APPEALS MODERNIZATION ACT (AMA) FREQUENTLY ASKED QUESTIONS (FAQs)

Purpose
The following FAQs apply to AMA procedures.

The FAQs are divided into the following topics:

• Supplemental Claims
• Request for Application (RFA)
• AMA Claims Establishment/ End Products (EPs)
• Effective Dates
• AMA Jurisdiction
• Attorney Fees
• Favorable Findings
• Applicable Laws and Regulations
• Changing Decision Review Lanes, and
• Miscellaneous.

Supplemental Claims

Question: If an incomplete supplemental claim is received on day 364 after the decision notification on an issue, we send the Veteran the incomplete supplemental claim letter and allow them 60 days. If they provide a complete supplemental claim within the 60-day window, but outside of the one year from the date of their notification, would that protect their entitlement to the effective date of the original claim, or only back to the date of the incomplete supplemental claim?

Answer: For effective date purposes, entitlement could be traced back to the date of the prior claim's filing.

Question: If the claimant files a claim for a secondary condition that was previously filed as direct service connection (SC), then would this be a supplemental claim?

Answer: Yes.

Question: If the Department of Veterans Affairs (VA) previously denied a right knee condition on direct SC, and now the Veteran claims a right knee condition secondary to a service-connected (SC) left hip condition. What is the process?

Answer: This would be considered a supplemental claim and would require submission of the claim on *VA Form 20-0995, Decision Review Request: Supplemental Claim*. In addition, the mere contention of "secondary service connection" is sufficient to meet the "new and relevant evidence" standard to render the claim complete.

Question: If the Veteran claims a left knee condition secondary to an SC left hip condition but had not claimed the left knee previously, how would the Department of Veterans Affairs (VA) treat this claim?

Answer: This would be considered an initial claim since the left knee condition was never previously decided on any basis, i.e., direct, secondary, or otherwise, and would require submission of the claim on *VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits*.

Question: What happens when a claimant asks for a hearing on a supplemental claim?

Answer: As noted in 38 CFR 3.103(d) "upon request, a claimant is entitled to a hearing on any issue involved with a claim within the purview of part 3 of this chapter before VA issues a notice of a decision on an initial or supplemental claim."

Question: On February 20, 2019 (after the implementation of AMA), can a Veteran file a supplemental claim in which the appeal period is still pending (e.g., previous decision was made in December 2018)?

Answer: Yes, claimants may file a supplemental claim, at any time on or after February 19, 2019, for review of a previously denied issue.

Question: Can a Veteran file a supplemental claim on an evaluation issue more than a year after the prior decision?

Answer: Yes. There is no regulatory time limit for filing a supplemental claim.

Question: If evidence received in support of a supplemental claim on an evaluation issue filed outside the year of the prior decision shows an increased evaluation is warranted, what effective date rules apply?

Answer: In these cases, 38 CFR 3.2500(h)(2) applies, which generally provides for an effective date based on "the date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim."

Question: If we mistakenly initiate development of an incomplete supplemental claim (for example, the Veteran failed to provide or identify any potentially new evidence), what is the proper procedure for handling this?

Answer: Once we create evidence, we are required to continue processing the claim as complete and issue a decision based on the new evidence.

Question: In cases where a Veteran's file a previously denied contention under many different ways/names claiming it to be new but it is not. For example, a knee condition was denied and now it is filed under knee pain or patellofemoral syndrome or some other kind of knee condition. How should this be handled?

Answer: As long as we have a substantially complete supplemental, claim, a new decision would be issued following the guidance in M21-1, Part III, Subpart iv, 2.B.3.e.

Question: Is intent to file (ITF) still acceptable for end product (EP) 020 for new claims and claims for increase after February 19, 2019?

Answer: ITFs continue to apply to all variants of initial claims under the modernized system. Only supplemental claims are exempt from the ITF process under revised legislation.

Question: It seems as if new and relevant is just a re-wording of new and material - not sure I completely understand the difference.

Answer: New evidence is evidence not previously part of the actual record before the agency. Relevant evidence tends to prove or disprove a matter at issue in a claim or raises a new theory of entitlement that was not previously addressed. See M21-1, Part III, Subpart iv, 2.B.3.d. It is intended to be a lower threshold than the material standard wherein the evidence presented had to relate to an unestablished fact necessary to substantiate the claim.

Question: Can an ITF be applied to a reopened claim that was submitted prior to implementation of the AMA and granted in a rating decision after February 19, 2019? I understand that M21-1, Part III, Subpart iv, 5.C.1.d states that ITFs are not to be associated with a supplemental claim, and 38 CFR 3.160(e) states: A request to reopen a finally decided claim that has not been adjudicated as of the effective date will be processed as a supplemental claim subject to the modernized review system.

Answer: The ITF can be associated with a reopened claim filed before February 19, 2019. On and after February 19, 2019, however, incoming supplemental claims established under EP 040 are ineligible for association with ITFs.

