Section 5103 and Duty to Assist for RVSRs (RVSR IWT)

Instructor Lesson Plan

Time Required: 1.5 Hours

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| Lesson Description |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. |
| TMS # | 4178713 |
| Prerequisites | Not Applicable |
| target audience | The target audience for Duty to Assist for RVSRs (RVSR IWT**)** is RVSR Challenge trainees.Although this lesson is targeted to teach the RVSR Challenge trainees, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 1.5 hour |
| Materials/TRAINING AIDS | Lesson materials:* Duty to Assist for RVSRs (RVSR IWT**)** PowerPoint Presentation
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| Training Area/Tools  | The following are required to ensure the trainees are able to meet the lesson objectives: * Classroom or private area suitable for participatory discussions
* Seating, writing materials, and writing surfaces for trainee note taking and participation
* Handouts, which include a practical exercise
* Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials
* Computer with PowerPoint software to present the lesson material

Trainees require access to the following tools: * VA TMS to complete the assessment
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| Pre-Planning  | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session.
* Become familiar with the content of the trainee handouts and their association to the Lesson Plan.
* Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson.
* Ensure that there are copies of all handouts before the training session.
* When required, reserve the training room.
* Arrange for equipment such as flip charts, an overhead projector, and any other equipment (as needed).
* Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson.
* This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins.
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| Training Day  | * Arrive as early as possible to ensure access to the facility and computers.
* Become familiar with the location of restrooms and other facilities that the trainees will require.
* Test the computer and projector to ensure they are working properly.
* Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly.
* Make sure that a whiteboard or flip chart and the associated markers are available.
* The instructor completes a roll call attendance sheet or provides a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers.
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| Introduction to Duty to Assist for RVSRs (RVSR IWT) |
| INSTRUCTOR INTRODUCTION | Complete the following:* Introduce yourself
* Orient learners to the facilities
* Ensure that all learners have the required handouts
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| time required | 0.5 hours |
| Purpose of LessonExplain the following: | This lesson is intended to introduce RVSR Challenge trainees to the VA’s duty to assist claimants that file a substantially complete claim and duty to notify claimants of the information or evidence that is necessary to substantiate their claim. This lesson will contain discussions that will allow you to gain a better understanding of the: * Regulations and Recognizing a Substantially Complete Application
* Notification Requirements
* Requesting Records
 |
| Lesson ObjectivesDiscuss the following:Slide 2 | Given all available references, RVSR trainees will be able to accomplish the following with 98% accuracy:* define the requirements for VA’s duty to notify and duty to assist responsibilities.
* identify whether or not VA’s duty to notify and duty to assist responsibilities have been fulfilled.
 |
| Explain the following: | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed.  |
| MotivationSlide 3 | According to 38 CFR 3.103(a) and 3.159 the Department of Veterans Affairs (VA) has an obligation to* notify claimants of the information or evidence that is necessary to substantiate their claim
* assist claimants that file a substantially complete claim in obtaining evidence to substantiate the claim before VA makes a decision on it, and
* grant every benefit supported by law, which is consistent with the facts of the case, while protecting the interests of the government.
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| STAR Error code(s) | B1, B2 |
| ReferencesSlide 4  | Explain where these references are located in the workplace.All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).* [Public Law 106-475: Veterans Claims Assistance Act of 2000](https://www.gpo.gov/fdsys/pkg/PLAW-106publ475/html/PLAW-106publ475.htm)
* [Public Law (PL) 112-154, Sections 504, Authorization of use of electronic communication to provide notice to claimants](https://www.gpo.gov/fdsys/pkg/PLAW-112publ154/html/PLAW-112publ154.htm)
* [Public Law (PL) 112-154, Section 505, Duty to assist claimants in obtaining private records](https://www.gpo.gov/fdsys/pkg/PLAW-112publ154/html/PLAW-112publ154.htm)
* [38 U.S.C. 5103, Notice to claimants of required information and evidence](https://www.law.cornell.edu/uscode/text/38/5103)
* [38 CFR 3.159, Department of Veterans Affairs assistance in developing claims](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [M21-1, Part I, Chapter 1, A, Duty to Assist, Description and General Information](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)
