### Section F. Compensation Based on Individual Unemployability (IU)

#### Overview

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

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| Topic | Topic Name |
| 1 (old 24) | General Information on IU Claims |
| 2 (old 25) | Evaluating Evidence to Establish Entitlement to IU |
| 3 (old 26) | Evaluating Evidence of Self-Employment or Employment With a Tightly Held Corporation |
| 4 (old 27) | Preparing a Rating Decision Addressing the Issue of IU |
| 5 (old 28) | Special Considerations in IU Claims |
| 6 (old 29) | Exhibit 1: Rating Decision Addressing Veteran’s Failure to Complete a Field Examination |
| 7 (old 30) | Exhibit 2: Rating Decision Addressing Veteran’s Failure to Respond to a Notice of Proposed Adverse Action After Failure to Complete a Field Examination |
| 8 (old 31) | Exhibit 3: Rating Decision Addressing the Subsequent Receipt of Evidence That Restores IU After Failure to Complete a Field Examination |
| 9 (old 32) | Exhibit 4: Poverty Threshold Information |

#### 1. General Information on IU Claims

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| Introduction | This topic contains general information on individual unemployability (IU) claims, including * establishing entitlement to increased compensation based on IU
* ***unemployability*** vs. ***unemployed*** and ***unemployable***, and
* the definition of ***substantially gainful employment.***
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| Change Date | December 16, 2011 |

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| a. Establishing Entitlement to Increased Compensation Based on IU | To establish entitlement to compensation as if 100 percent disabled based on individual unemployability (IU), a Veteran must be unable to secure or retain employment by reason of service-connected (SC) disability. The Veteran must be unemployable in fact by reason of SC disability *and* *either** meet the schedular requirements of [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC), or
* have an extra-schedular evaluation approved by the Compensation Service (211B).

***Notes***: * IU is also referred to as *total disability based on individual unemployability* (TDIU).
* IU must be established on a factual basis.
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| b. Unemployability vs. Unemployed and Unemployable  | The term ***unemployability*** is not synonymous with the terms ***unemployed*** and ***unemployable*** for the purpose of determining entitlement to increased compensation. A Veteran may be unemployed or unemployable for a variety of reasons. A determination as to entitlement to a total evaluation based on unemployability is appropriate only when a Veteran’s unemployability is a result of SC disabilities. |

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| c. Definition: Substantially Gainful Employment:  | ***Substantially gainful employment*** is defined as employment at which non-disabled individuals earn their livelihood with earnings comparable to the particular occupation in the community where the Veteran resides. |

#### 2. Evaluating Evidence to Establish Entitlement to IU

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| Introduction | This topic contains information on evaluating evidence to establish entitlement to increased compensation based on IU, including * general evidence requirements in IU claims
* medical evidence requirements in IU claims
* handling incomplete medical evidence
* employment history requirements in IU claims
* requesting employment information from employers
* when to obtain
* Social Security Administration (SSA) reports in IU claims, and
* vocational rehabilitation records in IU claims
* identifying reasonably raised claims of IU, and
* processing reasonably raised claims of IU.
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| Change Date | March 24, 2015 |

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| a. General Evidence Requirements in IU Claims  | A decision concerning entitlement to an IU evaluation is based on a review of all available evidence, which should be sufficient to evaluate both the Veteran’s * current degree of disability, and
* employment status.

Forward a *VA Form 21-8940,* *Veteran’s Application for Increased Compensation based on Unemployability*, to the Veteran if a request for IU is * expressly raised by the Veteran, or
* reasonably raised by the evidence of record.

***Note***: A *VA Form 21-8940* is required to establish entitlement to IU, and meets the requirement for a claim submitted on a prescribed form.***Important***: Any written communication indicating a Veteran is unable to work because of SC disability may establish the inference of individual unemployability, such that VA will solicit a claim. |

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| b. Medical Evidence Requirements in IU Claims | A claim for IU must contain sufficient medical evidence to support a current evaluation of the extent of all the Veteran’s disabilities. The evidence should reflect the Veteran’s condition within the past 12 months and include, but need not be limited to* the results of VA examination(s)
* hospital reports, and/or
* outpatient treatment records.
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| c. Handling Incomplete Medical Evidence | If the medical evidence of record is incomplete or inconsistent, schedule a medical examination.Request special tests only when required for proper evaluation of the degree of severity of relevant disabilities.***Reference***: For more information on scheduling examinations, see M21-1, Part III, Subpart iv, 3.B. |