Question: For supplemental claims received for Rating Veterans Service Representative (RVSR) adjudication, what needs to be included in the decision if the issue is denied again? Do we include confirmed and continued (C&C) denial language, as well as favorable findings? Is there any additional text relating to AMA that needs to be included in the narrative?

Answer: The Veterans Benefits Management System – Rating (VBMS-R) has been updated with disability decision information selections and language fragments to address the absence of new or relevant evidence, if either is the basis for the claim's continued denial. If the evidence presented is both new and relevant, but the claim still can't succeed on its merits, there is a National Glossary entry ("New and relevant evidence received merits-based denial") that can be used to supplement and support the decisional narrative. In either case, any existing favorable findings would need to be documented, as with any other denial of benefits.

Question: If the Veteran does not identify any new or relevant evidence on *VA Form 20-0995*, is the Veterans Service Representative (VSR)/RVSR responsible for reviewing the Compensation

and Pension Record Exchange (CAPRI) records to determine if there is new and relevant evidence or MUST the Veteran identify the records?

Answer: Yes. Before determining a supplemental claim is substantially complete (i.e. includes or identifies potentially new evidence), M21-1, Part III, Subpart ii, 1.D.1.e requires claims processors to conduct the enterprise search described in M21-1, Part III, Subpart iii, 1.C.2.g, even if a Veteran does not identify treatment at a specific VA facility.

Question: For supplemental claims received within a year of a Veteran's signed *VA Form 21-526EZ* will a new Section 5103 notice be needed if the Veteran did not check the *5103 Notice Acknowledgement,* Item 16 on *VA Form 20-0995*?

Answer: A new Section 5103 notice on a supplemental claim that is filed within a year of the date of the previous notification is not needed. See M21-1, Part III, Subpart ii, 2.D.1.f.

Question: If there is a supplemental claim from a Veteran who missed the exam and the Veteran doesn't send in new evidence, is that an incomplete application? If the only reason the Veteran was denied was due to missed exams and they don't send in evidence, do we still administratively deny them?

Answer: The Veteran stating on *VA Form 20-0995* that he will attend the exam is enough evidence to request/reschedule the exam.

Question: For ancillary issues, such as auto or housing allowance, is new and relevant evidence required to file a supplemental claim for these issues or are they considered a "new" claim each time they are filed?

Answer: As supplemental claims, they will require potentially new evidence as discussed in M21-1, Part III, Subpart ii, 2.D.1.e.

Request for Application (RFA)

Question: What happens if a mixed claim is received or a claim is received on an improper form? For instance, what would the process be if the Veteran submits a contention that has previously been rated (supplemental) on a *VA Form 526EZ* along with new contentions?

Answer: Under AMA, a supplemental claim must be submitted on the prescribed supplemental claim form, *VA Form 20-0995.* This includes claims previously denied before February 19, 2019. Therefore, if VA receives a supplemental claim on another form, such as a *VA Form 21-526EZ,* this submission should be handled as a request for an application (RFA) form for benefits under 38 CFR 3.150(a).

Guidance: Regional offices (ROs) will take jurisdiction over sending RFAs for erroneously filed *VA Form 21-526EZ* submissions discovered at intake, as well as those erroneously established or auto-established through a selfservice portal. In these cases, the first claims processor to discover the erroneous submission must address the RFA using the procedure below.

Decision review operation centers (DROCs) will take jurisdiction over processing entire packets in cases where the packet is comingled with other mail (e.g. *VA Form 20-0995* with a *VA Form 21-526EZ*, evidence, etc.).

Question: If a *VA Form 20-0995* was received for supplemental claim issues and an additional *VA Form 21-4138, Statement in Support of Claim*, was received with a new issue, would we accept the new claim that was on *VA Form 21-4138* or send an RFA?

Answer: The acceptance of the contentions on the "additional correspondence" (here, a *VA Form 21-4138*) is contingent on the underlying, accompanying application being the correct one for the benefit sought. Because initial compensation claims must be on *VA Form 21-526EZ*, the submission you describe would be an RFA relative to the new issues.

Question: When an AMA RFA letter has to be done and an EP 400 established, should it be done in Share or VBMS? VBMS will automatically send the RFA letter and *VA Form 21-526EZ.* If the EP 400 is established in Share, it does not send *VA Form 21-526EZ.*

Answer: In order to prevent the RFA letter with the attached *VA Form 21-526EZ*, the EP 400 should be established and then cleared in Share. The *Request for Application AMA Review* letter from the Letter Creator will then be uploaded into VBMS and have a subject line placed on it that indicates that it is an AMA RFA letter. The source document that initiated the claim should also be labeled in the subject line as an *Incorrect AMA application*.

Question: If we receive late flowing private medical records (PMRs) from the provider or from the PMR contractor and the EP has already been cleared, what is the appropriate action to take?