* [M21-1, Part I, Chapter 1, B, Duty to Notify Under 38 U.S.C. 5103](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)
* [M21-1, Part I, Chapter 1, C, Requesting Records](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)
* [M21-1, Part III, Subpart iv, 2, B, Section 5103 Requirements](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/)
* [Shade v Shinseki, No. 08-3548, November 2, 2010, New and Material Evidence](https://www.uscourts.cavc.gov/documents/Shade_08-3548_published_opinion_11-2-2010.pdf)
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| Topic 1: Regulations and Recognizing a Substantially Complete Application |
| Introduction | This topic will introduce the trainees to the regulations that define VA’s duty to assist and duty to notify and how to recognized a substantially complete application. |
| Time Required | 0.5 hours  |
| OBJECTIVES/Teaching Points | Topic objectives:* Understand the regulations that define VA’s duty to assist and duty to notify under VCAA and Public Law 112-154, Section 504 and Section 505.
* Recognized a substantially complete application.
 |
| PL 106-475, VCAASlide 5**M21-1.I.1.A.1.a****.** Description of PL 106-475 | *Public Law (PL) 106-475*, *Veterans Claims Assistance Act of 2000*, was enacted on November 9, 2000, and* redefined the Department of Veterans Affairs’ (VA’s) duty to assist claimants in obtaining evidence necessary to substantiate a claim
* eliminated the requirement from [*Morton v. West*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm) that a claimant must submit a well-grounded claim before VA can assist in developing the claim, and
* mandated specific notice requirements regarding information that is necessary to substantiate a claim.
* required VA, upon a receipt of an incomplete application for benefits or an intent to claim or apply for a benefit, to notify the claimant of the information necessary to complete the application and to defer assistance until the claimant submits the information
* require VA to notify the claimant of any information not previously provided that is necessary to substantiate the claim.
* require VA to make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate a claim. This assistance includes obtaining relevant federal records, relevant private records adequately identified by the claimant, and a medical examination, if necessary to decide the claim.
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| PL 112-154, Section 504, Authorization of Use of Electronic Communication to Provide Notice to Claimants for BenefitsSlide 6**M21-1.I.1.A.2.a.** PL 112-154, Section 504, Authorization of Use of Electronic Communication to Provide Notice to Claimants for Benefits | *Public Law 112-154, Section 504* amended VA’s duty to notify responsibilities. These statutory changes permit VA to* provide Section 5103 notices by the most effective means available, including electronic communications
* provide Section 5103 notices before the submission of a claim such as attaching the notice to an application
* eliminate the need to provide additional Section 5103 notices on subsequent claims if the same type of Section 5103 notice has already been provided on a current pending claim within the previous year
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| PL 112-154, Section 505, Duty to Assist Claimants in Obtaining Private Records Slide 7**M21-1.I.1.A.2.b****.** PL 112-154, Section 505, Duty To Assist Claimants in Obtaining Private Records | *Public Law 112-154, Section 505* amended VA’s duty to assist responsibilities. These statutory changes permit VA to* make not less than two requests to a custodian of a private record (which was consistent with VA procedures prior to enactment of [PL 112-154](http://www.gpo.gov/fdsys/pkg/PLAW-112publ154/content-detail.html)), and
* encourage claimants under VA regulations to submit relevant private medical records if such submission does not burden the claimant.
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| Refraining from or Discontinuing AssistanceSlide 8**M21-1.I.1.A.3.b****.** Refraining From or Discontinuing Assistance | VA will refrain from or discontinue providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim.Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to* the claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of Veteran status or other lack of legal eligibility
* claims that are inherently incredible or clearly lack merit, and
* an application requesting a benefit to which the claimant is not entitled as a matter of law.
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| Substantially Complete ApplicationSlide 9 **M21-1.I.1.A.3.f****.** Definition: Substantially Complete Application | A substantially complete claim initates VA’s duty to assist and duty to notifiy responsibilities. Substantially complete application means an application containing* the claimant's name
* his or her relationship to the Veteran, if applicable
* sufficient service information for VA to verify the claimed service, if applicable
* the benefit claimed and any medical condition(s) on which it is based
* the claimant's signature, and
* a statement of income in claims for Veterans Pension or Survivors Pension and Parents' Dependency and Indemnity Compensation (DIC)

