#### Department of Veterans Affairs M21-1, Part IV, Subpart ii

**Veterans Benefits Administration September 24, 2015**

**Washington, DC 20420**

#### Key Changes

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| Changes Included in This Revision | The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part IV, “Compensation DIC, and Death Compensation Benefits,” Subpart ii, “Compensation.”***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 referencesto remove obsolete terminologyreassign alphabetical designations to individual blocks, where necessary, to account for new and/or deleted blocks within a topicclarify block labels and/or block text, and bring the document into conformance with M21-1 standards. |

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| Reason(s) for the Change | Citation |
| To add references for establishing an effective date for individual unemployability (IU). | [M21-1, Part IV, Subpart ii, Chapter 2, Section F, Topic 1, Block a (IV.ii.2.F.1.a)](#_a.__Establishing) |
| To add references for required employment history and disability information. | [IV.ii.2.F.2.a](#_a.__General) |
| * To add guidance on determining if the Veteran has provided sufficient work history information with the IU claim.
* To delete and relocated procedures for handling the work history provided with an IU claim.
 | [IV.ii.2.F.2.e](#_e.__Employment) |
| To add a new Block f containing updated procedures for handling an IU claim with incomplete work history relocated from IV.ii.2.F.2.e. | [IV.ii.2.F.2.f](#Topic2f) |
| To add and reformat the procedures for requesting *VA Form 21-4192,* *Request for Employment Information in Connection with Claim for Disability Benefit*. | [IV.ii.2.F.2.g](#_fg.__Requesting) |
| To update guidance on the Veteran’s responsibility to specify a disability or disabilities that cause unemployability. | [IV.ii.2.F.2.h](#Topic2h) |
| To create new Step 5 in the step action table and embed information about the Veterans Benefits Management System (VBMS) fields. | [IV.ii.2.F.2.k](#Topic2k) |
| * To update guidance on determining if the Veteran’s service-connected disabilities meet the schedular requirements for IU.
* To add an example illustrating the updated guidance.
 | [IV.ii.2.F.4.e](#_e__Considering) |
| To remove duplicative guidance on what the rating decision should contain. | [IV.ii.2.F.4.f](#_f.__Entitlement) |
| To replace duplicative guidance on what the discussion in the rating decision should include with a reference to where that information is contained in IV.ii.2.F.4.l. | [IV.ii.2.F.4.i](#_i.__Determining) |
| To add a new Block m with guidance on handling intertwined IU claims and appeals.  | [IV.ii.2.F.4.m](#Topic4m) |
| To add a reference for 800 series work items. | [IV.ii.2.F.5.d](#_d.__Dispatch) |
| To add that authorization activity should also notify a Veteran’s authorized representative, if any, of a proposed reduction. | [IV.ii.2.F.5.i](#_i.__Action) |
| To reformat guidance on handling *VA Form 21-4140, Employment Questionnaire*,that shows possible gainful employment. | [IV.ii.2.F.5.j](#_j.__Action) |

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| Rescissions | None |

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

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| Signature | Thomas J. Murphy, DirectorCompensation Service |

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| Distribution | LOCAL REPRODUCTION AUTHORIZED |

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

#### Overview

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

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

#### 1. General Information on IU Claims

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| Introduction | This topic contains general information on IU claims, including * establishing entitlement to a total disability rating for compensation based on IU (TDIU)
* unemployable vs. unemployed
* the definition of substantially gainful employment, and
* the definition of marginal employment.
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| Change Date |  September 24, 2015 |

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| a. Establishing Entitlement to TDIU | To establish entitlement to a total disability rating for compensation based on individual unemployability (TDIU), the Veteran must be unemployable in fact (unable to secure or follow substantially gainful employment) by reason of service-connected (SC) disability *and* *either** meet the schedular requirements of [38 CFR 4.16(a)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116), or
* have an extra-schedular individual unemployability (IU) evaluation, under the provisions of [38 CFR 4.16(b),](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.5&idno=38#se38.1.4_116) approved by Compensation Service (211B).

***Note***: IU is also referred to as *total disability based on individual unemployability* (TDIU).***Reference***: For more information on establishing an effective date for IU benefits, see * [38 CFR 3.400(o)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=24d7b0104e345a2b1323e4453b13a76b&mc=true&node=se38.1.3_1400&rgn=div8)
* [*Rice v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmr), 22 Vet. App. 447 (2009)
* [*Dalton v****.*** *Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmd), 21 Vet. App. 23 (2007), and
* [*Hurd v. West*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmh), 13 Vet. App. 449 (2000).
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| b. Unemployable Vs. Unemployed  | Being ***unemployable*** and being ***unemployed*** are not synonymous for the purpose of determining entitlement to an IU rating under [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116). A Veteran may be unemployed and even have a history of unemployment from several jobs but not be incapable of substantially gainful employment (unemployable). Unemployment can be due to economic factors, work performance issues, or other reasons and not necessarily related to being unable to secure or follow substantially gainful employment due to SC disability. A Veteran might also be unemployed from one job due to an SC disability without being incapable of securing or following another substantially gainful occupation due to SC disability.  |

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| c. Definition: Substantially Gainful Employment  | ***Substantially gainful employment*** is defined as employment at which non-disabled individuals earn their livelihood with earnings comparable to the particular occupation in the community where the Veteran resides. It suggests a living wage. Substantially gainful employment is* competitive (not protected) employment, and with
* earnings exceeding the amount established by the U.S. Department of Commerce, U.S. Census Bureau, as the poverty threshold for one person.

***Reference***: For more information on the definition of substantially gainful employment, see* [*Faust v. West,*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmf) 13 Vet.App. 342 (2000), and
* [*Moore v. Derwinski*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm), 1 Vet.App. 83 (1991).
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| d. Definition: Marginal Employment | ***Marginal employment*** exists* when a Veteran’s earned annual income does not exceed the amount established by the U.S. Department of Commerce, U.S. Census Bureau, as the poverty threshold for one person, or
* on a facts-found basis, and includes, but is not limited to, employment in a protected environment, such as a family business or sheltered workshop, when earned annual income exceeds the poverty threshold.

