### Section B. Handling Claims Under 38 U.S.C. 5103

#### Overview

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| In this Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 (old 3) | Handling Claims Not Previously Denied |
| 2 (old 4) | Handling Claims to Reopen a Previously Denied Claim |

#### 1. Handling Claims Not Previously Denied

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| Introduction | This topic contains information on handling original and new claims and claims for increased evaluation, including   * criteria for substantially complete applications * notification requirements for complete and incomplete applications * claims for specific evaluations or effective dates * considering freestanding claims for an earlier effective date * responding to freestanding claims for an earlier effective date * developing substantially complete applications * claimant’s duty to identify and locate records * definition of “relevant records” * handling *VA Form 21-4142, Authorization for Release of Information,* or equivalent form * claimant’s duty to authorize the release of existing records, and * exception to the notification requirement. |

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| Change Date | March 24, 2015 |

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| a. Criteria for Substantially Complete Applications | Upon receipt of an application for benefits, determine if it is substantially complete. A substantially complete application must include the following:   * claimant’s name and relationship to the Veteran, if applicable * sufficient service information for the Department of Veterans Affairs (VA) to verify the Veteran’s service, if applicable * benefit claimed * disability(ies) on which the claim for benefits is based (*Exposure* to certain agents such as Agent Orange or anthrax, with no corresponding disability or symptomatology, is not a disability for VA purposes.) * signature of the claimant or another legally authorized individual, and * statement of income for nonservice-connected (NSC) disability pension, death pension or Parents' Dependency and Indemnity Compensation (DIC), if claimed.   ***Notes***:   * A faxed or photocopied signature is acceptable for VA claims purposes. * The successful submission of an electronic application satisfies the signature requirement.   ***Reference***: For more information on other individuals authorized to sign claims for incompetent, underage or physically incapacitated claimants see [M21-1 Part III, Subpart ii, 1.A.3.b.](imi-internal:M21-1MRIII.ii.1.A.3.b) |

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| b. Notification Requirements for Complete and Incomplete Applications | Use the table below to determine the notification requirements for complete and incomplete applications.  ***Note***: The “Section 5103 notice” referred to in this block and throughout M21-1MR refers to that section of Title 38 of the United States Code that directs VA to notify claimants of the information or evidence required to substantiate their individual claims.  ***References***: For more information about VA’s notification requirements, see   * [38 U.S.C. 5103](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00005103----000-.html), and * [38 CFR 3.159(b)(1)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_159.DOC). |

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| If the application is … | Then … |
| substantially complete | send Section 5103 notice to the claimant (and the claimant’s representative, if any).  This notice must   * inform the claimant of the information or medical or lay evidence * the claimant is responsible for submitting to VA, and * VA will attempt to obtain on the claimant’s behalf, and * include a *VCAA Notice Response* form, which the claimant may use to * notify VA that he/she has no further information or evidence to submit, and * request a decision on his/her claim without further delay.   ***Note***: These requirements apply to all substantially complete applications, including those received prior to a service member’s discharge from active duty. |
| *not* substantially complete  ***Notes***:   * Do not * establish end product (EP) control, or * undertake development. * Cancel any erroneously established EP after notifying the claimant about the incomplete application. * Establish EP control only when a substantially complete application is received, using the date of receipt of the *complete* application as the date of claim. | notify the claimant (and the claimant’s representative, if any)   * of the information VA needs to consider the application complete, and * that failure to submit a substantially complete application within one year will result in no benefit being paid or furnished by reason of that application.   ***Note***: Contact the claimant by telephone whenever possible to obtain the information needed to complete the application. Otherwise,   * mark the blocks on the application in red that require the claimant’s attention * make a copy of the application * enclose the original application with a letter containing the notice described at the top of this cell, and * file a copy of the application and the notification letter in the claims folder.   ***Reference***: For more information about incomplete applications, see [38 U.S.C. 5102(b) and (c)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00005102----000-.html). |

