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# ***VA Appeals Modernization Act Appeals Modernization 201***



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# Objectives

## **At the end of this lesson, you will be able to:**

- Summarize the Appeals Modernization Act (AMA)
- Distinguish between the three decision review options
- Identify the required application forms for AMA decision review requests
- Identify the key regulatory changes resulting from AMA
- Explain the opt-in opportunities into the modernized review system
  - Rapid Appeals Modernization Program (RAMP)
  - Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC)
- Understand workload routing of AMA claims



# References

- PL115-55, *Veterans Appeals Improvement and Modernization Act of 2017*
- 38 CFR 3.2400, *Applicability of modernized review system\**
- 38 CFR 3.2500, *Review of decisions\**
- 38 CFR 3.2501, *Supplemental claims\**
- 38 CFR 3.2601, *Higher-level review\**
- 38 CFR 20.202, *Notice of Disagreement\**
- Appeals Modernization – VA.gov  
<https://benefits.va.gov/benefits/appeals.asp>
- AMO Intranet Site, Program Administration Page  
<https://vbaw.vba.va.gov/APPEALS/programadministration.asp>

*\*Pending publication in the federal register.*



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# Appeals Modernization Act (AMA)

- On August 23, 2017, the *Veterans Appeals Improvement and Modernization Act of 2017* was signed into law.
- The new law takes effect on February 19, 2019
- **What does this law change?**
  - VBA's claims and appeals processes
  - VBA's decision notification requirements
- **Who does this law impact?**
  - All VA administrations (VBA, VHA, NCA)
  - All VBA claimants (Veterans, survivors, and other beneficiaries)
  - All VBA Business Lines (Compensation Service, Pension and Fiduciary Service, Loan Guaranty Service, Vocational Rehabilitation and Employment Service, Insurance Service, and Education Service)
  - All VBA claims and appeals personnel



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# Appeals Modernization Act (AMA)

- AMA features a three option framework for claimants to choose from when dissatisfied with VA's decision on their claim:

**Supplemental  
Claim**

**Higher-Level  
Review**

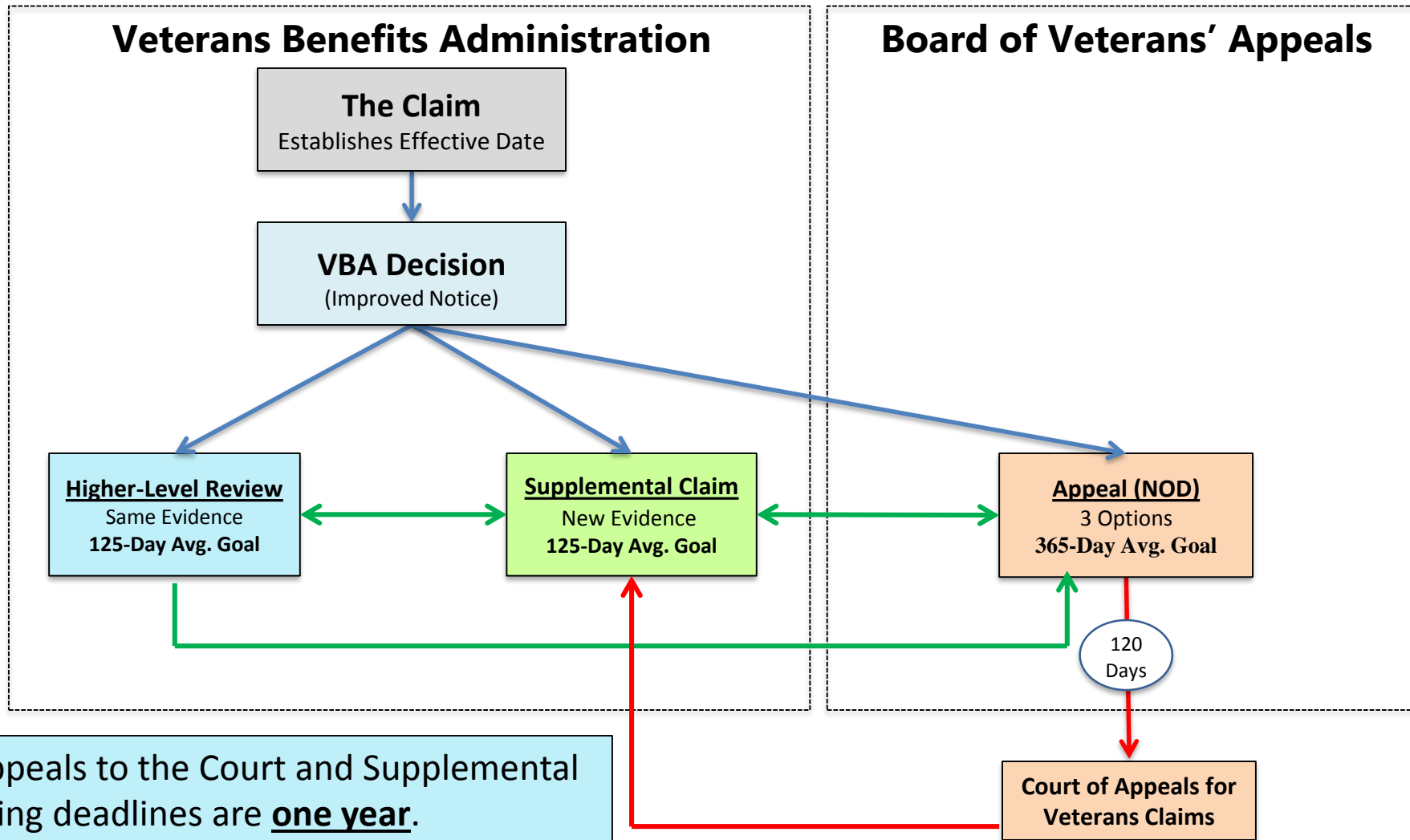
**Board Appeal**

- Additional changes found in the new law include:
  - Improved notification of all VA decisions (8-point requirement)
  - Effective date protections for continuously pursued claims
  - Findings favorable to a claimant are binding on VA and Board adjudicators
  - Elimination of the split jurisdiction between VBA and the Board for appeals processing (*no certification process*)

# Three Review Options

VBA		BVA
<b>Supplemental Claim</b> <ul style="list-style-type: none"> <li>• Replaces “reconsiderations” and “reopening” claims with “new and material” evidence</li> <li>• VA will readjudicate a claim if “new and relevant” evidence is presented or identified with a supplemental claim (<b>open record</b>).</li> <li>• VA will assist in gathering new and relevant evidence (<b>duty to assist</b>).</li> <li>• Effective date for benefits is always protected when submitted within 1 year of prior decision.</li> <li>• Tracked and controlled under <b>EP 040 series</b></li> <li>• Decisionmakers are <b>Veterans Service Representatives (VSRs)</b> and <b>Rating VSRs (RVSRs)</b></li> </ul>	<b>Higher-Level Review</b> <ul style="list-style-type: none"> <li>• More experienced VA employee takes a second look at the same evidence (<b>closed record and no duty to assist</b>).</li> <li>• Option for a one-time telephonic <b>informal conference</b> with the higher-level reviewer to discuss the error in the prior decision</li> <li>• <i>De novo</i> review with full difference of opinion authority</li> <li>• Duty to assist errors returned to lower-level for correction (<b>quality feedback</b>)</li> <li>• Tracked and controlled under <b>EP 030 series</b></li> <li>• Decisionmakers are <b>Decision Review Officers (DROs)</b> and <b>Senior VSRs</b></li> </ul>	<b>Board Appeal</b> <ul style="list-style-type: none"> <li>• <b>Evidence only docket:</b> The appellant may submit evidence within the 90 day window following submission of the NOD. The Board does not have a duty to assist and the record is otherwise closed.</li> <li>• <b>Direct docket:</b> The appellant receives direct review by the Board of the evidence that was before VBA in the decision on appeal. The Board has a 365-day timeliness goal for this docket. Quality feedback loop for VBA.</li> <li>• <b>Hearing docket:</b> The appellant will be scheduled for a Board hearing. Additionally, the appellant may submit evidence within the 90 day window following the scheduled hearing. The Board does not have a duty to assist and the record is otherwise closed.</li> </ul>

