Establishing an Appellate Record

Trainee Handout

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Objectives

* Determine if a Notice of Disagreement (NOD) is valid, complete, and timely filed.
* Establish an EP and VACOLS record for a Notice of Disagreement (NOD).

References

* [M21-1, Part III, Subpart ii, Chapter 3, Section E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record#1)
* [M21-1, Part III, Subpart ii, Chapter 3, Section D](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000031819/M21-1%2C-Part-III%2C-Subpart-ii%2C-Chapter-3%2C-Section-D---Claims-Establishment%22%20%5Cl%20%224)
* [[38 CFR 20.301(b)](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000031819/M21-1%2C-Part-III%2C-Subpart-ii%2C-Chapter-3%2C-Section-D---Claims-Establishment%22%20%5Cl%20%224)](https://www.ecfr.gov/cgi-bin/text-idx?SID=899fb01ea832ee34b5eca4b1d4bbac35&mc=true&node=se38.2.20_1301&rgn=div8)
* [[38 CFR 20.302(a)](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000031819/M21-1%2C-Part-III%2C-Subpart-ii%2C-Chapter-3%2C-Section-D---Claims-Establishment%22%20%5Cl%20%224)](http://www.ecfr.gov/cgi-bin/text-idx?SID=abdfaea7ca5ea88657cab4e4db307ee1&mc=true&node=se38.2.20_1302&rgn=div8)

Topic 1 - ****Reviewing Potential NODs****

****IPC’s Role in Reviewing and Establishing NODs****

The Intake Processing Center (IPC) is responsible for reviewing all potential notices of disagreement (NODs) and controlling all valid and timely NODs by

* establishing an end product (EP) 170 with a *Pending Initial Development-Std  Notice Not Required* claim-level suspense, and
* initiating a Veterans Appeals Control and Locator System (VACOLS) record containing
	+ date of receipt of the NOD
	+ notification letter date, and
	+ *NOD Received* diary.

****Determining if an NOD Is Valid****

Before establishing a VACOLS record, review all potential NODs to determine if they are valid.

 A valid NOD must be filed

* by
	+ a claimant personally
	+ his or her authorized representative, or
	+ a fiduciary of an incompetent claimant or other individual as authorized in [38 CFR 20.301(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=899fb01ea832ee34b5eca4b1d4bbac35&mc=true&node=se38.2.20_1301&rgn=div8)
* timely
* in response to notification of an appealable claim decision by the RO, and
* in the proper format as described in [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#1c).

****Acceptable Format for an NOD****

| **If the decision notice was sent ...** | **Then the NOD ...** |
| --- | --- |
| prior to March 24, 2015 | * does not need to be submitted on [Department of Veterans Affairs (VA) Form 21-0958, Notice of Disagreement](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), but
* must be a written communication from a claimant or his/her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the decision.
 |
| * on or after March 24, 2015, and
* the decision notice on a claim for compensation included [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf)
 | must be timely submitted on a completed [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf). **Note**:  An NOD **must** be submitted on the current version of [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf). **Reference**:  For more information on handling NODs submitted on an outdated version of [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), see [M21-1, Part III, Subpart ii, 1.C](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014112/M21-1%2C-Part-III%2C-Subpart-ii%2C-Chapter-1%2C-Section-C---Initial-Screening-Policies). |
| * on or after March 24, 2015, and
* the decision notice on a claim for compensation did not include [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf)
 | * does not need to be submitted on [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), but
* must be a written communication from a claimant or his/her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the decision.
 |
| * on or after March 24, 2015, and
* the decision notice was in regards to a
	+ claim for pension or death benefits, or
	+ simultaneously contested claim.
 | * does not need to be submitted on [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), but
* must be a written communication from a claimant or his/her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the decision.
 |

**Important**:  There is no standard form requirement for an NOD which contests a decision regarding a claimant’s entitlement to pension, Dependency and Indemnity Compensation, or accrued benefits.

****Handling a Disagreement With a Decision Not Submitted on VA Form 21-0958, When Required****

If a claimant or his/her representative submits a written statement expressing dissatisfaction or disagreement with a *compensation* decision and a desire to contest the decision on anything other than [*VA Form 21-0958*](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf) send the *Request for Application for NOD Letter* from [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp).

