### Section B. Power of Attorney (POA) Rights to Notification and Review of Records

#### Overview

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

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| Topic | Topic Name |
| 1 | Department of Veterans Affairs’ (VA’s) Duty to Notify POAs |
| 2 | POA Authority to Review Claims Folder |
| 3 | Veterans Service Organization (VSO) Review of Rating Decisions |
| 4 | Exhibit: VSO Notification Guide |

#### 1. Department of Veterans Affairs’ (VA’s) Duty to Notify POAs

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| Introduction | This topic contains information on VA’s duty to notify POAs, including   * a claimant’s right to representation * notices that must be provided to the representative * VA’s partnership policy with POAs * providing notice to POAs * providing notice to private attorneys or claims agents * requirement to list the private attorney or claims agent address in the carbon copy (cc) line, and * editing the cc line to list a representative and address. |

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| Change Date | March 9, 2016 |

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| a. A Claimant’s Right to Representation | The Department of Veterans Affairs’ (VA’s) policy is that all claimants have the right to representation before the department in claims affecting the payment of benefits or relief.  Claimants before VA are provided representation by Veterans Service Organizations (VSOs), attorneys, agents and other accredited individuals to ensure that such claimants have responsible, qualified representation to assist in the preparation, presentation, and prosecution of claims for Veterans’ benefits.  ***References***: For more information on   * a claimant’s right to representation before VA, see [38 CFR 3.103(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=c1d09d0f9b4c68459174bb6d6641b7dc&mc=true&node=se38.1.3_1103&rgn=div8), and * the purpose of representation before VA, see [38 CFR 14.626](http://www.ecfr.gov/cgi-bin/text-idx?SID=c1d09d0f9b4c68459174bb6d6641b7dc&mc=true&node=se38.1.14_1626&rgn=div8). |

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| **b. Notices That Must be Provided to the Representative** | Unless representation is limited by the claimant, power of attorney (POA) representatives are entitled to notice of any VA decisions affecting the payment of benefits or relief sought by claimants whom they represent. Representatives also must receive other forms of correspondence sent to claimants. These include   * decision notices * statements of the case and supplemental statements of the case * notice of certification and transfer of appeals to the Board of Veterans’ Appeals (BVA) * intent to file a claim notices * incomplete application notices, and * requests for information and evidence needed to substantiate a claim (e.g. development letters).   ***Important***: Release of Federal tax information (FTI) requires special considerations as noted in M21-1, Part X, 9.B.3.c.  ***References***: For more information, on   * limited attorney representation, see M21-1, Part I, 3.A.2.d * records protected by [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332), see M21-1, Part I, 3.B.2.d * VSO review of rating decisions, see M21-1, Part I, 3.B.3 * intent to file a claim notices, see [38 CFR 3.155(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=67d301f2e98031e709d2c5b55bf6a108&mc=true&node=se38.1.3_1155&rgn=div8) * notice of decisions, see [38 U.S.C. 5104](https://www.law.cornell.edu/uscode/text/38/5104) * incomplete applications, see [38 U.S.C. 5102](https://www.law.cornell.edu/uscode/text/38/5102), and * information and evidence needed to substantiate a claim, see [38 U.S.C. 5103(a)](https://www.law.cornell.edu/uscode/text/38/5103). |

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| **c. VA’s Partnership Policy with POAs** | VA’s policy in working with POA representatives is that of an equal partnership that seeks to effectively serve Veterans and their dependents and survivors. VA employees are expected to render timely and effective assistance to POA representatives. |

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| **d. Providing Notice to POAs** | For POAs who have access to a Veteran’s electronic claims folder (eFolder) via the VSO work queue, work queue indicators in the Veterans Benefits Management System (VBMS) provide adequate notice that correspondence is available for their review.  Provide a paper copy of correspondence to the claimant’s POA if   * the POA does not have access to the eFolder * there is a paper claims folder, or * a rating decision or correspondence is generated and the end product (EP) will be cleared the same day.   ***Exception***: See M21-1, Part I, 3.B.1.e for procedures on providing  notice to private attorneys and claims agents.  ***Important***: If providing a paper copy of a decision notice to a POA, and that decision notice is based on a rating decision, attach a copy of the rating decision narrative and codesheet. |

