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

**Veterans Benefits Administration January 27, 2016**

**Washington, DC 20420**

#### Key Change

|  |  |
| --- | --- |
| 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 Assist”.  ***Notes***:   * Minor editorial changes have also been made to * update incorrect or obsolete references and * bring the document into conformance with M21-1 standards. |

|  |  |
| --- | --- |
| Reason(s) for the Change | Citation |
| To add a reference to about the incomplete application sample letter. | [M21-1, Part I, Chapter 1, Section B, Topic 1, Block e](#Topic1e)  [(I.1.B.1.e)](#Topic1e) |
| To provide a sample of the letter sent to notify a claimant when an incomplete application is received. | [I.1.B.1.k](#Topic1k) |

|  |  |
| --- | --- |
| Rescissions | None |

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

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

|  |  |
| --- | --- |
| Distribution | LOCAL REPRODUCTION AUTHORIZED |

### Section B. Duty to Notify Under 38 U.S.C. 5102 and 5103

#### Overview

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

|  |  |
| --- | --- |
| Topic | Topic Name |
| 1 | Notification Requirements for Claims Not Previously Denied |
| 2 | Notification Requirements for Requests to Reopen a Previously Denied Claim |

#### 1. Notification Requirements for Claims Not Previously Denied

|  |  |
| --- | --- |
| Introduction | This topic contains information on handling original and new claims and claims for increased evaluation, including   * Department of Veteran’s Affairs’ (VA’s) duty to notify claimants of necessary information or evidence * criteria for substantially complete applications * notification requirements for a complete application * cases that require issuance of a standard Section 5103 notice letter * notification requirements for an incomplete application * notification requirements for a request for application or an intent to file a claim * notification requirements for claims that are inherently incredible or lack merit * responding to a request for an earlier effective date * exception to the notification requirement * Section 5103 notice requirements for subsequent claims, and * sample letter for notification of incomplete application for benefits. |

|  |  |
| --- | --- |
| Change Date | January 27, 2016 |

|  |  |
| --- | --- |
| a. VA's Duty to Notify Claimants of Necessary Information or Evidence | The Department of Veterans Affairs (VA) shall provide to the claimant, by the most effective means available, a notice (hereafter referred to as ‘Section 5103 notice’) of any information and medical or lay evidence not previously provided that is necessary to substantiate the claim.  ***Important***: VA has historically provided claimants the required Section 5103 notice in a paper-based letter *after* receipt of a substantially complete application for benefits. However, *Public Law (PL) 112-154*, *Honoring America’s Veterans and Caring for Camp Lejeune Families Act of 2012*, enacted on August 6, 2012, amended 38 U.S.C. 5103 to afford VA more flexibility in how and when VA delivers the notice.  ***Reference***: For more information on VA’s duty to notify, see   * [38 CFR 3.159(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f2c2845208123b45d61daddd233693ee&node=se38.1.3_1159&rgn=div8), and * [38 U.S.C. 5103](https://www.law.cornell.edu/uscode/text/38/5103). |

|  |  |
| --- | --- |
| b. Criteria for Substantially Complete Applications | Upon receipt of an application for benefits, VA must determine if it is substantially complete. If not, then VA is ***not*** required to send a Section 5103 notice. However, VA is obligated under [38 U.S.C. 5102](https://www.law.cornell.edu/uscode/text/38/5102) to notify the applicant of the information and proper forms necessary to substantiate the claim.  A substantially complete application must include the following   * claimant’s name and relationship to the Veteran, if applicable * sufficient service information for the 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 Veterans pension, Survivors 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. * Beginning March 24, 2015, all claims governed by VA’s adjudication regulations must be filed on standard forms prescribed by the Secretary, regardless of the type of claim or posture in which the claim arises.   ***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.C.2.e.](imi-internal:M21-1MRIII.ii.1.A.3.b) |