*Important*:  If correspondence expressing dissatisfaction or disagreement with a decision is reviewed and processed outside the one-year appellate period, do not send the *Request for Application for NOD Letter*. Instead, send the claimant the NOD Not Timely letter under the APPEALS tab in the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), or PCGL equivalent, and include a copy of the [VA Form 4107, Your Rights to Appeal our Decision](http://vaww.va.gov/vaforms/va/pdf/VA4107.pdf) with the letter.

Follow the steps below to process a Request for Application for NOD Letter.

| **Step** | **Action** |
| --- | --- |
| 1 | Establish EP 400 Request for Notice of Disagreement. |
| 2 | Open the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp) available on the [Rating Job Aids](http://vbaw.vba.va.gov/bl/21/rating/rat00.htm) intranet site. |
| 3 | Select the IPC tab in the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp). |
| 4 | Select the Request for Application for NOD letter from the drop down menu. |
| 5 | Complete the fields for the contact information and the date of notification letter before clicking on the CREATE LETTER button. |
| 6 | Print and mail the letter to the claimant and, if necessary, the authorized representative. **Reference**:  For more information on providing notices to an authorized representative, see [M21-1, Part I, 3.B.1](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014077/M21-1%2C-Part-I%2C-Chapter-3%2C-Section-B---A-Representative%E2%80%99s-Right-to-Notification-and-Review-of-Records). |
| 7 | * Associate the document with the claims folder.
* For electronic documents, proceed to Step 8.
 |
| 8 | * Open the ACTIONS drop down menu in the Veterans Benefits Management System (VBMS) electronic claims folder (eFolder).
* Select Upload Document.

**Example**:Image of  the upload document drop down menu option.* Complete the fields as follows:
	+ SUBJECT:  leave blank
	+ CATEGORY-TYPE:  Correspondence - Miscellaneous: Report of Contact
	+ SOURCE:  VBMS
	+ ASSOCIATE TO:  EP 400 Request for Notice of Disagreement
	+ DATE OF RECEIPT:  date of receipt of the non-standard NOD.
 |

**Response to Invalid Premature NODs**

Do not accept an NOD as valid if it is filed prior to notice of a final claim decision.

Use the table below to respond to an invalid, premature NOD.

| **If the NOD is filed in response to ...** | **Then do not establish a VACOLS record, and ...** |
| --- | --- |
| a notice of proposed adverse action | send the NOD Against a Proposal letter from the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), or Personal Computer Generate Letters (PCGL) equivalent, to advise the claimant that a proposed adverse action is merely a preliminary action that is not appealable and that a notice of appellate rights will be furnished when a final decision is made. |
| provisional rating | send a notice with the following language: We have received your notice of disagreement based on the provisional rating decision of which we sent notification on [date of notification letter].  ***This was not a final decision and did not include appeal rights.*** If you have additional relevant evidence pertaining to the issues decided in that decision that you would like us to consider, please submit it to our office within one year of the date that we notified you of the decision, and we may reconsider the decision. If you want to receive a final decision with appeal rights before the one year provisional period ends, send VA a signed statement as follows: “All necessary evidence was considered by VA.  I request that this provision decision be made final.” |
| exclusion from the Fully Developed Claim (FDC) Program, andprior to a final decision on the claim **Exception**:  A timely NOD filed after a final decision on the excluded claim must be accepted as valid. | advise the claimant that the NOD is not valid as no final decision had been made at the time he/she filed the disagreement. **Reference**:  For more information on appealing an exclusion from the FDC Program, see [M21-1, Part III, Subpart i, 3.B](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014110/M21-1%2C-Part-III%2C-Subpart-i%2C-Chapter-3%2C-Section-B---Processing-Fully-Developed-Claims-%28FDCs%29). |
| a currently pending claim for which no decision has been issued | send the NOD Against Pending Claim letter from the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), or PCGL equivalent, to advise the claimant that the NOD is premature as we have not yet made a decision on the claim. |

**Identifying an Incomplete NOD**

An NOD is incomplete if it lacks any of the following information:

* information necessary to identify the claimant
* the decision to which the NOD pertains
* information necessary to identify the category of disagreement, or
* the signature of the claimant or his/her accredited representative.

***Exception***:  Do not consider an NOD incomplete if it fails to identify the category of disagreement or the date to which the decision pertains, but this information can be reasonably ascertained.

***Example 1***:  Appellant submits a [*VA Form 21-0958*](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf) identifying a rating decision that denied service connection (SC) for a back condition but does not identify the category of disagreement. In this scenario, the category of disagreement can be reasonably ascertained as a disagreement with VA’s decision to deny SC.

