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

**Veterans Benefits Administration January 29, 2016**

**Washington, DC 20420**

#### Key Changes

|  |  |
| --- | --- |
| 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.”  ***Notes***:   * The term “regional office” (RO) also includes pension management center (PMC), where appropriate. * Unless otherwise noted, the term “claims folder” refers to the official, numbered, Department of Veterans Affairs (VA) repository – whether paper or electronic – for all documentation relating to claims that a Veteran and/or his/her survivors file with VA. * Minor editorial changes have also been made to   + update incorrect or obsolete references, and   + bring the document into conformance with M21-1 standards. |

|  |  |
| --- | --- |
| Reason(s) for the Change | Citation |
| To clarify that VA does not require the use of a specific form to file a notice of disagreement (NOD) with a decision regarding a claimant’s entitlement to Dependency and Indemnity Compensation (DIC) or accrued benefits. | [M21-1, Part I, Chapter 5, Section B, Topic 1, Block b (I.5.B.1.b)](#Topic1Blockb) |
| To correct the example to reflect that the appeal-level action involves the knee condition and the claim-level action involves the back condition. | [I.5.B.3.h](#Topic3Blockh) |
| To update the incomplete NOD letter template with current language for VA contact information and Veteran Service Organization (VSO) paragraphs. | [I.5.B.3.o](#Topic3Blocko) |

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

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

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

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

### Section B. Notice of Disagreement (NOD)

#### Overview

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

|  |  |
| --- | --- |
| Topic | Topic Name |
| [1](#Topic3) | NOD Considerations |
| [2](#Topic4) | Time Limits for Filing an NOD |
| [3](#Topic5) | Receipt of an NOD |
| [4](#Topic6) | Multiple Issue NODs |
| [5](#Topic7) | Reviewing an NOD for Further Development |
| [6](#Topic8) | Exhibit: Telephone Script |

#### 1. NOD Considerations

|  |  |
| --- | --- |
| Introduction | This topic contains information about an NOD, including   * requesting clarification from claimants * sympathetic review of appeal submissions * response to a notice of proposed adverse action * response to notice of provisional rating decision, and * response to exclusion from the Fully Developed Claim (FDC) Program. |

|  |  |
| --- | --- |
| Change Date | January 29, 2016 |

|  |  |
| --- | --- |
| a. Requesting Clarification from Claimants | If it is uncertain whether a communication from the claimant is a notice of disagreement (NOD), request clarification from the claimant.  ***Reference***: For more information on requesting clarification from a claimant, see M21-1, Part I, 5.B.4.b. |

|  |  |
| --- | --- |
| b. Sympathetic Review of Appeal Submissions | Veterans Benefits Administration (VBA) policy is to consider all claims sympathetically or liberally by generously construing the evidence and resolving any ambiguities in the appellant’s favor.  Department of Veterans Affairs (VA) employees should liberally evaluate all evidence and statements from appellants to ensure all appealed issues are addressed. This does not require reading into the record an argument that has not been made.  ***Important***: Effective March 24, 2015, VA will only accept issues listed on a timely *VA Form 21-0958, Notice of Disagreement*, if required, as part of the appeal submission for compensation. Any additional evidence or statements suggesting appealed issues will be considered a request for notice of disagreement.  ***Exception***: There is *no* standard form requirement for an NOD which contests a decision regarding a claimant’s entitlement to pension, Dependency and Indemnity Compensation (DIC), or accrued benefits.  ***References***: For more information on   * construing appeal submissions, see * [*Harris v Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmh), 704 F.3d 946 (Fed.Cir. 2013) and * [*Comer v. Peake*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmc), 552 F.3d 1362 (Fed.Cir. 2009) * required language for liberally construing evidence, see M21-1, Part I.5.D.2.b, and * determining/clarifying issues and potential claims, see M21-1, Part III, Subpart iv, 6.B. |

|  |  |
| --- | --- |
| c. Response to Notice of Proposed Adverse Action | Do *not* accept an NOD in response to a notice of proposed adverse action as a valid NOD.  Advise the claimant that a proposed adverse action is merely a preliminary action that is not appealable and that a notice of appellate rights will be furnished when a final decision is made.  Delete any Veterans Appeals Control and Locator System (VACOLS) record that was erroneously established. |

|  |  |
| --- | --- |
| d. Response to Notice of Provisional Rating Decision | Do *not* accept an NOD in response to a provisional rating as a valid NOD.  If an NOD stems from a provisional rating, respond to the claimant in a subsequent notice with the following language:  *We have received your notice of disagreement based on the provisional rating decision in which we sent notification on [date of notification letter].* ***This was not a final decision and did not include appeal rights.***  *If you have additional relevant evidence pertaining to the issues decided in that decision that you would like us to consider, please submit it to our office within one year of the date that we notified you of the decision, and we may reconsider the decision.*  *If you want to receive a final decision with appeal rights before the one year provisional period ends, send VA a signed statement as follows:*  *“All necessary evidence was considered by VA. I request that this provision decision be made final.”*  Delete any VACOLS record that was erroneously established. |

|  |  |
| --- | --- |
| **e. Response to Exclusion From FDC Program** | An NOD in response to exclusion from the Fully Developed Claim (FDC) Program *may* be accepted, depending on when the NOD was filed and the type of claim.  If an NOD stemming from exclusion from the FDC Program is not valid, advise the claimant that the NOD is not valid using one of the following rationales, as applicable   * the NOD is premature, or * exclusion from the FDC Program did not result in a substantive loss of benefits   ***Reference***: For more information on excluding claims from the FDC Program, see M21-1, Part III, Subpart i, 3.B.2. |