***Important***: * Marginal employment is by definition not substantially gainful employment.
* Do not consider amounts received from participation in the Veterans Health Administration’s (VHA’s) Compensated Work Therapy (CWT) Program as income for IU purposes.

***Reference***: For more information on the poverty threshold, see M21-1, Part IV, Subpart ii, 2.F.9.b. |

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

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| Introduction | This topic contains information on evaluating evidence to establish entitlement to increased compensation based on IU, including * general evidence requirements in IU claims
* medical evidence and examination requirements in IU claims
* requesting an examination in IU claims
* handling insufficient medical evidence
* employment history requirements in IU claims
* action to take based on employment history provided
* requesting employment information from employers
* Veteran’s responsibility to specify a disability or disabilities that cause unemployability
* when to obtain Social Security Administration (SSA) reports in IU claims
* when to obtain vocational rehabilitation and education (VR&E) records in IU claims
* regional office (RO) procedure for obtaining VR&E records
* appeals management center (AMC) procedure for obtaining VR&E records
* identifying reasonably raised claims of IU
* processing reasonably raised claims of IU, and
* considering IU claims for National Guard and Reservists.
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| a. General Evidence Requirements in IU Claims  | A decision concerning entitlement to an IU evaluation is based on a review of all available evidence, which should be sufficient to evaluate the * current severity of the SC disability(ies) that the Veteran states and/or the evidence indicates prevent(s) substantially gainful employment
* the impact of SC disability(ies) upon employability, and
* employment status.

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

***Note***: A substantially complete *VA Form 21-8940* is required to establish entitlement to IU, and meets the requirement for a claim submitted on a prescribed form. ***Important***: * Any written communication indicating a Veteran is unable to work because of SC disability may establish the inference of IU, such that Department of Veterans Affairs (VA) will solicit a claim.
* A *VA Form 21-8940* must be signed by the Veteran and not a third party source such as a power of attorney (POA).

***References***: For more information on * required employment history, see M21-1, Part IV, Subpart ii, 2.F.2.e, and
* required disability information, see M21-1, Part IV, Subpart ii, 2.F.2.h.
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| b. Medical Evidence and Examination Requirements in IU Claims | A claim for IU must contain sufficient medical evidence to support a current evaluation of the SC disabilities alleged by the claimant to be causing unemployability.The evidence should reflect the Veteran’s condition within the past 12 months and include, but need not be limited to* the results of VA examination(s)
* hospital reports, and/or
* outpatient treatment records.

***Important***: A medical examination is ***not automatically required*** in every IU claim. An examination is required if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim.  |

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| **c. Requesting an Examination in IU Claims** | When an examination is indicated, it is normally sufficient to request condition-specific disability benefits questionnaires (DBQs) for the conditions alleged to cause unemployability on the *VA Form 21-8940* (for example, Joints, Mental, and Peripheral Nerves DBQs). Schedule a General Medical Examination only if the rating activity determines that it is needed to fairly and fully adjudicate the IU claim, such as when the claim is made in connection with original claims for disability compensation or where it is alleged that multiple SC and/or non-service-connected (NSC) disabilities may have an impact on employability. However, do not order examinations for disabilities not alleged to cause or contribute to unemployability, even if the Veteran has received a previous award of service connection (SC) for the disabilities.  Do not ask the examiner to opine as to whether or not the Veteran is “unemployable” due to his or her SC disabilities. A determination that a Veteran is unemployable is a legal determination that rests solely with the rating activity. Instead, request that the examiner comment on the functional impairment caused solely by the SC disabilities. It is acceptable for an examiner to comment regarding what kind of work tasks or work environments (if any), to include employment that is sedentary in nature and employment requiring physical labor, the Veteran could perform despite his/her SC disability(ies). ***Reference***: For more information on adjudicative determinations in IU claims, see [38 CFR 4.16.](http://www.ecfr.gov/cgi-bin/text-idx?SID=92efd3bf0bf7a0f6bbb32c9acf1ac9d6&mc=true&node=se38.1.4_116&rgn=div8)  |

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| d. Handling Insufficient Medical Evidence | If the medical evidence of record is insufficient for rating the SC disability(ies) at issue or making a decision on entitlement to an IU evaluation, schedule a medical examination.***Reference***: For more information on scheduling examinations, see M21-1, Part III, Subpart iv, 3.B. |

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| e. Employment History Requirements in IU Claims | *VA Form 21-8940* requires the Veteran to furnish an employment history for the* five-year period preceding the date on which the Veteran claims to have become too disabled to work, and
* entire time after the date on which the Veteran claims to have become too disabled to work.

***Notes***: * In determining whether the Veteran provided work history information for the required time period, review the entries in Blocks 14 and 15 on the *VA Form 21-8940*.
* The minimum required work history must cover the year preceding the date the Veteran claims to have become too disabled to work.

***Reference***: For more information on action to take based on employment history, see M21-1, Part IV, Subpart ii, 2.F.2.f. |

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| **f. Action to Take Based on Employment History Provided** | Use the table below to determine the appropriate action to take based on whether or not the Veteran provides the required work history on *VA Form 21-8940*. |

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| **Step** | **Action** |
| 1 | Is the work history on *VA Form 21-8940* complete?* If *yes*, proceed to Step 5.
* If *no*, proceed to Step 2.
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| 2 | Make reasonable efforts to contact the Veteran by telephone to gather the missing employment history.  |
| 3 | Was the telephone contact successful? * If *yes*,
* document the employment information, and
* proceed to Step 5.
* If *no*, send the Veteran a letter requesting that he or she provide work history information within 30 days from the date of the notification letter.
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| 4 | Did the Veteran respond within 30 days?* If *yes*, proceed to Step 5.
* If *no*, forward the claim to the rating activity for a decision.
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| 5 | Follow the procedures in M21-1, Part IV, Subpart ii, 2.F.2.g for requesting employment information from employers. |

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| g. Requesting Employment Information From Employers | Use the table below to request *VA Form(s) 21-4192, Request for Employment Information in Connection with Claim for Disability Benefit*, for the Veteran’s last year of employment *even if* the Veteran has not worked for five years or more.***Exception***:Do *not* send the *VA Form 21-4192* to the Veteran’s last employer if the evidence of record is sufficient to award increased compensation based on IU and the Veteran has returned a substantially complete *VA Form 21-8940* indicating he/she is unemployed. |

