(VSR VIP Pre-D) Supplemental Claims

Trainee Handout

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Objectives

* Describe the background associated with supplemental claims
* Define supplemental claims
* Identify how supplemental claims are established
* Identify prescribed forms associated with supplemental claims
* Determine when a Section 5103 notice should and should not be sent for a supplemental claim
* Identify how to develop supplemental claims
* Identify an incomplete supplemental claim
* Identify the steps for process incomplete supplemental claims

References

* All M21-1 references are found in the [M21-1 Adjudication Procedures Manual](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003061/M21-1-Adjudication-Procedures-Manual)
* [Public Law 115-55, Appeals Modernization Act of 2017](https://www.congress.gov/bill/115th-congress/house-bill/2288/text)
* [38 CFR 3.159 Department of Veterans Affairs assistance in developing claims](https://www.ecfr.gov/cgi-bin/text-idx?SID=399857fa68fbe015c708a7086958e93c&mc=true&node=se38.1.3_1159&rgn=div8)
* [38 CFR 3.160 Status of Claims](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=ce7e2a14fbe13490c5f628f1ea873218&ty=HTML&h=L&r=SECTION&n=se38.1.3_1160)
* [38 CFR 3.2501, Supplemental Claims](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_12501)
* [M21-1, Part I. Chapter 1, Section B, Duty to Notify under 38 U.S.C. 5102 and 5103](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014065/M21-1,-Part-I,-Chapter-1,-Section-B---Duty-to-Notify-Under-38-U.S.C.-5102-and-5103)
* [M21-1, Part III. Subpart ii.2.C.6.a, Requests for Benefits Not Filed on the Prescribed Form on or After March 23, 2015.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014115/M21-1-Part-III-Subpart-ii-Chapter-2-Section-C-Informal-Claims-Received-Prior-to-March-24-2015-Communication-of-an-Intent-to-File-ITF-and-Requests-for-Application#6)
* [M21-1, Part III. Subpart ii. 2.D, Supplemental Claims](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014116/M21-1-Part-III-Subpart-ii-Chapter-2-Section-D-Supplemental-Claims?query=Supplemental)
* M21- Part III. Subpart ii. 2.D.1.e.  Requirement for Potentially New Evidence
* [M21-1, Part III.Subpart ii.2.E.1.c, Identification of Claims for Increase](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014121/M21-1,-Part-III,-Subpart-ii,-Chapter-2,-Section-E---Claims-for-Increase)

* [M21-1, Part III. Subpart iii.1.B.1.d, Claims Development by E-mail, Fax and Telephone](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014152/M21-1-Part-III-Subpart-iii-Chapter-1-Section-B-Evidence-Requested-From-the-Claimant" \l "1d)
* [M21-4, Appendix C. Index of Claim Attributes](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000036570/Appendix%20C.%20Index%20of%20Claim%20Attributes" \l "2)
* M21-1, Part IV. Subpart ii.1.A, Developing Compensation Claims to Include Claims Filed under 38 U.S.C. 1151

Topic 1: Supplemental Claims

**Appeals Modernization Act**

On August 23, 2017 the President signed Public Law 115-55, Appeals Modernization Act (AMA) of 2017. The intent of the law is to pursue the following initiatives:

* Modernize the current claims and appeals process
* Provide for three review options for disagreements with decisions
* Requires improved notification of VA decisions
* Provides earlier claim resolution
* Ensures Veteran receives the earliest effective date possible

The previous appeals process was a complex system which divided jurisdiction of appealed claims into different administrative processes. The process was confusing and contained many unnecessary steps. Additionally, the volume of appeals has continued to increase over the years which made resolving appeals in a timely manner difficult.

Public Law 115-55, created a new system designed to streamline the appeals process. The new law created a system built on three review options: This lesson addresses the supplemental claim program.

* A “higher-level review” by a more senior claims adjudicator
* A “supplemental claim” option for new and relevant evidence
* An “appeal” option for review by the Board of Veterans’ Appeals (BVA)

Under the established framework, Veterans can choose an option that meets their needs. The new framework is intended to reduce the time it takes to process, review and make a final decision, while ensuring Veterans receive a fair decision. The new framework includes safeguards to ensure that claimants receive the earliest effective date possible for their claims.