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| d. VA Form 21-8940 Employment History Requirements | *VA Form 21-8940* requires the Veteran to furnish an employment history for the* five-year period preceding the date on which the Veteran claims to have become too disabled to work, and
* entire time after the date on which the Veteran claims to have become too disabled to work.
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| e. VA Form 21-4192 – Requesting Employment Information From Employers | Request each employer for whom the Veteran worked during the 12-month period prior to the date the Veteran last worked complete and return *VA Form 21-4192*, *Request for Employment Information in Connection with Claim for Disability Benefits*. At the same time, send a copy of *VA Form 21-4192* to the Veteran. If *VA Form 21-4192* is not received from the Veteran’s employer(s) within 30 days* send a follow-up request to the employer(s) for *VA Form 21-4192*, allowing an additional 10 days for response, and
* notify the Veteran that
* the employer has failed to respond to VA’s request, and
* it is ultimately his/her responsibility to obtain this information.

***Exception***: Do *not* send *VA Form 21-4192* to the Veteran’s last employer if it has been more than five years since the Veteran last worked.***Notes***: * If the information on *VA Form 21-4192* only states that the Veteran retired, then request additional information as to whether the Veteran’s retirement was by reason of disability. If so, ask the employer to identify the nature of the disability for which the Veteran was retired.
* Do not deny an IU claim solely because an employer failed to return a completed *VA Form 21-4192.*
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| f. When to Obtain SSA Reports in IU Claims  | Obtain and consider complete copies of the Social Security Administration (SSA) decision (grants and denials) and any supporting medical records when* evidence of record is insufficient to award increased compensation based on IU, and
* the Veteran’s claims folder shows that the Veteran has been examined or awarded disability benefits by SSA.

***Notes***: * Although decisions by SSA regarding a Veteran’s unemployability are not controlling for VA determinations (and vice versa), SSA’s record may indicate the level of impairment of the Veteran’s SC disability.
* When reviewing SSA records, pay close attention to what disability resulted in a grant of SSA benefits, and whether that disability is one for which service connection has been granted.

***References***: For more information on * requesting information from SSA, see M21-1, Part III, Subpart iii, 3.A, and
* the effect of SSA decisions regarding unemployability on VA determinations, see [*Murincsak v. Derwinski*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVC/1992dec/Murincsa.doc)*,* 2 Vet.App. 363 (1992).
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| g. When to Obtain Vocational Rehabilitation Records in IU Claims | When a Veteran’s claims folder indicates that he/she was seen by the Vocational Rehabilitation and Employment Service (VR&E), obtain and evaluate any records related to this contact.The VR&E records may* document the Veteran’s participation in a training program, or
* show that training was not feasible or was unsuccessful.
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| h. Identifying Reasonably Raised Claims of IU | Reasonably raised claims for IU may arise in a Veteran’s original claim or in a claim for an increased rating. The Department of Veterans Affairs (VA) must consider a claim for IU if * the Veteran’s SC rating meets the minimum schedular criteria found in [38 CFR 4.16(a)](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC), and
* there is evidence of current SC unemployability in the Veteran’s claims folder or under VA control.

***Reference***: For more information on reasonably raised claims for IU, see [*Norris v. West*](http://vbaw.vba.va.gov/bl/21/Advisory/DADS/1999dads/Norris.doc)*,* 12 Vet.App. 413 (1999). |

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| i. Processing Reasonably Raised Claims of IU | When a reasonably raised claim for IU is identified, and additional evidence is needed* rate all other claimed issues that can be decided
* show the issue of potential IU entitlement as deferred in the rating decision
* develop the reasonably raised IU issue under the *existing* end product, which will remain pending until a merits determination of IU entitlement is made, and
* send the Veteran the section 5103 notice, enclosing *VA Form 21-8940* for completion.

***Notes***: * Do *not* send a Veteran *VA Form 21-8940* to complete if
* the schedular requirements of [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) are met, *but*
* there is no evidence of SC unemployability.
* A subsequent formal rating decision will be required to dispose of the issue of entitlement to a total evaluation based on IU, even when the Veteran fails to return *VA Form 21-8940*.