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| **Step** | **Action** |
| 1 | * Send a *VA Form 21-4192* to the former employer(s) for which the Veteran worked during his last year of employment.
* At the same time, send a copy of *VA Form 21-4192* to the Veteran and request that their previous employer complete and return the form.
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| 2 | Was a completed *VA Form 21-4192* received from the Veteran’s employer(s) within 15 days?* If *yes*, refer the claim to the rating activity.
* If *no*, proceed to Step 3.
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| 3 | * Send a follow-up request to the employer(s) for *VA Form 21-4192*, allowing an additional 15 days for response, and
* notify the Veteran that it is ultimately the Veteran’s responsibility to obtain this information.
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| ***Notes***: * If the information on *VA Form 21-4192* only states that the Veteran retired, then request additional information as to whether the Veteran’s retirement was by reason of disability. If so, ask the employer to identify the nature of the disability for which the Veteran was retired.
* Do not deny an IU claim solely because an employer failed to return a completed *VA Form 21-4192.*
* If the Veteran worked for a Federal agency, treat the *VA Form 21-4192* development as a request for Federal records and follow the guidelines prescribed under M21-1MR, Part III, Subpart iii, 1.C.2.b.
* If an employer responds to the *VA Form 21-4192* by providing a web site that does not provide all of the required information in the form, follow-up with the employer and again request that the *VA Form 21-4192* be completed, allowing an additional 10 days for response.
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| **h. Veteran’s Responsibility to Specify a Disability or Disabilities That Cause Unemployability** | VA will no longer presume a claim for IU is a claim for increase in all SC disabilities. As part of a substantially complete application for IU, VA will require that the claimant with multiple SC disabilities specify at least one disability that he or she believes causes the unemployability.Use the table below to determine the appropriate action to take based on whether or not the Veteran specifies a disability as the cause of his or her unemployability. |

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| **If the Veteran ...** | **Then ...** |
| only has one SC disability | * presume that disability to be the cause of the Veteran’s unemployability, and
* treat the IU claim as a claim for increase for that disability.
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| * has multiple SC disabilities, but
* does not identify which SC disability(ies) cause(s) unemployability
 | contact the Veteran by telephone to gather that information. ***Note***: Make reasonable efforts to contact the Veteran by phone. If unsuccessful, send the Veteran a letter requesting that he/she identify which SC disability(ies) are believed to result in unemployability.  |
| * has multiple SC disabilities, and
* identifies one or more as the cause of unemployability
 | treat the IU claim as a claim for increase for specified disability(ies) |

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| i. When to Obtain SSA Reports in IU Claims  | Obtain and consider complete copies of the Social Security Administration (SSA) decision (awards and denials) and any supporting medical records when* evidence of record is insufficient to award IU, and
* the Veteran’s claims folder shows that the Veteran has been examined or awarded disability benefits by SSA.

***Notes***: * Although decisions by SSA regarding a Veteran’s unemployability are not controlling for VA determinations, SSA’s record may indicate the level of impairment of the Veteran’s SC disability.
* When reviewing SSA records, pay close attention to what disability resulted in an award of SSA benefits, and whether that disability is one for which SC has been awarded.
* Regional offices (ROs) are not required to request SSA records when a Veteran fails to return the *VA Form 21-8940*.

***References***: For more information on * requesting information from SSA, see M21-1, Part III, Subpart iii, 3.A, and
* the effect of SSA decisions regarding unemployability on VA determinations, see [*Murincsak v. Derwinski*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVC/1992dec/Murincsa.doc)*,* 2 Vet.App. 363 (1992).
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| j. When to Obtain VR&E Records in IU Claims | When the evidence of record indicates that the Veteran was seen by the Vocational Rehabilitation and Employment Service (VR&E) and evidence of record is insufficient to award IU, obtain and evaluate any records related to this contact.The VR&E records may* document the Veteran’s participation in a training program, or
* show that training was not feasible or was unsuccessful.

***Notes***: * The entire Counseling/Evaluation/Rehabilitation (CER) folder is not necessary to adjudicate IU claims that are processed at the RO. If adjudicating a claim for IU, and the Veteran has an existing VR&E record, request that VR&E provide a completed *VA Form 28-1902b, Counseling Record – Narrative Report*, in lieu of the entire CER folder. *VA Form 28-1902b* contains the necessary information concerning the impact of the Veteran’s SC and NSC conditions on employability.
* If the CER folder has evidentiary value that pertains to the pending claim and there is a need to scan the contents of the folder, send a photocopy of the folder to the scanning vendor and retain the original CER folder and its contents at the RO.
* The Appeals Management Center (AMC) must request that VR&E provide the entire CER folder when adjudicating Board of Veterans’ Appeals (BVA) remands, as BVA is able to contact the RO directly to request upload of the entire CER folder into the Veterans Benefits Management System (VBMS).

***References***: For more information on: * the AMC procedure for obtaining VR&E records, see M21-1, Part IV, Subpart ii, 2.F.2.l, and
* shipping requirements, see M21-1, Part III, Subpart.ii, 1.F.1.b.
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| **k. RO Procedure for Obtaining VR&E Records** | The table below describes the steps for the RO to follow to obtain VR&E records when a Veteran is in receipt of VR&E benefits. |

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| **Step** | **Action** |
| 1 | Send an encrypted e-mail to the VR&E office located in the RO requesting *VA Form 28-1902b*.  |
| 2 | Once the form is received, ensure that it has the necessary information to assist in adjudication of the IU claim.  |
| 3 | Save the document in a PDF file (if not already a PDF). |
| 4 | Upload the *VA Form 28-1902b* to the eFolder in VBMS. |
| 5 | Complete the following fields in VBMS.

