TWO DIFFERENT BILLS PENDING BEFORE CONGRESS TO REFORM THE VA APPEALS PROCESS

(1) Fully Developed Appeals
(2) "VA Appeals Modernization Act"

PENDING BILL #1: ADDING A "FULLY DEVELOPED APPEAL" PROCESS

A Five-Year Pilot Program to Provide Veterans with a Speedy Appeals Process

CHOICE BETWEEN (1) FDA OR (2) STANDARD APPEAL

At the Notice of Disagreement stage, all claimants who wish to appeal will be provided a choice between

- Filing a Fully Developed Appeal or
- Filing a Standard Appeal

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Starting a Fully Developed Appeal

To initiate FDA, the Notice of Disagreement must:

- Request FDA processing;
- Submit with the request any additional evidence you want the BVA to consider (this is your last opportunity to submit evidence)
- Submit any written argument you wish to make to the BVA (but you will get one more opportunity to submit a written argument to BVA)

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What Happens after FDA submitted

- No Statement of the Case;
- No Form 9 Substantive Appeal needed from vet;
- No DRO review or hearing is possible;
- RO will transfer appeal to the Board of Veterans' Appeals;
- BVA will give the claimant an separate FDA docket number; and
- BVA will give claimant and representative one more opportunity to submit a written argument

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BVA Process for Deciding FDAs

- BVA will have two appeal dockets – one for FDA appeals and one for standard appeals;
- BVA will decide 1 FDA appeal for every 4 standard appeals;
- BVA will decide FDA appeals based on the written record;
- NO BVA HEARING IS POSSIBLE ON FDA

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Opting out of an FDA appeal

At ***any*** time between the filing of an FDA and the Board's decision on an FDA, the FDA will be transformed into a standard appeal and given a standard appeal docket number -- IF:

- (1) the claimant or representative requests to opt out of the FDA appeal; or
- (2) the claimant or representative submits new evidence

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Possible Results of FDA

BVA may:

- Grant all or part of the benefits requested;
- Deny all the benefits requested; or
- Determine that additional development is necessary

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BVA Development on FDAs

- If BVA determines that additional development is necessary (for example, to obtain an additional medical exam/opinion or existing medical records), BVA **will not remand the appeal to the RO or AMC**
- Instead, BVA will (a) oversee the development itself; (b) send the new evidence to the claimant/rep and allow 90 days for a response (including submission of new evidence) and (c) then make a final decision

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BILL #2: VA DRAFT BILL THAT WOULD, AT SOME FUTURE DATE, REPLACE CURRENT SYSTEM WITH AN ENTIRELY NEW VA APPEALS PROCESS

MAIN FEATURES

- RO will provide an improved, more detailed explanation of the reasons for denial when it issues a rating decision
- Elimination of the Statement of the Case and need to submit a Form 9 Substantive Appeal;
- Elimination of hearings at the RO after a rating decision.

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3 Choices after Rating Decision

Within **one year** of rating decision, claimant may take one of the following 3 actions in an effort to change the rating decision and preserve the earliest effective date:

- (1) request difference of opinion review by a higher level RO official (no hearing or new evidence allowed);
- (2) file a "supplemental claim" with "new and relevant evidence"; or
- (3) file a notice of disagreement

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Supplemental Claim Process

- Claimant needs to submit "new and relevant evidence"
- Supp. Claim goes back to square one → RO review to determine whether (1) new and relevant evidence has been submitted, and, if so, (2) whether additional development is necessary, and (3) whether the supplemental claim should be granted or denied.

- If supp. claim is granted → **effective date can be as early as date of original claim**
- If supp. claim is denied → same 3 options available to change decision as with original claim
- If supplemental claim is filed more than 1 year after RO decision → earliest effective date = date of supp. claim

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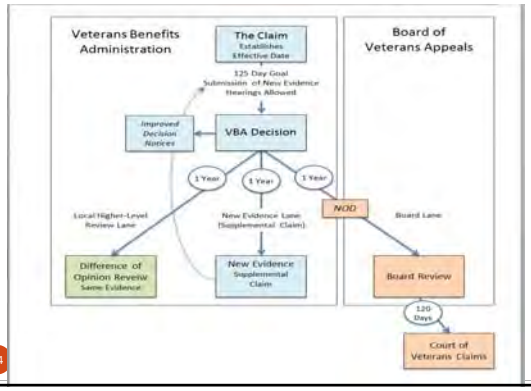

Notice of Disagreement Option

- Must allege specific error(s) of fact or law in NOD;
- Must choose between one of two lanes for BVA appeal:

LANE 1 (aka the Fast Lane) : Record review by BVA (no BVA hearing) and cannot submit additional evidence

LANE 2: (aka the Slow Lane): Claimant can either (1) request hearing and submit additional evidence or (2) submit additional evidence without a hearing

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BVA Maintains 2 Dockets

- One docket for Lane 1 and one docket for Lane 2
- Legislation does not contain a provision allowing veteran to change from one Lane to another
- Target appeal time for Lane 1 is 1 year from NOD
- Legislation allows BVA to decide how much resources (that is, Judge time) to devote to each Lane

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BVA Authority Over Duty to Assist

- If BVA concludes that the RO violated the duty to assist prior to the RO decision that led to the NOD, BVA can remand the appeal to the AMC or RO for additional development
- The BVA is under no obligation to comply with the duty to assist based on the time period after the RO's decision
  - Example: BVA under no obligation to obtain relevant records created after the RO decision (but claimant can submit these records if the NOD chose Lane 2)

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Choices After BVA Decision

- BVA may grant all or part of benefits sought, deny all the benefits sought, or remand the claim to the AMC or RO for further proceedings
- After BVA decision that grants or denies benefits sought, claimant can:
  - File an Appeal to the Court of Appeals for Veterans Claims within 120 days of BVA decision;
  - File a Supplemental Claim with the RO with new and material evidence
- If claimant wins through either option → right to effective date retroactive to date of initial claim is preserved

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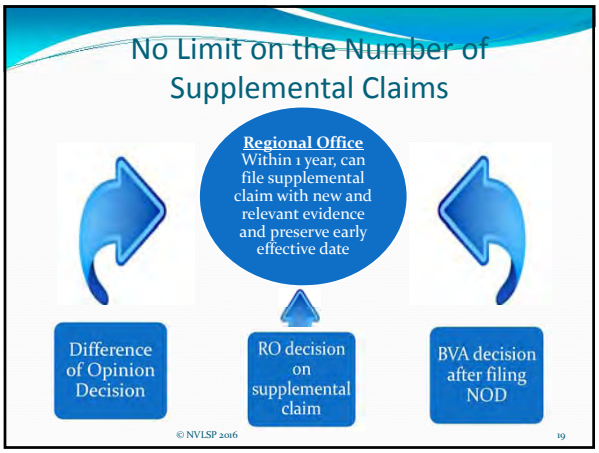
No Limit on the Number of Supplemental Claims
Regional Office
Within 1 year, can file supplemental claim with new and relevant evidence and preserve early effective date
Difference of Opinion Decision
RO decision on supplemental claim
BVA decision after filing NOD
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