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| ***Note***: A claim for an increased evaluation of a service-connected disability based on a statement from the claimant that the disability has worsened constitutes a substantially complete application if received prior to March 24, 2015. Statements received without a prescribed form will be considered a request for application, if received on or after March 24, 2015. If the claimant does not identify or submit medical evidence in support of his/her claim   * schedule an examination immediately, provided there are no new or reopened issues that will require development before an examination may be scheduled, *and* * notify the claimant in the Section 5103 notice that * evidence collected in connection with the claim must show worsening of the disability, and * VA will request an examination to determine the current level of disability.   ***Reference***: For more information about a request for application, see [M21-1 III.ii.2.D](http://www.benefits.va.gov/WARMS/docs/admin21/m21_1/mr/part3/subptii/ch02/M21-1MRIII_ii_2_SecD.doc). |

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| c. Claims for Specific Evaluations or Effective Dates | In [*Dingess/Hartman v. Nicholson (2006)*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmd)*,* the U.S. Court of Appeals for Veterans Claims (CAVC) established notification requirements with regard to compensation claims for specific evaluations or effective dates.  Whenever a Veteran requests or asserts entitlement to a specific evaluation, including a total evaluation based on individual unemployability (IU), or a specific effective date, the Section 5103 notice must provide the criteria that must be met to substantiate that claim.  ***Example***: The following statements constitute claims for a specific evaluation:   * “I believe my knee should be rated 40 percent,” and * “My PTSD makes me totally disabled.”   If a Veteran requests a specific evaluation for a specific disability,   * copy the criteria for assigning that evaluation from the [*Schedule for Rating Disabilities*](http://www.benefits.va.gov/warms/bookc.asp), and * paste it at the end of that portion of the Section 5103 notice that discusses what the evidence must show.   For other types of specific claims, such as a claim for a total evaluation based on IU, use the appropriate letters and attachments that are specific to the claim. |

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| d. Considering Freestanding Requests for an Earlier Effective Date | Per [*Rudd v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmr)*,* 20 Vet.App. 296 (2006), VA has no authority to adjudicate a freestanding request for an earlier effective date in an attempt to overcome the finality of an unappealed regional office (RO) decision. However, the claimant may request revision based on clear and unmistakable error (CUE) with respect to the assignment of the effective date in that prior final RO decision.  ***Example***: A decision to grant service connection for an inguinal hernia became final on August 18, 2009. On September 25, 2010, VA receives a claim for an earlier effective date for service connection of the hernia.  ***Analysis***: Because the request relates to the effective date in a decision that is now final, it is considered freestanding and, as such, cannot be adjudicated, except as a request to revise based on CUE.  ***Note***: A request to revise an effective date based on CUE is valid only if the claimant specifies the factual or legal errors at issue.  ***Example***: A claimant’s statement that “my effective date is wrong” or “I want an earlier effective date” does not sufficiently specify the factual or legal error at issue.  ***Reference***: For information on responding to freestanding requests for an earlier effective date, see [M21-1, Part I, 1.B.3.e](imi-internal:M21-1MRI.1.B.3.e). |

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| e. Responding to Freestanding Requests for an Earlier Effective Date | Upon receipt of a freestanding request for an earlier effective date, send the claimant a letter including the following language:  *We received your request for an earlier effective date. We notified you of our prior decision for* **[insert contention]** *on* **[insert date]***. Since you did not appeal, the decision is now final. VA cannot accept a request for an earlier effective date on a final regional office decision. However, you may request revision based on clear and unmistakable error (CUE) with respect to the assignment of the effective date in the unappealed decision.*  *A CUE is an error that is undebatable in that a reasonable mind can only conclude that the original decision was fatally flawed at the time it was made. For VA to consider your request for revision based on CUE, you must specify the factual or legal error you believe VA made with regard to assigning the effective date in our prior decision. We will take no further action on your request until we receive this information.*  ***Note***: If the only issue on the claim is the request for an earlier effective date, change the EP to a 400 and do not control for receipt of a response.  ***Reference***: For more information on revising decisions based on CUE, see   * [38 CFR 3.105(a)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_105.DOC), and * [M21-1, Part III, Subpart iv, 2.B.7](imi-internal:M21-1MRIII.iv.2.B.7). |

