CONCLUSION

¹ <https://www.veterans.senate.gov/hearings/the-state-of-the-va-01172018>

Secretary Shulkin's statement that the Veterans Appeals Improvement and Modernization Act of 2017 is the most significant statutory change in decades affecting the process is certainly true, and as a primary VSO stakeholder, The American Legion supports this new law and the efforts through RAMP to begin implementation. We fully intend to support our VA partners in this transformative effort.

The American Legion thanks this committee for the opportunity to elucidate the position of the 2 million veteran members of this organization. For additional information regarding this testimony, please contact Jeff Steele, Assistant Director of The American Legion Legislative Division at jsteele@legion.org, or (202) 861-2700.

VETERANS OF FOREIGN WARS OF THE UNITED STATES (VFW)
JOHN TOWLES, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE

Chairman Roe, Ranking Member Walz and members of the committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, I want to thank you for the opportunity to present the VFW's views on the Department of Veterans Affairs (VA) efforts in implementing appeals reform.

When the negotiation process began for what would come to be Public Law 115-55, the Veterans Appeals Improvement and Modernization Act of 2017, it was made clear that the input and support of Veterans Service Organizations (VSOs) was important to the success of the new appeals framework. As we testified in May of 2017, our goal with this bill was to build a process that placed the veteran first, was easy to navigate, and protected a veteran's rights every step of the way. The VFW, along with several other organizations, have long advocated for appeals reform, and were honored to be a part of the process with the assurance that the level of engagement that existed during the bills development would be sustained after the bill became law.

However, once the legislation was passed, we began having concerns almost immediately with how VA was planning to implement the new appeals process. Not only did we feel as though the roll-out was hasty, but reckless. As a result, in September of 2017, the VFW and the Disabled American Veterans (DAV) sent a joint letter to Deputy Secretary of Veterans Affairs Thomas Bowman expressing our major concerns.

Some of the concerns cited in the letter included the proposed speed of the roll out; the language used in the initial opt-in notification letter and phone script; and the overall lack of engagement that we, and nearly every other VSO involved in the crafting of this legislation, had been afforded up to that point.

While VA has addressed some of the issues identified in the joint letter, the VFW has lingering concerns with regard to the speed and haste in which VA is implementing these changes and communicating with our organization regarding the progress that has or has not been made, and the data that supports that narrative.

As an organization that represents a large portion of appellants with cases pending before the Board of Veterans Appeals (BVA), our clients depend on us to provide the most accurate advice in order to increase the chances of a successful outcome. We have been representing veterans for more than a century and have a fairly good understanding of how the system works. Having researched the possible impact of the program on our clients, we have found that there are circumstances where opt-in may actually be detrimental to the veteran.

Many of our clients have been waiting for years to have their cases heard at BVA. They have invested time and energy into appealing their claims, and many of them are appealing denials for extremely complex issues. For our organization to recommend that they opt-in to a program that is potentially faster, and may lead to their case being decided more quickly, but may also lead to them losing their place in line at BVA if they are denied in the first phase of the program, would be irresponsible.

The most recent version of the eligibility notice refers veterans who are interested in opting-in to contact their "VSO, attorney, or claims agent" so that they can assist in determining the best option. However, it is unreasonable to expect that we will be able to assist them in this decision if we have almost zero knowledge of whether or not the Rapid Appeals and Modernization Program (RAMP) is more effective than the current appeals system.

We have attempted to conduct thorough due diligence so that we can better inform our members and clients by engaging directly with VA prior to making any

recommendations. We have asked that they provide us the tools and resources that we require to do the best job that we possibly can, but we are often met with either silence or hypotheticals. Given the current proven and documented success rates of VFW appeals that are classified as legacy and the myriad of unknowns, whether due to lack of participation by our clients or lack of interest in sharing data from VA, all evidence points to a better chance of success by not opting in at this time.

To be blunt, we have not been shown any evidence from VA, or anyone else, that would suggest that RAMP will actually improve a veteran's chance of a favorable outcome. As a result, the majority of our nationwide cadre of professionally-trained, accredited advocates and our BVA- based professional staff have declined to recommend participation to our clients who have received eligibility notices to participate in the program, and will continue to do so until we are provided with more thorough data from VA.