# New Decision Review Process



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# “Opt-in” Opportunities for Legacy Appeals

There are two opportunities for some claimants with a pending legacy appeal to “opt-in” to the new modernized review system

## 1. Test Programs

- Rapid Appeals Modernization Program (RAMP)
- Board Early Applicability of Appeals Modernization (BEAAM)

## 2. Opt-in from a SOC/SSOC

- Available after the effective date of the new law
- Must be filed within 60 days of receipt of SOC/SSOC, or within the one year appeal period





# New AMA Application Forms

- VBA will include ***VA Form 20-0998, Your Rights to Seek Further Review of Our Decision***, with all decision notices. This form provides claimants with information on the available decision review options.
- Claimants will use new enterprise wide VA forms to file under one of the new options:
  - **VA Form 20-0995, Decision Review Request: Supplemental Claim**
  - **VA Form 20-0996, Decision Review Request: Higher-Level Review**
  - **VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement)**
- VBA will no longer provide the forms to claimants with our notice letters. Claimants will access the new forms on the VA.gov forms page.

**Important:** Use of *VA Form 4107* and *VA Form 21-0958, Notice of Disagreement*, will be discontinued for decisions issued after the new law takes effect.



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# AMA Regulatory Changes/Manual Updates

- To implement the new AMA decision review process, VA amended its regulations found in Title 38 of the Code of Federal Regulations (CFR) on:
  - Claims Adjudication (Parts 3, 8, 22)
  - Board of Veterans' Appeals: Legacy Appeals Regulations (Part 19)
  - Board of Veterans' Appeals: Rules of Practice (Part 20)
  - Accreditation of attorneys, agents, and Veterans Service Organization (VSO) representatives and the rules governing fees for representation (Part 14)
- VA's final rule (RIN 2900-AQ26) was published by the Federal Register on January 18, 2019.
- The Appeals Management Office in conjunction with Compensation Service will make several updates to the M21-1, Adjudication Manual to provide procedural guidance to claims personnel on AMA changes. Manual updates will be published when the law becomes effective.



# Key Amendments to 38 CFR Part 3

## Definitions

(38 USC 101)

- Further defines the term “claim” to provide distinction between “initial claim” and “supplemental claim”
- New definition of supplemental claim (removal of “reopened” claims)
- Defines “clear and unmistakable error”
- **Pending location of changes: 38 CFR 3.1, 38 CFR 3.105, 38 CFR 3.151, 38 CFR 3.160**

## Improved

## Decision Notice

(38 USC 5104(b))

- The legislation requires VA to modify its decision notices to ensure they are clearer and provide adequate detail.
- Decisions must be accompanied by new 8-point notice letters.
- **Pending location of changes: 38 CFR 3.103(f)**

## Review

## Options

(38 USC 5104C)

- After an initial AOJ decision or readjudication of a supplemental claim, claimants have all three review options.
- After a decision on a higher-level review, claimants may file a supplemental claim or appeal to the Board, but may not request another higher-level review.
- After a decision by the Board, claimants may file a supplemental claim, but may not file a higher-level review.
- **Pending location of changes: 38 CFR 3.156, 38 CFR 3.160, 38 CFR 3.400, 38 CFR 3.2501 (new) 38 CFR 3.2500 (new), 38 CFR 3.2400 (new) 38 CFR 3.2601 (new), 38 CFR 3.2502 (new)**



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# Key Amendments to 38 CFR Part 3

## Favorable Findings

(38 USC 5104A)

- Favorable findings are binding on all subsequent VA adjudicators, unless rebutted by clear and unmistakable evidence.
- **Pending location of changes: 38 CFR 3.104(c)**

## Duty to Assist

(38 USC 5103A)

