

# VA

# Board of Veterans' Appeals

## Tennessee VSO Annual Conference-September 2022

Presented by Veterans Law Judge (VLJ)

**Jennifer White**



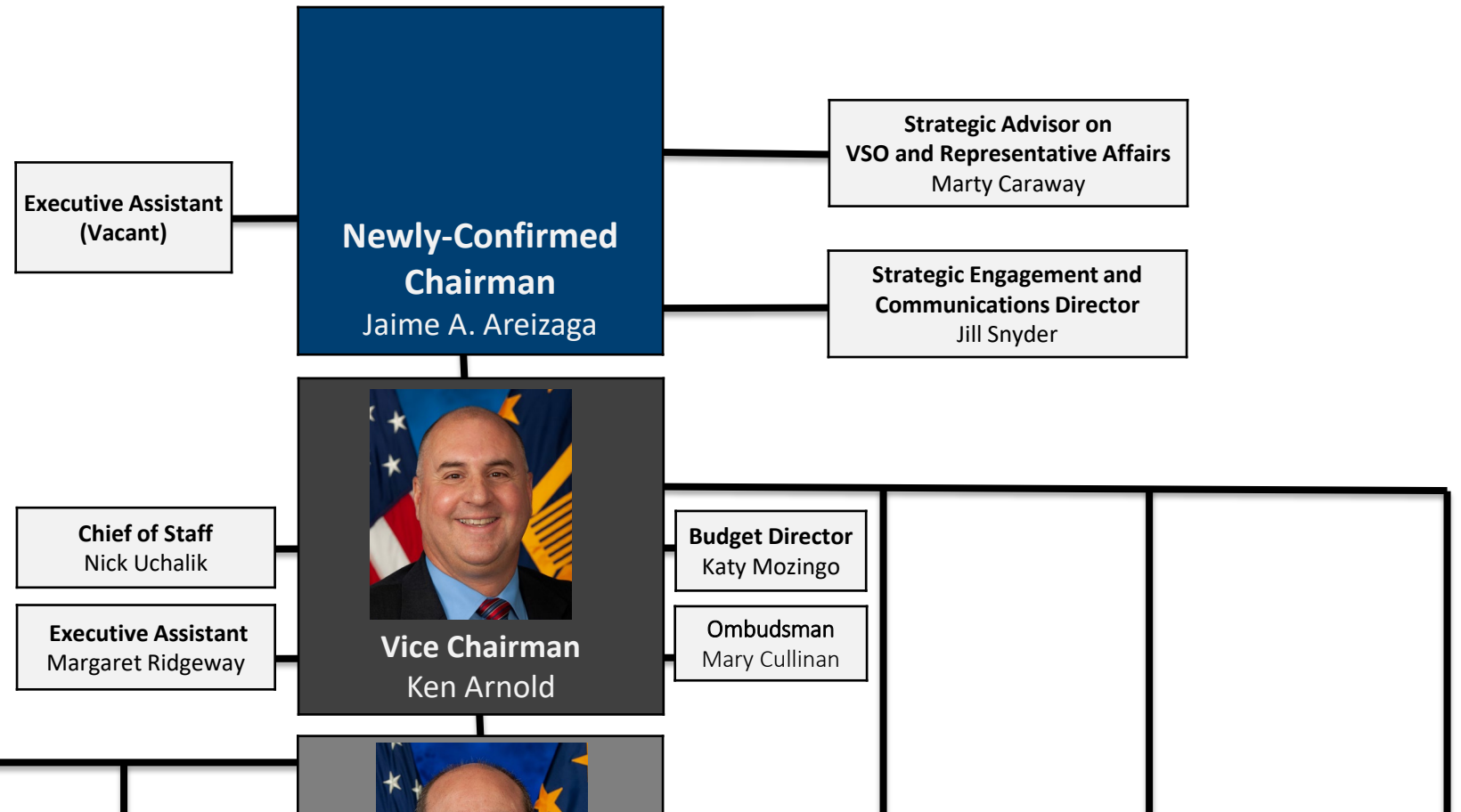
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U.S. Department  
of Veterans Affairs

# Board of Veterans' Appeals Organizational Structure



**Deputy Vice Chairman**  
Robert Scharnberger

**Deputy Vice Chairman**  
Tamia Gordon

**Deputy Vice Chairman**  
Tom Rodrigues

**Senior Deputy Vice Chairman**  
Chris Santoro

**Chief Counsel**  
Tony Sciré

**Executive Director**  
Nina Tann

**Deputy Vice Chairman**  
TBD

# Board of Veterans' Appeals



**Mission: To honor America's promise to our Veterans by swiftly resolving their appeals to the fullest extent of the law.**

**It's all about maximizing the number of Veterans and their families served through hearings and decisions.**

- Responsible for fully considering and appropriately resolving final decisions on behalf of the Secretary for the provision of Veterans' benefits and services from all three Administrations and OGC.
- Strengthening employee and Veteran experience through strong partnerships with labor relations representatives, Veterans Service Organizations, private bar, Veteran advocates and the Hill.
- Solicit and publicize Veteran experience feedback to demonstrate Board's commitment to resolving appeals in our non-adversarial and duty-to-assist system.