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| **In VBMS field…** | **Enter…** |
| SUBJECT | *VOCATIONAL REHABILITATION & EMPLOYMENT DOCUMENTS* |
| DOCUMENT TYPE | *EDUCATION GENERAL – VA FORM 28-1902b* |
| SOURCE | *VBMS* |
| DATE of RECEIPT | [**THE DATE THE COMPLETED FORM WAS RECEIVED**]  |

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| ***Note***: If BVA requests the entire folder from the RO, follow the AMC procedures for requesting VR&E records at M21-1, Part IV, Subpart ii, 2.F.2.l.  |

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| **l. AMC Procedure for Obtaining VR&E Records**  | The table below describes the steps for the AMC to follow to obtain VR&E records when a Veteran is in receipt of VR&E benefits. |

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| **Step** | **Action** |
| 1 | Send an encrypted e-mail to the VR&E office to request the Veteran’s CER folder. |
| 2 | Photocopy the entire CER folder once it is received. |
| 3 | Send the photocopy of the CER folder to the scanning vendor as pending work to Veterans Claims Intake Program as described in the [VBMS job instruction sheet](http://vbaw.vba.va.gov/VBMS/docs/Shipping_Manifest_and_Document_Control_Sheet_JIS_140623_FINAL_v1.pdf). The material should be placed in its own manila folder with an attached cover sheet on top of the documents. The cover sheet will not be scanned but will be used to only notify vendors of the proper indexing values.  |
| 4 | After the claims folder has been photocopied and sent for scanning, return it back to VR&E.  |

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| m. Identifying Reasonably Raised Claims of IU | Reasonably raised claims of IU may arise in a Veteran’s original claim or in a claim for an increased rating. VA must consider a claim for IU if * the Veteran’s SC rating meets the minimum schedular criteria found in [38 CFR 4.16(a)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116), and
* there is current evidence of unemployability due to SC disability(ies) in the Veteran’s claims folder or under VA control.

***Reference***: For more information on reasonably raised claims for IU, see * [*Norris v. West*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmn)*,* 12 Vet.App. 413 (1999)
* [*Roberson v. Principi,*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmr) 251 F.3d 1378 (Fed. Cir. 2001), and
* [*Comer v. Peake,*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmc) 552 F.3d 1362 (Fed. Cir. 2009).
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| **n. Processing Reasonably Raised Claims of IU** | When a reasonably raised claim of IU is identified, and additional evidence is needed* rate all other claimed issues that can be decided
* show the issue of potential IU entitlement as deferred in the rating decision
* develop the reasonably raised IU issue under the *existing* end product (EP), which will remain pending until a merits determination of IU entitlement is made, and
* send the Veteran the section 5103 notice, enclosing *VA Form 21-8940* for completion.

***Notes***: * Do *not* send a Veteran *VA Form 21-8940* to complete if
* the schedular requirements of [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116)(a) are met, *but*
* there is no evidence of SC unemployability.
* A subsequent formal rating decision will be required to dispose of the issue of entitlement to IU, even when the Veteran fails to return *VA Form 21-8940*.

***Reference***: For more information on Section 5103 notices, see M21-1, Part I, 1.B. |

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| **o. Considering IU Claims for National Guard and Reservists** | If a Veteran is currently serving in the National Guard or Reserves, the reviewer should consider the following.* Determine if a medical examiner has indicated that a Veteran is unable to perform his/her military duties due to SC disability.
* Make sure that the latest service treatment records (STRS) are of record. Such records may aid in determining if the disability is preventing the Veteran from performing his/her current Guard or Reserve duties.

If the evidence of record is not sufficient to award increased compensation based on IU, request that the unit commander complete and return *VA Form 21-4192.****Note***: The VBMS *Initial Private 3rd Party Employer Letter, 21-4192* does not allow the user to edit the salutation section of the letter. To ensure that the request is routed to the unit commander, include “ATTN Unit Commander” in the *Employer Name* section following the unit designation.***Example***: 334th Brigade Engineer Battalion ATTN Unit Commander |

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

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

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

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| d. Evaluating Evidence Showing Income From a Tightly Held Corporation | Since the Veteran may control the amount of wages paid to himself/herself, do not make a finding of marginal employment solely on the basis of low wages.Keep in mind that the issue for consideration is whether the frequency and type of service performed by the Veteran equates to substantially gainful employment. Therefore, consider evidence that the Veteran received, or was entitled to receive, other remuneration from the corporation, such as stock dividends or loans, in lieu of wages.***Note***: If the reported wages appear low for the work performed, request a field examination per M21-1, Part III, Subpart vi, 8.8.a, to determine the Veteran’s entitlement to the corporation and corporate earnings.  |

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

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| Introduction | This topic contains information on preparing a rating decision addressing the issue of IU, including * considerations when deciding an IU claim
* the applicability of the concept of average impairment in earning capacity to IU claims
* considering IU for incarcerated Veterans
* considering IU on a temporary basis
* considering multiple disabilities in IU claims
* entitlement to special monthly compensation (SMC) at the Housebound rate if the IU rating is based on a single disability
* determining whether to substitute a single 100 percent schedular evaluation for IU in Housebound cases
* when an IU evaluation is considered moot
* determining the effect of SC disabilities on employability
* reasons for denying IU claims
* formally denying IU
* the information to include in the rating decision, and
* handling intertwined IU claims and appeals.
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| a. Considerations When Deciding an IU Claim | When deciding an IU claim, the rating activity must take into account* the Veteran’s current physical and mental condition
* the Veteran’s employment status, including
* the nature of employment, and
* the reason employment was terminated, and
* whether
* the disability requirements set forth in [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116) are met, or
* extra-schedular consideration under [38 CFR 4.16(b)](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.5&idno=38#se38.1.4_116) is warranted.