Answer: If the evidence is received, and we become aware of it prior to the decision and the clearing of the EP, follow the procedural guidance at M21-1, Part III, Subpart ii, 1.E.5.d. If we do not receive the evidence until after a decision is rendered and the EP is cleared, then the evidentiary record is closed. The Veteran should then be sent the *Request for Application AMA Review* letter in Letter Creator and encouraged to file a supplemental claim to have the evidence reconsidered.

Question: EBenefits is allowing reopen contentions to be submitted on *VA Form 21-526EZ*, will this be corrected to have the contentions submitted on the correct form?

Answer: EBenefits was updated May 8, 2019, with a banner warning users to not submit previously denied claims online through eBenefits. If you receive a post February 19, 2019, claim that includes reopened contentions, send the Veteran the *Request for Application AMA Review* letter from Letter Creator.

Question: If we receive a claim on an incorrect form or the information is not complete should we send an RFA letter or an incomplete letter?

Answer: The *Incomplete Application Letter* is sent if you are returning the AMA application because it is not substantially complete. The *Request for Application AMA Review* letter is sent when the claimant applies using the incorrect form.

AMA Claims Establishment/EPs

Question: Will employees have access to Caseflow?

Answer: Yes, employees at ROs can be granted Caseflow access in the same way as other system applications are granted through use of the Common Security Employee Manager (CSEM) application. However, the level of access will vary by position and need.

Question: Will EPs 040 be used for non-rating supplemental claims?

Answer: Yes.

Question: Will there be multiple EPs, such as 020 for new claim and 040 for supplemental claims?

Answer: Yes, if the Veteran submits a *VA Form 21-526EZ* for a new claim, the Veterans Benefits Administration (VBA) will control the action through the use of an EP 020. If a Veteran submits a *VA Form 20-0995* for a supplemental claim, VBA will control the action through the use of an EP 040. These separate EPs could run concurrently, but submission must be made on the appropriate prescribed forms.

Question: If the reconsideration or reopened claim was filed before the go live date for AMA, i.e., before February 19, 2019, then does it remain as an EP 020?

Answer: Yes

Question: If a station receives a supplemental claim should the application be sent to a DROC for establishment in Caseflow?

Answer: Yes, stations should follow M21-1 guidance for routing supplemental claims, for compensation issues, through the Centralized Mail portal to the DROCs.

Question: Who will establish the EP 020/ 040?

Answer: Until further notice, the EP 020 will be established by the Veterans Service Center (VSC) and the EP 040 will have to be established in Caseflow by the DROC. If there is a combination of EPs needed for a mixed claim submission at the same time, then the DROC will establish both claims.

Question: When we receive a *VA Form 10182, Decision Review Request:Board Appeal (Notice of Disagreement)* are we to reassign that mail to VBA mail portal. And how does that work for an intake processing center claims assistant?

Answer: Centralized Mail (CM) routing rules should automatically assign any *VA Forms 10182* to the Board of Veterans' Appeals' (BVA's) mail queue. However, if one is erroneously received by a VSC, reassign all *VA Forms 10182* to BVA in the CM portal per the guidance in M21-1, Part III, Subpart ii, 1.E.5.d.

Question: We shouldn't see *VA Forms 20-0996, Decision Review Request: Higher-Level Review*, or incomplete *VA Forms 20-0995* if they are routed correctly to begin with, but if a VSC CA gets one that is incomplete what should be done?

Answer: An incomplete *VA Form 20-0995* should be processed according to M21-1, Part I, 1.B.1.g. Incomplete *VA Forms 20-0996* should be routed to the DROCs, per M21-1, Part I, 7.2.e.

Question: If the Veteran is claiming an increase can we accept it on a *VA Form 20-0995*?

Answer: Per the guidance in M21-1, Part III, Subpart ii, 2.E.3, submissions must be screened to determine the intent of the claimant. The form used by the claimant will determine whether the submission should be handled as a claim for increase or as a continuously pursued issue under 38 CFR 3.2500. If the Veteran files a substantially complete *VA Form 20-0995* on an evaluation issue, it should be processed as a supplemental claim. Claims for increase must be filed on *VA Form 21-526EZ* or other benefit-specific form identified in M21-1, Part III, Subpart ii, 2.B.1.b.

Question: We've been told that supplemental claims are to be filed on *VA Form 20-0995*. Would a supplemental claim for dependency be filed on the same form? Example, the Veteran failed to provide the Social Security number for the claimed dependent and is now providing it. Also, would this warrant an EP 040?

Answer: Yes, a request for review of a prior decision to deny dependency benefits should be filed on *VA Form 20-0995* and would warrant an EP 040. However, a claim for dependency can be claimed on *VA Form 21-686c, Application Request To Add And/Or Remove Dependents,* or any permitted forms listed in M21-1, Part III, Subpart ii, 2.B.1.b. Those filings, however, may not secure entitlement to the earliest effective date as a matter of continuous pursuit. Additional guidance can be found in M21-1, Part III, Subpart ii, 2.E.3.