**FY 2022 Metrics through August 31<sup>st</sup>, 2022**

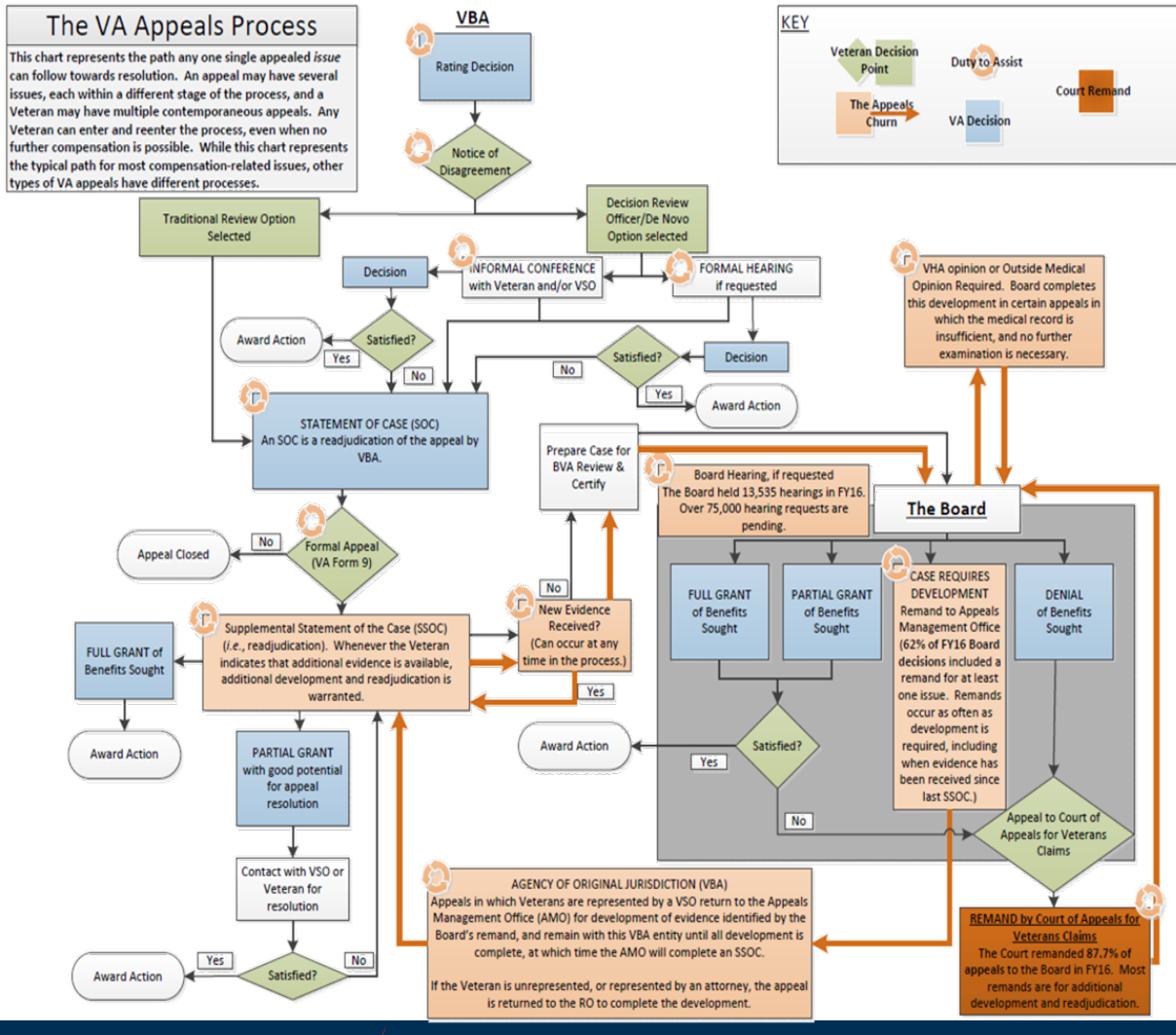
**86,808  
Decisions FYTD**

**208,006  
Appeals Pending**

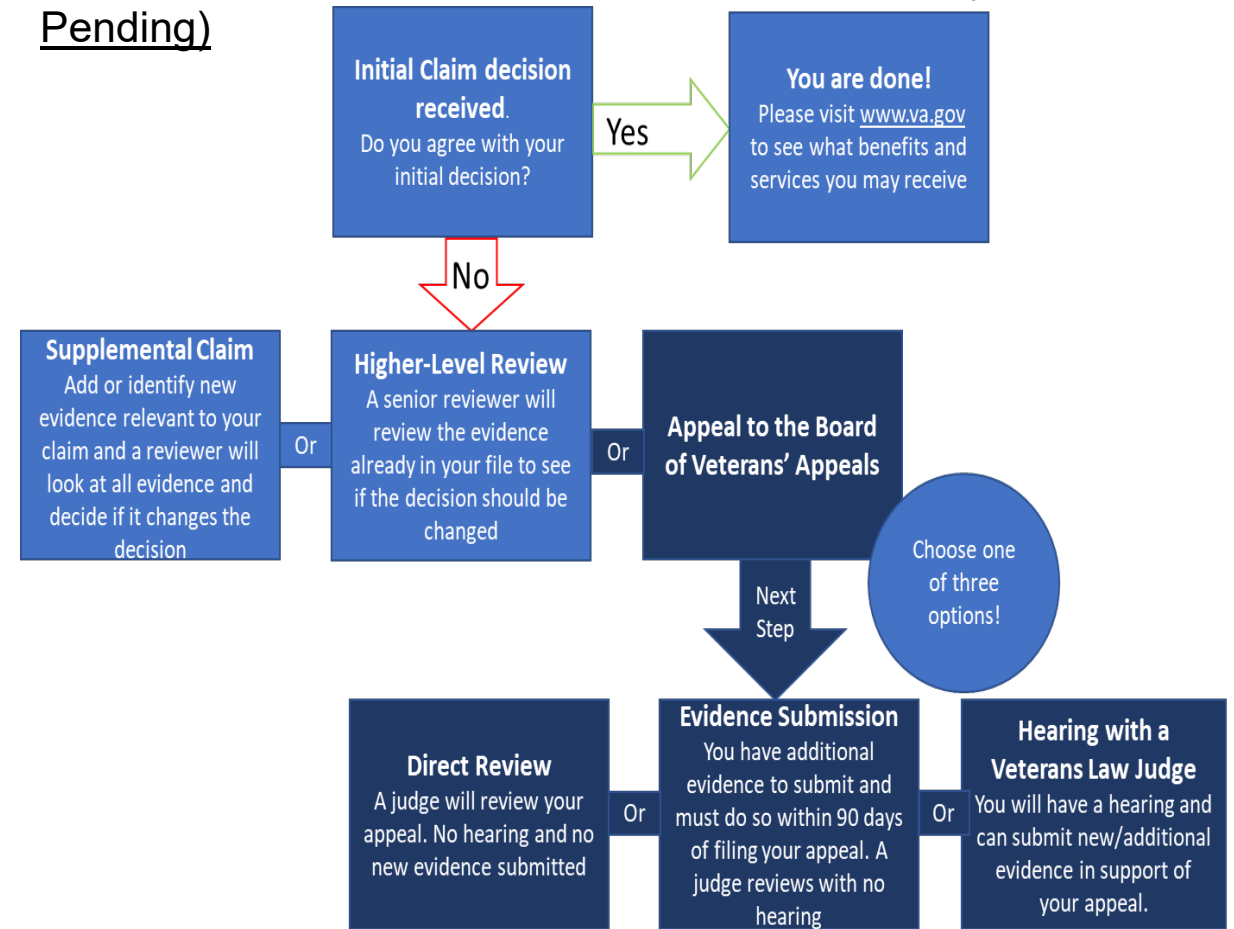
**73,997 Hearings Pending  
(7,916 Legacy)**

# Challenge: The Story of Two Appeals Processes

## VACOLS: Legacy Appeals EOFY21 (125K Appeals Pending) (92K Pending at Board)



## Caseflow: AMA Appeals at the Board EOFY 21 (105K Appeals Pending)



- The *Veterans Appeals Improvement and Modernization Act of 2017 (AMA)* became effective February 19, 2019. Gave Veterans choice, clarity & control.
- In a 2016 agreement with stakeholders during creation of AMA, VA guaranteed prioritization of Veterans' pending legacy appeals.

# APPEALS MODERNIZATION ACT (AMA)

On February 19, 2019, the Veteran Appeals Improvement and Modernization Act of 2017 (AMA) went into effect. Overarching goals of the AMA were to deliver more choice and control to Veterans and to make the review and appeal process more efficient to allow for more timely decisions.

Significant changes from the pre-modernized (or “legacy”) system:

- Multiple review options of a decision by the initial adjudicator (*e.g.*, VBA, VHA, NCA): Higher-Level Review (HLR); Supplemental Claim; and Board appeal. Under legacy, that decision could only be appealed to the Board.
- Closed record on appeal to the Board (with the exception of statutory evidentiary windows for the Evidence Submission and Hearing dockets). Under legacy, the record stayed open until the Board decision was issued.
- The duty to assist does not apply to the Board; therefore, the Board can only remand for development if there was a pre-decisional error by the initial adjudication in fulfilling its duty to assist.

# APPEALS MODERNIZATION ACT (AMA)

The AMA created **three choices** (or “lanes”) to request review of an adverse VA benefits decision:

1. Higher-Level Review (HLR): Review of the same evidence by a more experienced reviewer at the same VA entity that conducted the initial adjudication.
2. Supplemental Claim: Claimant submits/identifies new and relevant evidence not previously before VA and the claim is reviewed by the same entity *de novo* based on all evidence of record
3. Board Appeal: Review is conducted by a Veterans Law Judge (VLJ) at the Board

There are **three Board appeal review options** (or “dockets”):

1. Direct Review: Board only reviews evidence considered in the initial adjudication
2. Evidence Submission: Board considers evidence before the initial adjudicator plus evidence submitted with or within 90 days of receipt of the notice of disagreement (NOD)
3. Hearing: Board considers evidence before the initial adjudicator and evidence submitted at or within 90 days of the Board hearing



# FY 2022 - Veteran Experience & Trust

**All Veterans with Appeals are surveyed at three phases during the appeals process:**

- When appeal first is docketed
- Immediately after the hearing with a Veterans Law Judge
- After the decision on appeal is delivered to the Veteran

**About 8 questions per survey (timeliness, communication, satisfaction/trust). Examples:**

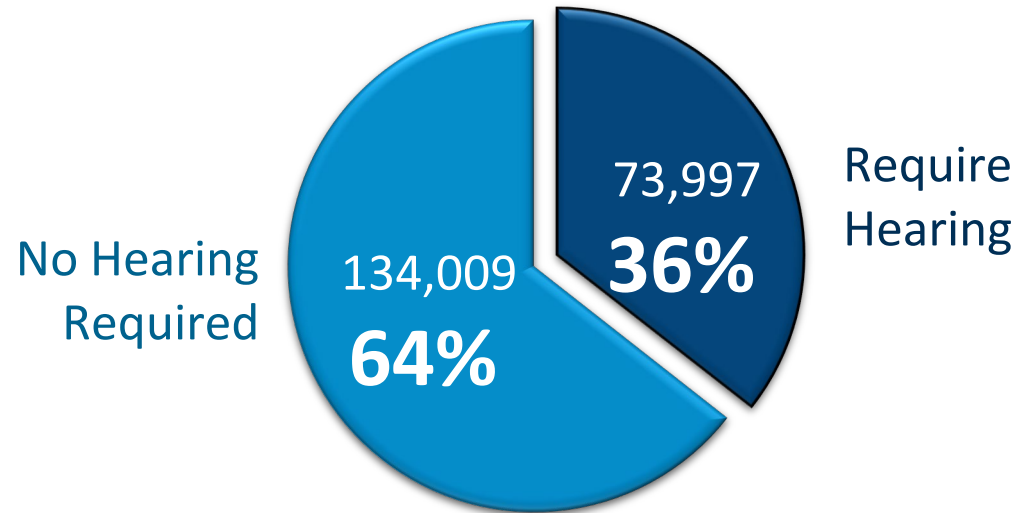
- I felt confident that I selected the best review option.
- The Veterans Law Judge (VLJ) who held the hearing listened to me.
- The Veterans Law Judge (VLJ) explained things to me in a way that was easy to understand.
- From the time I received notice that the Board received my appeal, I received my decision in a timely manner.
- I trust the Board of Veterans' Appeals to fulfill our country's commitment to Veterans and their families.