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

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| b. Applicability of the Concept of Average Impairment in Earning Capacity to IU Claims | Do *not* apply the concept of average impairment in earning capacity set forth in [38 CFR 4.1](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=df1f6289347222a3c5deb478ef3fddb3&ty=HTML&h=L&r=SECTION&n=se38.1.4_11) to determinations regarding IU. This concept applies only to determinations of the percentage of disability for schedular evaluations. |

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| **c. Considering IU for Incarcerated Veterans** | An IU rating that would first become effective while a Veteran is incarcerated in a Federal, State, or local penal institution for conviction of a felony shall not be assigned during such period of incarceration.If an IU evaluation is in effect prior to incarceration in excess of 60 days for conviction of a felony, the IU evaluation will be reduced to 10 percent in accordance with [38 CFR 3.665](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38#se38.1.3_1665). ***Reference***: For more information regarding the prohibition of assigning IU ratings for incarcerated Veterans, see* [38 U.S.C. 5313](https://www.law.cornell.edu/uscode/text/38/5313), and
* [38 CFR 3.341(b)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=fe8c20f3de87880906f4318ff0c1b495&ty=HTML&h=L&r=SECTION&n=se38.1.3_1341).
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| **d. Considering IU on a Temporary Basis**  | [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/text-idx?SID=1176038cf0499694d6b2daa62390e286&mc=true&node=se38.1.4_116&rgn=div8) authorizes the VA to assign an IU rating due to a Veteran’s temporary inability to follow a substantially gainful occupation.***Notes***: * Not every period of inability to work will establish an inability to follow a substantially gainful occupation warranting an IU rating, because it may be possible to secure and retain employment and to earn significant income despite occasional periods of incapacity.
* VA must make determinations regarding ability or inability to secure or follow a substantially gainful occupation on a case-by-case basis, taking into account such factors as the frequency and duration of periods of incapacity or time lost from work due to disability, the Veteran’s employment history and current employment status, and the Veteran’s annual income from employment, if any.

***Reference***: For more information regarding consideration of IU on a temporary basis, please see [VAOPGCPREC 5-2005](http://www.va.gov/ogc/opinions/2005precedentopinions.asp).  |

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| e Considering Multiple Disabilities in IU Claims | Under certain circumstances, multiple disabilities may be considered one disability for the purpose of meeting the requirements of [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116)(a).As stated in [38 CFR 4.16(a)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116), for the purpose of meeting the requirement of having one 60 percent or one 40 percent disability, the following will be considered as one disability* disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable
* disabilities resulting from common etiology or a single accident
* disabilities affecting a single body system
* multiple disabilities incurred in combat, or
* multiple disabilities incurred as a former prisoner of war (FPOW).

***Example***: Consider multiple disabilities of the musculoskeletal system as one disability because the multiple disabilities affect a single body system or multiple gunshot wounds as the result of combat service as one disability because the multiple disabilities were incurred in combat. ***Important***: In determining whether the Veteran's SC disabilities meet the schedular requirement as stated in [38 CFR 4.16(a)](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034), all SC disabilities will be considered. This determination is *not* restricted to only those SC disabilities that cause or contribute to unemployability.***Example***: A Veteran is SC for diabetes mellitus at 40 percent, right shoulder arthritis at 30 percent, ulcerative colitis at 30 percent, posttraumatic stress disorder (PTSD) at 30 percent, and low back strain at 20 percent. The combined disability evaluation is 80 percent. The evidence demonstrates that all SC disabilities, except for diabetes mellitus, cause or contribute to rendering the Veteran unable to secure or follow substantially gainful employment. TDIU would be awarded under [38 CFR 4.16(a)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116) as the Veteran meets the schedular requirements of the regulation (combined disability evaluation of at least 70 percent and one disability, diabetes mellitus, rated at least 40 percent). ***Rationale***: The regulation does not require that when multiple SC disabilities are present and collectively render the Veteran to be unemployable, that the 40 percent disability specifically cause or contribute to the unemployability. |

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

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

 ***Notes***: * Entitlement to Housebound benefits under [38 U.S.C. 1114(s)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001114----000-.html) *cannot* be established if the IU rating is based on multiple disabilities considered as one disability under [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116)(a).
* Do *not* put entitlement to SMC at issue, however, unless SMC benefits will be awarded or the issue has been explicitly claimed by the Veteran.

***Reference***: For more information on entitlement to Housebound benefits when the IU rating is based on a single SC disability, see [*Bradley v. Peake*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmb)*,* 22 Vet. App. 280 (2008). |

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| **g. Determining Whether to Substitute a Single 100 Percent Schedular Evaluation for IU in Housebound Cases** | VA is obligated to maximize the benefits awarded. In determining whether to substitute a 100 percent schedular evaluation for IU, consider whether substitution would result in the Veteran no longer being entitled to SMC at the Housebound rate. VA decision makers are to assess whether the Veteran still meets the criteria for IU based on a single disability before substituting a combined total schedular rating for the IU as indicated in [*Bradley v. Peake*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmb)*,* 22 Vet. App. 280 (2008). As a result, in cases where a single SC condition supports an IU rating and the Veteran has other SC conditions entitling him or her to statutory Housebound, the IU evaluation should be retained if the Veteran would otherwise lose the SMC rate if the IU were to be discontinued.  |

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| **h. When an IU Evaluation is Considered Moot** | A single SC disability rated 100 percent disabling generally renders an IU evaluation moot as no additional benefit would typically flow to the Veteran by substituting an IU evaluation for a single SC disability rated 100 percent disabling. ***Exception***: The IU evaluation is not moot if the effective date of the single schedular 100 percent evaluation is from a later date than that which can be assigned based on entitlement to IU (such as when an effective date for IU may be assigned from the day following discontinuation of last employment).  |

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| i. Determining the Effect of SC Disabilities on Employability | Determine whether the severity of the SC disabilities precludes the Veteran from securing or following substantially gainful employment. The following factors have no bearing on a determination of whether SC disability renders a Veteran unemployable * age
* NSC disabilities
* injuries occurring after military service
* availability of work, or
* voluntary withdrawal from the labor market.

***Reference***: For more information on the discussion to include in the rating decision, see M21-1, Part IV, Subpart ii, 2.F.4.l. |

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| j. Reasons for Denying IU Claims | Deny entitlement to IU only if the facts demonstrate that the Veteran* is not precluded from securing or following substantially gainful employment by reason of SC disability
* is gainfully employed, or
* has failed to cooperate with development, such as failing to return a completed *VA Form 21-8940* when requested.