**Definition of Supplemental Claims**

A supplementalclaimis any complete claim for a Department of Veterans Affairs (VA) benefit on a VA Form 20-0995, *Decision Review Request: Supplemental Claim*, where the claimant or his/her authorized representative disagrees with the decision VA made on an initial or supplemental claim for the same or similar benefit on the same or similar basis. The request for a supplemental claim does not have a time limit for the Veteran to submit a claim, however the effective date of the claim is impacted by whether or not the supplemental claim was received prior to one year from previous claim notification.

In claims for compensation, a claim based on a new theory of service connection is a supplemental claim.

**Example:** A Veteran has been denied a condition because there is no evidence in service, therefore the condition is denied based on direct service connection. The Veteran can reclaim the condition utilizing another theory of service connection such as “secondary”. The new theory for secondary service connection noted in the example is sufficient new and relevant evidence which satisfies the evidentiary threshold discussed in M2-1, Part III. Subpart ii. 2. D.1.e.

**Note**: Same or similar benefit on the same or similar basis means VA has previously decided a claim for the same benefit.

**Note:** It is important to understand the difference between a supplemental claim and a claim for increase. The primary indicator is that a claim for increase must be on a 21-526EZ, *Application for Disability Compensation and Related Benefits* or other prescribed form, as noted in M21-1, Part III. Subpart ii. 2.B.1.b.

**Supplemental Claims Establishment**

Supplemental Claims are established using End Product (EP) 040, *Supplemental for Rating or Non Rating* claims. They are not established in VBMS Core or any other legacy system and must be established in Caseflow using the appropriate end product (EP), claim label and any applicable special issues.

Access to Caseflow is limited to personnel dedicated to Appeals.

**Prescribed Supplemental Claim Form**

Supplemental claims must be submitted on a VA Form 20-0995, *Decision Review Request: Supplemental Claim*. The supplemental claim must be complete as defined by 38 CFR 3.160, Status of Claims.

A Supplemental Claim not submitted on the appropriate prescribed form will be considered a Request For Application (RFA). If identified as an RFA, follow procedures outlined in M21-1.III.ii.2.C.6.a.

**New and Relevant Evidence**

As described by 38 CFR 3.160, Status of Claims, a supplemental claim must identify or include potentially new evidence.

Definition - New and Relevant -CFR 3.2501(a)(1)

New evidence is evidence not previously part of the actual record before agency adjudicators.

Relevant evidence is information that tends to prove or disprove a matter at issue in a claim. Relevant evidence includes evidence that raises a theory of entitlement that was not previously addressed.

***Potentially new evidence*** is evidence that *may* be new to the claim, thereby providing some potential basis for a supplemental claim.  When deciding if a supplemental claim is substantially complete, there is no need to determine that the evidence is non-duplicative or that it is relevant.  Any evidence must be accepted when making the complete claim threshold determination.

**Note**:  Once a claim is considered substantially complete, a decision must be issued on the basis of whether the evidence is new and relevant as described in [M21-1, Part III, Subpart iv, 2.B.3.e](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015808/M21-1,-Part-III,-Subpart-iv,-Chapter-2,-Section-B---Revision-of-Decisions).

**Duty to Provide Section 5103 Notice**

For supplemental claims filed more than a year after the prior decision on the same issue, review the VA Form 20-0995, *Decision Review Request: Supplemental Claim.* If Item 16 is selected, the Veteran received an electronic version of the Section 5103 notice and there is no need to send another.

Where the evidence of record, to include VA medical center records is sufficient to substantiate a claim and award the maximum benefit sought, there is no need to send a 5103.

If the previous 5103 did not include information and evidence necessary to substantiate the claim type, such as a special issue identified in M21-I.1.B.1.f then send a new 5103 and provide the statement provided in M21-1 I.1.B.1.m.