|  |  |
| --- | --- |
| **c. Notification Requirements for a Complete Application** | Regional offices (ROs) must ensure that all claimants receive the required notification regarding the information and evidence that is necessary to substantiate their claims. This statutory obligation, based on [38 U.S.C. 5103](https://www.law.cornell.edu/uscode/text/38/5103), is met when the notice is provided to claimants   * on a standard EZ application form when filing * a claim through the Fully Developed Claim (FDC) program, or * a claim through the standard claims process * through online claims submission via * eBenefits, or * the Stakeholder Enterprise Portal (SEP), or * when an automated Section 5103 notice is generated during the establishment of the end product (EP), via the * Veterans Benefits Management System (VBMS), or * Letter Creator.   In rare instances, ROs may still need to send claimants the traditional Section 5103 notice letter but *only* when one of the above methods was not utilized in the filing of the claim.  ***Important***:   * If the Section 5103 notice has been provided to the claimant but there is additional information needed from claimants to support their claim, (e.g., specific exposure information), then ROs are obligated to notify claimants of this required information. In such cases, ***do not*** include redundant Section 5103 notice information in the letter to claimants. * Non-original claims signed and submitted by a power of attorney (POA) only, using means other than SEP for submission, require sending the claimant an automated Section 5103 notice at the time of establishment of the EP. * VBMS still automatically adds the “*What Have We Received*” paragraph to Section 5103 notices. Until it is updated * use the date of the letter as the receipt date, and * add the following sentence to the evidence list under “*What Have We Received*”: “*All evidence received to date has been incorporated into your electronic record*.” * For Section 5103 notices created in Modern Award Processing-Development (MAP-D), remove the “*What Have We Received*” paragraph.   ***Notes***:   * Do not include the claimed conditions (contentions) in the Section 5103 notice letter. * Because the law permits a generic Section 5103 notice, it is not required that ROs include diagnostic criteria for a specific disability in the notice even if the claimant asserts entitlement to a specific evaluation level. See [*Wilson* *v.* *Mansfield*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmw), 506 F.3d 1055, 1062 (Fed. Cir. 2007). * To document VA’s compliance with [38 U.S.C. 5103](https://www.law.cornell.edu/uscode/text/38/5103), ensure a copy of any Section 5103 notice, along with enclosures, is included in the claims folder. Do not include copies of any forms requested to be returned. * 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.   ***References***: For more information on   * the notice VA provides to claimants in * *VA Form 21-526EZ*, *Application for Disability Compensation and Related Compensation Benefits*, see M21-1, Part III, Subpart i, 3.A.2.e. * *VA Form 21-527EZ*, *Application for Pension*, see M21-1, Part III, Subpart i, 3.A.2.f, and * *VA Form 21-534EZ*, *Application for DIC, Death Pension, and/or Accrued Benefits*, see M21-1, Part III, Subpart i, 3.A.2.g. * 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.ecfr.gov/cgi-bin/text-idx?SID=e4773620348b09dbbd647c08574adce5&node=se38.1.3_1159&rgn=div8) * the origination of Section 5103 notice, see M21-1, Part I, 1.A.1.c * FDCs and special issue development letters, see M21-1, Part III, Subpart i, 3.B.3.d, and * electronic Section 5103 notice through eBenefits for claims submitted in SEP, see M21-1, Part III, Subpart i, 4.B.2.i. |

|  |  |
| --- | --- |
| **d. Cases That Require Issuance of a Standard Section 5103 Notice Letter** | In rare instances when the claimant ***is not*** provided the required Section 5103 notice, through the methods illustrated in M21-1, Part I, 1.B.1.c, it may be necessary to send the claimant a standard Section 5103 notice letter.  ***Example***: When rating a claim pending for 15 months, a Rating Veterans Service Representative (RVSR) discovers a claimed issue that was received on a non-EZ form over one year after the initial Section 5103 notice was provided. No action had been taken on this issue.    ***Analysis***: In this case, since the claimed issue was not previously covered by a prior Section 5103 notice, a standard Section 5103 notice letter must be provided to the claimant.  See below table for the required elements and actions to take when issuing a claimant a standard Section 5103 notice letter. |