# Pending Appeals and Hearing Requests

**208,006 appeals as of August 31<sup>st</sup>**

AMA: 142,697

Legacy: 65,309



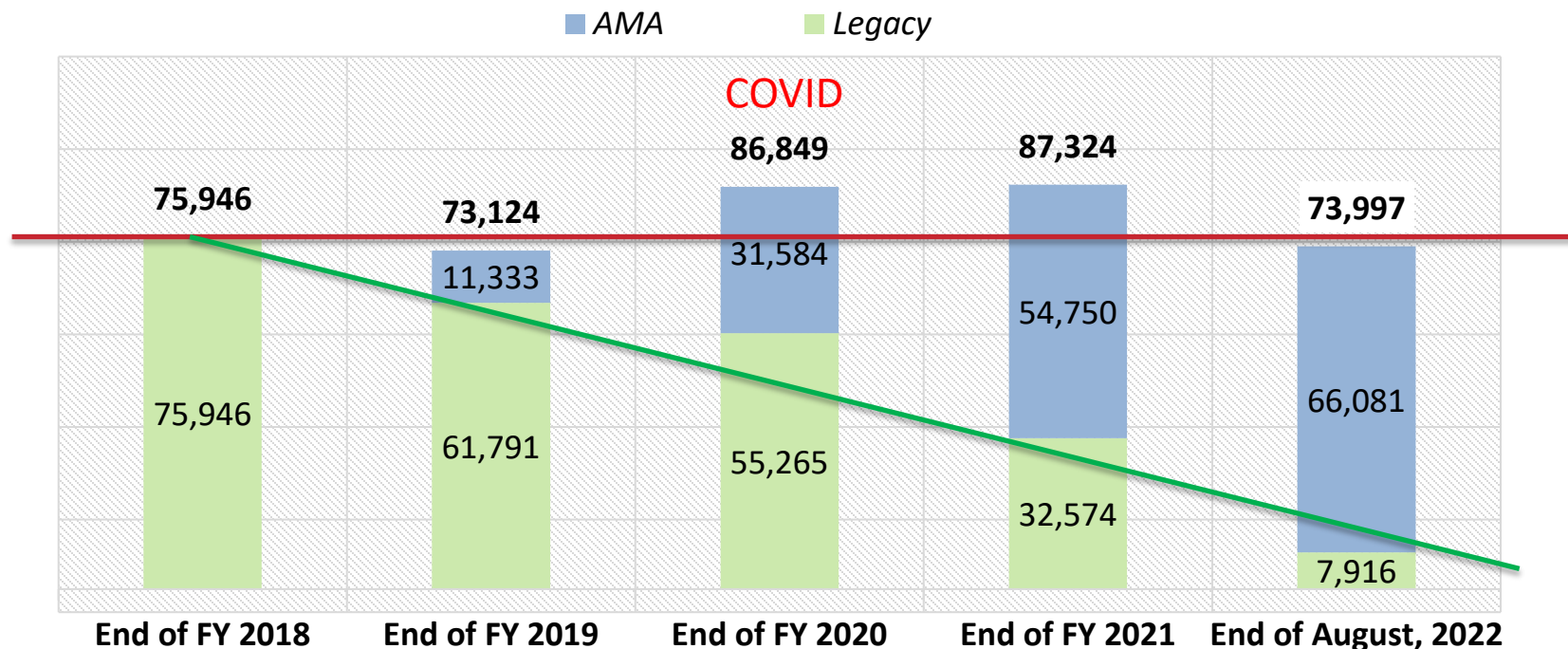
**36% of Appeals Pending Require a Veteran Requested Hearing**

Data as of: August 31, 2022

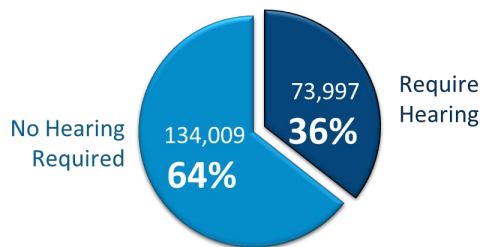
Data Source: Board's AMA Tableau and VACOLS Reports



# Hearings Pending

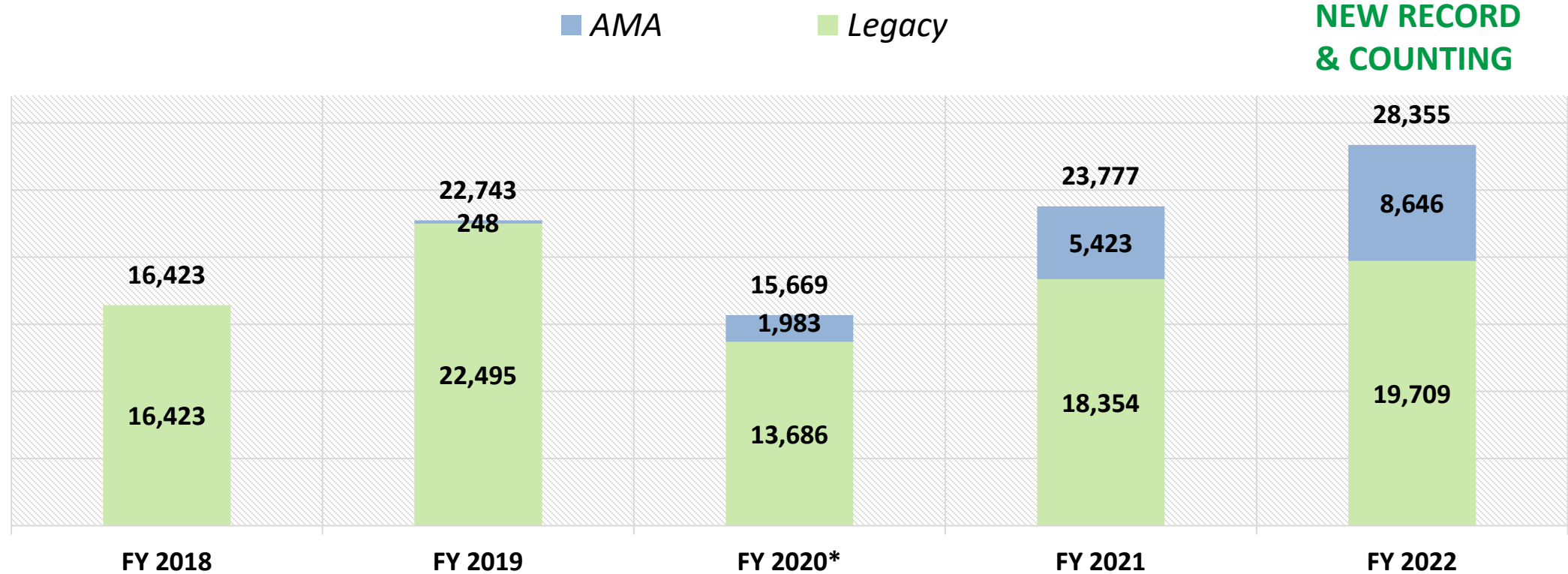


Appeals Pending: 208,006



- **Hearings Pending:** ~74.0K hearing requests pending | ↓ ~15% since Sep 2021
  - On pace to hold a record 28K+ hearings this fiscal year
- **Virtual hearing** solution has been implemented. 84% held virtually in FY 2022
  - Capacity to hold 1,000 virtual tele-hearings; at 50% capacity.
  - VLJs are ready to hold hearings.
- **FTE:** 2023 Request supports 150 total VLJs for 30K hearings held goal