Question: Is a claim for an earlier effective date acceptable on a *VA Form 21-526EZ* or must it be filed on *VA Form 20-0995*?

Answer: Freestanding claims for an earlier effective date have never been acceptable. See M21-1, Part I, 1.B.1.k. If the Veteran disagrees with an effective date on a decision made before February 19, 2019, he/she can file a legacy notice of disagreement or a supplemental claim. For decisions made on or after February 19, 2019, the Veteran has the three new AMA options available to pursue the issue. It should also be noted that before or after February 19, 2019 the Veteran can, and has always been able to, have an earlier effective date readdressed by alleging a

CUE. There is no prescribed form requirement to accomplish this. Additional guidance can be found in M21-1, Part III, Subpart iv, 5.C.9.a and M21-1, Part III, Subpart ii, 2.B.1.c.

Question: If we've previously denied a dependent, and they then submit all the required information to add the dependent on a new *VA Form 21-686c* would we consider this an RFA?

Answer: It would be acceptable as an initial claim for the dependent but wouldn't guarantee or safeguard the effective date that may have been assigned in connection with the prior claim. *VA Form 20-0995* would enable the benefit to be granted with the effective date of the original claim that is being disputed, whereas the new *VA Form 21-686c* would be processed as a claim for increase/new dependency claim stream.

Question: Can we have more than one EP 040 at a time - say a Non-Rating and a Rating? If so, will they be EP 040, 041, etc.?

Answer: Yes.

Question: Can we get clarification on what form(s) can be submitted for decisions that were completed prior to February 19, 2019? For example, rating decision was completed on March 14, 2018, with notification on March 19, 2018. Can the Veteran submit *VA Form 20-0996* on February 25, 2019? M21-1, Part I, 7.2.c seems to indicate that *VA Form 21-0958, Notice of Disagreement*, must be submitted for any decision prior to February 19, 2019.

Answer: If the Veteran received a decision prior to February 19, 2019, they have the one-year legacy appeal period to file *VA Form 21-0958*. Higher-level reviews (HLRs) are only an option for decisions issued on or after February 19, 2019, or if they opt into AMA during the legacy appeals process. See 38 CFR 3.2400. For previously denied issues, they can file a supplemental claim at any time. See 38 CFR 3.160(e).

Effective Dates

Question: How are we handling claims where the element lacking is a diagnosis? For example, prostate cancer was claimed on January 10, 2018. VA confirms service in the Republic of Vietnam, but the claim is denied for lack of diagnosis on February 15, 2018. The Veteran submits a supplemental claim on March 15, 2018. On September 15, 2018, the Veteran undergoes a biopsy and this is the first date VA has a confirmed diagnosis of prostate cancer. Is the effective date September 15, 2018, based on facts found or is the effective date January 10, 2018?

Answer: While the earliest effective date of a supplemental claim filed within a year of the decision is the date of the prior claim, the provisions of 38 CFR 3.400 still apply and determine the effective date.

Question: If an EP 040 is received within the proper time limits, is the initial effective date of the EP 020 applicable?

Answer: AMA provides protection of effective dates by providing the Veteran options to continuously pursue a claim. If the Veteran receives a decision on a claim, and later files a supplemental claim, you should apply the effective date provisions of 38 CFR 3.2500(h).

AMA Jurisdiction

Question: For HLR returns to the Supplemental Claim Lane, who will be handling that? Under the new process, will that be the DROCs)? If the HLR returns under the Rapid Appeals Modernization Program (RAMP), will that go to the RAMP stations?

Answer: Under the new process, DROCs will process HLR returns and any necessary re-adjudication of these cases under EP 040. If an HLR reviewer returns a claim under RAMP, these will be worked by a designated RAMP station.

Question: Do the ROs process EP 040s?

Answer: Yes, the ROs process EP 040s as long as they have been received on the correct form and are substantially complete.

Question: Can we work both an EP 020 and an EP 040 at the same time?

Answer: Yes, both EPs, if correctly established and not represented by different power of attorneys (POAs) for the different EPs, would be worked at the same time. It should be noted that if the Veteran has different POAs for the two different EPs, then they cannot be worked in one rating decision. Notification requirements would be separate if the Veteran had different POAs representing the different EPs.

Question: If medical evidence arrives for an active *VA Form 20-0995* do we send these to the DROC or do we note and upload them under the pending EP 040?

Answer: If there is an existing EP, you would follow the guidance in M21-1, Part III, Subpart ii, 1.E.5.d for processing solicited and unsolicited mail.

Attorney Fees

Question: Can supplemental claims be subject to attorney fees?

Answer: Yes, both supplemental claims and HLRs can potentially result in an attorney fee being paid.