#### 

#### 2. Time Limits for Filing an NOD

|  |  |
| --- | --- |
| Introduction | This topic provides information on time limits for filing an NOD, including   * NOD time limits * computing the NOD time limit * informing the claimant of an NOD that was not timely filed, and * handling a time limit extension request. |

|  |  |
| --- | --- |
| Change Date | July 24, 2015 |

|  |  |
| --- | --- |
| a. NOD Time Limits | The table below describes the time limits for a claimant to file an NOD. |

|  |  |
| --- | --- |
| An NOD for … | Must be filed … |
| a simultaneously contested claim, including an apportionment claim | * 60 days from the date the VA mailed the decision notice to the unsuccessful claimant, and * in accordance with [38 CFR 20.201(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=52eb4742327fa7debf0edf1f2b38ebae&mc=true&node=se38.2.20_1201&rgn=div8).   ***References***: For more information on   * contested claims, see M21-1, Part III, Subpart vi, 6, and * apportionment claims, see M21-1, Part III, Subpart v, 3. |
| all other claims | one year from the date VA mailed the decision notice to the claimant.  ***Important***:If VA requests clarification of an incomplete or unclear NOD and there are less than 60 days remaining in the appeal period, provide the appellant 60 days from the date of request for clarification to respond.  ***Note***: When a *VA Form 21-0958* is required to initiate an appeal, submitting the incorrect form *does not* extend, toll or otherwise delay the time limit for filing the correct form.  ***Reference***: For more information on clarifying NODs, see M21-1, Part I, 5.B.4.b. |

|  |  |
| --- | --- |
| b. Computing the NOD Time Limit | When computing the NOD time limit   * exclude the first day of the specified period * include the last day of the specified period, and * if the time limit expires on a Saturday, Sunday, or legal holiday, include the next workday in the computation.   ***Important***: If the postmark date on a paper NOD is   * prior to the expiration of the NOD time limit * consider the NOD timely filed, *and* * retain the postmarked envelope, or * absent, presume the postmark date to be five business days prior to the date VA received the NOD. |

|  |  |
| --- | --- |
| c. Informing the Claimant of an NOD That Was Not Timely Filed | If a claimant submits an NOD past the time limit   * inform the claimant via letter, and * send *VA Form 4107, Your Rights to Appeal Our Decision,* with the letter.   ***Note***: The decision that an NOD was not timely filed is appealable to the Board of Veterans’ Appeals (BVA).  ***References***: For more information on   * disagreements as to whether an NOD was timely filed, see M21-1, Part I, 5.B.3.f, and * informing the claimant that an NOD was not timely filed, see the [Letter Creator](http://vbaw.vba.va.gov/bl/21/rating/rat00.htm). |

|  |  |
| --- | --- |
| d. Handling a Time Limit Extension Request | A claimant may request an extension of the time limit for filing an NOD.  ***Important***: If the claimant requests an extension *after* the expiration of the time limit for filing an NOD, he or she *must*   * submit a completed NOD simultaneously with the request for extension, and * demonstrate good cause.   ***Notes***:   * A claimant may request an extension before *or* after the expiration of the NOD period. * An extension may be granted when good cause is shown. * A claimant may appeal a denial of a request for a time limit extension to BVA.   ***Reference***: For more information on requests to extend the NOD time limit, see [38 CFR 3.109](http://www.ecfr.gov/cgi-bin/text-idx?SID=8a9107307da79ce3c2c55d2669891c39&node=se38.1.3_1109&rgn=div8). |

