#### Department of Veterans Affairs M21-1, Part III, Subpart iv

**Veterans Benefits Administration June 25, 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 III, “General Claims Process,” Subpart iv, “General Rating Process.”***Notes***: * The term “regional office” (RO) also includes pension management center (PMC), where appropriate.
* 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 obsolete terminology, where appropriate
* reassign alphabetical designations to individual blocks and repaginate, where necessary, to account for new and/or deleted blocks within a topic
* update section and topic titles to more accurately reflect their content
* update incorrect or obsolete references
* clarify block labels and/or block text, and
* bring the documents into conformance with M21-1 standards.
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| Reason(s) for the Change | Citation |
| To add information about final and binding determinations | M21-1, Part III, Subpart iv, Chapter 2, Section B, Topic 1, Block a(III.iv.2.B.1.a) |
| * To add new Block b with information on the significance of final and binding determinations.
* To relocate old Block b to Topic 4.
 | III.iv.2.B.1.b |
| * To add new Block c with information on finally adjudicated claims.
* To delete old Block c due to the incorporation of effective date information throughout the Section where appropriate.
 | III.iv.2.B.1.c |
| To add new Block d with information on final and binding, but not finally adjudicated claims. | III.iv.2.B.1.d |
| To add new Topic 2 to more adequately address instances where VA receives additional service records after making a decision on a claim. | III.iv.2.B.2 |
| To add new Block a with information on reconsidering additional service records after VA issues a decision on a claim. | III.iv.2.B.2.a |
| To add new Block b with information on the types of service records that warrant reconsideration under 38 CFR 3.156(c)(1). | III.iv.2.B.2.b |
| To add new Block c with information on service records that do not justify reconsideration under 38 CFR 3.156(c)(1). | III.iv.2.B.2.c |
| To add new Block d providing guidance to discuss effective dates when considering service records under 38 CFR 3.156(c) (1) | III.iv.2.B.2.d |
| To add new Block e with information on the rating procedures when considering service records received after VA issued a decision  | III.iv.2.B.2.e |
| To combine old Topic 2 (New and Material (N&M) Evidence) and old Topic 3 (Reopening a Claim) into a new Topic 3 entitled “Reopening a Previously Denied Claim Based on N&M evidence.” This simplifies guidance for reopening previously denied claims and discusses N&M concepts.  | III.iv.2.B.3 |
| To provide guidance that a decision which is finally adjudicated can only be “reopened” with new and material evidence.  | III.iv.2.B.3.a |
| * To add new Block b to clarify that the new and material evidence requirement can apply to reconsideration of claims but not with the purpose of “reopening” the claim.
* To add recent court holding in Beraud (2014) that explains the application of 38 CFR 3.156(b).
 | III.iv.2.B.3.b |
| To add new Block c providing guidance that there is no need to provide a case specific Section 5103 Notice when a claimant attempts to reopen a previously denied claim. | III.iv.2.B.3.c |
| * To clarify that “material” evidence only needs to relate to, instead of prove, any unestablished fact necessary to substantiate the claim.
* To add more explanation of the court case (*Shade v Shinseki*).
* To add information relating to General Counsel (OGC) Opinion 6-2014.
 | III.iv.2.B.3.d |
| * To add examples of evidence considered new and material.
* To clarify that the submission of new and material evidence must be done on a prescribed form beginning March 24, 2015.
 | III.iv.2.B.3.f |
| * To clarify examples of evidence ***not*** sufficient to reopen a claim.
* To delete old Block g due to the incorporation of notification procedures throughout the Section where appropriate.
 | III.iv.2.B.3.g |
| To add new Block i providing guidance on the presumption of evidence to be credible. | III.iv.2.B.3.i |
| To clarify necessary procedures when new and material evidence is submitted. | III.iv.2.B.3.j |
| To add new Block k with guidance on what is required in a Statement of the Case (SOC) when addressing an appeal for denial based on evidence not being new and material. | III.iv.2.B.3.k |
| To add new Block l explaining that the effective date of a reopened or revised claim based on new and material evidence can be the date of receipt of the intent to file, as well as the date of claim. | III.iv.2.B.3.l |
| To add new Block m explaining the effective date for revisions based on new and material evidence received within the appeal period. | III.iv.2.B.3.m |
| To add exceptions indicating that a rating protected under 38 CFR 3.951 and 3.957 cannot be changed based onclear and unmistakable error (CUE) unless there was fraud.  | III.iv.2.B.4.b |
| To delete old Block c due to incorporation of the information into other blocks. | III.iv.2.B.4.c (old) |
| To add guidance that deficiency in duty to assist development is not a CUE but that failure to review VA medical records in VA’s possession may be a CUE if that tfailure affectshe outcome of the claim. | III.iv.2.B.4.c |
| * To clarify that a revision request based on CUE must assert more than a disagreement as to how the facts were weighed or evaluated.
* To add information based on *Pirkl v. Shinseki* that a CUE of a particular decision may affect subsequent decisions.
 | III.iv.2.B.4.d |
| * To add note indicating a new medical diagnosis correcting an earlier diagnosis does not constitute a CUE.
* To add that CUEs may be based on evidence accumulated after the prior decision when it is determined that service connection was based on an erroneous diagnosis.
 | III.iv.2.B.4.e |
| To delete old Block g due to incorporation of the information in a separate block. | III.iv.2.B.4.g (old) |
| To delete Block i due to incorporation of the information in a separate block. | III.iv.2.B.4.i (old) |
| To clarify which appeals should contain citation to OGC Opinion 14-95. | III.iv.2.B.5.a |
| * To clarify that Board of Veterans Appeals (BVA) decisions are final and binding on VBA but only with regard to the specific case decided.
* To clarify that appellants can file a motion asserting CUE with BVA.
* To clarify that a motion for reconsideration of BVA decision is not governed by the *Standard Claims and Appeals Forms* regulation change.
 | III.iv.2.B.5.b |
| To delete old Block c due to relocation of the information to M21-1, Part 5, G.1. | III.iv.2.B.5.c (old) |
| To delete old Block d due to relocation of the information to M21-1, Part 5, G.1. | III.iv.2.B.5.d (old) |

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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, DirectorCompensation Service |

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