Question: Because attorney fees are payable when granting benefits under an EP 040, what protocol should be followed in instances where we have both an EP 040 and an EP 020?

Answer: 38 CFR 14.631(e) requires exclusive decision notice with the representative recognized for that claim. Attorney fees are only payable on supplemental claims, HLRs, and legacy appeals. If the Veteran has a POA for multiple claims and that POA is entitled to fees for only one of them, there is no legal requirement that we process the claims separately; however, the claims could be processed separately to ensure proper payment of fees. If the Veteran has different POAs for each claim, the claims *must be* processed separately.

Favorable Findings

Question: Are favorable findings required for proposed rating reductions?

Answer: No. M21-1, Part I, 2.B addresses due process notice requirements. Favorable findings are not specifically mentioned in the notice elements listed in M21-1, Part I, 2.B because they are not required in proposed decisions. Favorable findings are binding on future adjudicators (38 CFR 3.104(c)). By definition, a proposed decision is not yet binding, and therefore, should not include favorable findings.

Question: When we are listing favorable findings are we listing all the events found in the service treatment records (STRs) for one disability, or can we list one or two events found in the STRs?

Answer: Identification of every instance of treatment is unnecessary. It is acceptable to identify just the most recent or most relevant instance of treatment. The treatment dates could be represented, perhaps, in the form of a date range, or if one treatment entry is more significant than others, it could be identified on its own.

Question: For favorable findings, do we have to use the canned text such as "The evidence shows that a qualifying event, injury, or disease had its onset during your service”?

Answer: For the sake of consistency, it is best to use the canned favorable finding text provided and supplement it with free text, as necessary.

Question: Are favorable findings required for confirmed and continued evaluation decisions (C&C)?

Answer: Favorable findings for C&C evaluation decisions are felt to be covered by evaluation builder/calculator output and needn't be explicitly addressed any further. See M21-1, Part III, Subpart iv, 6.C.5.f.

Question: If a Veteran applies for secondary SC for a condition and we're denying SC, would we have to formally deny in the rating decision on both a secondary and direct SC basis?

Answer: The rating must address all theories of entitlement raised by the evidence with appropriate regulations and favorable findings, regardless of whether the Veteran expressly raises the theory or whether the evidence itself does. Denials need only address entitlement

theories that are expressly claimed and/or raised/supported by the evidentiary record. See M21-1, Part III, Subpart ii, 2.B.1.m.

Question: What if there are no favorable findings?

Answer: If there are no favorable findings, then deny the claim, using glossary fragments to indicate to the claimant what elements are missing for a grant. It is not required for the rating narrative to explicitly state no findings were favorable to the issue in such instances. See M21-1, Part III, Subpart iv, 6.C and 38 CFR 3.103(f).

Question: If VA records show complaints and treatment but not a diagnosis of a claimed condition do we note that as a favorable finding?

Answer: A favorable finding is a conclusion you as the decision maker reach when deciding the claim. It is based on whether the evidence shows that an element is established and must be based on the evidence available. We cannot provide you a hard and fast rule as to what evidence satisfies each element that is part of your decision-making process. You can review M21-1, Part III, Subpart iv, 5.A for guidance on weighing evidence and reaching conclusions.

Question: Does every Personal Computer Generated Letters (PCGL) letter regarding AMA have to be customized or are there paragraphs that have been updated?

Answer: PCGL has not been updated and there is no current plan to do so. If you must use PCGL to generate a notification letter you would be required to customize the paragraphs.

Question: If the Veteran submits private treatment records or VA records that show a diagnosis of posttraumatic stress disorder (PTSD), but on the VA exam the examiner stated that there was no current diagnosis of PTSD which is now the basis for our denial, would we list a favorable finding of "Your VAMC records show a diagnosis of PTSD"?

Answer: You have conflicting evidence in the file and must analyze that evidence for competence, credibility, and weight before deciding. Address the conflicting evidence in your reasons for decision prior to the favorable findings section and determine which evidence holds more weight before deciding whether the Veteran is diagnosed with PTSD or not - a VA examination does not hold more weight simply because a VA examiner wrote it. See M21-1, Part III, Subpart iv, 5.A and 38 CFR 4.6 for the basics of reviewing evidence.

Question: Can you give an example as to when we would use the 'nexus' as a favorable finding in a denial? A nexus, or link, has been established between your claimed issue and an in-service event or injury?

Answer: A nexus favorable finding can be used in a case where the Veteran had noise exposure in service, attended an examination where the audiologist rendered a positive medical opinion, but the Veteran does ***not*** have hearing loss for VA purposes.

Question: If we are denying entitlement to compensation under 38 CFR 3.324 based on multiple SC conditions evaluated as non-compensable, then what would the favorable finding statement look like?

Answer: This would be the appropriate favorable finding, "You have two or more separate, permanent, service-connected disabilities evaluated at noncompensable levels."