#### 3. Receipt of an NOD

|  |  |
| --- | --- |
| Introduction | This topic contains information on receipt of an NOD, including   * when an NOD must be submitted on *VA Form 21-0958* * accepting an NOD * requests for telephone contact * documenting telephone contact * receiving an NOD with request for a hearing * handling disagreements regarding inadequate or not timely filed NODs * new issues raised on an NOD * example of a new issue * raised on an NOD prior to March 24, 2015 * not within the scope of an appeal raised on an NOD after March 24, 2015**,** and * within the scope of an appeal raised on an NOD after March 24, 2015 * handling correspondence expressing dissatisfaction or disagreement not submitted on a *VA Form 21-0958* when required * identifying an incomplete NOD * processing an incomplete NOD * instructions for processing the incomplete NOD letter, and * exhibit: incomplete NOD letter. |

|  |  |
| --- | --- |
| Change Date | January 29, 2016 |

|  |  |
| --- | --- |
| **a. When an NOD Must be Submitted on VA Form 21-0958** | Use the following table to determine if an NOD for a compensation decision must be submitted on *VA Form 21-0958*. |

|  |  |
| --- | --- |
| **If the decision notice was sent...** | **Then the NOD...** |
| prior to March 24, 2015 | does *not* need to be submitted on *VA Form 21-0958*. |
| * on or after March 24, 2015, and * the decision notice included *VA Form 21-0958* | must be submitted on *VA Form 21-0958*. |
| * on or after March 24, 2015, and * the decision notice did not include *VA Form 21-0958* | does *not* need to be submitted on *VA Form 21-0958*. |

|  |
| --- |
| ***References***: For more information on   * when an NOD must be submitted on *VA Form 21-0958*, see [38 CFR 20.201](http://www.ecfr.gov/cgi-bin/text-idx?SID=db2b24188a864873362074399e09b8f7&mc=true&node=se38.2.20_1201&rgn=div8) * accepting an NOD, see M21-1, Part I, 5.B.3.b, and * handling correspondence expressing dissatisfaction or disagreement with a decision that is not submitted on a *VA Form 21-0958* when required, see M21-1, Part I, 5.B.3.k. |

|  |  |
| --- | --- |
| b. Accepting an NOD | Follow the steps in the table below to accept a valid NOD when it is received. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Determine if the claimant submitted a valid NOD.  ***Important***:   * If the decision notice was sent prior to March 24, 2015, the NOD *does not* have to be on a prescribed form. * If the decision notice was sent on or after March 24, 2015, the NOD *must* be on *VA Form 21-0958*. |
| 2 | Review the NOD.  ***Notes***:   * If it is unclear as to whether or not a letter from the claimant is an NOD, follow the procedures for clarification of issues in M21-1, Part I, 5.B.4.b. * For electronic submissions, the earliest date stamp on *VA Form 21-0958*, or the correspondence accepted as the NOD, must be used as the date the NOD is recorded. * For paper submissions, stamp the *VA Form 21-0958* or correspondence accepted as the NOD in the lower right corner on the top page as follows:   **NOTICE OF DISAGREEMENT**  **RECORDED\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **[DATE]**  ***Important***:For paper submissions that are going to be scanned into an electronic format, this stamp should be placed on the NOD prior to scanning into a Veteran’s electronic claims folder (eFolder). |
| 3 | Establish a VACOLS record and diary within 7 days.  ***Note***:The NOD need not be associated with the appellant’s records prior to establishing the appeal record in VACOLS or referral to the proper operating element.  ***References***: For more information on   * VACOLS, see * M21-1, Part I, 5.K, and * the [*VACOLS User’s Guide*](http://vbaw.vba.va.gov/bl/21/publicat/Users/Index.htm#bmv), and * establishing an NOD in VACOLS, see M21-1, Part III, Subpart ii, 3.E.1.c. |
| 4 | Did the appellant request the Decision Review Officer (DRO) review process on his/her NOD?   * If *yes*, send the appellant the *DRO Process Explanation Letter*. * If *no*, go to Step 5.   ***Note***: The September 2015 version of *VA Form 21-0958* includes an option for the appellant to choose either the DRO review process or the traditional appellate review process. **Go to Step 6***if* the   * option checkboxes are left blank on the September 2015 version of *VA Form 21-0958* * NOD is on an older version of *VA Form 21-0958* and the appellant does not specify which appellate review process he/she prefers, or * NOD is not on a prescribed form because the decision was sent prior to March 24, 2015, and the appellant does not specify which appellate review process he/she prefers.   ***Reference***: For more information on establishing requests for a hearing, see M21-1, Part III, Subpart ii, 3.D.4.a. |
| 5 | Did the appellant request the traditional appellate review process on his/her NOD?   * If *yes*, send the appellant the *Traditional Process Explanation Letter*. * If *no*, go to Step 6.   ***Note***: The September 2015 version of *VA Form 21-0958* includes an option for the appellant to choose either the DRO review process or the traditional appellate review process. **Go to Step 6** *if* the   * option checkboxes are left blank on the September 2015 version of *VA Form 21-0958* * NOD is on an older version of *VA Form 21-0958* and the appellant does not specify which appellate review process he/she prefers, or * NOD is not on a prescribed form because the decision was sent prior to March 24, 2015, and the appellant does not specify which appellate review process he/she prefers. |
| 6 | When the appellant does not specify on the NOD whether he/she desires the DRO review process or the traditional appellate review process, regardless of valid NOD format or form version, then   * send the appellant the *Appeal Process Request Letter*, and * give the appellant 60 days from the date the letter is sent to elect the DRO review process. This time limit cannot be extended.   ***Note***: Failure to reply to the letter is considered an election of the traditional appellate processing method and an indication that a DRO review process is not desired. |