***Reference***: For more information on section 5103 notices, see M21-1, Part I, 1.A.2. |

#### 3. Evaluating Evidence of Self-Employment or Employment With a Tightly Held Corporation

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| Introduction | This topic contains information on evaluating evidence of self-employment or employment with a tightly held corporation, including* self-employment development
* deciding whether self-employed individuals are unemployable due to a SC disability
* the definition of a ***tightly held corporation***, and
* evaluating evidence showing income from a tightly held corporation.
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| Change Date | September 8, 2009 |

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| a. Self-Employment Development | Development to produce the evidence necessary to establish the degree to which SC disability has impaired the Veteran’s ability to engage in self-employment *must* generally be more extensive than development in cases in which the Veteran worked for others. Request that the Veteran furnish a statement regarding the * types of work performed
* number of hours worked per week, and
* amount of time lost in the previous 12 months due to SC disabilities.
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| b. Deciding Whether Self-Employed Individuals Are Unemployable Due To SC Disability | When determining entitlement of self-employed individuals to increased compensation based on IU, consider the relationship between the frequency and the type of service performed by the Veteran for his/her business and the Veteran’s net and gross earnings for the past 12 months. Consider facts of the case, such as* low gross earnings that support a finding of marginal employment, especially when the amount of time lost from work due to SC disablement is taken into account, or
* high gross earnings that indicate the Veteran is capable of engaging in a substantially gainful occupation.

***Notes***: * Consider low net earnings in conjunction with gross income.
* The inability to make a profit is not always indicative of the inability to engage in substantially gainful employment.
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| c. Definition: Tightly Held Corporation | A ***tightly held*** ***corporation*** (or closely held corporation) is usually a family corporation. A corporation bearing the Veteran’s name is usually indicative of a tightly held corporation.  |

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| d. Evaluating Evidence Showing Income From a Tightly Held Corporation | Since the Veteran may control the amount of wages paid to himself/herself, do not make a finding of marginal employment solely on the basis of low wages.Keep in mind that the issue for consideration is whether the frequency and type of service performed by the Veteran equates to substantially gainful employment. Therefore, consider evidence that the Veteran received, or was entitled to receive, other remuneration from the corporation, such as stock dividends or loans, in lieu of wages.***Note***: If the reported wages appear low for the work performed, request a field examination per M21-1, Part III, Subpart vi, 8.7, to determine the Veteran’s entitlement to the corporation and corporate earnings.  |

#### 4. Preparing a Rating Decision Addressing the Issue of IU

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| Introduction | This topic contains information on preparing a rating decision addressing the issue of IU, including * considerations when deciding an IU claim
* the applicability of the concept of average impairment in earning capacity to IU claims
* considering multiple disabilities in IU claims
* entitlement to special monthly compensation (SMC) at the Housebound rate if the IU rating is based on one disability
* determining the effect of SC disabilities on employability
* the definition of ***marginal******employment***
* reasons for denying IU claims
* formally denying IU, and
* the information to include in the rating decision.
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| Change Date | September 15, 2011 |

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| a. Considerations When Deciding an IU Claim | When deciding an IU claim, the rating activity must take into account* the Veteran’s current physical and mental condition
* the Veteran’s employment status, including
* the nature of employment, and
* the reason employment was terminated, and
* whether
* the disability requirements set forth in [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) are met, or
* extra-schedular consideration under [38 CFR 3.321(b)(1)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_321.DOC) is warranted.

***Important***: Do not defer a decision as to the schedular degree of disability pending receipt of evidence sufficient to adjudicate the issue of IU. |

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| b. Applicability of the Concept of Average Impairment in Earning Capacity to IU Claims | Do *not* apply the concept of average impairment in earning capacity set forth in [38 CFR 4.1](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_1.DOC) to determinations regarding IU. This concept applies only to determinations of the percentage of disability for schedular evaluations. |

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| c. Considering Multiple Disabilities in IU Claims | Under certain circumstances, multiple disabilities may be considered one disability for the purpose of meeting the requirements of [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC).***Example***: Consider multiple disabilities incurred while a prisoner of war (POW) and disabilities incurred in action prior to, or subsequent to, former POW status, as one disability.***Rationale***: POW status is a continuation of action against the enemy.***Reference***: For more information on rating claims involving former POWs, see [M21-1, Part IV, Subpart ii, 2.E](pt04_sp02_ch02_secE.xml#IV.ii.2.E). |

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| d. Entitlement to SMC at Housebound Rate if IU Rating Is Based on One Disability  | A Veteran in receipt of IU benefits may be entitled to special monthly compensation (SMC) at the Housebound rate under [38 U.S.C. 1114(s)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001114----000-.html) if the evidence shows that* the unemployability is the result of *one* SC disability, and
* the Veteran has
* additional SC disability(ies) independently rated at least 60 percent disabling, or
* been determined to be permanently Housebound as a result of the SC disability that rendered the Veteran unemployable.