***Example 2***:  Appellant submits [*VA Form 21-0958*](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), states he disagrees with the denial of his back claim, but does not input the date of the decision in Item 10. A review of the eFolder reveals only one decision on the back has been made in the last year. In this scenario, the decision to which the NOD pertains can be reasonably ascertained.

***Notes***:

* The current version (September 2015) of [*VA Form 21-0958*](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf) contains Part III – Appeal Process Election. Failure to complete this section of the form does not render the NOD incomplete.
* If VA requests missing information from the claimant on an incomplete NOD and there are fewer than 60 days remaining in the appeal period, provide the claimant 60 days from the date of the request for information to respond.
* If an NOD requires clarification, refer the NOD to the appeals team or other designated personnel.

**Processing an Incomplete NOD**

Follow the steps in the table below to process an incomplete NOD.

| **Step** | **Action** |
| --- | --- |
| 1 | Can the claimant be identified?* If yes, go to Step 2.
* If no, go to the unidentifiable mail procedures in
	+ [M21-1, Part III, Subpart ii, 1.B](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014111/M21-1%2C-Part-III%2C-Subpart-ii%2C-Chapter-1%2C-Section-B---Mail-Management), and
	+ [M21-1, Part III, Subpart ii, 4.H](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014133/M21-1%2C-Part-III%2C-Subpart-ii%2C-Chapter-4%2C-Section-H---File-Types).
 |
| 2 | Is the form signed by the claimant and/or authorized representative?* If yes, go to Step 3.
* If no,
	+ do not establish a VACOLS record, and
	+ follow the steps in [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#1h) to obtain a signature.
 |
| 3 | Did the claimant identify the decision to which the NOD pertains and the category of disagreement?* If yes, accept the NOD as complete.
* If no,
	+ do not establish a VACOLS record, and
	+ follow the steps in [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#1h) to obtain the missing information.

**Reference**:  For more information on the specificity required on [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), see [38 CFR 20.201](http://www.ecfr.gov/cgi-bin/text-idx?SID=b74afbee8dbf8534428c20c8cb2b886c&mc=true&node=se38.2.20_1201&rgn=div8). |

**Instructions for Processing the Incomplete NOD Letter**

Follow the steps in the table below to process an *Incomplete NOD* letter.

| **Step** | **Action** |
| --- | --- |
| 1 | Establish an EP 400 with the CORRESPONDENCE claim label. ***Note***:  Use the date of the incomplete NOD as the date of claim. |
| 2 | Generate the *Incomplete NOD* letter in the Letter Creator, or equivalent letter from PCGL. ***Important***:  Make sure to select the relevant option(s) for the specific information needed to submit a complete NOD. |
| 3 | Send the *Incomplete NOD* letter, or PCGL equivalent, to the claimant and his/her accredited representative, if applicable. |
| 4 | Clear the EP 400 |

**Computing the NOD Time Limit**

The NOD time limit is calculated based on the date VA mails notice of a decision to the claimant and the date the claimant files an NOD. Generally, the date an NOD is filed is determined by the date VA receives the document (date stamp), but consideration must also be given to the post mark date, if available, as noted in the table below.

**Note**:  A postmark refers to the date marked on an envelope by the mail carrier service, while date stamp refers to the date of receipt marked on the mail when it is received by VA.

 When computing the NOD time limit

* exclude the first day of the specified period
* include the last day of the specified period, and
* if the time limit expires on a Saturday, Sunday, or legal holiday, include the next workday in the computation.

Follow the steps in the table below to calculate the NOD time limit.

| **Step** | **Action** |
| --- | --- |
| 1 | Determine the date VA mailed the decision notice to the appellant by accessing the claimant’s eFolder in VBMS, and in the DOCUMENTS tab, locate the decision notice and the rating decision associated with the issues on the claimant’s NOD.  **Note**:  If the decision notice is undated, presume the notice was mailed on the date the award was authorized. **Example**:  In SHARE,* enter the claim number
* select CORPORATE INQUIRIES
* select the CLAIMS/DENIALS button
* on the BENEFIT CLAIM INFORMATION tab, select the relevant EP, and
* identify the date of authorization as shown below.