# Hearings Held: 5-yr Trend



**NEW RECORD  
& COUNTING**

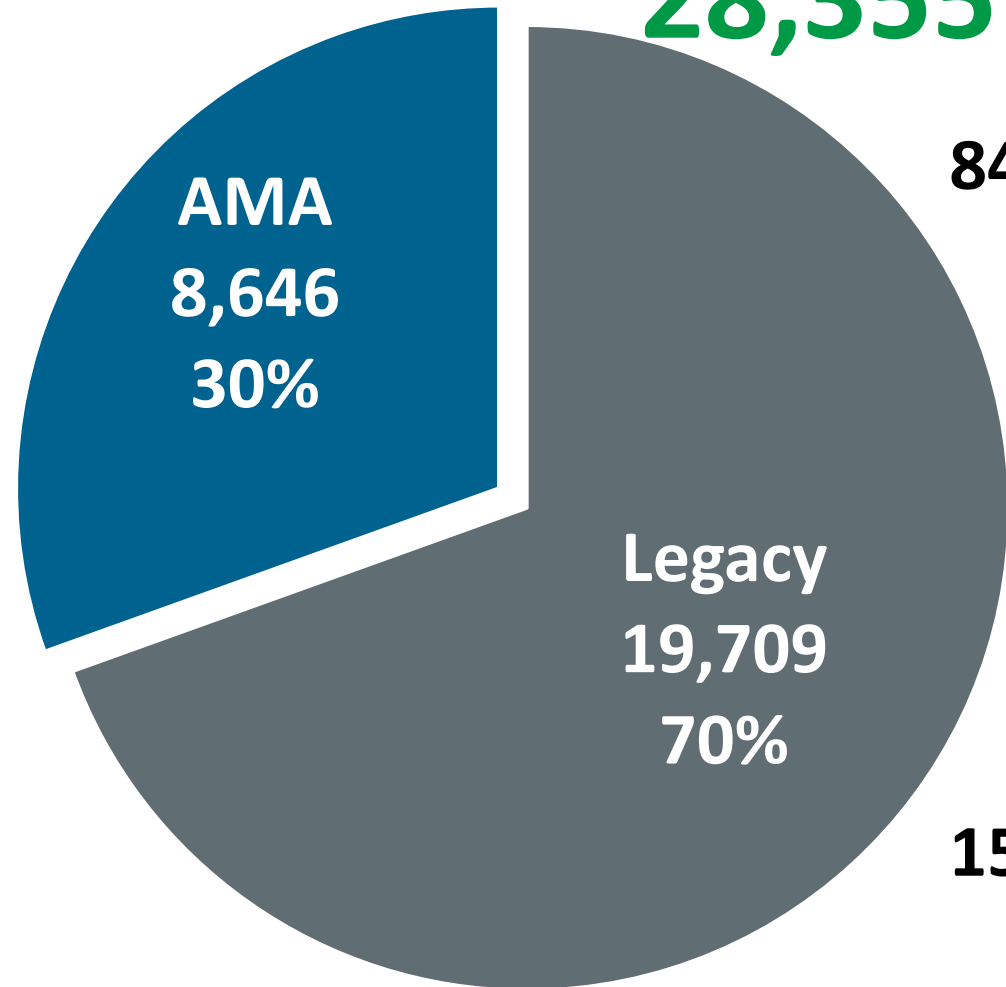
\*COVID-19 significantly impacted hearing operations in FY 2020. On pace to conduct 24K+ hearings prior to pandemic.

- Held a record 28,355 hearings through August 2022
- 2,577 hearings held per month in FY 2022
- ~44% of hearings in FY 2022 are cancelled/withdrawn, no-show, or postponed every month

Data as of: August 31, 2022

# Hearings Held - FY 2022

## 28,355 Hearings Held (new record thru Aug)



**84% Held Virtually** 23,000+ hearings held virtually

**34% Increase** In AMA and Legacy Hearings Held vs. FY 2021

**15% Decrease** In number of pending hearing requests since SOY

Data as of: August 31, 2022



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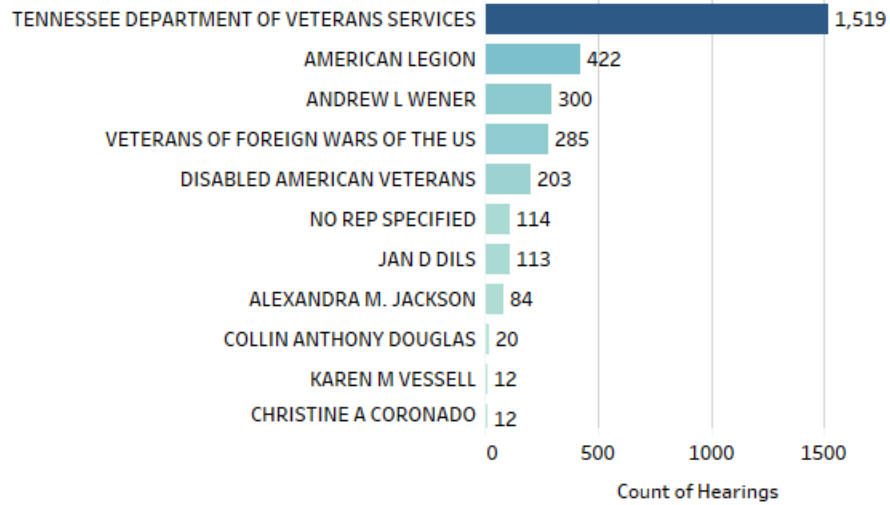


