#### Department of Veterans Affairs M21-1, Part I, Chapter 1

**Veterans Benefits Administration August 26, 2015**

**Washington, DC 20420**

#### Transmittal Sheet

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| Changes Included in This Revision | The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part I, “Claimants Rights and Responsibilities,” Chapter 1, “Duty to Notify and Duty to Assist.”  ***Notes***:   * Unless otherwise noted, the term “claims folder” refers to the official, numbered, Department of Veterans Affairs (VA) repository – whether paper or electronic – for all documentation relating to claims that a Veteran and/or his/her survivors file with VA. * Minor editorial changes have also been made to * update incorrect or obsolete references * update obsolete terminology, where appropriate * renumber each topic based on the standard that the first topic in each section is Topic 1 * reassign alphabetical designations to individual blocks, where necessary, to account for new and/or deleted blocks within a topic * update section and topic titles to more accurately reflect their content * clarify block labels and/or block text, and * bring the document into conformance with M21-1 standards. |

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| Reason(s) for the Change | Citation |
| To rename section as “Records and Examination Requests” to more accurately and better structure information on VA’s statutory duty to assist in developing claims and to discuss in terms of the general duty to assist principles under 38 U.S.C. 5103A that apply when adjudicating claims for benefits. | M21-1, Part I, Chapter 1, Section C  (I.1.C) |
| To rename topic as “Assisting with Federal Records Requests” rather than “Requesting Federal Records” since this section addresses VA’s obligation under 38 U.S.C. 5103A rather than specific procedures to obtain records, which are more appropriately described in other sections. | I.1.C.1 |
| * To modify block to discuss VA’s obligation to obtain Federal Records under 38 U.S.C. 5103A. * To add reference on circumstances when VA may refrain from providing assistance. * To move existing language on types of Federal records to Block b. | I.1.C.1.a |
| * To modify block to provide definition of “Federal records,” which is similar to old Block a which described types of Federal records. * To add key references on developing Federal records. | I.1.C.1.b |
| To delete old Block c on “framing requests for Federal records” since this information is covered in other sections of the manual. | -- |
| * To delete information on “waiting period after making requests for Federal records” since this information is included in other sections of the manual. * To provide a definition on what is considered reasonable efforts to obtain Federal records. * To add references on development of records. | I.1.C.1.c |
| * To add new information on certification of completeness of service treatment records when concluding that Federal records do not exist. * To add references. | I.1.C.1.d |
| To delete old Block f on notifying the claimant that Federal records are unavailable since this information is covered in other sections of the manual. | -- |
| * To add a new Block e with information about the concept that claimants must cooperate with VA in obtaining Federal records. * To add references. | I.1.C.1.e |
| To rename topic as “Assisting with Non-Federal Records Requests” rather than “Requesting Non-Federal Records” since this section addresses general principles regarding VA’s obligation to obtain private records under 38 U.S.C. 5103A rather than lay out specific procedures to obtain the records. | I.1.C.2 |
| * To describe the general principles under 38 USC 5103A to make reasonable efforts to assist a claimant in obtaining private records. * To add discussion on court case (Savage v. Shinseki) to indicate that, as part of its duty to assist, VA must clarify medical evidence in certain cases. | I.1.C.2.a |
| * To add language from 38 U.S.C. 5103A that reasonable efforts to obtain records means VA shall make not less than two requests. * To add references regarding what constitutes reasonable efforts and procedural guidance on obtaining evidence. | I.1.C.2.b |
| To add new Block c on VA’s duty to assist in obtaining 3rd party records when adjudicating a claim. | I.1.C.2.c |
| To delete old Block c on requirement to follow up on requests for non-Federal records by telephone as this is more appropriately covered in III.iii.1.C. | -- |
| To delete old Block d on waiting period after making requests from non-Federal sources as this is more appropriately covered in III.iii.1.C. | -- |
| To delete old Block e on using the telephone, fax, or email to obtain evidence from the claimant as this is more appropriately covered in III.iii.1.B and C. | -- |
| To delete old Block f on notifying claimant at time of follow up request for non-Federal records as this is covered in new Topic 4 and other sections in the manual. | -- |
| To delete old Block g on notifying claimant when VA’s reasonable efforts to obtain non-Federal records are unsuccessful as this is covered in new Topic 4. | -- |
| To delete old Block h on VA’s responsibility for requesting medical records as this is sufficiently covered in I.1.C.2.a. | -- |