***Example***: A Veteran would be entitled to SMC at the Housebound rate if* his/her total IU evaluation is based on a 70 percent SC rating for posttraumatic stress disorder, and
* the Veteran has additional SC evaluations for headaches and a back condition that combine to 60 percent.

When granting entitlement to IU, include in the rating decision a determination as to which specific SC disability(ies) render the Veteran unemployable. Do *not* put entitlement to SMC at issue, however, unless SMC benefits will be granted.***Important***: Entitlement to Housebound benefits under [38 U.S.C. 1114(s)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001114----000-.html) *cannot* be established if the IU rating is based on multiple disabilities considered one disability under [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC). ***Reference***: For more information on entitlement to Housebound benefits when the IU rating is based on a single SC disability, see [*Bradley v. Peake*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmb)*,* 22 Vet.App. 280 (2008). |

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| e. Determining the Effect of SC Disabilities on Employability | Determine whether the severity of the SC conditions precludes the Veteran from obtaining or retaining substantially gainful employment. Identify and isolate the effects of extraneous factors, such as * age
* nonservice-connected (NSC) disabilities
* injuries occurring after military service
* availability of work, or
* voluntary withdrawal from the labor market.

***Notes***: Include sufficient information in the *Reasons for Decision* section of the rating decision to* explain the reasoning behind the decision, either favorable or unfavorable, and
* justify the conclusion.
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| f. Definition: Marginal Employment | ***Marginal employment*** exists* when a Veteran’s earned annual income does not exceed the amount established by the U.S. Department of Commerce, U.S. Census Bureau, as the poverty threshold for one person, and/or
* on a facts-found basis, and includes, but is not limited to, employment in a protected environment, such as a family business or sheltered workshop, when earned annual income exceeds the poverty threshold.

***Note***: The U.S. Census Bureau revises the poverty thresholds annually. When the revised amounts are published, Veterans Benefits Administration (VBA) revises M21-1, Part IV, Subpart ii, 2.F.32.b. ***Important***: * Do not consider marginal employment as substantially gainful employment.
* Do not consider amounts received from participation in the Veterans Health Administration’s (VHA’s) Compensated Work Therapy (CWT) Program as income for IU purposes.

***Reference***: For more information on the poverty threshold, see M21-1, Part IV, Subpart ii, 2.F.32. |

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| g. Reasons for Denying IU Claims | Deny IU claims or reduce compensation that is based on a finding of IU only if the facts demonstrate that the Veteran* is not precluded from obtaining gainful employment by reason of SC disability
* has in fact obtained gainful employment, or
* has failed to cooperate with development, such as failing to return a competed *VA Form 21-8940* when requested.

***Notes***: * The fact that a Veteran is participating in a program of rehabilitation does not preclude a finding of IU.
* The fact that a Veteran has completed a program of rehabilitation does not mandate a termination of IU unless sustained employment is also demonstrated.
* When IU is claimed following a completed program of rehabilitation, pay special attention to evidence of program results that indicate the Veteran's ability and willingness to engage in a substantially gainful occupation.

***Reference***: For more information on continuing a total evaluation based on IU, see [38 CFR 3.343(c)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_343.DOC). |

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| h. Formally Denying IU | Formally code the rating decision to indicate denial of IU if * the Veteran specifically claims entitlement to IU, and
* any of the requirements for [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) are not met.

***Note***: If the Veteran disagrees with the decision, the statement of the case (SOC) should cite the relevant portion of [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) as the authority of the denial. |

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| i. Information to Include in the Rating Decision | Use the information below to determine what information to include in the rating decision. |

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| If … | Then … |
| schedular requirements of [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) are met, but IU is denied | provide an explanation of all pertinent subsidiary determinations. |
| the Veteran is considered employable | explain the facts that are pertinent to that conclusion. |
| schedular requirements of [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) are not met | note the absence of a basis for submission of the case to the Compensation Service (211B) for consideration of an extra-schedular rating, if applicable.***Reference***: For more information on extra-schedular submission, see* [38 CFR 3.321(b)(1)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_321.DOC)
* [38 CFR 4.16(b)](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC), and
* M21-1, Part IV, Subpart ii, 2.F.28.a.
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| a Veteran is considered unemployable due to NSC factors | include * an explanation of the reasons for this decision, and
* the reasoning for finding that SC disabilities alone do not render the Veteran unemployable.
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| IU is established | * include an explanation or analysis of how impairment from SC disability supports the decision, and
* specify which disability(ies) render the Veteran unemployable.