## Pending Hearings by POA

Tennessee - 3,411

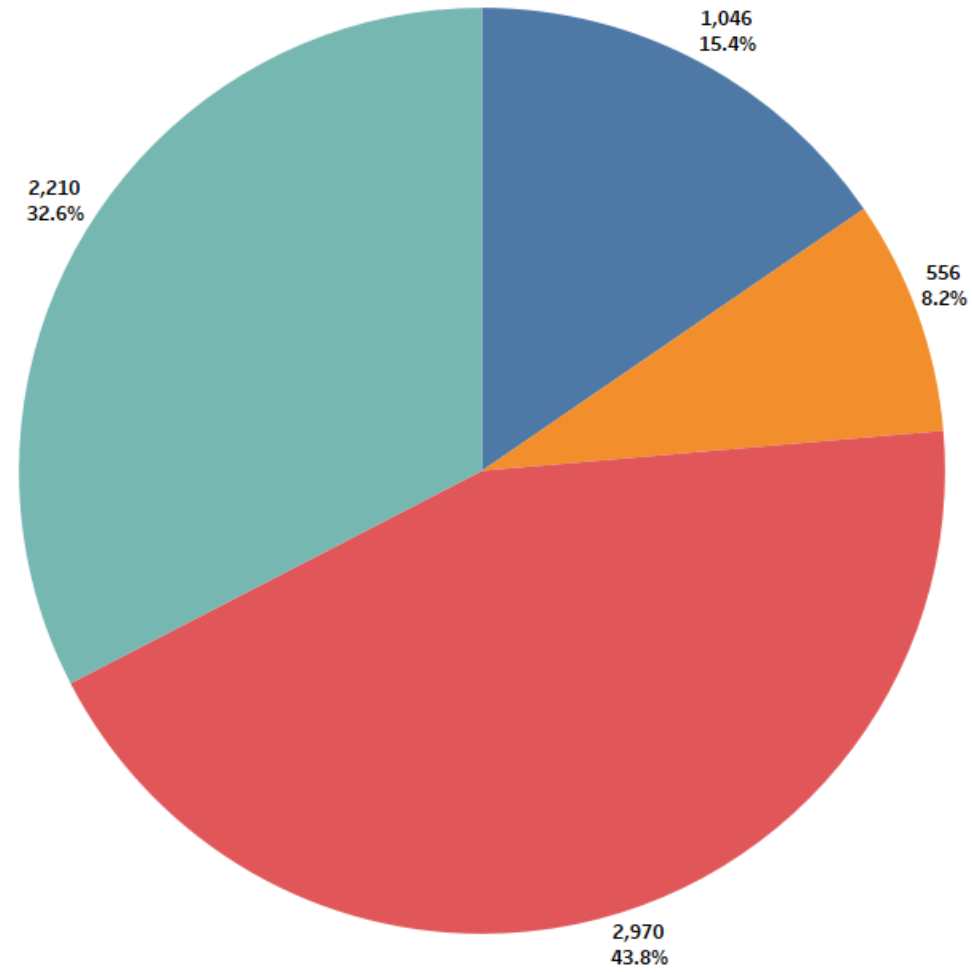
POA Hearings Count

1



## Board Appeals Inventory

Tennessee - 6,782

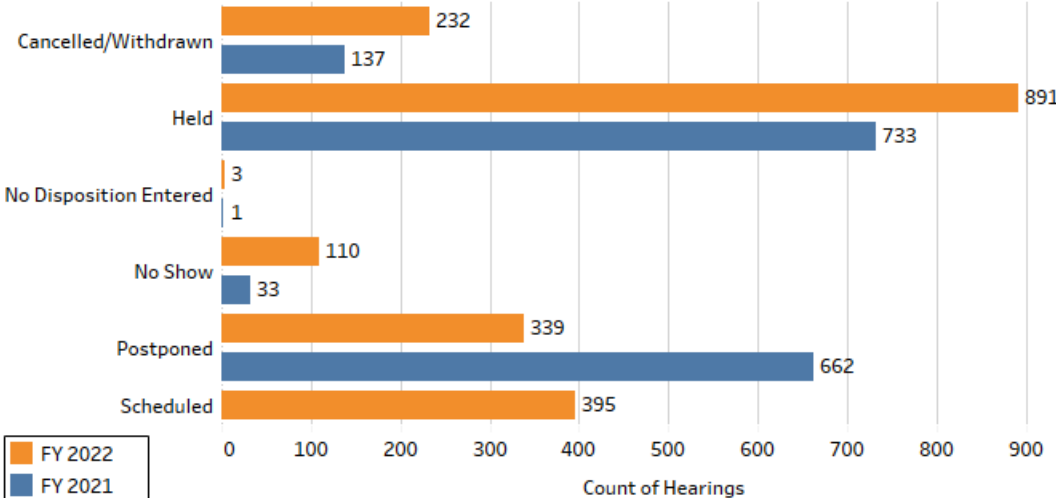


State List  
Tennessee

Representative Name  
All

## Hearing Disposition Comparison

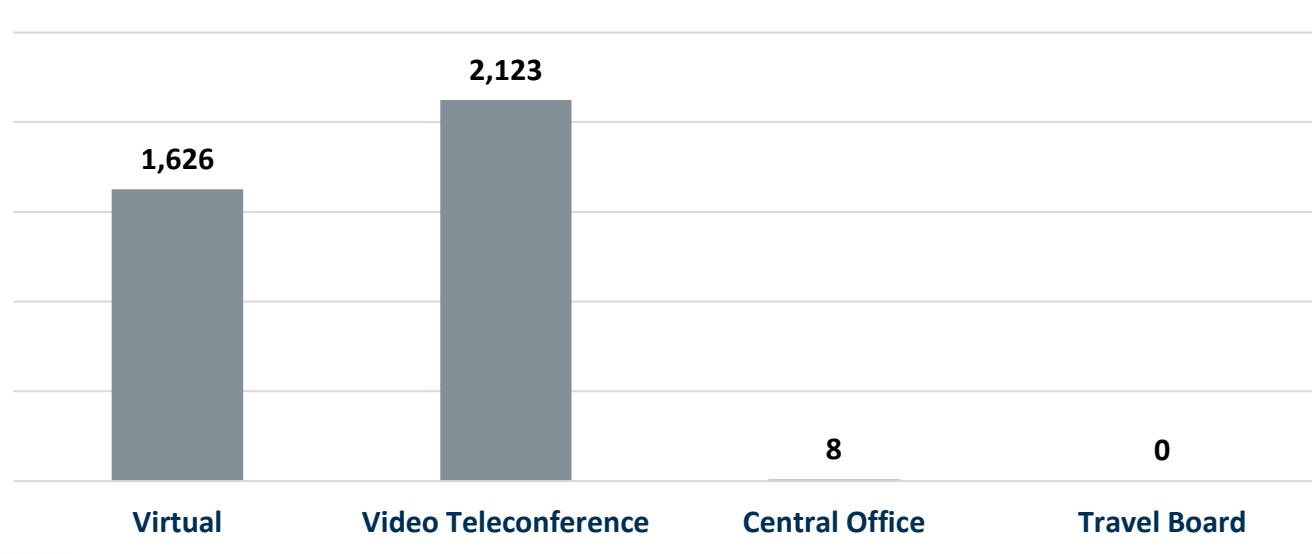
Tennessee - 3,536



FY 2022  
FY 2021

# Hearings – Opportunity to Influence Choice

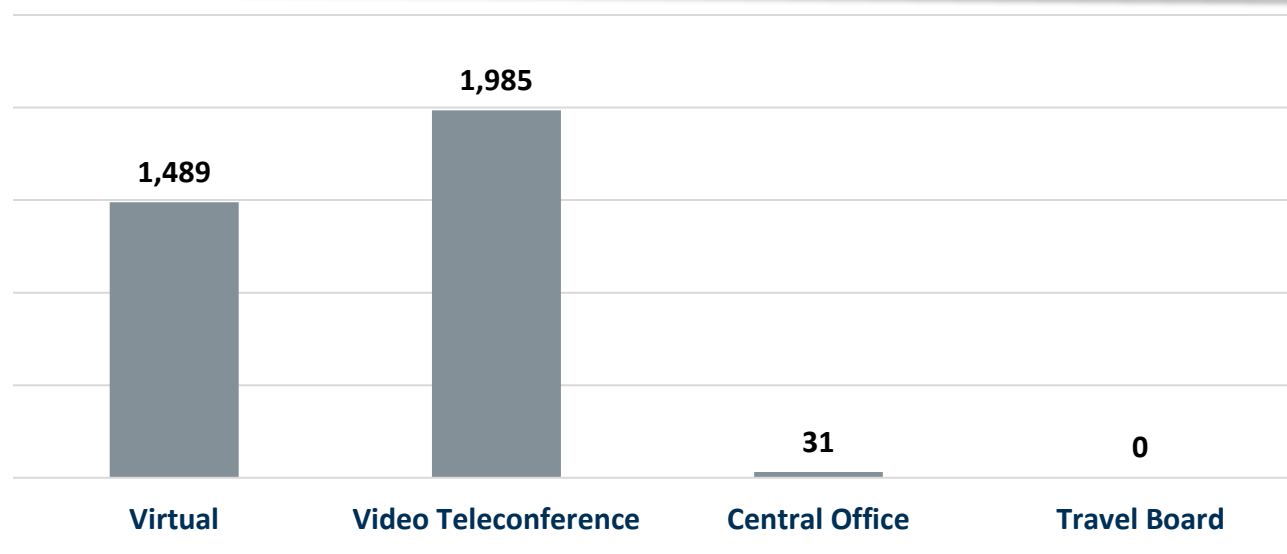
## AMA Hearing Venue – Current Pending



Hearing Venue Not Yet Selected:

62,235

## Legacy Hearing Venue - Current Pending



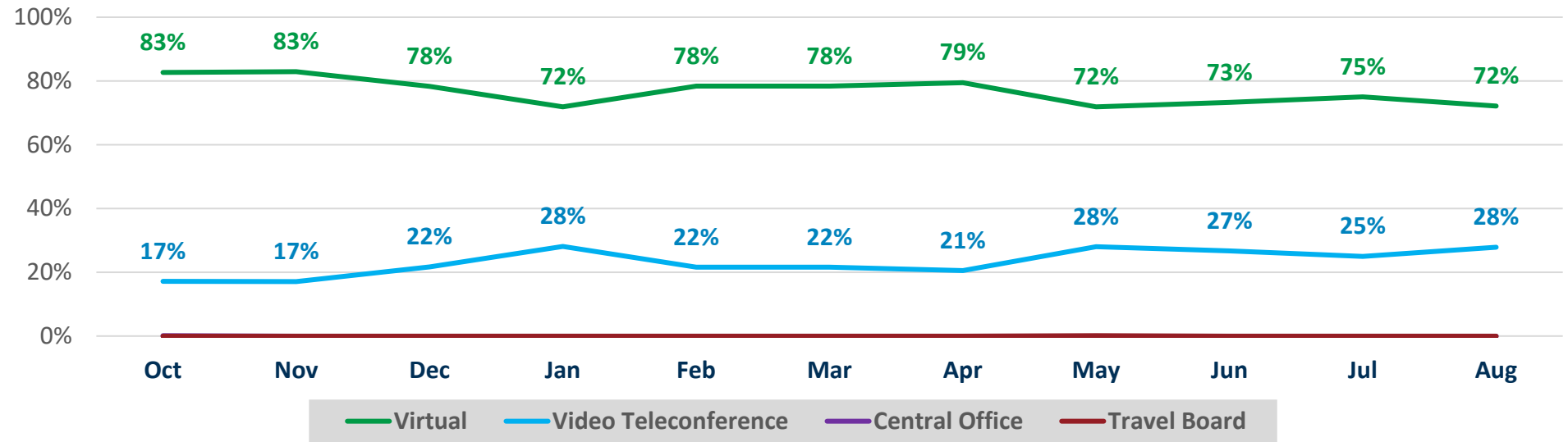
Hearing Venue Not Yet Selected:

4,229

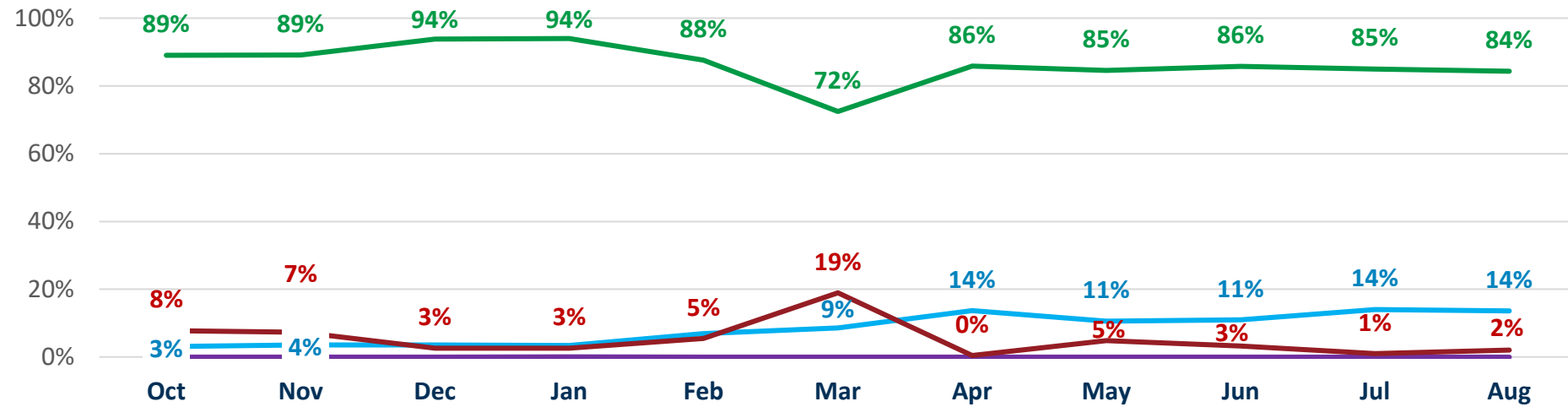
Data as of: September 7, 2022

# Hearings Held – Forum of Choice

## AMA Hearing Type

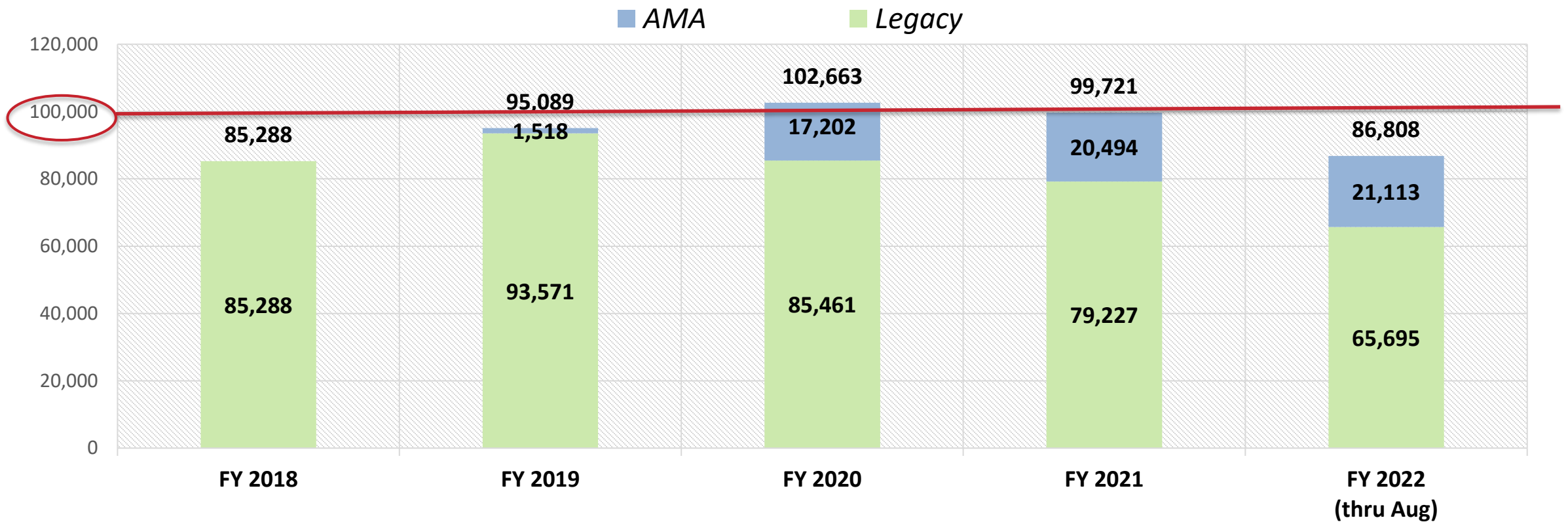


## Legacy Hearing Type



Data as of: August 31, 2022

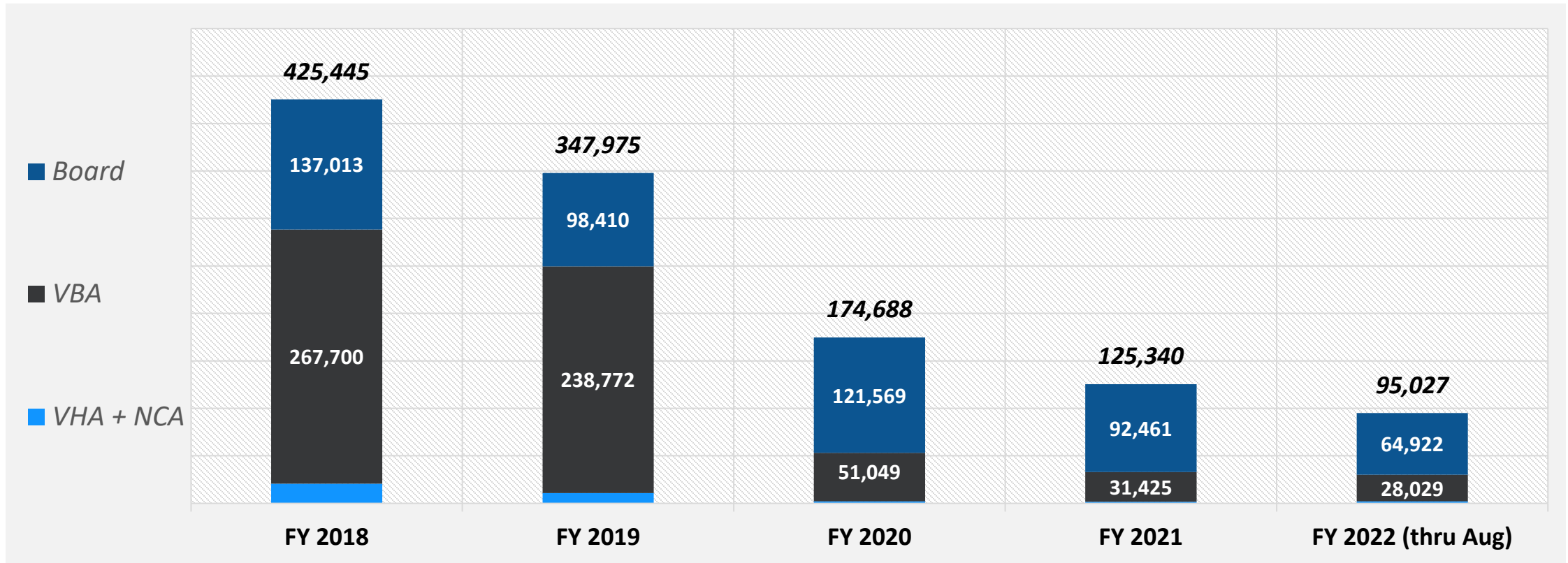
# Appeals Decided: 5-yr Trend



- ~7,892 decisions dispatched per month in FY 2022
- ~76% of decisions are Legacy appeals and 24% AMA in FY 2022



# VA Appeals – Focus on Legacy Case Drawdown



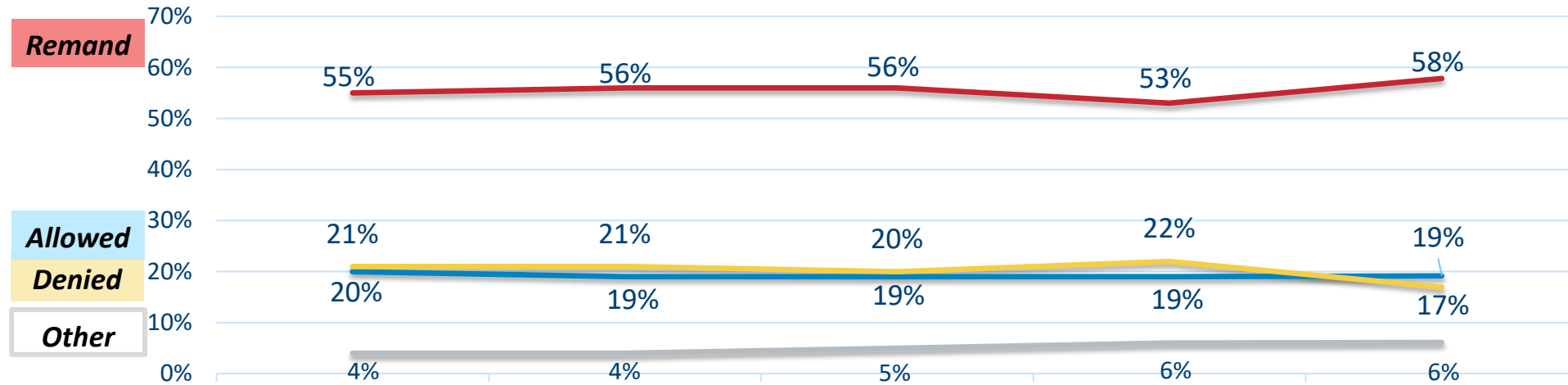
## Legacy Resolution Prioritization

- **78% reduction in appeals pending since end of FY 2018**
  - ✓ 239,000+ less VBA appeals pending
  - ✓ 72,000+ less Board appeals pending
- **95,027 remain pending; 51%+ are remanded appeals**