Question: If a favorable finding is overturned, can that create an overpayment, and if so, will we proceed with due process?

Answer: Favorable findings are only selected and provided to the Veteran for a claim that was denied. Overturning a previous favorable finding to an element not met, would not create a debt or require due process as the Veteran would not have been in receipt of benefits for the denied issue.

Question: Is there a manual citation that describes the degree of specificity required for a favorable finding that a specific date of an in-service event is required or diagnoses in private medical records?

Answer: Not specifically, no. M21-1, Part III, Subpart iv, 6.C discusses the requirements for favorable findings and how they are met. It also includes (in the context of a sample short form denial exhibit) an example of how a sufficiently formatted favorable finding for incurrence may appear. Procedures does not and are not planning to specifically dictate how granular or detailed favorable findings need be.

Question: Can you provide a brief example on when we would have a need to overturn a previous favorable finding please?

Answer: Grounds to overturn a favorable finding exist when there is clear and unmistakable evidence to rebut the favorable finding. For example, we established that the Veteran had been diagnosed with hypertension previously, but we denied it. Upon review of a supplemental claim for hypertension, it is found the Veteran did not have hypertension at all, but instead had pre-hypertension. See M21-1, Part III, Subpart iv, 2.B.5.d.

Question: As it pertains to favorable findings and elements not met in dependency cases: if we are denying different dependents for the same reasons, can we consolidate the reasons under one listing or do we have to list different and separate paragraphs specific to each dependent?

Answer: Favorable findings and reasons for denial are issue specific. In VBMS-Awards (VBMS-A), you should enter decisions for each claimed dependent separately, which will then generate decision notice language specific to each claimed dependent.

Question: Are favorable findings required when individual unemployability is addressed in a rating decision as moot?

Answer: The requirement to address favorable findings in a decision notice is specified in 38 CFR 3.103(f). If you are not rendering a decision on an issue, then there is no need to provide the elements of a decision.

Question: Do favorable findings have to be included in the narrative of a proposal or final reduction to sever SC?

Answer: The revised regulations call for inclusion of favorable findings in connection with all decisions that impact the payment of benefits. Since rating decisions communicating proposed adverse action do not singularly reach that level (of directly or immediately affect benefit entitlement or payment), favorable finding documentation is not required. The final decision implementing the proposal, however, would need to include favorable findings insofar as any exist.

Question: The training stated to overturn favorable findings there would be a need to provide justification in VBMS-R. Where and how is that to be done?

Answer: The process for overturning favorable findings in VBMS-R is explained in the VBMS Job Aid - VBMS-Rating: Favorable Findings.

Question: If a negative opinion is addressed in the narrative, should we be concerned about whether to use the favorable finding wording?

Answer: Favorable findings are editable. If you find the facts of the claim support a particular favorable finding, but the wording is not exactly appropriate for the specifics in your claim, you can edit the system-generated language to suit your needs.

Question: Do favorable findings have to be repeated for each decision in the future that continues to deny SC?

Answer: Yes, favorable findings will appear for you to select/deselect on subsequent decisions.

Question: As it pertains to favorable findings, how do we answer the met and not met questions for foreign dependent claims?

Answer: If you require specific documents to establish the relationship or marital history, and the Veteran fails to provide the necessary document(s), you would select the relevant element as not met.

Question: When a Veteran is attempting to add a spouse back to his award after being removed, but not all of the necessary information is present on the form, would that require the favorable findings if we are unable to add a spouse back that was previously on his award?

Answer: If the decision is to deny the dependent's re-addition because the necessary evidentiary elements are not shown, then yes, favorable findings (if any) would need to be identified.

Question: The training did not touch on apportionments. Am I correct in thinking that favorable findings will be included apportionment notification letters?

Answer: Discussion of favorable findings is not required in decision notices communicating apportionment (and contested claim) outcomes. See M21-1, Part III, Subpart v, 3.A.3.k.

Question: For the "qualifying event in service" if the event in service was during a reserve period, would it still need to be cited as a favorable finding?

Answer: It is assumed that the "qualifying event" in this scenario is an injury or disease during a period of active duty for training or an injury during a period of inactive duty for training. If so, the answer is yes, as an element favorable to the claimant exists within the evidence.

Question: Is it correct not to use a low probability military occupational specialty (MOS) as a favorable finding event when we have a denial for hearing loss or tinnitus.

Answer: If you concede an in-service event or injury as part of the decision making process, you should list it as a favorable finding. See M21-1, Part III, Subpart iv, 4.D.1.b.

Applicable Laws and Regulations

Question: If a Veteran fails to report to a VA exam, can you confirm whether it is required for the narrative to include 38 CFR 3.655 as a regulation or are the generated regulations enough?

Answer: 38 CFR 3.103(f) requires a summary of the laws and regulations applicable to the claim. If we are denying the claim in part because the vet failed to report, then yes, you would parenthetically note 38 CFR 3.655 after the text in the rating narrative that states he failed to report.