***Important***: A conclusory statement alone that the criteria for a total evaluation based on IU are met does *not* satisfy the requirement to state the basis for the decision. |
| permanency of the total disability IU evaluation is established | dispose of the issue of Dependents’ Educational Assistance (DEA) under [38 U.S.C. Chapter 35](http://www.law.cornell.edu/uscode/html/uscode38/usc_sup_01_38_10_III_20_35.html), regardless of whether or not there appear to be any potential dependents.***Note***: The rating conclusion must include the statement, *Basic eligibility under 38 U.S.C. Chapter 35 is established from [date].*  |

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| ***References***: For more information on * IU, see [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC), and
* unemployability, see [38 CFR 4.18](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_17a.DOC).
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#### 5. Special Considerations in IU Claims

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| Introduction | This topic contains information on special considerations in IU claims, including* handling claims requiring CO approval
* monitoring changes in employability status
* when monitoring changes in employability status is not required
* dispatch and control for the return of *VA Form 21-4140, Employment Questionnaire*
* the action taken
* when Hines Information Technology Center (ITC) cannot issue *VA Form 21-4140,*
* if *VA Form 21-4140* or *VA Form 21-4140-1* shows continued unemployability, or
* by the Triage Team if *VA Form 21-4140* indicates veteran may be employed
* determining whether the Veteran has sustained gainful employment,
* action taken if *VA Form 21-4140* is not returned
* action taken if the Veteran returns a signed *VA Form 21-4140* during the due process period and
* failure to cooperate with a required field examination.
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| Change Date | September 15, 2011 |

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| a. Handling Claims Requiring CO Approval | Submit any claim to CO (211B) for extra-schedular consideration if the schedular requirements of [38 CFR 4.16](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) are not met but the evidence of record supports a finding that the Veteran is unemployable by reason of SC disability.The memorandum prepared to transmit claims folders to CO for review must provide the following:* a clear and succinct statement of the facts of the case, including medical and lay evidence of symptoms
* a discussion of relevant laws and regulations, and
* a statement of the issues to be resolved, as well as the recommended evaluation(s).
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| b. Monitoring Changes in Employability Status | Changes in the employability of Veterans for whom IU is established is monitored through the* annual release of *VA Form 21-4140, Employment Questionnaire*, via the Benefits Delivery Network (BDN), and
* Income Verification Match (IVM).

***References***: For more information on* dispatch and control for the return of *VA Form 21-4140*, see M21-1, Part IV, Subpart ii, 2.F.28.d, and
* the IVM as it relates to awards based on IU, see M21-1, Part X, 9.12.
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| c. When Monitoring Changes in Employability Status Is Not Required  | Monitoring changes in employability status is not required when the Veteran* is 69 years of age or older
* has been rated totally disabled due to unemployability for a period of 20 continuous years, which protects the evaluation from future reduction under [38 CFR 3.951(b)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_950.DOC), or
* is assigned a 100-percent schedular evaluation.
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| d. Dispatch and Control for Return of VA Form 21-4140 | The table below shows the steps involved in the dispatch and control for return of *VA Form 21-4140.* |

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| Step | Action |
| 1 | A future diary is generated whenever a rating decision granting a total evaluation based on individual unemployability is processed. |
| 2 | Hines Information Technology Center (ITC) issues *VA Form 21-4140* annually upon maturation of the future diary established under reason code 02, “100% Unemployable Review.”***Note***: To control the release of the last *VA Form 21-4140*, a master record diary is generated under reason code 32, “Expiration of Employability Control,” 19 years from the effective date of the grant of total benefits, or at age 69, whichever is earlier.  |
| 3 | A future diary is established to control for the return of *VA Form 4140* two months from the month it is issued from Hines ITC.***Note***: If the future diary is not cleared timely * BDN will issue a writeout with message code 631, or
* the Veterans Service Network (VETSNET) will establish an 800 Series Work Item to indicate that the diaried action is due.