|  |
| --- |
| ***References***: For more information on   * NOD considerations, see M21-1, Part 1, 5.B.1 * when an NOD must be submitted on a prescribed form, see M21-1, Part 1, 5.B.3.a, and * the letters to send in response to a valid NOD regarding the appellate review process options, see the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp) tool available on the [Rating Job Aids](http://vbaw.vba.va.gov/bl/21/rating/rat00.htm) page. |

|  |  |
| --- | --- |
| c. Requests for Telephone Contact | *VA Form 21-0958* provides appellants an opportunity to request telephone contact from a regional office (RO) employee. The Veteran Service Center Manager (VSCM) or Pension Management Center Manager (PMCM) has authority to designate the individual(s) responsible for conducting the telephone contact.  ***Note***:The purpose of the telephone contact is to   * confirm the issues with which the appellant disagrees, and * explain the appeals process. |

|  |  |
| --- | --- |
| d. Documenting Telephone Contact | When an appellant requests telephone contact from an RO employee on the *VA Form 21-0958*, the designated employee will make at least two attempts to contact the appellant at the time he/she requested.   * If contact cannot be made, document the negative contact on *VA Form 27-0820, Report of General Information*. Provide a copy of the form to the appellant’s accredited representative and associate it with the claims folder. * If contact is made, document it on *VA Form 27-0820*. Provide a copy of this documentation to the appellant’s accredited representative and associate it with the claims folder.   ***Note***: The appeals team representative reserves the right to not call the appellant when circumstances indicate that such a call would not prove to be productive (due to a service-connected condition, for example). In such cases, the appeals team coach will be notified, as well as the appellant’s accredited representative.  ***Reference***: For a sample phone script, see M21-1, Part I, 5.B.6. |

|  |  |
| --- | --- |
| e. Receiving an NOD With Request for a Hearing | If a hearing request is received with an NOD   * schedule and hold the hearing, and then * send the statement of the case (SOC), if the appeal remains denied.   ***Note***: This policy applies to both the DRO and the traditional appellate review process.  ***References***: For more information on   * the filing of NODs and appeals, see [38 U.S.C. 7105](http://www.law.cornell.edu/uscode/text/38/7105) * the DRO review process, see M21-1, Part I, 5.C * RO hearings, see M21-1, Part I, 4 * sending an SOC, see M21-1, Part I, 5.D, and * establishing requests for a hearing, see M21-1, Part III, Subpart ii, 3.D.4.a. |

|  |  |
| --- | --- |
| f. Handling Disagreements Regarding Inadequate or Not Timely Filed NODs | If the claimant disagrees with a determination that an NOD was not adequate or timely filed, send him/her an SOC because that determination may be appealed.  ***References***: For more information on   * disputes of NODs, see * [38 CFR 19.28](http://www.ecfr.gov/cgi-bin/text-idx?SID=116beed018421305f7838341b4b59904&mc=true&node=se38.2.19_128&rgn=div8), and * [38 CFR 19.34](http://www.ecfr.gov/cgi-bin/text-idx?SID=116beed018421305f7838341b4b59904&mc=true&node=se38.2.19_134&rgn=div8) * sending an SOC, see M21-1, Part I, 5.D, and * determining if an NOD is timely, see M21-1, Part III, Subpart ii, 3.E.1.a. |

|  |  |
| --- | --- |
| g. New Issues Raised on an NOD | If the appellant raises issues on the NOD that have not yet been adjudicated, do *not* delay sending an SOC covering those issues that were previously decided *unless* there is outstanding evidence related to an SOC issue identified by the appellant or the Veterans Service Representative (VSR), Rating Veterans Service Representative (RVSR), or DRO.  ***Important***:   * Develop and decide the new issue(s) raised on the NOD received prior to March 24, 2015. * Do not accept non-appeal issues raised on an NOD received on or after March 24, 2015, as a new claim. The correspondence is a request for application pertaining to the non-appeal issues ***except*** if the new issue is within the scope of the issue on appeal. Issues within the scope of the appeals issue do not require a separate claim.   ***References***: For more information on   * examples of action to take for issues raised on an NOD, see M21-1, Part I, 5.B.3.h-j * handling new issues raised on a substantive appeal, see M21-1, Part I, 5.E.3 * including appeal rights with the decision of the new issue, see M21-1, Part III, Subpart v, 2.B * requests for application, see M21-1, Part III, Subpart ii, 2.C.1, and * handling issues that are within the scope of another claim or appeal issue, see 38 CFR [3.155(d)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=fa1b8699fd155b704cae9810108be451&mc=true&node=se38.1.3_1155&rgn=div8). |