If special issues are identified on a supplemental claim follow the procedures outlined in M21-1 Part I. Chapter 1, Section B to ensure the Veteran has been informed of What The Evidence Must Show (WTEMS) for the special issue.

**Note 1**: Refer to M21-1 I.1.B.1.f for a list of special issues and the notification requirements for each.

**Intent to File and Supplemental Claims**

* Do not associate an intent to file (ITF) with a supplemental claim.

**Supplemental Claim Development**

* Ensure that appropriate flashes are established in corporate.
* Ensure contentions are correct
* Ensure appropriate Special Issues have been placed on one contention in VBMS Core as well as specifically to issues that may require special issue development.
* Ensure 5103 requirements are complied with.
  + Within a year of previous decision for same issue, a 5103 is not required
  + If there is a current claim pending, a 5103 is not required
  + If outside the year, and the veteran checks the 5103 acknowledgement on the 0995, no 5103 notice is needed.
* Once development actions have been completed as outlined in M21-1 IV.ii.1.A.1.a, has been complied and tracked items are closed, forward the case to rating.

Topic 2: Processing Incomplete Supplemental Claims

**Identifying an Incomplete Supplemental Claim**

Two of the most important factors when reviewing a supplemental claim is to determine if the supplemental claim is a *claim for increase* rather than a supplemental claim and if the claim is substantially complete. Substantially complete, as it pertains to the supplemental claim includes the same aspects of a substantially complete claim for any other type of claim that has been submitted on the *prescribed form* as well as the requirement for *new information*.

* Name
* Service Information
* Benefit being sought
* Contention(s)
* Signature
* New and relevant evidence
* Completed VA Form 20-0995*, Decision Review Request: Supplemental Claim (see note 1)*

(In cases of survivor’s pension and parents’ dependency and indemnity compensation (DIC), a statement of income is also needed.)

**Important:** In the case of the supplemental claim there must also be a submission of the claim on the prescribed VA Form 20-0995, *Decision Review Request: Supplemental Claim,* as well as new evidence. If after review of the claim the requirements noted above have not been met follow the procedures in accordance with M21-1 I.1.B.1.g as outlined below:

**Processing Incomplete Claims**

* Whenever possible, contact the claimant first by telephone to obtain the information needed to complete the application. If contact is made with the claimant ensure that appropriate contact requirements are satisfied, to include the completion of the VA Form 27-0820: *Report of General Contact*, as noted in M27-1 I.5.7.

1. If the information needed to substantiate the claim cannot be obtained by telephone complete a note in VBMS Core indicating the action that is necessary and why the telephone development was not adequate.
   * If unable to reach the claimant by telephone ensure that a note in VBMS Core has been completed indicating the unavailability of the claimant.
   * Establish an EP 400 or change incorrect EP to a 400, to control the correspondence and use the *Incomplete Application* claim label.
   * Use the date that the application was received as the control date.
   * Cancel the EP that has been erroneously established.
   * Annotate in the document’s subject the EP initiating correspondence with “incomplete application”.
2. Prepare the *Incomplete Application* letter included in the Letter Creator tool or an equivalent letter from Personal Computer-Generated Letters (PCGL). The notice must include the following information:
   * The information that the VA needs to consider the application complete, including the specific section (s) and question numbers that require completion.
   * A statement that failure to submit a substantially complete application within the required time period of **60 days** will result in no benefit being paid or furnished.
3. Add the letter to the claims folder and place subject line “Incomplete Application Notification”
4. Use the Package Manager to submit the *Incomplete Application* letter and *incomplete application* for printing and mailing to the claimant and the claimant’s representative (if any) through Centralized Benefits Communication Management.
5. Clear the corresponding EP 400.

If the substantially complete claim is submitted within the required time period (60 days) from incomplete application notification consider the complete application filed as of the date the incomplete application form was received, but use the **date of receipt** of the complete claim as the date of claim M21-1.I.1.B.1.g.

If review of an incomplete application reveals that additional evidence exists that could be relevant to the corresponding claim, simultaneously ask the claimant to provide both the additional evidence *and* the information that is missing from the application.