Data as of: August 31, 2022. Updated monthly.  
Data Source: VBA Tableau – Pending Month Summary

# Legacy Appeals – Board Resolution Rates

## Board Disposition Rates



Board Appeal Dispositions	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022 (thru Aug)
Allowed w/ no remands*	16,729	17,505	15,927	15,346	12,596
Denied w/ no remands	17,821	19,430	17,337	17,059	11,119
Remanded**	46,861	52,470	47,701	42,021	37,976
Other***	3,877	4,166	4,496	4,801	4,004
<b>Total</b>	<b>85,288</b>	<b>93,571</b>	<b>85,461</b>	<b>79,227</b>	<b>65,695</b>

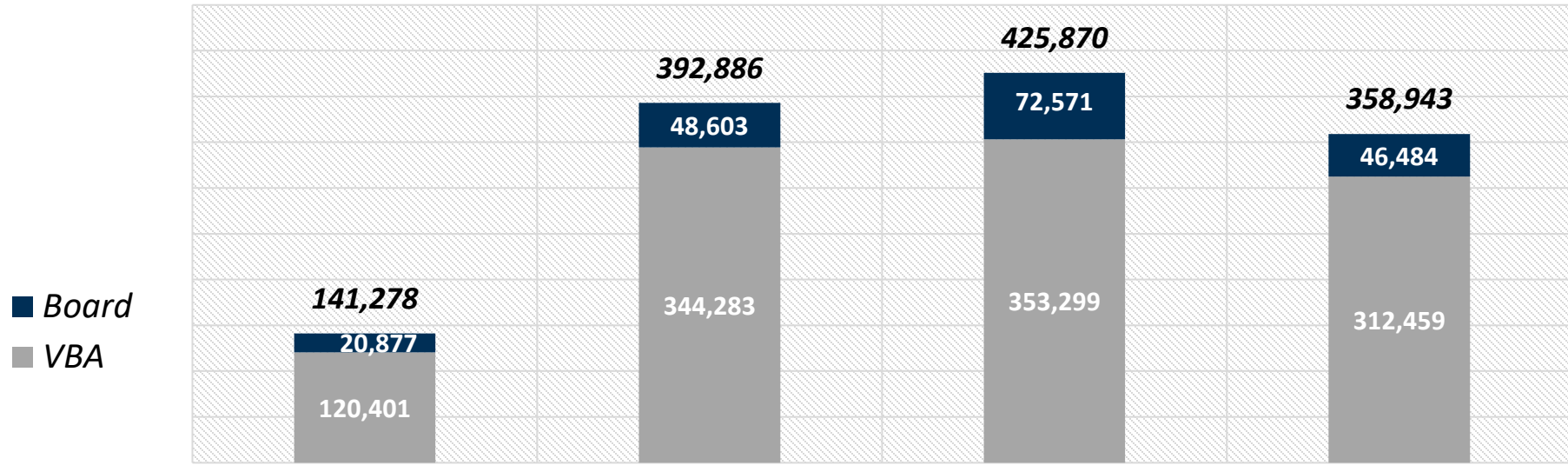
\*Allowed appeals may also contain 1 or more issues denied and do not include appeals with any remanded issues.

\*\*Remanded appeals may also contain 1 or more issues allowed or denied.

\*\*\*Dispositions other than allowed, denied, or remanded such as dismissals, motion for reconsideration, vacates.

Data as of: August 31, 2022. Updated monthly.

# AMA Receipts - Claims (VBA) & Appeals (Board)



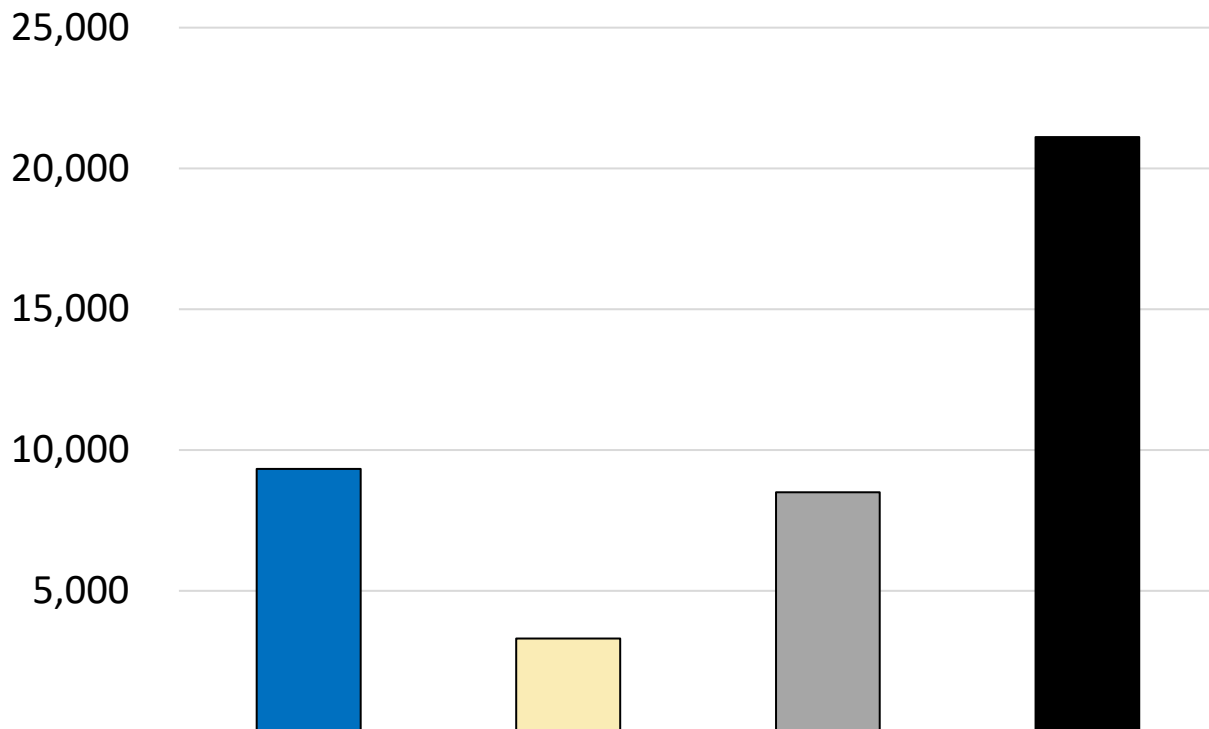
Appeal Receipts		FY 2019		FY 2020		FY 2021		FY 2022 (Q3)	
VBA	HLR	21,395	(15%)	82,599	(21%)	102,707	(24%)	88,421	(25%)
	Supplemental	99,006	(70%)	261,684	(67%)	250,592	(59%)	224,038	(62%)
Board	Direct	7,791	(6%)	17,682	(5%)	27,755	(7%)	18,960	(5%)
	Evidence	2,723	(2%)	8,546	(2%)	14,908	(4%)	9,012	(3%)
	Hearing	10,363	(7%)	22,375	(6%)	29,908	(7%)	18,512	(5%)

\*Receipts based on date docketed and excludes appeals later cancelled.

Data as of: 3<sup>rd</sup> Quarter FY 2022. Updated quarterly.

