### Section C. Requesting Records

#### Overview

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

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| Topic | Topic Name | See Page |
| 5 | Requesting Federal Records  | 1-C-2 |
| 6 | Requesting Non-Federal or Private Records | 1-C-8 |
| 7 | Requesting a Medical Opinion or Examination | 1-C-14 |

#### 5. Requesting Federal Records

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| Introduction | This topic contains information about requesting Federal records, including* types of Federal records that may be requested
* continuing attempts to obtain Federal records
* framing the requests for Federal records
* waiting period after making the requests for Federal records
* concluding efforts to obtain Federal records, and
* notifying the claimant that Federal records are unavailable.
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| Change Date | February 3, 2014 |

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5. Requesting Federal Records, Continued

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| a. Types of Federal Records That May Be Requested | VA may request a variety of Federal records including:* service treatment records
* other relevant service department records identified by the claimant
* records of relevant VA medical treatment or examination that the claimant identifies adequately
* authorized VA medical treatment or examination at a non-VA facility if adequately identified, and
* any other relevant records held by any Federal department or agency (such as those held by the Social Security Administration (SSA) or Public Health Service) that the claimant authorizes VA to obtain and adequately identifies.

***Note***: For disability compensation claims, obtain all the records if relevant and identified.***References***: For more information on requesting records held by * the SSA, see M21-1MR, Part III, Subpart iii, 3.A, and
* other Federal departments or agencies, see
* M21-1MR, Part III, Subpart iii, 2.I.57.b, and
* M21-1MR, Part III, Subpart iii, 4.
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5. Requesting Federal Records, Continued

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| b. Continuing Attempts to Obtain Federal Records | When records are in the custody of a Federal department or agency, the law obligates VA to continue attempts to obtain records until* records are obtained, or
* it is reasonably certain that
* the records do not exist, or
* further efforts by VA to obtain the records would be futile.

***References***: For more information on requesting Federal records as part of the duty to assist, see* [38 CFR 3.159(c)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_159.DOC)(2) and (3)
* M21-1MR, Part III, Subpart iii, 2.I.
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| c. Framing the Requests for Federal Records | Frame the initial and any follow-up requests for Federal records in a complete and specific way so as to obtain the following:* necessary information
* necessary evidence, and/or
* a negative reply.

***Reference***: For more information on how to create a request for service records, see the Personnel Information Exchange System (PIES) Defense Personnel Records Information Retrieval System (DPRIS) page located on the [VBA Compensation Service's Intranet site](http://vbaw.vba.va.gov/bl/21/Products/piesdpris.htm). |

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5. Requesting Federal Records, Continued

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| d. Waiting Period After Making Requests for Federal Records | Allow * 30 days for a response to the initial request, and
* 15 days for follow-up requests.

Inform the claimant of the status of his/her claim, including VA efforts to obtain identified records. ***Note***:If neither Federal nor non-Federal records have been received within their respective response periods, notice about the status of both requests may be included in a single letter, but the letter must clearly differentiate between the actions we will take concerning these two categories of records. ***References***: For more information on * the standard procedure for requesting records from a Federal entity, see M21-1MR, Part III, Subpart iii, 2.I.57.b, and
* requesting non-Federal records, see M21-1MR, Part I, 1.C.6.
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| e. Concluding Efforts to Obtain Federal Records | Determine on a case-by-case basis whether further attempts to obtain records would be futile, based on completion of at least the minimum efforts specified in M21-1MR, Part III, Subpart iii, 2.I.57.b and/or any response received from the records custodian. |

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5. Requesting Federal Records, Continued

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| f. Notifying the Claimant That Federal Records Are Unavailable | Use the table below to determine what action to take when notifying the claimant that the requested records do not exist or that further attempts to request them would be futile. |

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| Step | Action |
| 1 | * Prepare a “final-attempt letter” that contains the information described in M21-1MR, Part III, Subpart iii, 2.I.59.c
* send the letter to the claimant, and
* allow the claimant 10 days to respond.

***References***: For more information on * final attempt letter content see M21-1MR, Part III, Subpart iii, 2.I.59.c
* unsuccessful attempts to obtain Federal records, see M21-1MR, Part III, Subpart iii, 2.I.59
* the duty to notify claimants of the inability to obtain records, see [38 CFR 3.159(e)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_159.DOC), and
* alternative sources for service records, see M21-1MR, Part III, Subpart iii, 2.E.
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5. Requesting Federal Records, Continued

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| f. Notifying the Claimant That Federal Records Are Unavailable (continued) |

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| Step | Action |
| 2 | Has the claimant furnished evidence or identified alternative source(s) of evidence within the 10-day time limit?* If *yes*, take action on the claim or develop for the records, as appropriate.
* If *no*, continue processing the claim on the evidence of record, including scheduling an examination or requesting a medical opinion, if needed to decide the claim.