|  |  |
| --- | --- |
| **Required Element** | **Action** |
| What the evidence must show (WTEMS) to substantiate the claim | Provide the following WTEMS, when a claim for direct or increased service connection (SC) is sought   * *original service connection* (also referred to as the *continuity* WTEMS), * *secondary service connection* (which includes information regarding *aggravation*), and * the *increased rating* attachments. |
| Information the claimant is responsible for submitting to VA | Request the claimant to   * identify any records he/she believes are relevant to the claim, and * complete *VA Form 21-4142*, *Authorization to Disclose Information to the Department of Veterans Affairs (VA)*, and *VA Form 21-4142a*, *General Release for Medical Provider Information to the Department of Veterans Affairs (VA)*,where appropriate. This will allow VA to request private medical records on the claimant’s behalf. |
| Time limit for submission of evidence | Inform the claimant that   * 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. |
| Evidence VA will attempt to obtain on the claimant’s behalf | Inform the claimant of the evidence VA is requesting, such as   * service treatment records (STRs), * private records (when *VA Forms 21-4142* and *21-4142a* are received and complete), and * medical examination requests. |
| Section 5103 notice response form | Inform the claimant that he/she may     * notify VA that he/she has no further information or evidence to submit, and * request a decision on his/her claim without further delay. |

|  |  |
| --- | --- |
| e. Notification Requirements for an Incomplete Application | When an incomplete application is received   * establish an EP 400 to control the correspondence and use the date the application was received as the control date * cancel any erroneously established EP after notifying the claimant about the incomplete application * print a copy of the incomplete application * mark the blocks on the application in red that require the claimant’s attention * return the incomplete application to the claimant and notify him or her (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 * add a copy of the application and the decision notice to the claims folder, and * clear (PCLR) the EP 400.   ***Note***: When appropriate, contact the claimant first by telephone to obtain the information needed to complete the application.  ***References***: 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), and * [38 CFR 3.159(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=e4773620348b09dbbd647c08574adce5&node=se38.1.3_1159&rgn=div8) * a sample notification letter to send to a claimant who has submitted an incomplete application, see M21-1, Part I, 1.B.1.k, and * claims development by e-mail, fax, and telephone, see * M21-1, Part III, Subpart iii, 1.B.1.c, and * M27-1, Part I, 5.8 and 5.9. |

|  |  |
| --- | --- |
| f. Notification Requirements for a Request for Application or an Intent to File a Claim | Effective March 24, 2015, VA requires all claims to be filed on a standard form. Therefore, ROs shall provide the prescribed application forms to the claimant when he or she   * submits a request for application or desire for benefits either in writing or through electronic communications that is not on a standard claim form * submits a *VA Form 21-0996*, *Intent To File A Claim For Compensation and/or Pension, or Survivors Pension and/or DIC*, or * calls a National Call Center (NCC) indicating an intent to file a claim.   ***Note***: After the intent to file a claim has been entered into the corporate data base, a one-time correspondence is automatically generated and sent to the claimant the following day.  ***References***: For more information on   * application forms furnished upon request; notice to claimants of incomplete applications, see M21-1, Part III, Subpart ii, 2.C.2.c, and * the *ITF Received* letter generated by Hines, see M21-1 Part III, Subpart ii, 2.C.1.h. |

|  |  |
| --- | --- |
| g. Notification Requirements for Claims That Are Inherently Incredible or Lack Merit | Upon identification of a compensation claim that is inherently incredible or clearly lacks merit   * notify the claimant of the evidence required to make the claim plausible, and * defer assistance, including scheduling an examination, until that evidence is received.   If the evidence requested is not received within 30 days, decide the claim based upon all available evidence.  ***Reference***: For the definition of claims that are inherently incredible or lack merit, see M21-1, Part I, 1.A.3.c. |