 Image of  SHARE Benefit Claim Information tab screen. |
| 2 | Determine the date the appellant filed the NOD by reviewing the relevant date stamp on the document and post mark, if available. Consider the postmark date as instructed in the table below.

| **If the NOD was filed by mail, and the postmark date is …** | **Then …** |
| --- | --- |
| prior to the expiration of the substantive appeal period | * consider the NOD timely, and
* retain the postmarked envelope.
 |
| not of record | presume the postmark date to be five days prior to the date VA received the NOD, excluding Saturday, Sundays, and legal holidays. |

  |
| 3 | Follow the guidance in [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#1j) to determine if the NOD is timely. |

**Determining if an NOD Is Timely**

An NOD must be filed within the time periods specified in [38 CFR 20.302(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=abdfaea7ca5ea88657cab4e4db307ee1&mc=true&node=se38.2.20_1302&rgn=div8). Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her.

Note: A ***contested claim*** exists when a favorable decision on one claim requires the denial of the other claim, or payment of a lesser benefit to the other claimant, and one claimant may contest the allowance or payment of that benefit to the other claimant. A common example would be a decision on an apportionment claim. A contested claim automatically exists if two people allege to be the legal surviving spouse, mother, or father, ***and*** file a formal claim for the same benefit.

Follow the steps in the table below to determine if an NOD is timely.

| **Step** | **Action** |
| --- | --- |
| 1 | Use the table below for guidance on NOD timeliness.

| **An NOD for …** | **Must be filed …** |
| --- | --- |
| a simultaneously contested claim, including an apportionment claim | 60 days from the date the VA mailed the decision notice to the unsuccessful claimant. **References**:  For more information on* contested claims, see [M21-1, Part III, Subpart vi, 6.A](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014298/M21-1%2C-Part-III%2C-Subpart-vi%2C-Chapter-6%2C-Section-A---General-Information-on-Contested-Claims), and
* apportionment claims, see  [M21-1, Part III, Subpart v, 3](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014232/M21-1%2C-Part-III%2C-Subpart-v%2C-Chapter-3%2C-Section-A---Apportionment-Process).
 |
| all other claims | one year from the date VA mailed the decision notice to the claimant.  **Reference**:  For more information on requiring [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), see [38 CFR 20.201](http://www.ecfr.gov/cgi-bin/text-idx?SID=b74afbee8dbf8534428c20c8cb2b886c&mc=true&node=se38.2.20_1201&rgn=div8). |

 |

**Determining if an NOD Is Duplicative**

Before taking action to establish an NOD, verify it is not a duplication of a pending appeal or claim.

Use the table below to determine if an otherwise valid NOD is duplicative of a pending appeal or claim.

***Important***:  If the currently pending VACOLS record is in any status other than NOD status, the RO should not follow the table below. Instead, ROs must establish a new separate appeal record for any new, valid NOD.

| **If the potential NOD ...** | **And …** | **Then ...** |
| --- | --- | --- |
| does *not* contain any of the same issue(s) as the pending appeal | is part of the same decision notice as an already pending NOD | * do *not* establish a separate VACOLS NOD record
* add the new appellate issue(s) as a contention to the pending appeals EP in VBMS
* follow the procedures in [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2e) to determine which appellate review process letter to send, and
* refer the appeal to the appeals team based on established workload management procedures.
 |
| is part of a different decision notice as an already pending NOD | follow the guidance in* [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2c) to establish a subsequent NOD in VACOLS
* [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2d) to establish a subsequent NOD EP in VBMS, and
* [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2e) to determine which appellate review process letter to send.
 |
| contains *only* the same issue(s) as the pending appeal | -- | * print a copy of the [*VA Form 21-0958*](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf)
* send the claimant the *Duplicate Documents* letter available under the APPEALS tab in the [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), and
* no further action is necessary.
 |
| contains both new appellate issues and issues already pending appeal | the same decision notice as an already pending NOD | * do *not* establish a separate VACOLS NOD record
* add the new appellate issue(s) as a contention to the pending appeals EP in VBMS
* follow the procedures in [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2e) to determine which appellate review process letter to send, and
* refer the appeal to the appeals team based on established workload management procedures.
 |
| a different decision notice as an already pending NOD | follow the guidance in* [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2c) to establish a separate NOD record in VACOLS
* [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2d) to establish a subsequent NOD EP in VBMS, and
* [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2e) to determine which appellate review process letter to send.
 |
| contains the same issue(s) which are currently pending under a claim EP | the NOD issues are valid and timely | * follow the guidance in
	+ [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2c) to establish the NOD in VACOLS
	+ [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2d) to establish the NOD in VBMS, and
	+ [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#2e) to determine which appellate review process letter to send, and
* remove the duplicate contention(s) from the pending claim EP.