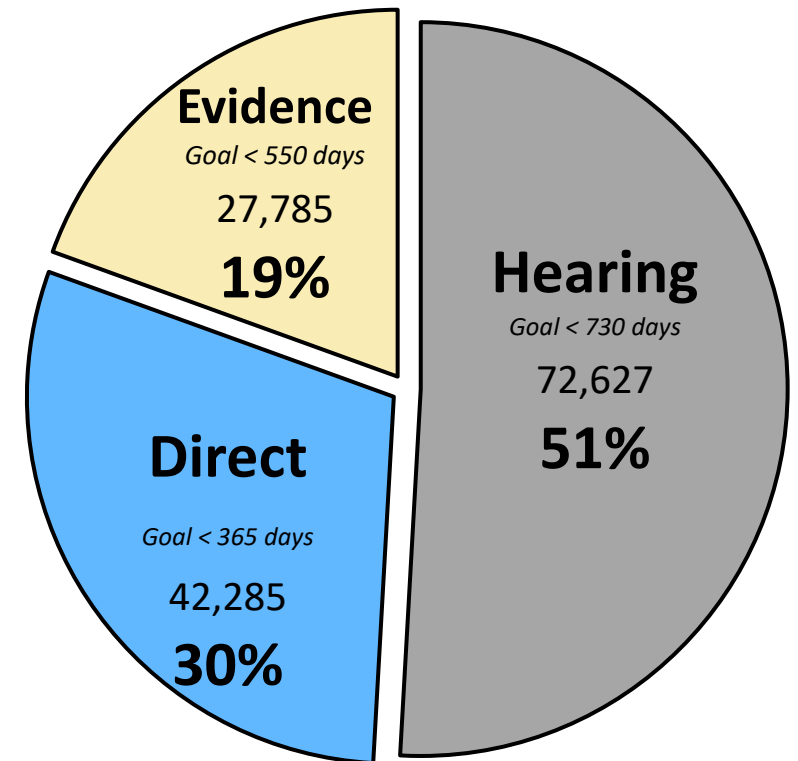
# AMA Appeals – FY 22 Decided & Pending

## AMA Decisions Dispatched FYTD



	Direct	Evidence	Hearing	Total
Decisions Dispatched	9,324	3,299	8,490	21,113

## Appeals Pending by Lane



Data as of: August 31, 2022



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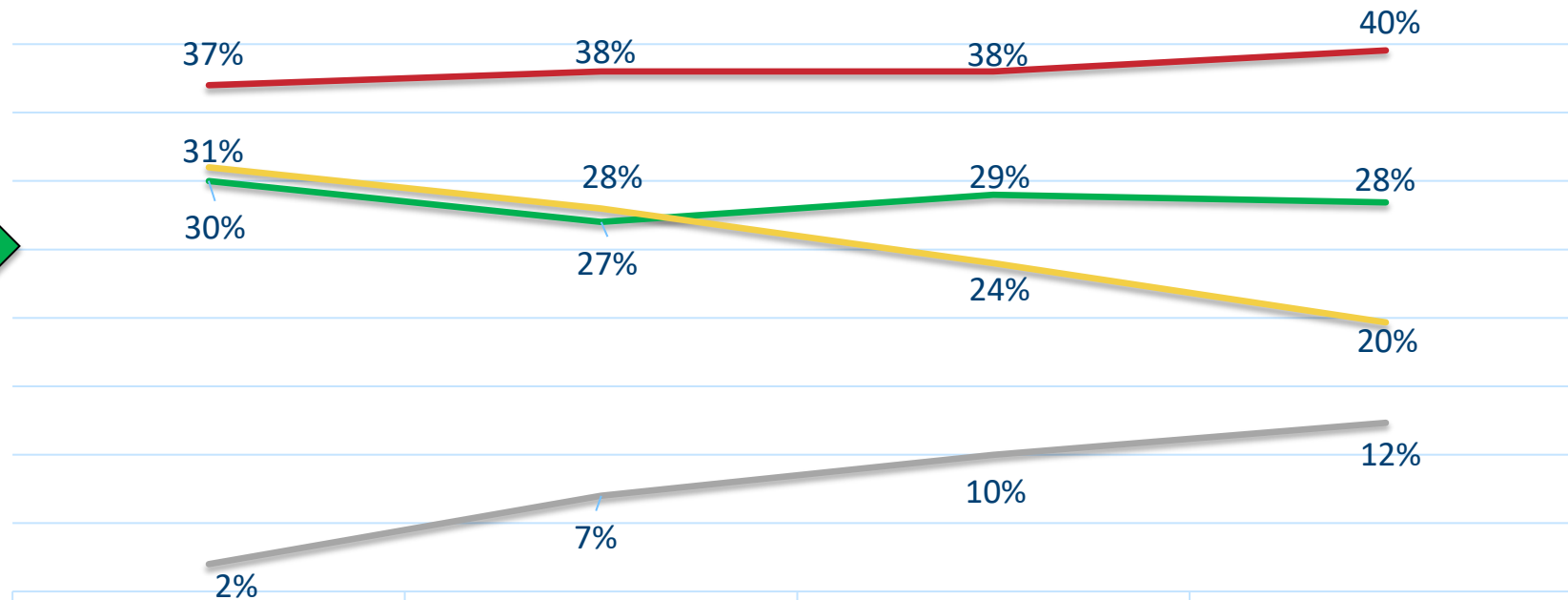
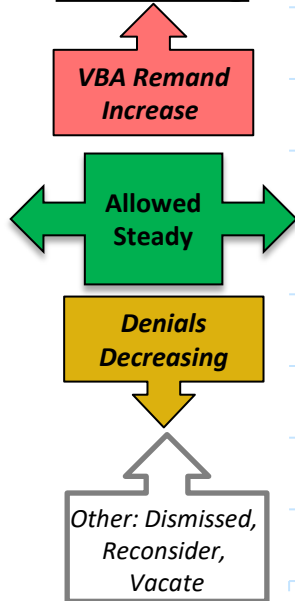
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# AMA Appeals – Resolution Rates (Board)

## Trending



Board Appeal Dispositions	FY 2019	FY 2020	FY 2021	FY 2022 (thru Aug)
Allowed w/ No Remands	505	4,723	5,842	6,006
Denied w/ No Remands	528	4,738	4,965	4,154
Remanded**	627	6,490	7,695	8,351
Other***	38	1,247	1,991	2,602
<b>Total</b>	<b>1,698</b>	<b>17,198</b>	<b>20,493</b>	<b>21,113</b>

\*Allowed appeals may also contain 1 or more issues denied and do not include appeals with any remanded issues.

\*\*Remanded appeals may also contain 1 or more issues allowed or denied.

\*\*\*Dispositions other than allowed, denied, or remanded such as dismissals, motion for reconsideration, vacates.

Data as of: August 2022. Updated monthly.



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# CAREGIVERS – *BEAUDETTE* DECISION

Historically, Veterans Health Administration (VHA) Program of Comprehensive Assistance for Family Caregivers (PCAFC) decisions were considered not subject to Board review (review was limited to the VHA Clinical Appeals Process).

*Beaudette v. McDonough*, 34 Vet. App. 95 (2021), held that PCAFC decisions are appealable to the Board.

The PCAFC (set forth in 38 U.S.C. § 1720G(a) and 38 C.F.R. pt. 71) provides benefits to family caregivers of Veterans, including instruction, preparation and training; counseling and mental health services; medical care; financial planning; legal services; and a monthly stipend.

Initially the PCAFC was only open to Veterans whose serious injury was incurred or aggravated in the line of duty in active service on or after September 11, 2001. Effective October 1, 2020, the MISSION Act of 2018 expanded program eligibility and modified certain eligibility factors.

- Expanded to active service on or before May 7, 1975 (effective October 1, 2020) and all periods of service (effective October 1, 2022)

# CAREGIVER APPEALS

The Board created a pre-docket queue in Caseflow, so that when an AMA PCAFC appeal is received by the Board, the Board can request and receive the evidentiary file from VHA's Caregiver Support Program (CSP) in order to facilitate adjudication of PCAFC appeals.

When the Board receives the evidence files from CSP, the Board will formally docket the appeal, which will be distributed to a VLJ for adjudication based on docket order (*i.e.*, the date the appeal was received by the Board).

As of Sep 4, 2022:

- 3,238 AMA PCAFC appeals pending at the Board
  - Most of these appeals are currently awaiting evidence files and have yet to be docketed.



# PRESUMPTIVE CONDITIONS

On August 10, 2022 President Biden signed the Sergeant First Class (SFC) Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, establishing presumptive service connection for certain conditions due to environmental exposures based on certain geographical locations.

The expansion of presumptive in-service exposures and the addition of new presumptive conditions will result in more grants of service connection, including claims that were previously denied.

The Board can expect a corresponding increase in appeals of downstream issues such as the assigned disability rating and effective date of the grant of service connection.

# FY 2022 Goals and Objectives

- Increased Board's Hearings capacity to 50,000/year
  - FY22 ~28,000 held
- 95,373 Decisions for Veterans and families
- Improved Access/Filing - 10182 Electronic Filing on VA.gov
- Increase stakeholder interface with Caseflow
  - Virtual tele-hearing opt ins
  - VSO Supervisor Tableau reporting

# Where are we today



- **Cabinet Report to White House**

- Thru EOM July, the Board has adjudicated 78,231 appellate decisions with 77,797 dispatched.
- Thru EOM July, the Board held 26,239 hearings, every day we set a new record!
- The number of legacy appeals pending in the Department is now **less than 96,000** compared to **472,000 in November 2017**.
- The Board has approximately 65,000 legacy appeals remaining.

- **Wrapping up FY22**

- Hearings and Decisions



- **CONTACTS -**

- **General Case Status Inquiries:**

- [www.va.gov/claim-or-appeal-status](http://www.va.gov/claim-or-appeal-status)
- **VA benefits hotline: 800-827-1000**

- **\*\*Hours: Monday through Friday, 8:00 a.m. to 9:00 p.m. EST**

- **Inquiries pertaining to purely procedural questions, email [BVALitSupport@mail.va.gov](mailto:BVALitSupport@mail.va.gov)**

- **Emergent issues or concerns email [Martin.Caraway@va.gov](mailto:Martin.Caraway@va.gov)**