***Important***: If Federal records cannot be obtained, both the rating decision and the letter of notification *must* clearly indicate that the custodian of the records stated that the records could not be provided. |

#### 6. Requesting Non-Federal or Private Records

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| Introduction | This topic contains information on requesting non-Federal or private records, including* making reasonable efforts to obtain relevant evidence
* definition of reasonable efforts
* requirement to follow up on requests for non-Federal records by telephone
* waiting period after making requests from non-Federal sources
* using the telephone, fax or e-mail to obtain evidence from the claimant
* notifying the claimant at the time of the follow-up request for non-Federal records
* notifying the claimant when VA’s reasonable efforts to obtain non-Federal records are unsuccessful
* VA’s responsibility for requesting medical records,
* identifying medical records, and
* identifying non-medical and non-Federal records.
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| Change Date | June 18, 2013 |

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| a. Making Reasonable Efforts to Obtain Relevant Evidence | The Veterans Claims Assistance Act (VCAA), as codified in [38 U.S.C. 5103A](http://www.law.cornell.edu/uscode/text/38/5103A) and [38 CFR 3.159](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_159.DOC), states that VA must make reasonable efforts to assist a claimant in obtaining the evidence necessary to substantiate a claim. The determination of what constitutes reasonable efforts is based on the circumstances of the case. |

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6. Requesting Non-Federal or Private Records, Continued

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| b. Definition: Reasonable Efforts | ***Reasonable efforts*** to obtain relevant records that are not in the custody of a Federal department or agency ordinarily require* an initial request for such evidence, and
* at least one follow-up request if no response is received from the custodian of the records unless a response to the initial request indicates that
* the records do *not* exist, or
* a follow-up request would be futile.

If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought then ***reasonable efforts*** would include* an initial request, and
* at least one follow-up request to the new source if the records are not received or an additional request to the original source if the records are not received.
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| c. Requirement to Follow Up on Requests for Non-Federal Records by Telephone | When following up on requests for non-Federal records, you must make one attempt to contact the records custodian by telephone. Document any successful telephone contact on a signed *VA Form 27-0820, Report of General Information,* for the claims folder.If the records custodian cannot be reached by telephone on the first attempt* make no further attempts to contact the custodian by telephone
* document the action in Modern Award Processing-Development (MAP-D) notes*,* and
* send the custodian a follow-up letter to request the records.

***Note***: Whenever appropriate, ask the custodian of the records to fax the records to the designated RO fax number. (***Note***: The fax machine must be located in a secure, nonpublic location because the faxed records may contain personally identifiable information.)***References***: * for more information on MAP-D, see the [*MAP-D User Guide*](http://vbaw.vba.va.gov/VetsNet/Claims_Docs/webhelp/Claim_Development1.htm).
* for more information on documenting unsuccessful telephone contacts in MAP-D, see M21-1MR Part I, 1.C.6.e.
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6. Requesting Non-Federal or Private Records, Continued

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| d. Waiting Period After Making Requests From Non-Federal Sources | When requesting records from non-Federal sources, allow * 15 days for a response to the initial request, and
* 15 days for a response to a follow-up request.

Make additional attempts to obtain the requested evidence when there is reason to believe that subsequent requests will result in obtaining the documents. Continue processing the claim after the initial 15 days, ordering an examination or medical opinion, or taking any further needed action, which may include preparing and propagating a rating decision addressing any issues for which benefits may be granted based on the evidence of record. Ordinarily, you should wait to schedule a VA examination until requested Federal and non-Federal records indicate there was an event, injury or disease in service that may be associated with the current condition. |

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| e. Using the Telephone, Fax, or E-mail to Obtain Evidence From the Claimant | Use the telephone, fax, or e-mail to * seek the claimant’s assistance in getting evidence or clarifying information, and
* gather information from the claimant.