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| **e. Providing notice to Private Attorneys or Claims Agents** | Since most private attorneys and claims agents do not have access to the  full eFolders, the regional office (RO) must send all accredited private attorneys or claims agents a copy of any correspondence regarding the claim they represent.  ***Important***: If providing a paper copy of a decision notice to a POA, and that decision notice is based on a rating decision, attach a copy of the rating decision narrative and codesheet.  ***References***: For more information on   * providing notice to POAs, see M21-1, Part I, 3.B.1.d, and * the accreditation of private attorneys and claims agents, see [*OGC Accreditation Search*.](http://www.va.gov/ogc/apps/accreditation/index.asp) |

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| f. Requirement to List the Private Attorney or Claims Agent Address in the CC Line | When RO personnel generate correspondence associated with a claimant represented by a private attorney or claims agent, they must include the address of the private attorney or claims agent in the carbon copy (cc) line of the correspondence.  Including the full address in the cc line will allow mail processors to quickly and accurately address outgoing private attorney or claims agent copies of correspondence.  ***Reference***: For more information on editing the cc line to list the representative and address, see M21-1, Part I, 3.B.1.g. |

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| g. Editing the CC Line to List a Representative and Address | Follow the instructions in the table below to update the cc line for letters generated by each program. |

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| If the letter is generated in ... | Then ... |
| Modern Awards Processing-Development (MAP-D), Personal Computer Generated Letter (PCGL) or the Letter Creator tool | * delete the generic POA designation (PRIVATE ATTORNEY WITH EXCLUSIVE CONTACT or AGENT OR PVT ATTY-EXCLUSIVE CONTACT NOT) within the Microsoft Word document from the cc line, if one exists * replace the deleted text with the private attorney/agent’s name and address * finalize the letter, and * follow the instructions in M21-1 Part III, Subpart ii, 4.G.2.b to upload the letter to the eFolder. |
| VBMS-Core | * select CARBON COPY as the FREE TEXT option within the letter creation screen * type the name and address of the private attorney/agent in the free text field as shown in this fictional example:      * select ADD PARAGRAPH * preview the letter to ensure the cc line contains the private attorney/agent name, and      * finalize the letter. |
| VBMS Awards/Automated Decision Letter (ADL) | process the decision notice using PCGL and follow the instructions for PCGL listed above. |
| the Statement of the Case (SOC)/ Supplemental Statement of the Case (SSOC) Program | * the program will prompt the user to complete cover letter fields including a cc line. * Add the representative’s name and address to the cc line when a private attorney or claims agent is representing the appellant.   ***References***: For more information on   * the sections of the SOC and actions required when completing each section, see M21-1, Part I, 5.D.2.a * printing a representative copy of the SOC, see M21-1, Part I, 5.D.2.i, and * how to prepare a SSOC, see M21-1, Part I, 5.D.4.b |

#### 2. POA Authority to Review a Claims Folder

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| Introduction | This topic contains information on representatives’ authority to review a claims folder, including   * authority to review a claims folder * authority for contractors to review a claims folder * assistance in reviewing the claims folder * specific authorization required to disclose records protected by 38 U.S.C. 7332 * VA forms providing legally sufficient 38 U.S.C. 7332 authorization * duration of 38 U.S.C. 7332 authorization * 38 U.S.C. 7332 authorization – relationship to POA system access * notification requirement where appointment forms lack 38 U.S.C. 7332 election * handling claims folder reviews by representatives of non-Veteran claimants in cases where the Veteran is living, and * location for conducting a claims folder review. |

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| a. Authority to Review a Claims Folder | Representatives have the authority to review information in the claimant’s claims folder provided there is proper authorization from the claimant to do so. If the representative holds POA for only one claim, the representative is permitted to review the information in the claims folder pertaining *only* to that claim, unless the claimant specifically consents or authorizes the release of other information.  ***Notes***:   * A declaration of representation written on an attorney’s letterhead is not sufficient to release information. A *VA Form 21-22a, Appointment of Individual as Claimant’s Representative*, signed by the claimant is required. For more information, see [5 U.S.C. 552a(b)](http://www.law.cornell.edu/uscode/text/5/552a), [38 U.S.C. 5701](http://www.law.cornell.edu/uscode/text/38/5701), and [38 U.S.C. 7332](http://www.law.cornell.edu/uscode/text/38/7332). * Without a *VA Form 21-22a* signed by the claimant, an attorney does not have the authority to review the claims folder or receive any correspondence from VA including development letters, decision letters, or copies thereof. * If a *VA Form 21-22a* is not signed by the claimant and the claimant has a paper (as opposed to an electronic) claims folder, back-file the form to show a signature is not of record and update the appropriate electronic claims system by noting there is no authority to disclose information to the attorney. * If a *VA Form 21-22a* is not signed by the claimant and the claimant has an electronic (as opposed to a paper) claims folder, annotate the form to show a signature is not of record and update the permanent notes in the appropriate processing system to reflect there is no authority to disclose information to the attorney.   ***Exception***: An RO may release a claimant’s claims folder to his/her attorney without a signed *VA Form 21-22a* being of record when the RO receives a   * request from the Office of General Counsel (OGC) Professional Group VII regarding representation of claimants in litigation before the U.S. Court of Appeals for Veterans Claims (CAVC), and * signed statement from the claimant authorizing VA to provide a copy of his/her claims folder to the attorney representing the claimant.   ***References***: For more information on   * a POA’s review of completed rating decisions, see M21-1, Part I, 3.B.3, and * CAVC remanded appeals, see M21-1, Part I, 5.I.2. |