**Note:** If the claim is not substantially complete, please return the claim to a VSR for proper action. |
| note(s) |  |
| DEMONSTRATION | Demonstration in Topic 2 |

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| Topic 2: Notification Requirements |
| Introduction | This topic will introduce the trainees to the notification requriements regarding the information and evidence that is necessary for a Veteran to substantiate their claims. |
| Time Required | 0.5 hours |
| OBJECTIVES/Teaching Points | Topic objectives:* Understand the notification requirements for a complete application
* Understand the notification requirements for subsequent claims
* Understand the notification requirments for requests to reopen a previously denied claim
 |
| Prescribed Form RequirementSlide 10**M21-1.I.1.B.1.b****.** Criteria for Substantially Complete Applications | Beginning March 24, 2015, all claims governed by VA’s adjudication regulations must be filed on standard forms prescribed by the Secretary, regardless of the type of claim. |
| Notification Requirements for a Complete ApplicationSlide 11 | Regional offices (ROs) must ensure that all claimants receive the required notification regarding the information and evidence that is necessary to substantiate their claims. This statutory obligation, based on [38 U.S.C. 5103](https://www.law.cornell.edu/uscode/text/38/5103), is met when the notice is provided to claimants* on a standard EZ application form when filing
	+ a claim through the Fully Developed Claim (FDC) program, or
	+ a claim through the standard claims process,
* through online claims submission via
	+ eBenefits, or
	+ the Stakeholder Enterprise Portal (SEP), or
* when an automated Section 5103 notice is generated during the establishment of the end product (EP), via the
	+ Veterans Benefits Management System (VBMS), or
	+ Letter Creator
 |
| Notification Requirements for a Complete Application (cont.)Slide 12**M21-I.1.B.1.c****.** Notification Requirements for a Complete Application**M21-1.I.1.B.1.d****.** Cases That Require Issuance of a Standard Section 5103 Notice Letter**M21-1.I.1.B.1.i.** Exception to the Notification Requirement | * If the Section 5103 notice has been provided to the claimant but there is additional information needed from claimants to support their claim, (e.g., specific exposure information), then ROs are obligated to notify claimants of this required information. In such cases, do not include redundant Section 5103 notice information in the letter to claimants.
* If claimed issue was not previously covered by a prior Section 5103 notice.
	+ **Example**: When rating a claim pending for 15 months, a RVSR discovers a claimed issue that was received on a non-EZ form over one year after the initial Section 5103 notice was provided. No action had been taken on this issue.
* In cases where the evidence of record is **sufficient to substantiate a claim and award the benefit sought**, it is unnecessary to provide Section 5103 notice to the claimant.

This exception ***only*** applies in cases where the evidence of record (to include VA medical center (VAMC) records available through the Compensation and Pension Records Interchange (CAPRI)) justifies awarding the specific benefit the claimant is seeking ***without*** undertaking development for additional evidence. |
| Notice Requirements for Subsequent ClaimsSlide 13**M21-1.I.1.B.1.j****.** Section 5103 Notice Requirements for Subsequent Claims | Regional Offices **are not** required in certain cases to send a Section 5103 notice for a subsequent claim that is filed while a previous claim is pending.The table below contains notification requirements when the claimant submits a subsequent claim while a previous claim is still pending.**Statement to provide in notice:***We are continuing to work on your previous claim(s) and have received your additional claim(s). Our previous letter(s) provided you with sufficient information regarding the evidence needed to support your claim, as well as what VA will do.* |
| Notice for Requests to Reopen a Previously Denied ClaimSlide 14**M21-1.I.1.B.2.a****.** Section 5103 Notice for Requests to Reopen a Previously Denied Claim | There is no requirement to provide the claimant with a case-specific Section 5103 notice letter when the Veteran is attempting to reopen a previously denied claim. See [VAOGCPREC 6-2014](http://www.va.gov/OGC/docs/2014/VAOPGCPREC6-2014.pdf).**Note:** In rare instances, when the claimant was not provided the 5103 notice through an EZ form, eBenefits, or automated notice from VBMS at time of EP establishment, a standard Section 5103 notice letter shall be sent to the claimant. In such cases, and unlike past practices when a case-specific notice was required, it is only necessary to provide a generic 5103 notice. |
| Exercise | N/A |
| note(s) |  |
| DEMONSTRATION | Review the [VA Forms 21-526, 21-526b, and 21-526EZ](http://vaww.va.gov/vaforms/Search_action.asp?FormNo=526&tkey=&Action=Search) |

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| Topic 3: Requesting Records |
| Introduction | This topic will introduce the trainees to the concept of duty to assist when obtaining federal, non-federal (private and third-party) records and determining when an examination and/or medical opinion is necessary. |
| Time Required | 0.5 hours |
| OBJECTIVES/Teaching Points | Topic objectives:* Define our duty to assist in obtaining federal, non-federal (private and third-party) records
* Define when an examination and/or medical opinion is needed.
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| Federal Records RequestsSlide 15**Ask trainees** “What are examples of federal records?”**M21-1.I.1.C.1.a-e**  Assisting with Federal Records Requests | The submission of a substantially completed application triggers the VA’s duty to assist procedures which include a duty to make reasonable efforts to obtain relevant records in the custody of a Federal department or agency.Federal records are any documents in the custody of a Federal department or agency. Federal records include but are not limited to* service treatment records (STRs), personnel records, line-of-duty determinations, inpatient treatment records, VA medical and other records (including Vet Center records, Social Security Administration (SSA) records, Public Health Service records, and Department of Labor records