When undertaking telephone development, you may leave a message for a claimant as voicemail or with a third party when contact is unsuccessful. However, the message must not include any information protected by the Privacy Act including:* income
* claim numbers
* Social Security numbers
* a beneficiary’s address
* the type or amount of monetary benefits received, including any benefits received in the past
* names, types, and percentages of disabilities, and
* treatment for drug and/or alcohol abuse, human immunodeficiency virus (HIV) infections, acquired immune deficiency syndrome (AIDS), or sickle cell anemia.
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6. Requesting Non-Federal or Private Records, Continued

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| e. Using the Telephone, Fax, or E-mail to Obtain Evidence From the Claimant (continued) | The phone message should simply leave VA’s toll-free number (1-800-827-1000) and ask for a return call. After leaving the message, enter a MAP-D note regarding the information sought. The MAP-D note should include, at a minimum, the name of the individual/facility contacted, and the specific evidence requested. ***Notes***: * Document all successful telephone contacts, including the name of the individual contacted, time, subject, and substance of the discussion on a signed *VA Form 27-0820* for the claims folder. ***Note***: You may communicate that notification by telephone and send simultaneous written notification for confirmation.
* Make hard copies of any e-mail correspondence for the claims folder.
* Be sure to protect personally identifiable information, such as the claimant’s name, date of birth, and VA claim number, in accordance with the [*Freedom of Information Act (FOIA) and Privacy Act (PA) User Guide*](http://vbaw.vba.va.gov/bl/21/publicat/Letters/FL10/FL10-010E1.doc) and [M27-1](http://www.benefits.va.gov/warms/M27_1.asp).
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6. Requesting Non-Federal or Private Records, Continued

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| f. Notifying the Claimant at the Time of the Follow-Up Request for Non-Federal Records | At the time of the follow-up request, notify the claimant that* he/she is ultimately responsible for providing the evidence, but that a follow-up attempt is being made
* he/she must submit these requested records within one year of when VA first notified the claimant of the information and evidence necessary to substantiate the claim, and
* if the requested evidence is unobtainable, VA will process the claim based on the evidence of record.
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| g. Notifying the Claimant When VA’s Reasonable Efforts to Obtain Non-Federal Records Are Unsuccessful | Notify the claimant that VA has not received requested records if reasonable efforts have been made to obtain relevant non-Federal records, *but* * some or all of them have not been received, and
* a follow-up request for them is being made.

Notify the claimant at the time of the follow-up request for the records, and* identify the records that were not obtained
* briefly explain the efforts made to obtain the records, and
* describe any further action that will be taken with respect to the claim including processing the claim based on the evidence of record.

***Note***:If neither Federal nor non-Federal records have been received within their respective response periods, notice about the status of both requests may be included in a single letter, but the letter must clearly differentiate between the actions we will take concerning these two categories of records. |

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| h. VA’s Responsibility for Requesting Medical Records | VA must request relevant medical records from all sources that the claimant adequately identifies for the development of claims. |

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6. Requesting Non-Federal or Private Records, Continued

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| i. Identifying Medical Records | Request that the claimant * identify the
* type of record being obtained
* custodian of the record and his/her address
* medical condition to which these records relate
* approximate time frame covered by these records, and
* complete a medical release, if necessary.

***Note***: These requirements apply to all types of non-Federal records.  |

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| j. Identifying Non-Medical Non-Federal Records | Request that the claimant identify the * type of record being obtained
* custodian of the record and his/her address, and
* approximate time frame covered by these records.

***Examples***: These records include the following:* state workers compensation records, and
* employment records, including
* on-the-job injury reports, and
* accident reports.
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#### 7. Requesting a Medical Opinion or Examination

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| Introduction | This topic contains information on requesting a medical opinion or examination to develop claims, including* VA’s responsibility to provide medical examinations or obtain medical opinions
* when to request a medical opinion or examination
* when to request a medical opinion versus an examination
* stating medical opinion requests clearly
* what the medical opinion request must contain, and
* the importance of identifying evidence relevant to the medical opinion request.
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| Change Date | March 28, 2011 |

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| a. VA’s Responsibility to Provide Medical Examinations or Obtain Medical Opinion | In claims for disability compensation, assist the claimant by providing a medical opinion or examination when the opinion or examination is necessary to make a decision on the claim.***Reference***: For more information on requesting a medical opinion or examination, see M21-1MR, Part III, Subpart iv, 3.A. |

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7. Requesting a Medical Opinion or Examination, Continued

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| b. When to Request a Medical Opinion or Examination  | A medical opinion or examination may be necessary when, after the development of all other relevant evidence, including the statement of the claimant, the file does *not* contain sufficient medical evidence to make a decision on the claim, but* contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability (***Note***: A claimant is competent to describe symptoms of disability that he/she is experiencing, such as pain in the knee. However, because a claimant ordinarily lacks medical training and experience he/she may not be competent to diagnose his/her own medical condition or offer a medical opinion.)
* establishes that the Veteran
* suffered an event, injury, or disease in service, or
* has a disease or symptoms of a disease listed in [38 CFR 3.309](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_309.DOC), [38 CFR 3.313](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_313.DOC), [38 CFR 3.316](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_316.DOC), or [38 CFR 3.317](http://www.benefits.va.gov/WARMS/docs/regs/38cfr/bookb/part3/s3_317.doc) manifesting during an applicable presumptive period, and
* indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another SC disability.