- Duty to assist in the gathering of evidence begins upon receipt of an original or supplemental claim and ends once VA issues a decision on the claim. It is not applicable to higher-level review decisions or decisions by the Board. (38 USC 5103)
- DTA errors identified in the Higher-Level Review and Board lane require return for correction and re-adjudication.
- **Pending location of changes: 38 CFR 3.159, 38 CFR 3.2601, 38 CFR 3.103**

## Effective Date Protections

(38 USC 5110)

- For continuously pursued claims (filed within 1 year period), VA will use the date of receipt of the initial claim for effective date purposes. (38 USC 5104A)
- **Pending location of changes: 38 CFR 3.400, 38 CFR 3.2500**



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# Key Amendments to 38 CFR Part 3

## Finality of Decisions/CUE Standard

(38 USC 5109A)

- Decisions issued by an agency of original jurisdiction are binding on VA adjudicators, unless clear and convincing evidence is shown to rebut the favorable findings, even though the decision is not finally adjudicated because the period for a claimant to seek review of the decision is still open.
- VA will require a higher standard of “clear and unmistakable.”
- **Pending location of changes: 38 CFR 3.104, 3.105, 38 CFR 3.160**

## Filing Requirements

(38 USC 5104C)

- “Intent to file” provisions are not applied to supplemental claims or higher-level reviews.
- Allows for submission of a supplemental claim at any time after notice of a VA decision.
- Request for review under the higher-level review and Board appeal options must be submitted within one year of the date of notice of a prior VA decision.
- If VA receives an incomplete request form, a complete request must be submitted within 60 days of the date of the VA notification of such incomplete request.
- **Pending location of changes: 38 CFR 3.151, 38 CFR 3.155**

## Evidentiary Record

(38 U.S.C. 5104B(d))

- Claimant may reopen the evidentiary record by submitting a supplemental claim or claim for increase on the prescribed application form.
- Evidentiary record also reopens when claim must be re-adjudicated due to identification of DTA error on higher-level review or by the Board.
- Higher-level review consists of a closed evidentiary record.
- **Pending location of changes: 38 CFR 103, 38 CFR 104(c), 38 CFR 3.151(d), 38 CFR 3.159**



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# Key Amendments to 38 CFR Part 3

## New & Relevant Standard

(38 USC 101(35), 38 USC 5103A(f))

- New evidentiary standard for supplemental claims.
- New evidence means evidence not previously submitted to agency adjudicators.
- Relevant evidence means information that tends to prove or disprove a matter at issue in a claim.
- New & relevant standard is not a higher evidentiary threshold.
- “Relevant” has no requirement to relate to an unestablished fact (just a matter of issue) and includes the raising of a new theory of entitlement.
- **Pending location of changes: 38 CFR 3.156, 38 CFR 3.2501**

## Independent Medical Opinion

(38 USC 5103A)

- VBA will obtain independent medical opinions requested in a Board remand.
- **Pending location of changes: 38 CFR 3.328**

## Nomenclature Changes

- Replaces “reopen claim” with “supplemental claim”
- Updates to references to Part 19 and 20
- Updates to cross references in impacted sections
- Rescinds 38 CFR 3.161 Expedited Claims Adjudication Initiative - Pilot Program
- **Pending location of changes: Throughout 38 CFR Part 3**



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# IT System Updates

VBA made several changes to IT systems to assist claims processors with tracking and processing AMA claims and meeting the new decision notice requirements. New functionality guidance can be found in the applicable user guides and job aids available on the Compensation Service and AMO intranet sites.