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

***Reference***: For more information on continuing a total evaluation based on IU, see [38 CFR 3.343(c)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=df1f6289347222a3c5deb478ef3fddb3&ty=HTML&h=L&r=SECTION&n=se38.1.3_1343). |

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| k. Formally Denying IU | Formally code the rating decision to indicate denial of IU if * the Veteran specifically claims entitlement to IU, and
* any of the requirements for [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/text-idx?SID=706e37c32e96d7094a3fa453c9b28f6d&mc=true&node=se38.1.4_116&rgn=div8) are not met.

***Note***: If the Veteran disagrees with the decision, the statement of the case (SOC) should cite the relevant portion of [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116) as the authority of the denial. |

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

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| If … | Then … |
| schedular requirements of [38 CFR 4.16(a)](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.5&idno=38#se38.1.4_116) are met, but IU is denied because the Veteran is considered employable | explain the facts that are pertinent to that conclusion. |
| schedular requirements of [38 CFR 4.16(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=1176038cf0499694d6b2daa62390e286&mc=true&node=se38.1.4_116&rgn=div8) are not met and there is no finding that the Veteran is unemployable due to SC disability or evidence requiring extra-schedular consideration | explain the facts that are pertinent to the conclusion and note the absence of a basis for submission of the case to Compensation Service (211B) for consideration of an extra-schedular rating, if applicable.***Reference***: For more information on extra-schedular submission, see* [38 CFR 4.16(b)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116), and
* M21-1, Part IV, Subpart ii, 2.F.5.a.
 |
| a Veteran is considered unemployable primarily due to NSC factors and SC disabilities alone do not support a finding of unemployability | include * an explanation of the reasons for this decision, and
* the reasoning for finding that SC disabilities alone are not sufficiently severe enough to render the Veteran unemployable.
 |
| the Veteran fails to complete and return the *VA Form 21-8940* | include the following language explaining the basis for the denial:*Entitlement to individual unemployability is denied because you have not been found unable to secure or follow a substantially gainful occupation as a result of service connected disabilities.**On* ***[insert the date of the development letter that initially requested completion of the VA Form 21-8940 as Month DD, YYYY],*** *we wrote and asked you to send us a completed VA Form 21-8940, Veteran’s Application for Increased Compensation Based on Unemployability. As of this date, we have not received a complete VA Form 21-8940. This form is required to further consider your claim.* |
| IU is established | * include an explanation or analysis of how impairment from SC disability supports the decision, and
* specify which disability(ies) render the Veteran unemployable.

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

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| ***References***: For more information on * IU, see [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116), and
* unemployability, see [38 CFR 4.18](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=df1f6289347222a3c5deb478ef3fddb3&ty=HTML&h=L&r=SECTION&n=se38.1.4_118).
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| **m. Handling Intertwined IU Claims and Appeals** | The table below provides guidance on properly handling intertwined IU claims and appeals. |

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| **If the Veteran has an appeal pending**  | **And while the appeal is pending** | **Then** |
| for an increased evaluation for an SC disability | * the Veteran claims to be unemployable due, at least in part, to the disability on appeal, and
* the rating decision denies the TDIU claim
 | the TDIU claim is now part of the pending appeal. Send the appellant a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC) on all issues on appeal, including IU.  |
| on a denial of IU benefits  | * the Veteran subsequently claims that an SC disability not on appeal causes unemployability, and
* the rating decision fails to increase the evaluation to the schedular maximum
 | that disability will also be considered in appellate status. Send the appellant an SOC or SSOC regarding the evaluation of that disability. |

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| ***Reference***: For more information on preparing an SOC and SSOC, see M21-1, I, 5.D. |

#### 5. Special Considerations in IU Claims

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| Introduction | This topic contains information on special considerations in IU claims, including* handling claims requiring Central Office (CO) approval
* monitoring changes in employability status
* when monitoring changes in employability status is not required
* dispatch and control for the return of *VA Form 21-4140, Employment Questionnaire*
* the action taken
* when Hines Information Technology Center (ITC) cannot issue *VA Form 21-4140*
* if *VA Form 21-4140* or *VA Form 21-4140-1, Employment Questionnaire,* shows continued unemployability, or
* by the Intake Processing Center (IPC) if *VA Form 21-4140* indicates Veteran may be employed
* determining whether the Veteran has sustained gainful employment
* action taken if *VA Form 21-4140* is not returned
* action taken if the Veteran returns a signed *VA Form 21-4140* during the due process period, and
* action taken if the Veteran fails to cooperate with a required field examination.
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| a. Handling Claims Requiring CO Approval | Submit any claim to Central Office (CO) (211B) for extra-schedular IU consideration if the schedular requirements of [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116)(a) are not met but the evidence of record supports a finding that the Veteran is unemployable by reason of SC disability. These referrals should be emailed to the following email address: VBMSAdvisoryRequests.VBAVACO@va.gov.The memorandum prepared to transmit claims folders to CO for review must provide the following* a clear and succinct statement of the facts of the case, including medical and lay evidence of symptoms
* a detailed discussion of all medical evidence for each issue
* a discussion of relevant laws and regulations
* a full statement as to the Veteran’s SC disabilities, employment history, educational and vocational attainment, and all other factors bearing on the issue
* a statement of the issues to be resolved, as well as the recommended decision and/or evaluation(s), and
* a signature (electronic signatures are accepted) of the referring station’s Veterans Service Center Manager (VSCM) or designee (no lower than an Assistant VSCM).
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| b. Monitoring Changes in Employability Status | Changes in the employability of Veterans for whom IU is established is monitored through the* annual release of *VA Form 21-4140* via the Hines Information Technology Center (ITC), and
* Income Verification Match (IVM).

***References***: For more information on* dispatch and control for the return of *VA Form 21-4140*, see M21-1, Part IV, Subpart ii, 2.F.5.d, and
* the IVM as it relates to awards based on IU, see M21-1, Part X, 9.15.
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| c. When Monitoring Changes in Employability Status Is Not Required  | Monitoring changes in employability status is not required when the Veteran* is 69 years of age or older
* has an IU rating that has been in effect for 20 continuous years, or
* has had an IU rating replaced with a 100-percent schedular evaluation.