***Reference***: For more information on VETSNET processing, see the [*VETSNET User Guides*](http://vbaw.vba.va.gov/bl/21/Systems/vetsnet.htm)on the Compensation Service Intranet*.* |

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| e. Action Taken When Hines ITC Cannot Issue VA Form 21-4140 | When Hines ITC cannot issue *VA Form 21-4140*, the system generates a BDN writeout/VETSNET 800 Series Work Item showing that the employability letter was not sent. Upon receipt of the BDN writeout/VETSNET 800 Series Work Item, immediately send the Veteran *VA Form 21-4140-1, Employment Questionnaire*. To control for the return of *VA Form 21-4140-1*, Hines ITC establishes a future diary under reason code 34 for four months from the month in which the writeout or Work Item was issued. ***Note***: As a local option, a regional office (RO) may establish a future diary under end product (EP) 310 upon receipt of the BDN writeout/VETSNET 800 Series Work Item. |

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| f. Action Taken if VA Form 21-4140 or VA Form 21-4140-1 Shows Continued Unemployability | When reviewing the completed *VA Form 21-4140* or *VA Form 21-4140-1*, if the Veteran has checked “NO,” indicating he or she has not been employed in the past 12 months (block 3) and signed the form, the Triage Team should * file the completed questionnaire in the claims folder, and
* clear
* EP 692, using the PCLR command, and
* the future diary established under reason code 34, using the DIAR command.

***Note***: Do not refer the claims folder to the rating activity.  |

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| g. Action Taken by the Triage Team if VA Form 21-4140 Indicates Veteran May Be Employed | The table below shows the action taken by the Triage Team if the Veteran checked “YES” for block 3 on *VA Form 21-4140* (or *VA Form 21-4140-1)*, or indicated employment during the past 12 months in “*Section I - Employment Certification.”* |

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| If/When … | Then the Triage Team will … |
| *VA Form 21-4140* shows that the Veteran regained employment during the past 12 months | * clear the future diary established under reason code 34
* establish a future diary under EP 310, entering a suspense date 12 months from the month in which the Veteran regained employment, and
* notify the Veteran that the total evaluation will continue at the present, but VA will reconsider entitlement to a total evaluation in the future.

***References***: For more information on* establishing a future diary, see
* [M21-1, Part V, 16.02h(13), (14), and (16)](http://www.warms.vba.va.gov/admin21/m21_1/part5/ch16.doc), or
* the [*VETSNET Awards User Guide*](http://vbaw.vba.va.gov/bl/21/Systems/awards.htm)
* sustained employment, see [38 CFR 3.343(c)(2)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_343.DOC), and
* the action to take when the future diary matures, see M21-1, Part IV, Subpart ii, 2.F.28.h.
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| *VA Form 21-4140* shows the Veteran has been gainfully employed for 12 or more consecutive months | * clear the future diary established under reason code 34
* establish EP 310, and
* refer the case to the rating activity.

***Note***: If the income shown is marginal per M21-1, Part IV, Subpart ii, 2.F.27.e, do *not** consider the Veteran to be gainfully employed, or
* refer the case to the rating activity.
 |

|  |  |
| --- | --- |
| h. Determining Whether the Veteran Has Sustained Gainful Employment  | When the future diary established under EP 310 matures, the authorization activity will develop to determine whether the Veteran has sustained gainful employment for 12 or more consecutive months.The table below shows the action to take after development is completed. |

|  |  |
| --- | --- |
| If … | Then … |
| * evidence shows gainful employment has continued for 12 or more consecutive months, or
* the Veteran failed to furnish the information requested to determine employment status
 | refer the claims folder to the rating activity under EP 310. |
| evidence does not show gainful employment has continued for 12 or more consecutive months | * clear EP 310, using the PCLR command, and
* notify the Veteran of continued entitlement to a total evaluation.
 |

|  |  |
| --- | --- |
| i. Action Taken if VA Form 21-4140 Is Not Returned | The table below shows the action taken if *VA Form 21-4140* is not returned.***Notes***: * Before taking the action shown in the table below, it may be useful to telephone the Veteran and ask him/her to return a signed *VA Form 21-4140* by mail, fax, or as an attachment to e-mail.
* If telephone contact is successful, and the Veteran agrees to return the form
* document that fact in the claims folder, and
* allow 10 days for receipt of the form before taking the action shown below.
* The telephone call itself, however, even with a statement of unemployment from the Veteran, is *not* a substitute for receipt of *VA Form 21-4140* with the Veteran’s signature.
 |

|  |  |
| --- | --- |
| Step | Action |
| 1 | The authorization activity* establishes EP 310 control, and
* refers the claims folder to the rating activity.
 |
| 2 | The rating activity prepares a rating decision proposing to reduce the Veteran to the appropriate schedular evaluation for failure to return *VA Form 21-4140.* |
| 3 | The authorization activity* notifies the Veteran of the proposed reduction in accordance with M21-1, Part I, 2.B, including
* the date the proposed action will be effective
* the reduced rate of compensation, and
* the proposed loss of entitlement to Dependents’ Educational Assistance (DEA) under [38 U.S.C. Chapter 35](http://www.law.cornell.edu/uscode/html/uscode38/usc_sup_01_38_10_III_20_35.html)
* clears the pending EP 310, and
* establishes an EP 600 to control the claim during the due process period.