Question: The guide says to list all applicable diagnostic codes. Would the decision be incorrect/need correction if the RVSR failed to list the applicable diagnostic code with the proper laws and regulations?

Answer: M21-1, Part III, Subpart iv, 6.C and 38 CFR 3.103(f) only require that the underlying law or regulation be identified.

Question: What kind of explanations do we need to provide for the CFRs we list in non-rating decisions? Is it what the CFR pertains to, or is it how the CFR has been applied?

Answer: The modernized decision notice requirements outlined in 38 CFR 3.103(f) only require that applicable laws be summarized or identified. By and large, parenthetical notations are seen as a satisfactory means for accomplishing this. Specific discussion of the CFR's individual regulatory requirements, above and beyond what is basically necessary to discuss claim elements that have and have not been met, is not necessary.

Question: Are applicable laws and regulations required for Audit Error Worksheets and cost-of-living adjustments?

Answer: Yes, this was covered in a calendar blast about providing laws and regulations in non-rating decision notices. There is nothing in 38 CFR 3.103(f) that limits applicability of providing laws and regs to specific types of claims.

Question: What missing regulatory citation is required when VBMS-R tells the Veteran "this is the highest schedular evaluation allowed under the law for this disability"?

Answer: Your explanation of the assigned evaluation should reference the regulation from 38 CFR Part 4 used to assign the current evaluation. As noted in a prior calendar blast that was sent regarding this issue: "When this occurs, please take care to parenthetically append to this sentence the appropriate regulatory citation that corresponds with the underlying service-connected disability and evaluation assigned." Several source documents were also cited in the calendar blast to assist you in this process.

Question: When granting, if we do a long form narrative and discuss things like probative value or reasonable doubt, do we need to list 38 CFR 4.3, 38 CFR 4.6? Or is that going overboard?

Answer: You should cite regulations that informed any decision element you include in your narrative, including weighing of evidence. If there is regulatory authority for any part of your decision, it should be cited.

Question: When denying due in part to a period of dishonorable service. Do we need to list that CFR regulation in our narrative?

Answer: If the narrative is discussing the issue's denial on the basis of a dishonorable character of service, then yes, the applicable regulation should parenthetically follow that discussion.

Question: Would we need to address the regulation for an effective date on an original claim, since we did not have to explain the effective date for an original claim in the narrative?

Answer: Effective dates for grants are assigned based on the regulation's requirements. Any time a regulation is the reason you are doing something (such as assigning an effective date), you should cite the regulation. Explanation of an effective date is a procedural concern and has no bearing on whether a regulation citation is required.

Question: Under AMA, is there any time that a regulation could or should not be cited for the effective date in the narrative?

Answer: There is not a time when you would not cite the regulation as a reason you are doing something.

Question: When using an ITF to grant an effective date, should we be citing 38 CFR 3.155 or another reference along with 38 CFR 3.400 since ITFs are not discussed in 38 CFR 3.400?

Answer: Yes - 38 CFR 3.155 allows us to consider a complete claim was filed on the date of the ITF if received within one year. 38 CFR 3.400 guides us in assigning effective dates. As both are the reason for the ITF effective date, both should be cited.

Question: Should we be including 38 CFR 3.159 in all decisions since duty to assist is considered in some way in all claims? It does not "pull into" VBMS-R automatically.

Answer: Only cite 38 CFR 3.159 if a statement you make in the narrative was made due to 38 CFR 3.159's requirements. As an example, if a Veteran requested an examination with his claim and we did not provide one, and you feel the narrative requires an explanation of why we did not, you might cite 38 CFR 3.159 after explaining the evidence we need prior to scheduling an examination. It would not appear to be a generally required reference for most rating decisions.

Question: Is there a minimum number of regulations that should be included in our rating narrative to satisfy the AMA requirements for "applicable laws and regulations" as noted in M21-1, Part III, Subpart iv, 6.C.5.a. The narrative examples shown in M21-1, Part III, Subpart iv, 6.C.6.d-e seem basic, but there has been guidance in the field that narratives should also include citations such as 38 CFR 3.1 & 38 CFR 3.159, etc.

Answer: Generally, VBMS-R will generate the regulations needed to satisfy the notice requirement of 38 CFR 3.103(f); however, if your decision-making process included consideration of other applicable laws and regulations or the generated regulations are erroneous or inadequate, you should update the reasons for decision to reflect the appropriate regulations. The regulation merely requires a summary of the laws and regs that *apply* to the claim.

Question: Do we need to include applicable laws and regulations for military retired pay (MRP) or severance and separation pay award adjustments in notification letters?

Answer: Yes, applicable laws and regulations do apply to MRP, severance, and separation pay award adjustments, as do all AMA decision notification requirements except for favorable findings.