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| b. Authority for Contractors to Review a Claims Folder | Allow contractors (individual or entity) hired by the representative holding POA to review information in the claims folder *only if* the claimant gives specific written consent to release his/her records to the representative’s contractors.  ***Example***: If Disabled American Veterans (DAV) holds POA for a claimant, do not allow a private physician hired by DAV to review the claims folder unless the claims folder contains specific written consent from the claimant on *VA Form 21-22, Appointment of Veterans Service Organization as Claimant’s Representative*, or in a separate signed statement, to release information to contractors of DAV. If the claims folder does not contain the claimant’s written consent, limit review of the claims folder to DAV and its employees. |

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| c. Assistance in Reviewing the Claims Folder | Obtain specific written consent from the claimant before allowing a law student, legal intern, or paralegal to access the claimant’s claims folder.  ***Reference***: For more information on law students, legal interns, or paralegals accessing a claimant’s claims folder, see [38 CFR 14.629(c)(3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.14_1629&rgn=div8). |

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| d. Specific Authorization Required to Disclose Records Protected by 38 U.S.C. 7332 | The claimant must specifically authorize VA to disclose records to the claimant’s representative that relate to conditions protected under the provisions of [38 U.S.C. 7332](http://www.law.cornell.edu/uscode/text/38/7332), namely   * drug abuse * alcoholism or alcohol abuse * infection with the human immunodeficiency virus (HIV), or * sickle cell anemia.   The claimant may authorize disclosure of *all* protected records or he/she may limit disclosure to *one or more* categories of protected records. |

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| e. VA Forms Providing Legally Sufficient 38 U.S.C. 7332 Authorization | The current and prior versions of the *VA Form 21-22* and *VA Form 21-22a* listed in M21-1, Part III, Subpart ii, 1.C.7.b provide legally sufficient [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) authorization when completed in connection with new or updated representative appointments.  ***References***: For more information on   * handling POA appointments, see M21-1, Part III, Subpart ii, 3.C.4 * updating electronic systems for POA, see M21-1, Part III, Subpart ii, 3.C.5 * acceptable versions of *VA Form 21-22* or *VA Form 21-22a*, see * M21-1, Part III, Subpart ii, 1.C.7.b, and * M21-1, Part III, Subpart ii, 3.C.4.c, and * handling outdated forms, see * M21-1, Part III, Subpart ii, 1.C.7.a, and * M21-1, Part III, Subpart ii, 3.C.4.g. |

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| f. Duration of 38 U.S.C. 7332 Authorization | When a claimant has completed a [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) authorization in connection with appointment of a representative using *VA Form 21-22* or *VA Form 21-22a*, the authorization remains in effect until the *earliest* of the following:   * the claimant revokes the [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) authorization by filing a written revocation with VA * the claimant revokes the representative’s appointment explicitly, or * the claimant implicitly revokes the representative’s appointment by appointing another representative. |