During a Senate Committee on Veterans' Affairs hearing two weeks ago, Secretary Shulkin reported that 75 percent of RAMP decisions "are going in favor of the veteran." While 75 percent may seem to indicate RAMP is a good option for veterans, VA's testimony does not clarify how many appeals were adjudicated and what VA defines as favorable. To VA, issuing a zero percent service-connection may qualify as favorable. A veteran would disagree if the decision is for a debilitating condition that merits a higher rating. As a result, we have declined to recommend participation in the program to veterans we serve who have received eligibility notices, and will continue to do so until we are provided with more thorough data from VA.

The VFW has yet to see empirical data that would otherwise change our position. Should better communications and more reassuring information be made known to us by VA, we would then be more able to wholeheartedly recommend RAMP as a viable option.

VA has recently invited VSOs to participate in work group discussions regarding RAMP implementation. The VFW is participating in these discussions and hopes VA will include our input and recommendations moving forward.

The VFW urges Congress and VA to properly resource VBA and the Board of Veterans Appeals to ensure they are able to timely adjudicate appeals from veterans who do not opt into the new appeals process, and the potential influx of supplemental claims and higher level review requests at VA Regional Offices. VA must be empowered to manage its workload, and stakeholders must be properly informed if the new framework to expected to succeed.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

THOMAS S. KAHN

DIRECTOR, LEGISLATIVE AFFAIRS

Chairman Roe, Ranking Member Walz, and Members of the Committee:

American Federation of Government Employees, AFL-CIO (AFGE) and its National VA Council (NVAC) appreciate the opportunity to submit a statement for the record on the January 30, 2018 hearing titled, "Appeals Reform: Will VA's Implementation Effectively Serve Veterans?" AFGE represents more than 700,000 employees in the federal and D.C. government, including 250,000 front line employees at the Department of Veterans Affairs providing comprehensive benefits, health care, and other critical services for veterans.

Chief among our concerns with the implementation of the "Veterans Appeals Improvement and Modernization Act of 2017" has been its impact on the 800 front line attorneys represented by AFGE and NVAC who work at the Board of Veterans' Appeals, in particular the counterproductive performance standards that went into effect on October 16, 2017. As we stated in the attached letter sent to the Senate Veterans' Affairs Committee, AFGE and NVAC continue to question the reasonableness of the new standard. The 35% production increase in cases for each individual attorney and the replacement of a credit based system with a case based system have both had negative effects on attorneys meeting their quotas.

At Chairman Mason's October 4, 2017 confirmation hearing, in response to a question from Senator Hirono (D-HI) as to whether she was willing to work with AFGE representatives to address the impact and implementation of the new standards and their adverse impact on workload, she answered "absolutely." However, it appears that Chairman Mason has not done so since getting sworn in. Based on this answer, AFGE would like to know what steps the Chairman has taken to date to address problems with the current standard and the backlog of veterans' appeals.

Furthermore, in a response to a question from Senator Brown (D-OH), Chairman Mason indicated she was open to considering whether to assign cases to Board attorneys based on specialization to better utilize attorneys' expertise. However, to the best of our knowledge, no such considerations have been made, and the Board has not raised this issue with AFGE representatives since that hearing.

In conclusion, AFGE respectfully urges members of the Committee to ensure that Deputy Secretary Bowman, Chairman Mason, or a combination of the two address the issue of performance standards for Board attorneys during today's hearing, and the steps they plan to take to set reasonable production standards for Board attorneys, and best allow them to fulfill the mission of serving our nation's veterans.

I request that this statement and my attached letter to the Senate Veterans Affairs' Committee be submitted for the record.

OCTOBER 3, 2017

Chairman Johnny Isakson
U.S. Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington, D.C. 20510-6050

Ranking Member Jon Tester
U.S. Senate Committee on Veterans' Affairs
825A Hart Senate Office Building
Washington, D.C. 20510-6050

Dear Chairman Isakson and Ranking Member Tester,

I write to you today on the matter of Cheryl Mason's nomination as Chairman of the Board of Veterans' Appeals. The American Federation of Government Employees, AFL-CIO (AFGE) and its National VA Council represent more than 700,000 employees in the federal and D.C. government including 250,000 front line employees at the Department of Veterans Affairs who provide vital care and services for our veterans. This includes serving as the exclusive representation of the approximately 700 attorneys who work for the Board of Veterans' Appeals and will serve under the leadership of Ms. Mason, should she be confirmed.