|  |  |
| --- | --- |
| **h****. Example of New Issue Raised on an NOD Prior to March 24, 2015** | ***Situation***: Prior to March 24, 2015, an NOD is received listing the issues of entitlement to increased evaluation for a knee condition and service connection (SC) for a back condition. The knee condition was recently decided, and the appeal is valid. Entitlement to SC for a back condition has not been previously claimed or decided. No new evidence is identified on the NOD.  ***Result***: Proceed with the appeal of entitlement to increased evaluation for the knee condition. Since the NOD was received prior to March 24, 2015, accept the correspondence as a claim for SC for the back condition and develop and decide the back claim. Do not delay the appeal decision on the knee for a rating decision on the back. |

|  |  |
| --- | --- |
| **i. Example of New Issue Not Within the Scope of an Appeal Raised on an NOD After March 24, 2015** | ***Situation***: After March 24, 2015, an NOD is received listing the issues of entitlement to increased evaluation for a knee condition and SC for a back condition. The knee condition was recently decided, and the appeal is valid. Entitlement to SC for a back condition has not been previously claimed or decided. No new evidence is identified on the NOD.  ***Result***: Proceed with the appeal of entitlement to increased evaluation for the knee condition. Since the NOD was received after March 24, 2015, accept the correspondence as a request for application for the back condition. Do not delay sending the SOC for the appealed knee issue. |

|  |  |
| --- | --- |
| **j. Example of New Issue Within the Scope of an Appeal Raised on an NOD After March 24, 2015** | ***Situation***: After March 24, 2015, an NOD is received listing the issues of entitlement to an increased evaluation of diabetes with peripheral neuropathy. On the NOD, the Veteran notes that he has been diagnosed with diabetic peripheral neuropathy. Treatment records accompanying the NOD show that the Veteran has been diagnosed with diabetic peripheral neuropathy. The diabetes was recently decided, and the appeal is valid. No decision has been made on the issue of SC for diabetic peripheral neuropathy.  ***Result***: The issue of SC for diabetic peripheral neuropathy is considered within the scope of the appealed evaluation of diabetes because the evidence establishes the relationship between the two issues and demonstrates the presence of the diabetes and the neuropathy. Therefore, a separate claim for SC for the diabetic peripheral neuropathy is not required. Proceed with adjudication of the diabetic peripheral neuropathy. Do not delay action, including sending SOC, on the appealed issue of evaluation of diabetes pending any necessary development, such as examination, for the within scope issue. |

|  |  |
| --- | --- |
| k. Handling Correspondence Expressing Dissatisfaction or Disagreement Not Submitted on a VA Form 21-0958 When Required | If a claimant or his/her representative submits a written statement expressing dissatisfaction or disagreement with a compensation decision and a desire to contest the decision on anything other than a *VA Form 21-0958*   * Provide the claimant, in writing, information on how to obtain *VA Form 21-0958*. * Inform the claimant that * VA regulations require the timely submission of a *VA Form 21-0958* in order to submit an appeal of the decision at issue, and * the completed *VA Form 21-0958* must be submitted within one year of the date of the decision notice sent to him/her on the issue(s) he/she is intending to appeal * VA will take no further action until a completed *VA Form 21-0958* is received, and * follow the steps below to process a *Request for Application for NOD Letter* |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Establish end product (EP) 400 Request for Notice of Disagreement. |
| 2 | Open the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp) tool available on the [Rating Job Aids](http://vbaw.vba.va.gov/bl/21/rating/rat00.htm) intranet site. |
| 3 | Select the IPC tab in the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp). |
| 4 | Select the *Request for Application for NOD Letter* from the drop down menu. |
| 5 | Complete the fields for the contact information and the date of notification letter before clicking on the CREATE LETTER button. |
| 6 | Print and mail the letter to the claimant and, if necessary, the authorized representative.  ***Reference***: For more information on providing notices to an authorized representative, see M21-1, Part I, 3.B.1. |
| 7 | Associate the document with claims folder. For electronic documents, proceed to Step 8. |
| 8 | * Open the ACTIONS drop down menu in the VBMS eFolder. * Select Upload Document.  * Complete the fields as follows: * SUBJECT: leave blank * CATEGORY-TYPE: *Correspondence - Miscellaneous: Report of Contact* * SOURCE: *VBMS* * ASSOCIATE TO: *EP 400 Request for Notice of Disagreement* * DATE OF RECEIPT: *date of receipt of the non-standard NOD*. |

|  |
| --- |
| ***Note***:If correspondence expressing dissatisfaction or disagreement with a decision is reviewed and processed outside the one-year appellate period, do not send the *Request for Application for NOD Letter*. Instead, notify the claimant that the VA has received the correspondence expressing dissatisfaction or disagreement with the decision, however, an NOD was not received within the one-year appellate period and no further action will be taken. |