***Note***: The effective date of the reduction will be no earlier than the first day of the month following the end of the 60-day due process period. Be sure to properly notify the Veteran’s designated representative of the proposal. |
| 4 | After the due process period expires, and there has been no response to the notification, under EP 600* reduce the award effective the date of the last payment (see [38 CFR 3.501(f)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_501.DOC)) or the date specified in the notice of proposed adverse action, whichever is later
* notify the Veteran of the reduction and loss of entitlement to DEA
* advise the regional processing office (RPO) of jurisdiction of the loss of entitlement to DEA, if a [38 U.S.C. Chapter 35](http://www.law.cornell.edu/uscode/html/uscode38/usc_sup_01_38_10_III_20_35.html) record exists under the Veteran’s claim number, and
* refer the claims folder to the rating activity for a rating decision to implement the reduction to the schedular evaluation.

***Note***: The notification letter should also advise the Veteran that if VA receives evidence establishing continued unemployability within one year of the date of the notification letter, the total evaluation based on unemployability will be restored from the date of reduction.***References***: For more information on* RPO jurisdiction, see M21-1, Part IX, Subpart ii, 2.11, and
* action taken if the Veteran responds during the due process period, see M21-1, Part IV, Subpart ii, 2.F.28.j.
 |

|  |  |
| --- | --- |
| j. Action Taken if the Veteran Returns a Signed VA Form 21-4140 During the Due Process Period | Use the table below to determine the action to take if the Veteran returns a signed *VA Form 21-4140* during the due process period. |

|  |  |
| --- | --- |
| If VA Form 21-4140 shows … | Then … |
| continued unemployability | * refer the claims folder to the rating activity to prepare a rating decision continuing the prior evaluation, and
* clear the EP 600 when notifying the Veteran of the rating decision.
 |
| possible gainful employment | * if employment has continued for 12 or more months, refer the claims folder to the rating activity under EP 600, or
* if employment has continued for fewer than 12 consecutive months
* clear the EP 600
* establish a future diary under EP 310, entering a suspense date 12 months from the month in which the Veteran regained employment
* notify the Veteran that
* the total evaluation will continue at the present, but
* VA will reconsider entitlement to a total evaluation in the future.

***Reference***: For information on the action to take when the future diary matures, see M21-1, Part IV, Subpart ii, 2.F.28.h. |

|  |  |
| --- | --- |
| k. Failure to Cooperate With a Required Field Examination | Follow the steps in the table below when the Veteran fails to participate in a required field examination. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Prepare a rating decision proposing a reduced evaluation using the format in M21-1, Part IV, Subpart ii, 2.F.29. |
| 2 | Use the table below to determine the action to take upon receipt of the Veteran’s response to the notice of proposed adverse action.

|  |  |
| --- | --- |
| If the Veteran … | Then … |
| fails to respond to the notice of proposed adverse action | prepare a rating decision to reduce the current evaluation using the format in M21-1, Part IV, Subpart ii, 2.F.30. |
| is willing to participate in the field examination prior to reduction to the schedular evaluation | defer the rating action to reduce the evaluation* reschedule the examination, and
* inform the Veteran that
* further failure to cooperate will be cause for a reduction to the schedular evaluation, and
* the total evaluation based on IU would not be restored until the field examination had been completed and the report reviewed.
 |
| sends evidence which warrants continuation of a total rating based on continued unemployability | prepare a rating decision using the format in M21-1, Part IV, Subpart ii, 2.F.31. |

  |

#### 6. Exhibit 1: Rating Decision Addressing a Veteran’s Failure to Complete a Field Examination

|  |  |
| --- | --- |
| Introduction | This topic contains an example of a rating decision addressing a Veteran’s failure to complete a field examination. |

|  |  |
| --- | --- |
| Change Date | September 8, 2009 |

|  |  |
| --- | --- |
| a. Rating Decision: Failure to Complete a Field Examination | An example of a rating decision addressing a Veteran’s failure to complete a field examination is below. |

|  |
| --- |
| DECISION: A reduction to the schedular evaluation shown below is proposed because of the Veteran’s failure to cooperate with a required field examination.**EVIDENCE:** Notice of Failure to Cooperate with field examiner.**REASONS FOR DECISION:** A total disability rating has been in effect because of unemployability. Notice has been received that the Veteran refused to cooperate in completing a required field examination.**JURISDICTION:** Field Examiner NotificationSUBJECT TO COMPENSATION (1.SC)\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_COMBINED EVALUATION FOR COMPENSATION:Individual Unemployability from \_\_\_\_\_\_\_\_NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC) |