AFGE and its National VA Council do not take a position on Ms. Mason's nomination to Chair the Board of Veterans' Appeals. However, AFGE is deeply concerned about new performance standards for the Board's attorneys that are scheduled to go into effect on October 16, 2017, and the negative impact these new standards will have on attorneys' ability to perform their duties. AFGE is also deeply concerned that this change in performance standards was made without completion of the bargaining process, which is prohibited. AFGE would like to know Ms. Mason's position on these new performance standards, and how she plans to work collaboratively with AFGE to address concerns about performance standards, new attorney training, inadequate systems including the Veterans Benefits Management System (VBMS), equipment, and office space that were raised by AFGE Local 17 President Douglas E. Massie on September 11, 2017 in a letter to Secretary David J. Shulkin.

Under the previous standard, attorneys were expected to complete 125 cases in a calendar year. Based on the new standards scheduled to go into effect later this month, Board attorneys would be expected to complete 169 cases a year, which is a 33% increase from the previous standard. This increase in production is being proposed despite that in previous years, smaller increases in quotas were later withdrawn or reduced because they were found to be unreasonable and had an overall negative impact on the Board's mission. In turn, there is a strong likelihood that there is a significant number of attorneys who meet the current standard but would fail to meet the new standard, and would either face termination or resign in lieu of termination.

This depletion of the workforce would further impede the ability of the Board of Veterans' Appeals to process its caseload, exacerbate a backlog of cases that already exceeds 150,000, and delay veterans having their cases resolved. This is especially relevant when the Board considers how it will backfill these positions, as it takes at least a year for a board attorney to become proficient in processing cases, and several years to truly master the requisite skill set. These personnel losses would weaken the Board's ability to fulfill its overarching mission of supporting veterans and accurately resolving their claims.

Therefore, AFGE asks the committee to ensure that any future Board Chairman commit to work collaboratively with AFGE to address performance standards, and achieve a reasonable set of standards for Board of Veterans' Appeals attorneys that best serves veterans' needs for quality and efficiency.

I respectfully request that this letter, and the attached letter from Doug Massie, President of AFGE Local 17 be submitted for the record.

Sincerely,

Thomas S. Kahn
 Director, Legislative Affairs
 American Federation of Government Employees, AFL-CIO

WHISTLEBLOWERS OF AMERICA (WOA)

STATEMENT OF MS. JAMIE FOX

Chairman Roe and Ranking Member Walz;

Thank you for this opportunity today to speak out on behalf of veterans who are also VA employees. I am submitting this statement for the record in cooperation with Whistleblowers of America (WoA) because my situation is not unique. WoA has had several other veteran/VA employees make this same claim about having their private information weaponized. We are joining forces today in hope that this hearing will give voice to those of us who have had our privacy invaded after blowing the whistle on VA and to ask Congress, that as you consider legislative reform for the Veterans Benefits Administration (VBA), that you might also consider the need to further protect Claim or C-files and to allow veterans/employees to know who has accessed their personal information.

Let me begin by saying that I come from a long line of family members who have served in the military as far back as the Revolutionary War and who are currently serving in the military. I also served honorably for five years in the U.S. Navy. When I volunteered to serve in the military and civil service I did not volunteer to be subjugated to the unethical and illegal abuse of public office power. Since coming forward in 2008, as a witness for a former co-worker who was being harassed - in order to help her stop the harassment - I have been continuously harassed, punished, and retaliated against by the same people who protected the perpetrator. When I came forward that day in 2008, I thought there were laws that protected me. I utterly had no idea that such a simple gesture, like caring for the dignity of another human-being, would have such severe and far reaching negative consequences. What is and has been happening to me is unethical and illegal. Not only is it a breach of privacy, but it is also a breach of trust.

It is a disgrace when the very people who defend the rights of the American people do not have those same rights at the VA, particularly the right to have our private information protected from the people who we do not want to access our private information.

Many veterans wrongly believe their private information, which includes Personally Identifiable Information (PII) and Sensitive Personal Information (SPI) is protected by privacy laws, but at the VA this belief couldn't be further from the truth. Veterans' PII and SPI have more protection in the civilian sector because there are very real and serious consequences for privacy violations, but there appears to be very little recourse for veterans whose privacy is violated by government officials at the VA.