| To delete old Block i on identifying medical records as this is covered in III.iii.1.C. | -- |
| To delete old Block j on identifying non-medical non-Federal records as this is covered in III.iii.1.B and C. | -- |
| To rename topic as “Assisting with Medical Opinion or Examination Requests” rather than “Requesting Medical Opinion or Examination” since this section addresses VA’s obligation under 38 USC 5103A rather than specific procedures to request medical opinions or examinations, which are more appropriately described in other sections. | I.1.C.3 |
| * To clarify the purpose of the statutory duty to assist in ordering a VA examination. * To add references on scheduling examinations or medical opinions and when to refrain from assisting the claimant. | I.1.C.3.a |
| * To add information on the test for when an examination is necessary. * To add applicable references. | I.1.C.3.b |
| * To add information to describe VA’s duty to obtain an examination and that VA shall rate on the evidence if it is sufficient for rating purposes. * To delete specific language on requesting exams/medical opinions since this information is covered in III.iv.3.A. | I.1.C.3.c |
| * To delete language on “stating medical opinion requests clearly” as this information is covered in III.iv.3.A. * To add new language on the first element that must be met to order an examination. * To incorporate guidance from Training Letter (TL) 14-01. * To incorporate court holding in McLendon v. Nicholson. * To add examples. | I.1.C.3.d |
| * To delete language on “what the medical opinion request must contain” as this is covered in III.iv.3.A. * To add new language on the second element that must be met to order an examination. * To incorporate TL 14-01. * To incorporate Bardwell v. Shinseki and Buchanan v. Nicholson and McLendon v Nicholson. * To add examples. | I.1.C.3.e |
| To delete old Block f, “the importance of identifying evidence relevant to the medical opinion request” as this is covered in III.iv.3.A. | -- |
| * To add a new Block f with language on the third element that must be met to order an examination. * To incorporate TL 14-01. * To incorporate case law – Waters v Shinseki, Colantonio v Shinseki, and McLendon v Nicholson. | I.1.C.3.f |
| * To add new Block g on necessary exam for secondary service connection. * To add examples. | I.1.C.3.g |
| To add a new Block h on necessary exam for presumptive service connection. | I.1.C.3.h |
| To add new Block i to address examination provisions relating to claims for increased evaluation. | I.1.C.3.i |
| To add new Block j to address timing of duty to obtain examination and that, to the extent practicable, VA shall assess whether an exam is needed after development of all relevant evidence. | I.1.C.3.j |
| To add new Block k to address effect of non-cooperation on duty to provide examinations and actions to take when there is failure to report for exam. | I.1.C.3.k |
| To add new Block l to address definition of good cause when claimant fails to report for VA examination. | I.1.C.3.l |
| To add new Block m to outline actions to take when reviewing returned mail notifying Veteran of scheduled examination. | I.1.C.3.m |
| To add new Block n to outline actions to take after attempting to locate a valid address. | I.1.C.3.n |
| To add new Block o on allegations by claimant of non-receipt of examination scheduling notice. | I.1.C.3.o |
| To add new Block p on timing of offer of good cause or willingness to report and rescheduling of VA examination. | I.1.C.3.p |
| To add new topic on determining relevance of records since this is a critical principle to understand when determining whether certain identified records shall be obtained. | I.1.C.4 |
| To add new Block a on the definition of relevant records. | I.1.C.4.a |
| To add new Block b on the concept that relevance of records is determined on a case-by-case basis. | I.1.C.4.b |
| To add new Block c on the importance of the Golz court decision in determining relevance. | I.1.C.4.c |
| To add new Block d illustrating examples of cases in which identified records are not relevant and therefore do not have to be obtained under VA’s duty to assist obligation. | I.1.C.4.d |
| To add a new Block e on the court decision Moore v. Shinseki to indicate that military clinical mental health records are relevant and must be obtained. | I.1.C.4.e |
| To add a new Block f on ***new requirements*** to document the claims folder when identified records are not considered relevant and, therefore, are not obtained. | I.1.C.4.f |
| To add new topic on Notification of Inability to Obtain Records. | I.1.C.5 |
| To add new Block a on requirements regarding notification of inability to obtain relevant private records. | I.1.C.5.a |
| To add new Block b on requirements regarding notification of inability to obtain Federal records. | I.1.C.5.b |

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| Rescissions | None |

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| Authority | By Direction of the Under Secretary for Benefits |

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| Signature | Thomas J. Murphy, Director  Compensation Service |

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