#### 7. Exhibit 2: Rating Decision Addressing a Veteran’s Failure to Respond to a Notice of Proposed Adverse Action After Failure to Complete a Field Examination

|  |  |
| --- | --- |
| Introduction | This topic contains an example of a rating decision addressing a Veteran’s failure to respond to a notice of proposed adverse action after failure to complete a field examination. |

|  |  |
| --- | --- |
| Change Date | September 8, 2009 |

|  |
| --- |
| DECISION: Reduction to the schedular evaluation is in order because of the Veteran’s failure to cooperate in the completion of a required field examination.**EVIDENCE:**  Notice of Failure to Cooperate with field examiner.**REASONS FOR DECISION:**  A total disability rating has been in effect because of unemployability. Notice has been received that the Veteran failed to cooperate with a required field examination and the Veteran failed to respond to the notice of proposed adverse action sent \_\_\_\_\_\_\_.**JURISDICTION:** Field Examiner NotificationSUBJECT TO COMPENSATION (1.SC)\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_COMBINED EVALUATION FOR COMPENSATION:Individual Unemployability from \_\_\_\_\_\_\_ to \_\_\_\_\_\_NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC)\_\_\_\_\_ \_\_\_\_\_  |

#### 8. Exhibit 3: Rating Decision Addressing the Subsequent Receipt of Evidence That Restores IU After Failure to Complete a Field Examination

|  |  |
| --- | --- |
| Introduction | This topic contains an example of a rating decision addressing the subsequent receipt of evidence that restores IU after failure to complete a field examination. |

|  |  |
| --- | --- |
| Change Date | September 8, 2009 |

|  |  |
| --- | --- |
| a. Rating Decision: Subsequent Receipt of Evidence That Restores IU  | An example of a rating decision addressing the subsequent receipt of evidence that restores IU after failure to complete a field examination is below. |

|  |
| --- |
| DECISION: The total rating based on unemployability is restored.**ISSUE:** Total Disability Because of Unemployability**EVIDENCE:** Report of Field Examination 12/11/95**REASONS FOR DECISION:** Veteran’s total disability rating because of unemployability was reduced to the schedular evaluation because of the lack of cooperation in completing a required field examination. Sufficient evidence, including completion of the field examination, has been received establishing continuing unemployability. **JURISDICTION:**  Completion of Field ExaminationSUBJECT TO COMPENSATION (1.SC) \_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_COMBINED EVALUATION FOR COMPENSATIONIndividual Unemployability from \_\_\_\_\_\_\_\_NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC) |

#### 9. Exhibit 4: Poverty Threshold Information

|  |  |
| --- | --- |
| Introduction | This topic contains information on the poverty threshold, including * marginal employment based on income below the poverty level, and
* the poverty threshold for one person.
 |

|  |  |
| --- | --- |
| Change Date | September 15, 2011 |

|  |  |
| --- | --- |
| a. Marginal Employment Based on Income Below the Poverty Threshold | [38 CFR 4.16(a)](http://www.warms.vba.va.gov/regs/38CFR/BOOKC/PART4/S4_16.DOC) provides that marginal employment is generally deemed to exist when a Veteran’s earned income does not exceed the amount established by the U.S. Census Bureau as the average poverty threshold for one person.***Reference***: For more information on the U.S. Census Bureau’s poverty thresholds, see <http://www.census.gov/hhes/www/poverty/data/historical/people.html>.  |

|  |  |
| --- | --- |
| b. Poverty Threshold for One Person | The table below lists the poverty threshold for one person by year.  |

|  |  |
| --- | --- |
| Calendar Year | Amount |
| 1989 | $6,310 |
| 1990 | $6,652 |
| 1991 | $6,932 |
| 1992 | $7,143 |
| 1993 | $7,363 |
| 1994 | $7,547 |
| 1995 | $7,763 |
| 1996 | $7,995 |
| 1997 | $8,183 |
| 1998 | $8,316 |
| 1999 | $8,501 |
| 2000 | $8,794 |
| 2001 | $9,039 |
| 2002 | $9,183 |
| 2003 | $9,393 |
| 2004 | $9,645 |
| 2005 | $9,973 |
| 2006 | $10,294 |
| 2007 | $10,590 |
| 2008 | $10,991 |
| 2009 | $10,956 |