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| g. 38 U.S.C. 7332 Authorization – Relationship to POA System Access | To prevent inadvertent disclosure of records protected by [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332), a claimant’s representative may onlyaccess VA electronic systems pertaining to the claimant when there is a ***valid claimant authorization in effect*** permitting disclosure of ***all protected records***.  A [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) authorization completed in connection with the representative’s appointment using *VA Form 21-22* or *VA Form 21-22a* remains in effect as provided in M21-1, Part I, 3.B.2.f and is sufficient for purposes of VA electronic system access by that representative if   * the form was valid at the time it was received * the claimant has explicitly authorized the representative to access records protected by [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332), ***and*** * there are no restrictions described by the Veteran.   The representative may ***not*** access VA electronic systems if the claimant   * has not provided specific authorization to release all records protected by [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) (including cases where the claimant has provided a limited authorization), ***or*** * has revoked the [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) authorization.   ***Important***: Where the appointment of the current representative occurred before a [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) election was added to the appointment forms, the representative’s access to electronic systems must be restricted unless/until the claimant authorizes access to all records protected by [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332).  ***References***: For more information on   * VA forms providing legally sufficient 38 U.S.C. 7332 authorization for a new or updated appointment, see M21-1, Part I, 3.B.2.e, and * providing notification to the claimant where a representative’s appointment form lacks a [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) election, see M21-1, Part I, 3.B.2.h. |

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| h. Notification Requirement Where Appointment Forms Lack 38 U.S.C. 7332 Election | If the *VA Form 21-22* or *VA Form 21-22a* used to appoint the claimant’s current representative does not permit release of [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) protected records, follow the process below. |

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| Step | Action |
| 1 | Send the claimant   * a current version of the appropriate appointment form, and * a notification letter that includes the following text:   *A recent review of your file shows that you have not authorized VA to disclose any records protected under 38 U.S.C. 7332 (records relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV) or sickle cell anemia) to your representative. You previously completed a power of attorney (POA) appointment form that did not include authorization to access these records. Because of this, we are unable to disclose any protected records that may exist to your representative or provide your representative with access to VA electronic systems that could result in inadvertent disclosure of any protected records. Please complete and submit the attached, current version of [****insert full name of applicable form--VA Form 21-22, VA Form 21-22a, or VA Form 10-5345****] if you wish for your POA to have access. The form must include your signature and your representative’s signature.*   * Continue adjudicating the claim with restricted POA access. |
| 2 | Did the claimant provide an updated form?   * If ***y****es*, go to Step 3. * If *no*, **stop**.   ***Explanation***: The RO has no obligation to take further action if the claimant does not return an explicit, valid election with regard to information protected under [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332). The record will contain the notice provided in Step 1 as evidence that the claimant was given an opportunity to provide a valid authorization. |
| 3 | Process the updated POA appointment form as provided in M21-1, Part III, Subpart ii, 3.C.4 and 5. |

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| ***Important***:   * Send the notice provided in this block once. There is no requirement to send it with each new claim. * There is no requirement for RO staff to routinely obtain updated authorization for release of records protected under [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332). New and previous appointments remain valid as provided in M21-1, Part I, 3.B.2.f and g. |

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| i. Handling Claims Folder Reviews by Representatives of Non-Veteran Claimants in Cases Where the Veteran is Living | In the case of a living Veteran, if a representative is acting under a POA from any person *not* acting on behalf of the Veteran, do *not*   * permit the representative to review the claims folder of the Veteran, or * furnish any information to which the person is not entitled or information not relating to such person alone.   ***Reference***: For more information about representation of a claimant not acting on behalf of the Veteran, see [38 CFR 1.525(a)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.1_1525&rgn=div8). |

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| j. Location for Conducting a Claims Folder Review | A representative who holds a written authorization or consent to review a claims folder may review the claims folder within an RO in a space designated for such reviews.  If the authorization or consent is limited, then the representative may review *only* the information in the claims folder that the Veteran has authorized or consented for the representative to review.  The RO director may permit accredited representatives of service organizations to review a claims folder at the desk of the accredited representative.  ***References***: For more information on   * the review of the claims folder, see [38 CFR 1.525](http://www.ecfr.gov/cgi-bin/text-idx?SID=416f8761b1794582fb3ab81547dec7ec&node=se38.1.1_1525&rgn=div8), and * limited representation, see M21-1, Part I, 3.A.2.d. |

#### 3. Veterans Service Organization (VSO) Review of New Rating Decisions

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| Introduction | This topic contains information about VSO review of new rating decisions, including   * purpose of VSO review of rating decisions * establishing time limits for VSO review * VSO review at brokered-work sites, and * procedure for VSO rating decision review. |

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| Change Date | November 30, 2015 |

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| a. Purpose of VSO Review of Rating Decisions | The purpose of VSO review of completed rating decisions is to   * provide VSOs an opportunity to review the decision, and * discuss the case with VA personnel *prior* to promulgation, if necessary.   VSOs may request clarification of a decision; however, they should pursue disagreements with a decision through the appellate process ***after*** the decision is promulgated.  ***Note***: Local policy determines whether to make deferred ratings and examination requests available for VSO review. |