|  |  |
| --- | --- |
| l. Identifying an Incomplete NOD | An NOD is incomplete if it lacks any of the following information   * information necessary to identify the claimant * the claim to which the NOD pertains * information necessary to identify the category of disagreement, or * the signature of the claimant or his/her accredited representative.   ***Exception***:Do not consider an NOD incomplete if it fails to identify the category of disagreement, but the category can be reasonably ascertained based on the decision for which the NOD applies.  ***Example***: Appellant submits an NOD identifying a rating decision that denied SC for a back condition but does not identify the category of disagreement. In this scenario, the category of disagreement can be reasonably ascertained as a disagreement with VA’s decision to deny SC.  ***Note***: The current version (September 2015) of *VA Form 21-0958* contains Part III – Appeal Process Election. Failure to complete this section of the form does not render the NOD incomplete. |

|  |  |
| --- | --- |
| m. Processing an Incomplete NOD | Follow the steps in the table below to process an incomplete NOD. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Can the claimant be identified?   * If *yes*, go to Step 2. * If *no*, go to the unidentifiable mail procedures in * M21-1, Part III, Subpart ii, 1.B.2.e, and * M21-1, Part III, Subpart ii, 4.H.3. |
| 2 | Is the form signed by the claimant and/or authorized representative?   * If *yes,* go to Step 3. * If *no*, develop to the claimant or his/her accredited representative to obtain a signature.   ***Reference***: For an example of the development letter sent to obtain information for an incomplete NOD, see M21-1, Part I, 5.B.3.l. |
| 3 | Did the claimant identify the claim to which the NOD pertains and the category of disagreement?   * If *yes*, accept the NOD as complete. * If *no*, develop to the claimant or his/her accredited representative to obtain the missing information.   ***Reference***: For an example of the development letter sent to obtain information for an incomplete NOD, see M21-1, Part I, 5.B.3.o. |

|  |  |
| --- | --- |
| n. Instructions for Processing the Incomplete NOD Letter | Follow the steps in the table below to process an incomplete NOD letter. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Establish an EP 400 with the CORRESPONDENCE claim label.  ***Note***:Use the date of the incomplete NOD as the date of claim. |
| 2 | Generate a generic letter in Modern Award Processing-Development (MAP-D) or Personal Computer Generate Letters (PCGL), and replace the system generated text with the language found in M21-1, Part I, 5.B.3.o.  ***Important***:Make sure to include the appropriate text for the specific information needed to submit a complete NOD. |
| 3 | Send the incomplete NOD letter to the claimant and his/her accredited representative, if applicable. |
| 4 | Clear the EP 400. |

|  |  |
| --- | --- |
| o. Exhibit: Incomplete NOD Letter | Send the incomplete NOD letter shown below to solicit a complete NOD. |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Dear **[claimant’s first and last name]**:  We received your *VA Form 21-0958*, *Notice of Disagreement*; however, the form was incomplete. Your Notice of Disagreement (NOD) was incomplete because:   * **[you did not identify the specific nature of disagreement, to include the decision letter date, specific issue/condition of disagreement, and area of disagreement.]** * **[you did not sign the *VA Form 21-0958*, *Notice of Disagreement.*]**   Without this information we are unable to accept your NOD.  **What Should You Do?**  In order for us to begin processing your NOD, you must complete, sign, and return *VA Form 21-0958*, *Notice of Disagreement*, within one year of the date of the decision notice we sent you on the decision(s) you are intending to appeal, or within 60 days from the date of this notice, whichever is later.  We will take no further action until we receive your completed *VA Form 21-0958*. We’ve attached the incomplete *VA Form 21-0958* that you previously submitted. Please complete the form and send it to the address listed on the *Where To Send Your Written Correspondence* enclosure. You can also obtain this form at the website [www.va.gov/vaforms](http://www.va.gov/vaforms), or by calling us at 1-800-827-1000.  **If You Have Questions or Need Assistance** [*If claimant address is Domestic-US/Puerto Rico/Alaska/Hawaii, use*:] If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.   |  |  | | --- | --- | | **If you** | **Here is what to do.** | | Telephone | Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711. | | Use the Internet | Send electronic inquiries through the Internet at <https://iris.va.gov>. | | 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* chart. |   In all cases, be sure to refer to your VA file number [*File Number*].  If you are looking for general information about benefits and eligibility, you should visit our web site at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <http://iris.va.gov>.  **[*If* c*laimant address is outside the US, use*:]**  If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.   |  |  | | --- | --- | | **If you** | **Here is what to do.** | | Telephone | Call or visit the nearest American Embassy or Consulate for assistance. In Canada, call or visit the local office of Veterans Affairs Canada. From Guam, call us by dialing toll free, 475-8387.  From American Samoa and N. Marianas, call us at 1-800-844-7928. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833. | | Use the Internet | Send electronic inquiries through the Internet at <https://iris.va.gov>. | | 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* chart. |   In all cases, be sure to refer to your VA file number [*File Number*].  If you are looking for general information about benefits and eligibility, you should visit our web site at <http://www.va.gov> or search the Frequently Asked Questions (FAQs) at <http://iris.va.gov>.  **[VSO Decision Point:]**  **[*If veteran has a VSO, use*:]**  We sent a copy of this letter to **[*User Entry-Enter name of Service Org/POA*],** who you have appointed as your representative. If you have questions or need assistance, you can also contact your representative.  **[*If no VSO, use*:]**  We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized Veterans’ Service Organizations and/or representatives. Veterans’ Service Organizations, which are recognized or approved to provide services to the veteran community, can also help you with any questions.  Currently, you may only submit a Notice of Disagreement by mailing the appropriate form to VA. However, you may track the status of your appeal, plus much more, using VA’s eBenefits website.  **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 Veterans Service Officer representation * 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](http://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.  Thank you,  Regional Office Director  Enclosure(s): VA Form 21-0958  Where to Send Your Written Correspondence  cc: **[insert POA if applicable]** |