***Example***: Request an examination if the available medical evidence is too old to adequately evaluate the current state of the claimant’s disability.***Important***: * Per [38 CFR 3.159(c)(4)(ii)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_159.DOC), post-service treatment alone may serve as a link to an injury or event in service.
* The threshold for determining whether a claimed disability may be associated with service is low and may be met by such evidence as
* medical evidence that suggests a nexus but is too equivocal or nonspecific to support a decision on the merits of the case, or
* credible evidence of continuity of symtomatology, such as pain or other symptoms capable of lay observation. (See [*McLendon v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm)*,* 20 Vet.App. 79, 81 (2006).)

***References***: For more information on * when to request a medical examination, see
* [*Proscelle v. Derwinski*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmp)*,* 2 Vet.App. 629 (1992)
* [*Olson v. Principi*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmo)*,* 3 Vet.App. 480, 482 (1992), and
* [*VA O.G.C. Prec. Op. 11-95*](http://www.va.gov/ogc/docs/1995/Prc11-95.doc) (April 7, 1995), and
* the competency of lay evidence to establish a diagnosis, see [*Jandreau v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmj)*,* 492 F.3d 1372, 1377 (Fed. Cir. 2007).
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7. Requesting a Medical Opinion or Examination, Continued

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| c. When to Request a Medical Opinion Versus an Examination | A medical opinion versus an examination should be requested when only the following is necessary to decide the claim:* reconciliation of different diagnoses
* opinion concerning the relationship between two conditions
* etiology and nexus opinions
* [*Allen v. Brown*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bma)cases (that is, when the issue is whether a service-connected condition has aggravated a non-service connected condition)
* independent medical opinions, and opinion regarding the extent to which service-connected disabilities affect the Veteran’s ability to perform physical and non-physical tasks in order for VA to determine whether the Veteran is unemployable.

***Notes***: * Many opinion requests require information that would be gleaned as part of the normal examination process, which the physician should not be precluded from conducting, if necessary.
* A medical opinion is not generally required when service connection may be granted under [38 CFR 3.303(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_303.DOC) because
* the disability is chronic, or
* symptoms that began in service have continued after the Veteran’s discharge.
* Generally, do not request a medical opinion to determine whether a disability causes a specific functional impairment, such as loss of use of an extremity; in such cases, an examination and description of the impairment and remaining function should suffice.

***References***: For more information on requesting* examinations, see M21-1MR, Part III, Subpart iv, 3.A, and
* medical opinions, see M21-1MR, Part III, Subpart iv, 3.A.9.
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7. Requesting a Medical Opinion or Examination, Continued

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| d. Stating Medical Opinion Requests Clearly | When seeking a medical opinion * follow the instructions in M21-1MR, Part III, Subpart iv, 3.A.9
* be very clear about what information or opinion is being requested
* send the following to the medical examiner:
* the claims folder, and
* the opinion request, and
* direct the medical examiner to
* review the claims folder, and
* provide a rationale for any opinion.
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| e. What the Medical Opinion Request Must Contain | When requesting a medical opinion* clearly state the nature of the opinion required
* explain why the opinion is needed, if this would clarify the request, and
* use a neutral and unbiased tone that gives no indication VA prefers one outcome over another or one specific answer over another.

When requesting an opinion in compliance with BVA remand instructions, do not simply refer the examiner to the claims folder containing the remand instructions; explain what you are requesting or quote the instructions from BVA on the medical opinion request.***Reference***: For more information on obtaining evidence in an impartial manner, see [*Douglas v. Shinseki*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmd)*,* 23 Vet.App. 19, 24, 25-26 (2009). |

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7. Requesting a Medical Opinion or Examination, Continued

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| f. Importance of Identifying Evidence Relevant to the Medical Opinion Request | The requester should identify the available evidence to assist the physician in focusing his/her review. The evidence should be tagged in the claims folder, *but* the examiner *must* be advised that he/she is not limited to reviewing only this evidence. ***Note***: Avoid the potential problem of steering the examiner to review only the evidence pre-selected as relevant since a medical professional may have a differing opinion as to what evidence is relevant and must *not* be limited in the record review. The identification of the evidence must include a general description of it, indicating the* source
* approximate dates, and
* subject matter.
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