***Reference***: For more information on protection of evaluations, see [38 CFR 3.951(b)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=df1f6289347222a3c5deb478ef3fddb3&ty=HTML&h=L&r=SECTION&n=se38.1.3_1951). |

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| d. Dispatch and Control for Return of VA Form 21-4140 | Follow the steps in the table below for the dispatch and control for return of *VA Form 21-4140*. |

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| Step | Action |
| 1 | A future diary is generated whenever a rating decision awarding IU is processed. |
| 2 | Hines ITC issues *VA Form 21-4140* annually upon maturation of the future diary established under reason code 02, “100% Unemployable Review.”***Note***: To control the release of the last *VA Form 21-4140*, a master record diary is generated under reason code 32, “Expiration of Employability Control,” 19 years from the effective date of the award of total benefits, or at age 69, whichever is earlier.  |
| 3 | A future diary is established to control for the return of *VA Form 4140* two months from the month it is issued from Hines ITC.***Note***: If the future diary is not cleared timely, the Veterans Service Network (VETSNET) will establish an 800 Series Work Item to indicate that the action is due.***References***: For more information on * VETSNET processing, see the [*VETSNET User Guides*](http://vbaw.vba.va.gov/bl/21/Systems/vetsnet.htm)on the Compensation Service Intranet, and
* 800 series work items, see M21-1, Part III, Subpart v, 10.A.
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| e. Action Taken When Hines ITC Cannot Issue VA Form 21-4140 | When Hines ITC cannot issue *VA Form 21-4140*, the system generates a work item showing that the employability letter was not sent. Upon receipt of the work item, immediately send the Veteran *VA Form 21-4140-1*. To control for the return of *VA Form 21-4140-1*, Hines ITC establishes a future diary under reason code 34 for four months from the month in which the work item was issued. ***Note***: As a local option, an RO may establish an EP 310 upon receipt of the work item to control for development to the beneficiary for the *VA Form 21-4140-1*. Upon establishment of an EP 310, ensure the SUPPRESS ACKNOWLEDGEMENT LETTER checkbox is selected so the Hines-generated acknowledgement letter is not automatically sent to the Veteran.  |

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

***Note***: Do not refer the claims folder to the rating activity. ***Important***:If the Veteran fails to check the *No* box in Block 3, but signs the *VA Form 21-4140* in Section II, indicating that he/she has not been employed by VA, others, or been self-employed at any time during the previous 12 months, no phone call or additional development is needed as the Veteran has certified that he/she remains unemployed. |

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| g. Action Taken by the IPC if VA Form 21-4140 Indicates Veteran May Be Employed | Use the table below to determine the action taken by the IPC if the Veteran checked *Yes* for Block 3 on *VA Form 21-4140* (or *VA Form 21-4140-1)*, or indicated employment during the past 12 months in Section I - Employment Certification. |

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

***References***: For more information on* establishing a future diary, see the [*VETSNET Awards User Guide*](http://vbaw.vba.va.gov/bl/21/Systems/awards.htm)
* sustained employment, see [38 CFR 3.343(c)(2)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=df1f6289347222a3c5deb478ef3fddb3&ty=HTML&h=L&r=SECTION&n=se38.1.3_1343), and
* the action to take when the future diary matures, see M21-1, Part IV, Subpart ii, 2.F.5.h.
 |
| *VA Form 21-4140* shows the Veteran has been gainfully employed for 12 or more consecutive months | * clear the future diary established under reason code 34
* establish EP 310, and
* refer the case to the rating activity.

***Note***: If the income shown is marginal per M21-1, Part IV, Subpart ii, 2.F.4.e * do *not* consider the Veteran to be gainfully employed, or
* refer the case to the rating activity.
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| h. Determining Whether the Veteran Has Sustained Gainful Employment  | When the future diary established under EP 310 matures, the authorization activity will develop to determine whether the Veteran has sustained gainful employment for 12 or more consecutive months.Use the table below to determine the action to take after development is completed. |

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| If … | Then … |
| * evidence shows gainful employment has continued for 12 or more consecutive months, or
* the Veteran failed to furnish the information requested to determine employment status
 | refer the claims folder to the rating activity under EP 310. |
| evidence does not show gainful employment has continued for 12 or more consecutive months | * clear EP 310, using the PCLR command, and
* notify the Veteran of continued entitlement to an IU evaluation.
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| i. Action Taken if VA Form 21-4140 Is Not Returned | Follow the steps in the table below regarding the action to take if *VA Form 21-4140* is not returned.***Notes***:* Before taking the action shown in the table below, it may be useful to telephone the Veteran and ask him/her to return a signed *VA Form 21-4140* by mail, fax, or as an attachment to e-mail.
* If telephone contact is successful, and the Veteran agrees to return the form
* document that fact in the claims folder, and
* allow 10 days for receipt of the form.
* If the form is not received in the 10-day period, follow the steps in the table below.
* If the form is received in the 10-day period, refer to M21-1 Part IV, Subpart ii, 2.F.5.f or g.
* The telephone call itself, however, even with a statement of unemployment from the Veteran, is *not* a substitute for receipt of *VA Form 21-4140* signed by the Veteran.
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| Step | Action |
| 1 | The authorization activity* establishes EP 310 control, and
* refers the claims folder to the rating activity.
 |
| 2 | The rating activity prepares a rating decision proposing to reduce the Veteran to the appropriate schedular evaluation for failure to return *VA Form 21-4140.* |
| 3 | The authorization activity* notifies the Veteran and his her authorized representative, if applicable, of the proposed reduction in accordance with M21-1, Part I, 2.B, including
* the date the proposed action will be effective
* the reduced rate of compensation, and
* the proposed loss of entitlement to DEA under [38 U.S.C. Chapter 35](http://www.law.cornell.edu/uscode/html/uscode38/usc_sup_01_38_10_III_20_35.html), if applicable
* clears the pending EP 310, and
* establishes an EP 600 to control the claim during the due process period.