#### 4. Multiple Issue NODs

|  |  |
| --- | --- |
| Introduction | This topic contains information on multiple issue NODs, including   * multiple issue NODs, and * clarifying multiple issue NODs. |

|  |  |
| --- | --- |
| Change Date | December 11, 2015 |

|  |  |
| --- | --- |
| a. Multiple Issue NODs | An NOD may express disagreement with a decision that contains multiple issues, but may not be clear as to which issue is being appealed.  ***Note***: A single-issue NOD that is complete does not require clarification.  ***Reference***: For more information on identifying an incomplete NOD, see M21-1, Part I, 5.B.3.l. |

|  |  |
| --- | --- |
| b. Clarifying Multiple Issue NODs | Follow the steps in the table below when an NOD contains multiple issues, and at least one of the issues requires clarification. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Can you identify one or more issues that are being appealed?   * If *yes*, but other issues require clarification * inform the appellant of the appealed issues * track the issue(s) identified as being appealed as an NOD in VACOLS * go to M21-1, Part I, 5.B.5, for action on the issues identified as being appealed, and * go to Step 2 for action on the issue(s) requiring clarification. * If *no*, go to Step 2.   ***Note***: If the NOD contained issues that do not require clarification, explain in the letter that these issues are considered to be under appeal. |
| 2 | * Contact the claimant by telephone or in writing to request clarification of which issue(s) is being appealed * notify the claimant that if he/she fails to respond within the remainder of the appeal period, the earlier, unclear communication will not be considered an NOD, and * go to Step 3.   ***Important***: Clarification of any appeals that required a *VA Form 21-0958* to initiate must also be submitted on a *VA Form 21-0958* if information is not received over the phone.  ***Notes***:   * If the appeal period is expired, or has less than 60 days remaining, provide the claimant 60 days to respond to the request for clarification in order to keep the appeal viable. Explain this 60-day time limit in your oral or written contact with the appellant. * Document any telephone conversation with the claimant on *VA Form 27-0820*. |
| 3 | Did the claimant send clarification within the given time limit?   * If *yes* * track the issue(s) as an NOD in VACOLS * inform the appellant of the appealed issues, and * go to M21-1, Part I, 5.B.5. * If *no* * take no further action in cases where an NOD on *VA Form 21-0958* was required, or * where an NOD on *VA Form 21-0958* is not required, notify the claimant of the lack of clarification and send a *VA Form 4107.*   ***Note***: If the claimant files a response past the time limit, follow the procedures in M21-1, Part I, 5.B.2.c.  ***Reference***: For more information on the definition of an appellant, see M21-1, Part I, 5.A.1.a. |

|  |
| --- |
| ***Note***:If, after following the procedures in the above table, it is still not clear whether the issue(s) can be considered an NOD, follow the procedures for an administrative appeal in M21-1, Part I, 5.J.2.  ***References***: For more information on   * notifying the accredited representative of communication with claimants, see M21-1, Part I, 3.B.1 * clarification of issues under appeal when the standardized NOD, *VA Form 21-0958*, is required, see [38 CFR 19.24](http://www.ecfr.gov/cgi-bin/text-idx?SID=b258c83694a4977e373452ffcc02af67&mc=true&node=se38.2.19_124&rgn=div8) * clarification of issues under appeal when *VA Form 21-0958* is not required, see [38 CFR 19.26](http://www.ecfr.gov/cgi-bin/text-idx?SID=62809537773b761517081e5e36079de5&node=se38.2.19_126&rgn=div8), and * the administrative appeal process when *VA Form 21-0958* is *not* required to initiate an appeal, see * [38 CFR 19.26](http://www.ecfr.gov/cgi-bin/text-idx?SID=62809537773b761517081e5e36079de5&node=se38.2.19_126&rgn=div8), and * [38 CFR 19.27](http://www.ecfr.gov/cgi-bin/text-idx?SID=b258c83694a4977e373452ffcc02af67&mc=true&node=se38.2.19_127&rgn=div8). |