***Important***:  If there are no issues remaining under the pending claim EP, cancel the EP. |
| the NOD issues are not valid or not timely | follow the guidance relevant to the reason the NOD is not valid in [M21-1, Part III, Subpart ii, 3.E](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000033133/M21-1-Part-III-Subpart-ii-Chapter-3-Section-E-Establishing-an-Appellate-Record%20-%201#1b). |

***Exception***:  Pension management centers (PMCs) send locally generated letters for appeals.

**Topic 2 - Establishing and Tracking an NOD**

**Jurisdiction for Control of an Appellate Record**

The following divisions will establish the appeal record for their respective NODs:

* Veterans Service Center (VSC)
* PMC
* Fiduciary Hub
* Education Division
* Philadelphia Insurance Center
* Vocational Rehabilitation and Employment (VR&E) Division, and
* Veterans Health Administration (VHA).

Program offices other than those listed above will refer an NOD to the VSC to establish and maintain the appeal record in VACOLS. The VSC is entitled to EP credit for those appeals tracked for other program offices.

**Initiating an NOD in VACOLS**

Follow the steps in the table below to initiate a claimant’s NOD in VACOLS.

| **Step** | **Action** |
| --- | --- |
| 1 | * From the VACOLS main screen, select ADD NEW APPEAL.
* Enter the claims folder number or Social Security number (SSN).
* Reenter the claimant’s information to confirm.
 |
| 2 | On the ADD APPEAL screen, input the following information in the designated fields, including:* NAME OF VETERAN
* ADDRESS
* PHONE NUMBER
* NAME OF APPELLANT (when applicable),
* VETERANS SERVICE ORGANIZATION (VSO),
* SSN (if not previously indicated as the claims folder number), and
* DATES fields, including
	+ NOTIFICATION (enter the date from the decision notice shown in VBMS)
	+ NOD (enter the date the NOD was received by VA), and
	+ DRO Elect (when applicable).

***Example***:screen shot that shows the fields that must be completed to add an appeal***Note***:  For electronic submissions, the earliest date stamp on [*VA Form 21-0958*](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), or the correspondence accepted as the NOD, must be used as the date the NOD is recorded. |
| 3 | Initiate completion of the ISSUES tab. On the ADD ISSUE screen enter the first issue listed on the NOD.***Example***:Image of the add issue screen in VACOLS. |
| 4 | Create a VACOLS diary. On the VACOLS main screen, enter the claimant’s identification (ID) number, select the newly created NOD record, and then select the DIARY tab to ADD the information listed below on the DIARY DETAIL screen.* ASSIGNED TO (*VSR*)
* DIARY CODE (*NOD received*)
* DAYS (in compliance with local guidance).

***Example***:Imgae of the VACOLS Diary Detail screen. |
| 5 | Select UPDATE to save the information. |

***Notes***:

* VACOLS allows the tracking of fiduciary appeals. The following are the user names for the Fiduciary Hubs:
	+ Columbia Fiduciary Hub RO64
	+ Indianapolis Fiduciary Hub RO65
	+ Lincoln Fiduciary Hub RO66
	+ Louisville Fiduciary Hub RO67
	+ Milwaukee Fiduciary Hub RO68
	+ Salt Lake City Fiduciary Hub RO69, and
	+ the Manila RO fiduciary activity will continue to use the RO's user name.
* VACOLS allows the tracking of pension related appeals. The following are the user names for the PMCs:
	+ Philadelphia PMC RO81
	+ Milwaukee PMC RO82, and
	+ St. Paul PMC RO83.

**Establishing an NOD in VBMS**

Follow the steps in the table below to establish a claimant’s NOD in VBMS.