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| f. Developing Substantially Complete Applications | In addition to the notification requirements outlined in [M21-1, Part I, 1.B.3.b](imi-internal:M21-1MRI.1.B.3.b) and [M21-1, Part I, 1.B.3.c](imi-internal:M21-1MRI.1.B.3.c), VA must also, in writing,   * ask the claimant to * identify any records he/she believes are relevant to the claim, and * complete *VA Form 21-4142, Authorization for Release of Information,* where appropriate, which will enable VA to request private medical records on the claimant’s behalf, and * inform the claimant * if he/she does not respond to the request for information within 30 days of the date of the request, VA may decide the claim based on all the information and evidence of record, and * he/she has one year from the date of the request to submit any evidence or information to substantiate the claim.   ***Notes***:   * Adequate identification of records by the claimant would normally include the * address of the custodian of the records * medical condition to which the records relate, and * approximate time frame covered by these records. * If the claimant identifies record sources at the same time he/she files the claim but furnishes no *VA Forms 21-4142* or equivalent form identifying those sources (or submits incomplete *VA Forms 21-4142*), notify the claimant * of the information and/or forms VA needs to request the records, and * that VA cannot assist the claimant in obtaining the records until it receives the missing information and/or forms. * The Section 5103 notice with all its enclosures (which are also called attachments and templates) must be of record in the claims folder to document VA’s compliance with its statutory [38 U.S.C. 5103(a)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00005103----000-.html) notice responsibility. * ROs are not required to include in the claims folder copies of any blank VA forms (such as, *VA Form 21-4138, Statement in Support of Claim,* or *VA Form 21-4142*) issued with the notification letter.   ***References***: For more information on   * VA’s duty to notify claimants of necessary evidence, see [38 CFR 3.159(b)(1)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_159.DOC), and * handling *VA Form 21-4142* or equivalent form, see [M21-1, Part I, 1.B.3.i](imi-internal:M21-1MRI.1.B.3.i). |

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| g. Claimant’s Duty to Identify and Locate Records | The claimant must cooperate fully with VA’s reasonable efforts to obtain relevant records by providing   * enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records * the approximate time frame covered by the records, and * the condition(s) for which treatment was provided, in the case of medical treatment records.   ***Note***: Full cooperation includes completing and returning the appropriate authorization form, such as a *VA Form 21-4142*.  ***Reference***: For more information on handling *VA Form 21-4142* or equivalent form, see [M21-1, Part I, 1.B.3.i](imi-internal:M21-1MRI.1.B.3.i). |

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| h. Definition: Relevant Records | “Relevant records,” for the purpose of VA’s statutory duty to assist, are those records that   * relate to the disability or injury for which the claimant is seeking benefits, and * have a reasonable possibility of helping to substantiate the claim.   ***Note***: Not all medical records have a reasonable possibility of helping to substantiate a disability claim.  ***Example***:  ***Situation***: A Veteran files a claim for an increased evaluation for residuals of a service-connected left ankle fracture. On the *VA Form 21-4142* he submits with his claim, he indicates he was treated for headaches.  ***Analysis***: Records referring to treatment for headaches are not relevant. It is unnecessary to obtain them unless there is an indication they also   * contain information about the left ankle, and * present a reasonable possibility of helping to substantiate the Veteran’s claim.   ***Reference***:For more information on relevant records, see   * *Black’s Law Dictionary,* 1316 (8th Ed. 2004), and * [*Golz v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmg)*,* 590 F.3d 1317 (Fed. Cir. 2010). |

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| i. Handling VA Form 21-4142 or Equivalent Form | The table below contains instructions for handling *VA Form 21-4142* or equivalent form under a variety of different circumstances: |