|  |  |
| --- | --- |
| h. Responding to a Request for an Earlier Effective Date | Because VA has no authority to adjudicate a request for an earlier effective date based on a claim that is finally adjudicated, ROs are not required to send a Section 5103 notice in these cases. If the claimant requests a revision of the effective date of a prior decision based on a clear and unmistakable error (CUE), and he/she specifies the factual or legal error in the previous claim, then the case is to be referred to the rating activity for review.  If a request for an earlier effective date of a prior claim is received and it is not based on a CUE, which specifies the factual error, then send the claimant a letter including the following language  *We received your claim 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 claim 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 (PCLR the EP 400).  ***References***: For more information on   * revising decisions based on CUE, see * [38 CFR 3.105(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=e4773620348b09dbbd647c08574adce5&node=se38.1.3_1105&rgn=div8), and * M21-1, Part III, Subpart iv, 2.B.4, * requests for reconsideration, see M21-1, Part III, Subpart ii, 2.F, and * processing requests for an earlier effective date, see M21-1, Part III, Subpart iv, 2.B.1.g. |

|  |  |
| --- | --- |
| i. Exception to the Notification Requirement | In cases where the evidence of record is sufficient to substantiate a claim and award 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 awarding the specific benefit the claimant is seeking without undertaking development for additional evidence.  ***Example***: When rating a claim for low back condition, an RVSR discovers a claim for SC for hypertension. A Section 5103 notice has not been provided to the claimant for the hypertension, nor does any previous notice cover it. The Veteran indicates he has only had treatment at a VAMC. After reviewing service treatment records and the VAMC records on file, which are found to be adequate for rating purposes, the RVSR awards SC for hypertension at 20 percent disabling.  ***Analysis***: In this case, since the evidence is adequate for rating purposes, and there is no other development required, the benefit can be awarded without sending the claimant a Section 5103 notice.  ***Important***: Provide Section 5103 notice if *any* development is necessary (including a request for an examination). |

|  |  |
| --- | --- |
| j. Section 5103 Notice Requirements for Subsequent Claims | In accordance with [38 U.S.C. 5103(b)(4)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00005103----000-.html), ROs are not required in certain cases to send a Section 5103 notice for a subsequent claim that is filed while a previous claim is pending.  The table below contains notification requirements when the claimant submits a subsequent claim while a previous claim is still pending. |

|  |  |
| --- | --- |
| If the previous notice… | Then ... |
| sufficiently identified the information and evidence necessary to substantiate such subsequent claim(s) | a new Section 5103 notice is *not* required.  ***Exception***: Send a Section 5103 notice if over one year has passed since the notice was sent *and a subsequent claim(s) is received* |
| did not include the information and evidence necessary to substantiate the current claim type | * send a Section 5103 notice that specifically addresses the new claim type, and * provide the following statement in the notice   *We are continuing to work on your previous claim(s) and have received your additional claim(s). Our previous letter(s) provided you with sufficient information regarding the evidence needed to support your claim, as well as what VA will do.* |

|  |
| --- |
| ***Important***: In the context of [38 U.S.C. 5103(b)(4)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00005103----000-.html), ‘pending’ claim also includes claims that are not finally adjudicated and claims pending on appeal.  ***Example***: VA sends Section 5103 notice to a claimant on January 5, 2010, for an original claim for SC for hearing loss. VA decides the claim on July 1, 2010. On January 3, 2011, the Veteran submits a new claim for SC for coronary artery disease (CAD). VA is not required to provide a Section 5103 notice for the CAD claim.  ***Analysis***:   * The new claim represents the same type of claim as the previous claim, which means the initial Section 5103 notice would have already identified the information necessary to substantiate the claim * The new claim was received within one-year of the date that VA sent the previous Section 5103 notice, and * The new claim was received within the one-year appeal period of the previous claim. |

|  |  |
| --- | --- |
| **k. Sample Letter for Notification of Incomplete Application for Benefits** | This exhibit contains a sample notification letter to be sent to the claimant when an incomplete application for benefits has been received. |