According to Deven McGraw, Director of the Washington-based Health Privacy Project of the nonprofit center for Democracy and Technology, the VA remains one of the top Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy offenders. In April 2015, the Office of Special Counsel Director, Carolyn Lerner, testified in Congress that the prevalence of privacy violations at the VA has become an epidemic.

VA Office of Inspector General (OIG) released a report April 2016, in which the VBA had not integrated proper audit logs in their new veterans' claims processing computer system, called Veterans Benefits Management System (VBMS). In fact, VBA failed to establish satisfactory system requirements in VBMS that would ensure that accurate audit logs were created. Without accurate audit logs, Information Security Officers cannot effectively identify, report, and react to data security issues in VBMS. OIG discovered VBA cannot detect if an employee improperly accessed a claim and that VBMS was not compliant with audit log procedures and regulations. Further OIG reported that the security vulnerability occurred because the Office of Business Process Integration did not create system requirements in VBMS to assure audit logs could accurately pinpoint security violations. It assumed that the audit log functionality was already built into VBMS as it was for the legacy claims processing systems.

The VBA is required by several regulations (e.g., Federal Information Processing Standards Publication) to develop, sustain, and retain audit records to supervise, analyze, and report on inappropriate access of information systems. The VBA must also develop the capability to monitor the actions of individual users. VBA's own VA Handbook states that information systems are required to create detailed audit logs that can help recreate a data security incident.

As a veteran using the VA system, I recently discovered that I have absolutely no control over my private and protected information, and that VA managers have carte blanche to everything with impunity! Anyone who has access to VBMS with a few strokes of the keyboard can view over 30 years of information about me, from anywhere in the country, including from someone's living room.

No person, not even a government official, should have that much access to so much information about a person's past and present life history, especially VA employees who are known to be unscrupulous. No manager or former manager or co-worker should have access to so much information about their employees or co-workers, especially the people who were responsible for forcing my resignation and who I testified against for protecting the man who I witnessed harassing a co-worker. What I say to my doctor is no one else's business unless they absolutely have to view the information and were authorized to view the information. It is my right to see who has accessed my private information and it is my right to restrict who sees my information.

It is incomprehensible to think the VBA failed to build in safeguards in its highly touted computer program, which was allegedly designed to make processing veterans' claims more efficient, but cannot restrict certain VBMS users from accessing specific claim files, except through an antiquated security system that was designed to control paper files. This antiquated security system allowed and continues to allow people, like my former managers and co-workers, access to my protected information. It also allows managers and employees to snoop on current VA veteran employees and co-workers.

It's easier to conceptualize the outdated security control system as a pyramid, scaled 1 to 9, where 9 has the most restriction. The higher the sensitivity level, the fewer people who can view the C-file. The higher the sensitivity level the fewer people there are to help a veteran with their C-file. C-files that are classified at sensitivity level 8 and above cannot receive help from the public contact line and Veterans Service Organizations, even with simple tasks, like changing an address. The only way someone would not be able to view a C-file is if they did not have access to a particular sensitivity level. For example, if you are authorized to view sensitivity level 7 C-files then you could view C-files classified at sensitivity level 7 and below. Obviously, anyone who does not have a sensitivity level 7 clearance would not be able to view C-files classified at sensitivity level 7 and above. Managers can also authorize other managers or employees, depending on the sensitivity level, to work on a C-file classified at a higher sensitivity level for a limited time. So, as you can see, it really does not matter what sensitivity level a veteran's C-file is classified at, if VA managers can work around existing security features.

VA leadership is misrepresenting the capabilities of the Restricted Access Claim Center (RACC) at the St. Paul, Minnesota Regional Office (and other RACC locations) regarding the restrictions related to managers and co-workers from accessing a current or former employee's veteran C-file. I was told once my C-file obtained RACC protection that the Oakland VA Regional Office would no longer have access to my C-file. I disproved this claim when I scheduled an appointment to review my digital C-file at the Oakland VA Regional Office. I witness with my own eyes how Oakland managers can still access my private information. It appears the RACC only restricts people from making changes to a C-file.

I was also told by several VBA employees that if a co-worker or a manager accesses a veteran employee's C-file, an alarm gets set off - that some employees have referred to as a "ping" - at the VA's Office of Information and Technology (OIT). However, I have spoken with several people from OIT and was informed there was no such "alarm" or notification when someone who does not have authorization accesses a C-file.