***Note***: The effective date of the reduction will be no earlier than the first day of the month following the end of the 60-day due process period.  |
| 4 |

|  |  |
| --- | --- |
| **If the Veteran ...** | **Then ...** |
| responds before the expiration of the due process period | follow the guidance inM21-1, Part IV, Subpart ii, 2.F.5.j. |
| does not respond before the expiration of the due process period | * reduce the award effective the date of the last payment (see [38 CFR 3.501(f)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=df1f6289347222a3c5deb478ef3fddb3&ty=HTML&h=L&r=SECTION&n=se38.1.3_1501)) or the date specified in the notice of proposed adverse action, whichever is later
* notify the Veteran of the reduction and any loss of entitlement to DEA or SMC
* advise the Veteran that if VA receives evidence showing continued unemployability within one year of the date of the decision notice, IU will be restored from the date of reduction
* advise the regional processing office (RPO) of jurisdiction of the loss of entitlement to DEA, if a [38 U.S.C. Chapter 35](http://www.law.cornell.edu/uscode/html/uscode38/usc_sup_01_38_10_III_20_35.html) record exists under the Veteran’s claim number, and
* refer the claims folder to the rating activity for a rating decision reflecting reduction to the schedular evaluation.

***Reference***: For more information on RPO jurisdiction, see M21-1, Part IX, Subpart ii, 2.8.a. |

 |

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

|  |  |
| --- | --- |
| If *VA Form 21-4140* shows … | Then … |
| continued unemployability | * refer the claims folder to the rating activity to prepare a rating decision continuing the prior evaluation, and
* clear the EP 600 when notifying the Veteran of the rating decision.
 |
| possible gainful employment | refer to the table below.

|  |  |
| --- | --- |
| **If employment has continued for …** | **Then …** |
| 12 or more months | refer the claims folder to the rating activity under EP 600. |
| fewer than 12 consecutive months | * clear the EP 600
* establish a future diary under EP 310, entering a suspense date 12 months from the month in which the Veteran regained employment, and
* notify the Veteran that
* the total evaluation will continue at the present, but
* VA will reconsider entitlement to a total evaluation in the future.
 |

 |

|  |  |
| --- | --- |
| k. Action Taken if the Veteran Fails to Cooperate With a Required Field Examination | Follow the steps in the table below when the Veteran fails to cooperate with a required field examination. |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Prepare a rating decision proposing a reduced evaluation using the format in M21-1, Part IV, Subpart ii, 2.F.6. |
| 2 | Use the table below to determine the action to take upon receipt of the Veteran’s response to the notice of proposed adverse action.

|  |  |
| --- | --- |
| If the Veteran … | Then … |
| fails to respond to the notice of proposed adverse action | prepare a rating decision to reduce the current evaluation using the format in M21-1, Part IV, Subpart ii, 2.F.7. |
| is willing to participate in the field examination prior to reduction to the schedular evaluation | * defer the rating action to reduce the evaluation
* reschedule the field examination, and
* inform the Veteran that
* further failure to cooperate will be cause for a reduction to the schedular evaluation, and
* the total evaluation based on IU would not be restored until the field examination has been completed and the report reviewed.
 |
| sends evidence which warrants continuation of a total rating based on continued unemployability | prepare a rating decision using the format in M21-1, Part IV, Subpart ii, 2.F.8. |

  |

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

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

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

|  |  |
| --- | --- |
| a. Proposed Reduction for Failure to Complete a Field Examination | An example of a rating decision proposing to reduce the IU evaluation to the schedular combined evaluation because of a Veteran’s failure to complete a field examination is below.***Note***: For proposed reductions, use the long-form rating narrative. ***Reference***: For more information on the long-form rating narrative, see M21-1, Part III, Subpart iv, 6.C.7. |

|  |
| --- |
| DECISION: A reduction to the schedular evaluation shown below is proposed because of the Veteran’s failure to cooperate with a required field examination.**EVIDENCE:** Notice of Failure to Cooperate with field examiner.**REASONS FOR DECISION:** A total disability rating has been in effect because of unemployability. Notice has been received that the Veteran refused to cooperate in completing a required field examination. The Veteran will be given 60 days to present additional evidence or argument to show that the IU evaluation should not be reduced. **JURISDICTION:** Field Examiner NotificationSUBJECT TO COMPENSATION (1.SC)\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_COMBINED EVALUATION FOR COMPENSATION:Individual Unemployability from \_\_\_\_\_\_\_\_NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC)\_\_\_\_\_  |

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

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

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

|  |  |
| --- | --- |
| a. Final Reduction for Failure to Complete a Field Examination | An example of a rating decision reducing an IU evaluation because of a Veteran’s failure to complete a field examination is below.***Note***: As provided in M21-1 Part III, Subpart iv, 6.C.7, reductions should use the long-form rating narrative. |

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

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

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

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

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

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

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

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

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

|  |  |
| --- | --- |
| a. Marginal Employment Based on Income Below the Poverty Threshold | [38 CFR 4.16(a)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d41946f98bf9198830e44d3ec683521d&ty=HTML&h=L&r=SECTION&n=se38.1.4_116) provides that marginal employment is generally deemed to exist when a Veteran’s earned income does not exceed the amount established by the U.S. Census Bureau as the average poverty threshold for one person.***Reference***: For more information on the U.S. Census Bureau’s poverty thresholds, see <http://www.census.gov/hhes/www/poverty/data/historical/people.html>. |

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

|  |  |
| --- | --- |
| Calendar Year | Amount |
| 1989 | $6,310 |
| 1990 | $6,652 |
| 1991 | $6,932 |
| 1992 | $7,143 |
| 1993 | $7,363 |
| 1994 | $7,547 |
| 1995 | $7,763 |
| 1996 | $7,995 |
| 1997 | $8,183 |
| 1998 | $8,316 |
| 1999 | $8,501 |
| 2000 | $8,794 |
| 2001 | $9,039 |
| 2002 | $9,183 |
| 2003 | $9,393 |
| 2004 | $9,645 |
| 2005 | $9,973 |
| 2006 | $10,294 |
| 2007 | $10,590 |
| 2008 | $10,991 |
| 2009 | $10,956 |
| 2010 | $11,137 |
| 2011 | $11,484 |
| 2012 | $11,720 |
| 2013 | $11,888 |
| 2014 | $12,316 |