**Note 1:** Directions pertaining to the usage of the package manager will be discussed in another class. The Package Manager class can be found in the VBA Learning Course Catalog using course ID 4415957.

**Note 2:** M21-1 III.iii.1.B.1.d outlines development actions that can be completed without written correspondence if contact is able to be made with claimant.

Attachment A

**What is the difference between a supplemental claim and other claims for compensation from a VSR perspective?**

|  |  |  |
| --- | --- | --- |
|  | **EP 020** | **EP 040 – Supplemental Claim** |
| **Application form** | [21-526EZ](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-526EZ-ARE.pdf) | [20-0995](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-20-0995-ARE.pdf) |
| **Claim types** | Original, Increase, New | Issues previously decided (Formerly known as Reconsideration & Reopen) |
| **Claim not filed on prescribed form** | RFA that VSR can process | If supplemental claim is filed on a 21-526EZ, 21-4138, or anything other than the 20-0995, an RFA is needed. |
| **5103 Notice** | 5103 notice is attached to 21-526EZ | VSR needs to send 5103 notice if DOC is more than one year after decision notice for issue AND Veteran didn’t check the *5103 NOTICE Acknowledgement* box in Block 16 of 20-0995. |
| **Duty to notify and assist** | VSR doesn’t need to review prior development (likely) | VSR needs to review the eFolder to determine if VA’s duty to notify and assist in connection with the issue being claimed/reviewed were satisfied or if additional development is needed to remedy prior deficiencies. [M21-1 III.ii.2.D](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014116/M21-1-Part-III-Subpart-ii-Chapter-2-Section-D-Supplemental-Claims), |
| **Pending legacy appeals** | Veteran cannot use the 21-526EZ to opt in for issues decided in SOC or SSOC | Veteran can opt in for issues decided in SOC or SSOC by checking the *OPT-IN from SOC/SSOC* box on 20-0995. |
| **New and relevant evidence** | N/A | VSR must follow incomplete claim procedures in [M21-1 I.1.B.1.g](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014065/M21-1-Part-I-Chapter-1-Section-B-Duty-to-Notify-Under-38-USC-5102-and-5103) if the supplemental claim doesn’t include or identify potentially new evidence. |
| **Acceptability of ITF** | ITF accepted | ITF not accepted VSR would need to take actions specified in [M21-1 III.ii.2.C](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014115/M21-1-Part-III-Subpart-ii-Chapter-2-Section-C-Informal-Claims-Received-Prior-to-March-24-2015-Communication-of-an-Intent-to-File-ITF-and-Requests-for-Application#5) if an ITF was erroneously associated with the EP 040 supplemental claim. |

Practical Exercise

Directions: Use your trainee handout and the Live Manual to answer the following questions.

1. **Multiple Choice**: What prescribed form must be used to submit a supplemental claim?
   1. VA Form 21-526s, Veterans application for supplemental claims and review
   2. VA Form 21-686f, Veterans application for supplemental review
   3. VA Form 21-0995, Decision Review Request: Supplemental Claim
   4. VA Form 20-0995, Decision Review Request: Supplemental Claim

1. Other than the prescribed form on which the supplemental claim must be submitted, what are the requirements of a substantially complete supplemental claim?
   1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
   2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
   3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
   4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
   5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
   6. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. How long does the Veteran/claimant have to provide the requested information from an incomplete application for a supplemental claim in order to maintain the effective date of the claim?
3. **Multiple Choice**: What application(s) is/are required to establish a supplemental claim?
   1. VBMS Core
   2. SHARE
   3. VBMS Awards
   4. Caseflow
   5. All the above
4. **Scenario**: A Veteran was denied service connection for his lower back and notified of the decision on February 22, 2019. The Veteran files a another claim on March 7, 2019 for his lower back on a VA Form 21-526EZ. What type of claim is this Veteran claiming? What is your justification for selecting this type of claim?
5. In the scenario above, is there any additional evidence that must be submitted for the claim to be processed? If so, what type of evidence must be provided? Please provide a justification for your answer.