#### 5. Reviewing an NOD for Further Development

|  |  |
| --- | --- |
| Introduction | This topic contains information on reviewing an NOD for further development, including   * who reviews the NOD * VA’s duty to assist the appellant in obtaining necessary evidence * reviewing an NOD, and * developing an NOD. |

|  |  |
| --- | --- |
| Change Date | July 24, 2015 |

|  |  |
| --- | --- |
| a. Who Reviews the NOD | When a timely NOD is received, the VSR, RVSR, or DRO, as appropriate, reviews the appeal to determine if   * the prior decision was correct, and * any development or other action is needed. |

|  |  |
| --- | --- |
| b. VA’s Duty to Assist the Appellant in Obtaining Necessary Evidence | As with every substantially complete claim, VA has a duty to assist the appellant in obtaining the necessary evidence to substantiate his/her claim.  ***Reference***: For more information on VA’s Duty to Assist when requesting records, see M21-1, Part I, 1.C. |

|  |  |
| --- | --- |
| c. Reviewing an NOD | Follow the steps in the table below to review an NOD. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Review the entire record, including the appellant’s statement on the NOD, to determine if additional development is needed. |
| 2 | Is additional development action required?   * If *yes*, go to M21-1, Part I, 5.B.5.d. * If *no*, go to Step 3. |
| 3 | Was the decision a clear and unmistakable error (CUE)?   * If *yes*, take corrective action. * If *no*, go to Step 4.   ***References***: For more information on   * the duty to assist the appellant in obtaining necessary evidence, see M21-1, Part I, 1.C, and * CUEs, see M21-1, Part III, Subpart iv, 2.B.4. |
| 4 | Take any necessary corrective action, including   * submission to the VSCM, PMCM, or DRO with a request for the DRO appellate review process, or * request for an advisory opinion.   ***Important***:   * Ensure that the decision notice sent to the appellant after such action clearly indicates that the appellant still has the right to appeal. * Do not forward the case to BVA until all reasonable assistance has been given to the appellant and all necessary evidence that can be obtained by VA is on file.   ***Reference***: For more information on requesting an advisory opinion, see M21-1, Part III, Subpart vi, 1.A.2. |

|  |  |
| --- | --- |
| d. Developing an NOD | Follow the steps in the table below to develop an NOD for further evidence. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | * Request evidence. * Go to Step 2. |
| 2 | Was the evidence received within the given time limit?   * If *yes*, go to Step 3. * If *no* * take no further development action * send an SOC to the appellant and his/her representative on the basis of the evidence of record explaining which requested evidence was not received * clear the appropriate EP, and * allow the appellant to perfect the appeal. |
| 3 | Did the evidence result in a complete grant of the benefits sought or did the appellant or his/her representative withdraw the NOD?   * If *yes*, close out any VACOLS controls. * If *no* * issue an SOC * update VACOLS * clear the appropriate EP, and * allow the appellant to perfect the appeal.   ***Note***: Do not prepare an SOC until development is completed or the time limit for submission of evidence has expired. |

|  |
| --- |
| ***References***: For more information on   * sending an SOC, see M21-1, Part I, 5.D, and * what EP credit to take, see M21-4, Appendix B. |

#### 6. Exhibit: Telephone Script

|  |  |
| --- | --- |
| Change date | September 16, 2014 |

|  |  |
| --- | --- |
| a. Sample Telephone Script | A sample script for telephone contact with appellants is shown below. |

|  |
| --- |
| Good morning/afternoon. May I speak with Mr. Mrs. **[Veteran’s name]**?  My name is **[your name]**, a **[your title]** at the **[name of regional office]** Regional Office. I am calling you today regarding your Notice of Disagreement we received on **[date]**. In order to protect your privacy, I need to verify that I am speaking with the correct individual.  **Verification Steps:**  To protect your privacy, I need to verify the following information:   * What is your date of birth? * What are the last four digits of your Social Security Number or your VA File Number? * In what branch of service did you serve?   Thank you for providing your information.  On your Notice of Disagreement, you indicated you wanted someone to contact you about your appeal. First, please let me verify the issues you disagree with. **[Verify the issues on the NOD form]**. **[Discussion between DRO and appellant].**  I will document our conversation and include it with your claims folder. We will also provide a copy of this documentation to your appointed representative, **[insert name of representative, if applicable]**.  CLOSING – UNREPRESENTED VETERAN  Do you have any additional evidence you would like to submit regarding these issues? If so, please submit the evidence to our office within 30 days. Can I answer any questions for you related to the issues addressed in this appeal? Thank you for your time and service to our country.  CLOSING – REPRESENTED VETERAN  Do you have any additional evidence you would like to submit in regards to these issues? If so, please submit additional evidence through your appointed representative, **[name of representative]**, or directly to our office within 30 days. If you don’t have any additional questions for us to answer at this time, we will move forward with processing your appeal. Let me also encourage you to communicate with your appointed representative, **[name of representative]**, if you have any questions or concerns. Thank you for your time and service to our country. |