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| If … | Then … |
| the *VA Form 21-4142* or equivalent form   * identifies a disability that is not * service connected, or * the subject of a pending claim, and * there is no * indication the claimant intends to seek benefits based on that disability, or * reasonable possibility the records identified on the form could help substantiate the pending claim | do ***not***   * consider the *VA Form 21-4142* or equivalent form a claim for benefits, or * request the records identified on the form.   ***Example***: The Veteran claims service connection for hypertension, but the records she identifies on *VA Form 21-4142* refer to treatment for NSC ankle pain.  ***Notes***:   * Per [*Criswell v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmc)*,* 20 Vet.App. 501, 503-504 (2006), where no intent can be found to apply for VA benefits, a claim for entitlement to such benefits has not been reasonably raised. * Request the records in the example above if * the cause of the ankle pain is service-related, and * the Veteran reports the pain either caused or aggravated her hypertension.   ***Important:***  If there is indication the claimant intends to seek benefits based on a disability listed on a VA Form 21-4142 received on or after March 24, 2015, treat the form as a request for application as indicated in [M21-1, Part III, Subpart ii, 2.D.2.a](http://www.benefits.va.gov/WARMS/docs/admin21/m21_1/mr/part3/subptii/ch02/M21-1MRIII_ii_2_SecD.doc). |
| the claimant identified multiple record sources on the same *VA Form 21-4142* or equivalent form | * make copies of the form for each record source * file the original copy of the *form* in the claims folder/eFolder, and * furnish each record source a redacted copy of the form that identifies only that record source. |
| the *VA Form 21-4142* or equivalent form is unsigned (and/or unwitnessed, if the records custodian requires a witnessed signature) | * return the form to the claimant, and * allow him/her 10 days to return the form with the appropriate signature.   ***Note***: If the records identified on the form do not appear to be relevant to the pending claim, it is not necessary to obtain   * a signature, or * the records. |
| the *VA Form 21-4142* or equivalent form   * identifies records that may possibly help substantiate the claim, but * does not contain enough information to obtain the records   ***Example***: A Veteran   * claims an increase for a service-connected back disorder * submits *VA Form 21-4142*, indicating treatment for foot drop, and * does not provide the name and address of the doctor who provided the treatment. | make one attempt to call the claimant and ask for the missing information.  ***Note***: Do not alter the *VA Form 21-4142* by adding information obtained by telephone. Instead, prepare a *VA Form 27-0820, Report of General Information,* to document the substance of the telephone conversation.   |  |  | | --- | --- | | If the claimant … | Then … | | provides the missing information | send a letter to the records custodian that includes   * the *VA Forms 21-4142* and *27-0820,* and * a request for records in accordance with [M21-1, Part III, Subpart iii. 1.C.14](imi-internal:M21-1MRIII.iii.1.C.14). | | * does not provide the missing information, or * cannot be reached by telephone | * document an unsuccessful attempt to contact the claimaint as a MAP-D note * send a letter to the claimant that * requests the missing information, and * reminds the claimant of his/her responsibility to identify and provide authorization for records he/she wants VA to obtain, and * allow the claimant 10 days to respond.   ***Note***: If VA does not receive the information within 10 days, forward the claim to the rating activity (if all other development is complete). | |
| * the claimant does not indicate whether the records identified on the *VA Form 21-4142* or equivalent form are relevant to the pending claim, and * it is unclear whether the records could help substantiate the claim   ***Example***: The Veteran claims service connection for anxiety, and the records identified are from a chiropractor. | consult a Rating Veterans Service Representative (RVSR) to determine which medical records are relevant to a pending claim. |