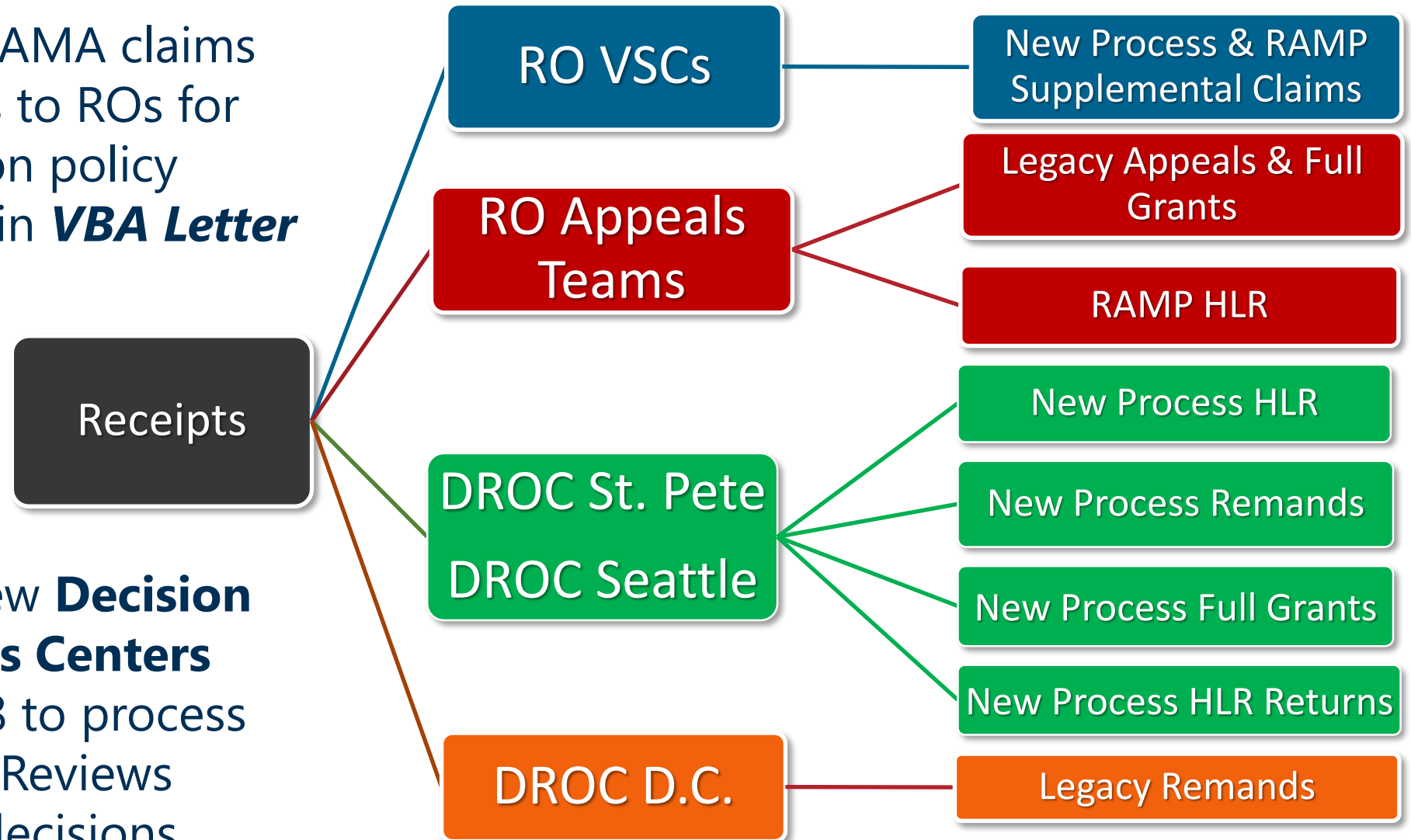
- **VBMS**
  - Tracking of multiple POAs
  - New claim labels and end products (030/040)
  - Locked contentions for AMA claims
- **VBMS-Rating**
  - Contention mapping to rated issues
  - Storing/documenting favorable findings
- **VBMS-Awards**
  - Dependency decisions with AMA notice requirements built in
  - Updated Automated Decision Letter (ADL) templates
  - New letter enclosures
- **Caseflow Intake System**
  - Replaces VACOLS for accessing AMA Board Appeal information
  - Claim establishment system for AMA decision reviews
- **Letter Creator Tool**
  - Updated letters that meet AMA requirements
- **Quality Management System (QMS)**
  - Updates to the VSR/RVSR checklists to account for changes under AMA
  - New review types and routing rules for AMA claims



# VBA Workload Distribution

VBA will distribute AMA claims and legacy appeals to ROs for processing based on policy guidance outlined in **VBA Letter 20-18-05**.