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| b. Establishing Time Limits for VSO Review | Veterans Service Center Managers (VSCMs) and Pension Management Center Managers (PMCMs) will provide VSOs 48 hours to review a rating decision prior to promulgation. This starts from the time the claims folder is placed on the VSO review table, or from the time the rating activity completes a rating decision in VBMS and activates the VSO REVIEW STATUS work queue.  The VSO must comply with the time limit to ensure timely processing of work.  A VSO may discuss decisions prior to promulgation with the appropriate decision maker or supervisor but should not cause unnecessary delays in processing.  Authorization activity should not promulgate a case that has been sent for VSO review until the VSO Review Status in VBMS shows *expired*.  ***Important***: The VBMS VSO Review Status timer that notifies a VSO that a rating decision is ready for review does not reset when an EP is continued at authorization and another rating decision is completed. Therefore, the VSO may not receive the proper time to review subsequent decisions.  When a rating EP is continued at authorization and a subsequent rating is completed on the same EP, follow the guidance in M21-1, Part I, 1.B.3.d for notifying the VSO of a rating decision that is available for review. |

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| c. VSO Review at Redistributed-Work Sites | If no authorized VSO is available at the redistributed-work site   * promulgate the completed rating decision without VSO review, and * return the case to the station of origination (SOO). |

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| d. Procedure for VSO Rating Decision Review | The table below describes the procedure for VSO representatives to review rating decisions. |

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| Step | Action |
| 1 | Is there an eFolder?   * If *yes*, proceed to Step 2. * If *no*, proceed to Step 3. |
| 2 | Has the VSO established access to the eFolder?   * If *yes*, proceed to Step 5 ***without*** printing a copy of the rating decision. * If *no*, proceed to Step 3.   ***Note***: VSO access to the eFolder must be restricted if the appointment was made using a form that is not compliant with the provisions of [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) as indicated in M21-1, Part III, Subpart ii, 3.C.4.c. |
| 3 | Is the VSO’s records access restricted due to [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332) limitations?   * If *yes*, proceed to Step 4. * If *no*, * print a copy of the rating decision for the VSO * place the rating in a designated area inside the RO for the VSO’s review, and * proceed to Step 5. |
| 4 | Does the rating decision include a condition protected under [38 U.S.C. 7332](https://www.law.cornell.edu/uscode/text/38/7332)?   * If *yes*, do not provide the decision to the VSO. No further action is needed. * If *no*, * print a copy of the rating decision for the VSO * place the rating in a designated area inside the RO for the VSO’s review, and * proceed to Step 5. |
| 5 | Is the rating the first decision being completed under the EP (i.e. EP has not been continued at authorization after a prior decision)?   * If *yes*, allow the VSO time to review the rating decision under the time limit established in M21-1, Part I, 3.B.3.b. * If *no*, * notify the VSO (via phone, e-mail, or in-person communication) that a subsequent rating decision has been made and is available for review in the eFolder * document telephone or in-person communication on *VA Form 27-0820, Report of Contact*, and * allow the VSO time to review the rating decision under the time limit established in M21-1, Part I, 3.B.3.b.   ***Note***: Place a copy of the VSO notification and any additional correspondence in the eFolder. |
| 6 | Resolve any mistakes noted or clarifications requested by the VSO.  ***Notes***:   * Disagreements with a decision should be pursued through the appellate process. * The VSO will request clarifications from the person designated by local management to resolve the issue. |
| 7 | If the review results in   * no change to the rating decision, proceed to Step 8. * modifications to the rating decision, regardless of whether or not the new rating is related to the VSO’s concerns, repeat the prior steps. |
| 8 | Refer the case to the authorization activity. |

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| ***Note***: When the VSO has access to the eFolder, the VSO work queue indicators in VBMS are sufficient notice that a rating decision or decision notice is available for review.  ***Reference***: For more information on VSO notification procedures, see the exhibit in M21-1, Part I, 3.B.4. |

#### 4. Exhibit: VSO Notification Guide

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| Introduction | This topic contains a flowchart to assist with VSO decision notifications. |

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| Change Date | July 13, 2015 |

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| a. VSO Notification Guide | The graphic below contains a flowchart of the VSO decision notification process. |

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