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **DEPARTMENT OF VETERANS AFFAIRS**   |  |  |  | | --- | --- | --- | | <Today's\_Date>    <Veteran\_Address> | In Reply Refer To: | **<RO/Division/Initials>** |   <Salutation>  We received <Evidence\_Name> on <Date\_of\_Request>. We are returning this application form to you because it was incomplete. We cannot process your claim until the highlighted part of the form is completed.  If we receive your completed application within one year from the date of this letter, we will consider your claim filed as of the date of receipt of your incomplete application. If we receive your completed application more than one year from the date of this letter, we will consider your claim filed as of the date of receipt of the completed application.  **What is eBenefits?**  eBenefits provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the eBenefits website you can:  **● Submit claims for benefits and/or upload documents directly to the VA**  **● Request to add or change your dependents**  **● Update your contact and direct deposit information and view payment history**  **● Request a Veterans Service Officer to represent you**  **● Track the status of your claim or appeal**  **● Obtain verification of military service, civil service preference, or VA benefits**  **● And much more!**  Enrolling in eBenefits is easy. Just visit www.eBenefits.va.gov for more information. If you submit a claim in the future, consider filing through eBenefits. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.   |  | | --- | | **If You Have Questions or Need Assistance** |  |  |  | | --- | --- | | **If you** | **Here is what to do.** | | Telephone | <Contact\_Information> | | Use the Internet | Send electronic inquiries through the Internet at https://iris. | |
| 2  File Number: <Veteran\_Name\_and\_File\_Number>   |  |  | | --- | --- | | Write | VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached *Where to Send Your Written Correspondence.* |   In all cases, be sure to refer to your VA file number, <Vet\_File\_Number>.  If you are looking for general information about benefits and eligibility, you should visit our website at https://www.va.gov, or search the Frequently Asked Questions (FAQs) at https://iris.va.gov.  <NO\_Representation>  Sincerely yours,  Regional Office Director  Enclosures: Where to Send Your Written Correspondence  <POA> |

#### 2. Notification Requirements for Requests to Reopen a Previously Denied Claim

|  |  |
| --- | --- |
| Change Date | July 27, 2015 |

|  |  |
| --- | --- |
| a. Section 5103 Notice for Requests to Reopen a Previously Denied Claim | There is no requirement to provide the claimant with a case-specific Section 5103 notice letter when the Veteran is attempting to reopen a previously denied claim. See [VAOGCPREC 6-2014](http://www.va.gov/OGC/docs/2014/VAOPGCPREC6-2014.pdf).  ***Example***: Veteran submits a request on a *VA Form 21-526EZ* to reopen a previously denied claim for SC for hearing loss.  ***Analysis***: Because the application form contains general information on the requirements to reopen a claim that was previously denied, it is not necessary to send the Veteran a case-specific Section 5103 notice.  Upon receipt of a request to reopen a previously denied claim, follow the instructions in   * M21-1, Part I, 1.B.1.b to determine whether the claim is substantially complete, and * M21-1, Part I, 1.B.1.c to provide proper notice to the claimant.   ***Note***: In rare instances, when the claimant was not provided the 5103 notice through an EZ form, eBenefits, or automated notice from VBMS at time of EP establishment, a standard Section 5103 notice letter shall be sent to the claimant. In such cases, and unlike past practices when a case-specific notice was required, it is only necessary to provide a generic 5103 notice. Follow guidance in M21-1, Part I, B.1.d but with the following exception. Include the two WTEMS:   * direct SC, and * new and material evidence.   ***Reminder***: VA *is* responsible for attempting to obtain any relevant Federal or non-Federal evidence identified by the claimant in requests to reopen a previously denied claim.  ***References***: For more information about   * handling claims to reopen a finally denied claim, see M21-1, Part III, Subpart ii, 2.D.2.c. * Section 5103 notice for FDCs and EZ forms, see M21-1, Part III, Subpart i, 3.A.2.e * requests for reconsideration, see M21-1, Part III, Subpart ii, 2.F * reopening a previously denied claim based on new and material evidence, see [M21-1, Part III, Subpart iv, 2.B.3](imi-internal:M21-1MRIII.iv.2.B.6), and * new and material evidence, see [M21-1, Part III, Subpart iii, 1.B.6](imi-internal:M21-1MRIII.iii.1.B.7). |