Changing Decision Review Lanes

Question: Can a Veteran withdraw a supplemental claim, then later request an HLR on the same issue?

Answer: Claimants or representatives may change the type of decision reviews, whether HLRs or supplemental claims, if VA has not yet completed the review and the claimant is still within the time period for filing the new review option. To do so, claimants or representatives must submit both request to withdrawal the current review, and a timely complete application for the other type of review.

Question: If we receive an acceptable supplemental claim regarding a decision review of a previously assigned evaluation for a service-connected condition (with additional evidence).

Subsequently, while the EP 040 is pending, we receive a valid claim for increase of the same condition on *VA Form 21-526EZ.* Can we accept and work the claim for increase (from effective date of the *VA Form 21-526EZ*), while the EP 040 for the previously assigned evaluation of the same condition is pending?

Answer: The claimant has the option to withdraw the disagreement with the prior evaluation (supplemental claim) and then file a claim for increase; however, we cannot process both concurrently. For withdrawal requirements of decision reviews under AMA, see M21-1, Part I, 7.

Miscellaneous

Question: Will a Veteran's subsequent action in response to a denial for a failure to report to an examination still be considered a claim for reconsideration?

Answer: No, claims for reconsideration will no longer exist effective February 19, 2019. If the Veteran's claim was denied due to a failure to report to an examination, the Veteran will need to submit a supplemental claim on *VA Form 20-0995*.

Question: Will the AMA forms be immediately available in eBenefits, or will there be a delay?

Answer: AMA application forms are not currently available in eBenefits. Claimants may download the forms from the VA.gov forms webpage or may access them from VA.gov/decision-reviews.

Question: If we are processing an EP 930 because a previous notification letter that was sent before February 19, 2019, was insufficient, should our letter now include the AMA language or the old appeal language?

Answer: AMA language. You would essentially be renewing appellate rights by sending the new amended letter, and in that vein, options for decision review are those identified in the new, approved paragraphs.

Question: There is information in the *Incomplete Application Letter* example discussing 60-days for the Veteran to send in the information to complete his/her claim. Is this 60-day period provided in the manual anywhere?

Answer: Yes. M21-1, Part I, 1.B.1.g, Step 5 speaks to the 60-day time period. Also see 38 CFR 3.155(d)(1)(i).

Question: Why was all information in the manual regarding claims for reconsideration/ reopen completely removed? If we are working a claim received prior to the regulation change we have no manual information to look at while working this type of claim.

Answer: Reopened and reconsideration claim guidance was removed from M21-1, Part III, Subpart ii, 2 on February 19, 2019, because, as of that date, submissions of those types were/are

no longer acceptable. Historical versions of M21-1, Part III, Subpart ii, 2.D (for reopened) and M21-1, Part III, Subpart ii, 2.F (for reconsideration) remain available in the Compensation and Pension Knowledge Management portal and are appropriate for use and reference wherever they apply to acceptance of a claim received prior to their change dates.

Question: Do we have a time frame on when PCGL will be updated?

Answer: PCGL will not be updated soon. All letters should be generated in VBMS-A unless there is an automated decision letter exclusion. Should that happen, please refer to the AMA approved text for PCGL letters that is included in the *Favorable Findings for Dependency* course in TMS and M21-1, Part III, Subpart v, 2.B.

Question: Does the old process of an administrative denial still apply for claims that were received prior to February 19, 2019, and are considered reopen or reconsideration claims? Under the old rules, the Veteran would be administratively denied and given appeal rights when no evidence was received. Is the best solution to modify the old admin denial letters in Letter Creator and continue to send these letters in this scenario?

Answer: Yes, what you have proposed (use of the Letter Creator letter, with selective edits) is the best solution for this issue. Ensure that the "What You Should Do" section speaks to supplemental (vs. reopened) claims and relevant (vs. material) evidence, and replace the "What You Should Do If You Disagree..." language with what's included in M21-1, Part III, Subpart v, 2.B.5.

Question: I am seeing cases on claims submitted prior to February 19, 2019, where the Veteran claimed reconsideration for an issue but did not identify or submit new/relevant evidence. The VSR requested an exam based on the same theory of SC (such as direct) and VA exam shows that the denial would be confirmed. Should we be rating those or sending them back as incomplete supplemental claims?

Answer: If the claim for reconsideration is received prior to February 19, 2019, then the claim will be controlled under an EP 020 until the claim is decided. They would not constitute an incomplete supplemental claim.

Question: I was told that ***all*** EPs fall under AMA. I'm confused by that. Even 010s and 110s? If this is regarding appeals, and originals are included, is this because all narratives now must include regulations and specific language, even if they aren't addressing a prior decision?

Answer: Despite its name, AMA has broader implications than just the appellate realm. It fundamentally changes, for instance, our notice requirements and standards for claim acceptance. Those concepts that are not exclusively tied to appeals apply to all claims received and/or decided after the implementation date.