I have been trying for several months to obtain a list of every person who has ever accessed, viewed, and/or queried any part of my C-file. It is every veteran's right to know who has been viewing their private information. The VA promised me I would receive an unredacted audit. However, the list the VA sent me was incomplete. There were many missing names and dates. VBA claimed that those were all the people and dates that they could find. However, I have evidence proving otherwise. When I informed the VA, in October 2017, of the missing names and dates, I was told the VA would look further into it. I have not received anything to date from this October request. When I recently requested a status update on the audit

of my C-file, I was told that VA FOIA requests were backlogged. I originally informed VA leadership in Washington DC of the privacy violation in early July 2017, as well as, requested an audit of my C-file at that time.

The person who is currently scrubbing the audit list of my C-file is the Director of the RACC, Ms. Kim Graves who totally disregarded my letter asking for RACC protection and assigned my C-file to the Oakland VARO, against my permission. When I asked OIT why they could not directly mail me the audit, I was informed that OIT “had” to send audits to the director of the regional office that has jurisdiction over my C-file. This absolutely makes no sense at all. Having the VA patrol itself is like having a fox guard the hen house. As you already know, Kim Graves has demonstrated her lack of integrity, so it is difficult to have confidence in her abilities. She and Diana Reubens are also tight with some of the Oakland VA regional office managers who are using the VA system to retaliate.

VA leadership has been informed that my former managers and co-workers at the Oakland VA Regional Office retaliated against me by trying to use my C-file against me. Yet nothing has been done about it, no one has been held accountable, no one has been prevented from accessing my C-file and hardly anyone returns my communication. I am having difficulty obtaining help from both VA employees, or the Veterans Service Organizations, not because they do not want to help me, but because, as they all put it, and quite frankly I have lost count on the number of people who have told me this, they are all afraid to help me for fear that they will be targeted like me; they are afraid of being “blacklisted” or “blackballed”, they fear they will lose their job and/or VA benefits.

What does it say about our country when veterans are afraid to speak out against unethical and illegal practices at the VA for fear of retaliation? I have a lot of support in the shadows, but no one has been willing to step out into the light and be my champion, because it is seen as a fruitless mission; instead of creating meaningful change, the mission would be more like falling on one’s sword. I am grateful to have found Whistleblowers of America because they understand whistleblower retaliation and are willing to give me a voice today.

We ask that Congress act on behalf of veterans so that they can obtain an accurate audit of a his/her C-file and to protect veterans’ privacy. The solution to update VBA’s security control system for digital C-files is to have Congress legislate new laws that can make VBA do so. The VA cannot be trusted to fix this security problem, because VA directives, memorandums, and protocols can be changed by the VA at any time, as well as, their interpretation and adherence to their own made up rules. A well written law minimizes ambiguity and ensures adherence and accountability.

I started a petition on Change.org, called “Protect Jamie’s Private Medical Info from Her Former VA employers and Make Them Accountable,” so I could get the attention of our legislatures. (I am represented by Representative Mike Thompson and Senator Kamala Harris who are aware of my situation.) I was told I would gain the ear of Congress if I could obtain at least 100,000 signatures. Although this petition has my name on it, protecting veterans’ privacy is not just for me, but for every veteran

Every veteran has a right to know, in a timely manner, who has been viewing their private information and why. There must be an enforceable law to deter people from accessing a veteran’s C-file without first having authorization or permission by the veteran. Congress can pass a law that make each veteran a watchdog over their own C-file by releasing unredacted audits of their C-file immediately upon request and whenever requested. Audit logs could be readily accessed at any time via the eBenefits portal, which would show the veteran via live coverage, who is and has been viewing their protected information. Congress should pass a law that require the reporting of privacy violations to be made easy and efficient, as well as, hold VA managers and employees accountable for privacy violations. Congress should pass a law that make sure VBMS and any other VA computer system has functional and accurate audit logs that can accurately pinpoint security violations.

Thank you for your time and consideration.

Whistleblowers of America is a 501C3, EIN 82-3989539. Its mission is to provide peer support to employees and veterans who have reported wrongdoing and experienced retaliation.

Jamie Fox is a whistleblower from Oakland, CA who reported harassment of a co-worker and suffered retaliation while working in the Oakland Regional Office. She is currently employed at another VA facility. This statement is made on her own time and not representative of the VA.