VBA established new **Decision Review Operations Centers (DROCs)** in FY2018 to process AMA Higher-Level Reviews (HLRs) and Board decisions.



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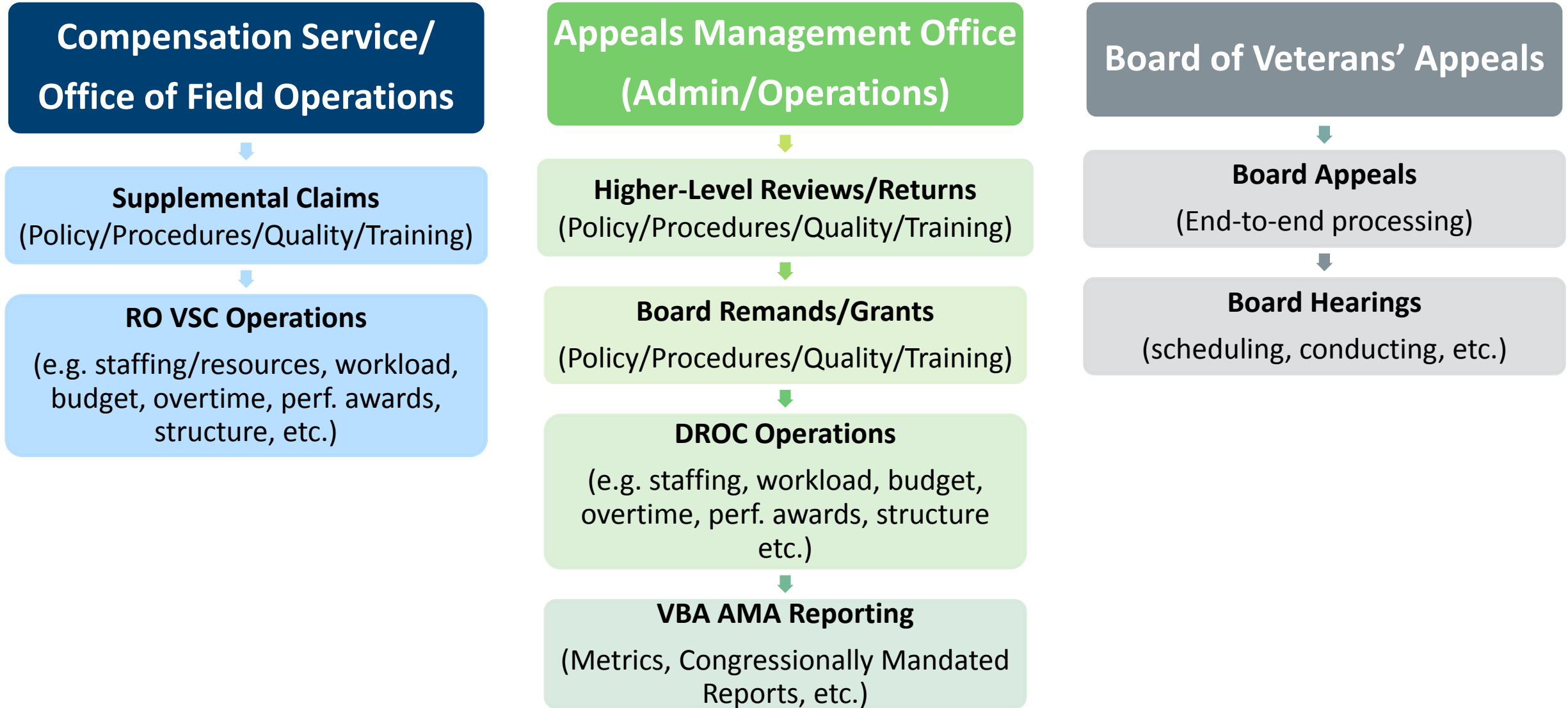
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# AMA Program Oversight



# AMA Summary

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



# TMS Credit/Next Steps

## Next Steps

- Remember to complete your survey in TMS to receive credit for completing this training.
- Review the *AMA Training Curriculum* for additional position specific trainings.



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