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| j. Claimant’s Duty to Authorize the Release of Existing Records | If necessary, a claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.  If the claimant does *not* provide the necessary authorization, inform him/her that VA will be unable to consider the records when deciding his/her claim unless the claimant obtains and submits the records to VA him/herself.  ***Note***: Follow the instructions in [M21-1, Part III, Subpart iii, 1.C.14.g](imi-internal:M21-1MRIII.iii.1.C.14.g) if a private medical care provider refuses to give VA a copy of a claimant’s medical records because   * the medical care provider requires completion of a special, signed consent form, or * the *VA Form 21-4142* included in VA’s initial request to the medical care provider did not have an original signature.   ***Reference***: For more information about authorizing the release of records, see [38 CFR 3.159(c)(1)(ii)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_159.DOC). |

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| k. Exception to the Notification Requirement | In cases where the evidence of record is sufficient to substantiate a claim and grant the benefit sought, it is unnecessary to provide Section 5103 notice to the claimant.  This exception ***only*** applies in cases where the evidence of record (to include VA medical center (VAMC) records available through the Compensation and Pension Records Interchange (CAPRI)) justifies granting the specific benefit the claimant is seeking without undertaking development for additional evidence.  ***Example***:   * A Veteran * files a claim for an increase in his service-connected knee disorder * specifically requests a 40-percent disability rating for the knee, and * reports recent treatment of the knee at a local VAMC. * Review of the VAMC records reveals range of motion of the service-connected knee is limited to an extent that warrants the assignment of a 40-percent disability rating.   ***Analysis***: Because VA may grant the benefit the Veteran specifically requested based solely on the evidence of record, there is no need to provide Section 5103 notice.  ***Important***: Provide Section 5103 notice if *any* development is necessary (including a request for an examination). |

#### 2. Handling Claims to Reopen a Previously Denied Claim

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| Introduction | This topic contains information on handling claims to reopen a previously denied claim, including   * definition of a reopened claim, and * VA responsibilities for claim development. |

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| Change Date | March 24, 2015 |

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| a. Definition: Reopened Claim | The term ***reopened claim*** pertains to any application for a benefit received after the disallowance of an earlier claim for that benefit has become final. This includes a claim in which service connection for the same disability is reclaimed under a different theory of entitlement.  ***Example***: A Veteran whose claim for direct service connection for hypertension was denied five years ago has now claimed service connection for hypertension on a secondary basis. Consider the claim for secondary service connection to be a reopened claim, because the same disability, hypertension, was reclaimed under a different theory of entitlement.  ***Notes***:   * “Final” means the * claim is no longer active, and * appeal period has expired. * Reopened claims do *not* include claims for * increased evaluations, or * ancillary benefits.   ***Reference***: For more information on claims reopened under a different theory of entitlement, see [*Robinson v. Mansfield*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmr)*,* 21 Vet.App. 545 (2008), *aff’d sub nom*, [*Robinson v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmr)*,* 557 F.3d 1355 (Fed.Cir. 2009). |

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| b. VA Responsibilities for Claim Development | Upon receipt of a claim to reopen a previously denied claim, follow the instructions in   * [M21-1, Part I, 1.B.3.a](imi-internal:M21-1MRI.1.B.3.a) to determine whether the claim is substantially complete, and * [M21-1, Part I, 1.B.3.b](imi-internal:M21-1MRI.1.B.3.b) to provide proper notice to the claimant.   In order to successfully reopen a previously denied claim, a claimant must submit a claim, to include new and material evidence. Although VA will *not* schedule an examination or request a medical opinion until it receives such evidence, VA *is* responsible for attempting to obtain any relevant Federal or non-Federal evidence   * the claimant identifies, and * VA has never reviewed.   ***References***: For more information about   * processing claims to reopen a previously denied claim, see [M21-1, Part III, Subpart iv, 2.B.6](imi-internal:M21-1MRIII.iv.2.B.6), and * new and material evidence, see * [M21-1, Part III, Subpart iv, 2.B.5](imi-internal:M21-1MRIII.iv.2.B.5), and * [M21-1, Part III, Subpart iii, 1.B.7](imi-internal:M21-1MRIII.iii.1.B.7). |