***Reasonable efforts*** to obtain relevant Federal records means VA must continue attempts to obtain the records until **records are obtained**, or it is reasonably certain that the records **do not exist**, or further efforts by VA to obtain the records **would be futile**.Determine on a case-by-case basis whether the requested Federal records do not exist or further attempts to obtain records would be futile based on completion of at least the minimum and/or any response received from the records custodian. ***Important***: *DD Form 2963,* *Service Treatment Record (STR) Transfer or Certification* is a certification of the completeness of all available STRs at discharge from service. Treat this, or a predecessor certification letter, as a statement from the records custodian that it is reasonably certain that additional STRs do not exist and further attempts to obtain additional records would be futile.The claimant must cooperate with VA’s attempts to obtain Federal records by providing* information, when requested by VA, to identify and locate existing records including
* the department or agency that is the custodian of the records
* the approximate time frame covered by the records, and
* for treatment records, a general description of the condition for which the treatment was provided
* information sufficient for the records custodian to conduct a search of records when records are requested to corroborate a stressor-event in service, and
* authorization to release existing records when requested by the department or agency custodian in the form acceptable to the custodian.
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| Non-Federal or Private Records RequestsSlide 16**M21-1.I.1.C.2.a-b** Assisting with Non-Federal or Private Records Requests  | VA must make reasonable efforts to assist a claimant in obtaining relevant non-Federal or private records from all sources that the claimant adequately identifies.Reasonable efforts to obtain relevant private records that are not in the custody of a Federal department or agency include making* an initial request for such evidence, and
* at least one follow-up request if no response is received from the custodian of the records unless a response to the initial request indicates that
	+ the records do not exist, or
	+ a follow-up request would be futile.

**Note**: If VA receives information showing that subsequent requests to a different custodian of the records could result in obtaining the records sought, then reasonable efforts include making* an initial request to the new source, and
* at least one follow-up request to the new source if the records are not received
 |
| Third Party RequestsSlide 17**M21-1.I.1.C.2.c****.** Assisting in Obtaining Third Party Records | VA is obligated to make reasonable efforts to obtain records pertaining to another individual if* those records are
	+ adequately identified by the claimant
	+ relevant to the claim, and
	+ potentially helpful in substantiating the claim, and
* VA would be authorized to disclose the relevant portions of such records to the Veteran under the Privacy Act and [38 U.S.C. 5701](http://www.law.cornell.edu/uscode/text/38/5701) and [38 U.S.C. 7332](http://www.law.cornell.edu/uscode/text/38/7332).
 |
| Notification of Inability to Obtain Federal or Private RecordsSlide 18*M21-1.I.1.C.5.a Notification of Inability to Obtain Private Records**M21-1.I.1.C.5.b Notification of Inability to Obtain Federal Records* | **Federal records**: VA has the duty under 38 CFR 3.159(e) to notify claimants of the inability to obtain relevant Federal records that are necessary to substantiate a claim. If, after continued efforts to obtain Federal records, it is reasonably certain that such records do not exist or further efforts to obtain them would be futile, VA must provide the claimant with notification in the rating decision of that fact and identify the federal records that were not obtained and explanation of efforts made by VA to obtain records.**Private records**: VA has a duty under 38 U.S.C. 5103A(b) and 38 CFR 3.159(e) to notify claimants of the inability to obtain any relevant private records ***that are identified*** by the claimant and necessary to substantiate a claim. If VA has made reasonable efforts to obtain relevant private records identified by the claimant, and such records are not obtained, decision makers must ensure that claimants receive the appropriate notification in the rating decision. |
| Medical Opinion or Examination RequestsSlide 19**M21-1.I.1.C.3.b.** Determining When an Examination or Medical Opinion Is Necessary | The test for when an examination is necessary under the duty to assist is in [38 CFR 3.159(c)(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8), and each element for this determination is described in more detail in a subsequent course (M21-1, Part I, 1.C.3.c-f.)A medical opinion or examination is necessary when there is not sufficient medical evidence of record to make a decision on the claim, and* there is competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability
	+ the evidence establishes that the Veteran
	+ suffered an event, injury, or disease in service, or
* has a disease or symptoms of a disease listed in [38 CFR 3.309](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1309&rgn=div8), [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1313&rgn=div8), [38 CFR 3.316](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1316&rgn=div8), or [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=53b288bd747a68e67e0892d80f38746c&mc=true&node=se38.1.3_1317&rgn=div8) manifesting during an applicable presumptive period, and
* the evidence indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected (SC) disability.

**Important**: An examination and/or opinion is not warranted until all three elements described above are present in the evidence. |
| Exercise | N/A |
| note(s) |  |
| DEMONSTRATION | No additional demonstration. This course is an introduction to topics that are discussed in detail in other courses. |
| Regional Office Specific Topics | N/A |