**Important**:  Establish non-Veteran appeals and PMC-related appeals in Share.

| **Step** | **Action** |
| --- | --- |
| 1 | Open the claimant’s profile and select NEW CLAIM from the ACTIONS drop down menu. |
| 2 | Review and update the following fields:* ADDRESS
* TELEPHONE NUMBER, and
* POWER OF ATTORNEY (POA).
 |
| 3 | Select the appropriate * 170 series EP, and
* claim label based on the following table.

| **If the appellant …** | **Then in the EP & CLAIM LABEL field select …** |
| --- | --- |
| failed to elect either the traditional review process or the de novo review | 170NOD – NOTICE OF DISAGREEMENT. |
| elected traditional review process | 170TRADNOD – TRAD Notice of Disagreement. |
| elected de novo review | 170DRONOD – DRO Notice of Disagreement. |

**Notes**:  * The EP 170 will be shown as the default EP in the MODIFIER field.
* When establishing the subsequent EP 170 based on a valid NOD select the next available, appropriate 170 series EP in the MODIFIER field.
 |
| 4 | Enter the date of receipt of the NOD in the DATE OF CLAIM field. |
| 5 | Assign the EP 170 to Appeals (National) in the SEGMENTED LANE field. **Example**:screen shot showing selection of Appeals (National) in segmented lane field   |
| 6 | Select SUBMIT to save the information. |
| 7 | From the CONTENTIONS tab, add each contention specified by the claimant. **Note**:  If the [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf) is received after March 24, 2015, treat any contentions without a previous decision as a request for application in accordance with [M21-1, Part III, Subpart 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%2C-Part-III%2C-Subpart-ii%2C-Chapter-2%2C-Section-C---Informal-Claims-Received-Prior-to-March-24%2C-2015%2C-Communication-of-an-Intent-to-File-%28ITF%29%2C-and-Requests-for-Application). |
| 8 | From the PROFILE screen, select MANAGE EVIDENCE from the ACTIONS drop down menu.* Select ADD UNSOLICITED and populate the following fields:
	+ RECEIPT DATE
	+ DOCUMENT TYPE, and
	+ EVIDENCE NAME.

**Example**:screen shot of fields that must be completed to identify and manage evidence * Select COMPLETE on the right panel of the screen to update and save the information.
 |
| 9 | If the appellant or authorized representative requests a formal hearing or informal conference, establish control of the request as detailed in M21-1, Part III, Subpart ii, 3.D. |

**Handling an Election of an Appellate Review Process**

Use the table below to handle an election of an appellate review process.

**Notes**:

* Only one of the following appellate review process letters is required.
* The September 2015 version of [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf) includes an option for the appellant to choose either the Decision Review Officer (DRO) review process or the traditional appellate review process.

| **If the appellant ...** | **Then ...** |
| --- | --- |
| requests the DRO review process | send the appellant the DRO Process Explanation Letter from [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), or equivalent letter from PCGL. |
| requests the traditional appellate review process | send the appellant the Traditional Process Explanation Letter from [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), or equivalent letter from PCGL. |
| selects both option checkboxes on the September 2015 version of VA Form 21-0958 | * accept it as an election of the DRO process, and
* send the appellant the DRO Process Explanation Letter from [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), or equivalent letter from PCGL.
 |
| * left both checkboxes in Block 9 blank on [VA Form 21-0958](http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf), or
* files an NOD in another valid format, but does not specify which appellate review process he/she prefers
 | * send the appellant the Appeals Process Explanation Letter from [Letter Creator](http://vbacodmoint1.vba.va.gov/bl/21/LetterGenerator/LG.asp), or equivalent letter from PCGL, and
* give the appellant 60 days from the date the letter is sent to elect an appellate review process.  This time limit cannot be extended.

**Notes**: * Failure to reply to the letter is considered an election of the traditional appellate processing method and an indication that a DRO review process is not desired.
* An appellant does not have to submit an election of an appellate review process in writing.  Such election may be received verbally.
 |

**Appeal EP Claim Labels**

Whether established in Share or VBMS, all NODs require a 170 series EP and appropriate claim label.

When establishing a 170 series EP for an NOD, select the appropriate claim label from the table below.

| **Claim Label** | **Code** |
| --- | --- |
| D2D Notice-Of-Disagreement | 170NODD2D |
| Notice of Disagreement | 170NOD |
| TRAD Notice of Disagreement | 170TRADNOD |
| DRO Notice of Disagreement | 170DRONOD |
| PMC - Notice of Disagreement | 170NODPMC |
| PMC-TRAD Notice of Disagreement | 170TRADNODPMC |
| PMC-DRO Notice of Disagreement | 170DRONODPMC |

**Establishing VACOLS Control for an NOD Regarding an Untimely Appeal**

The following example represents the standard way to control an NOD in VACOLS when an appellant files an NOD disagreeing with VA’s determination that an appeal was not filed timely.

***Example***:  The RO completed a rating decision denying SC for arthritis of a joint. The Veteran filed an NOD disagreeing with the denial of SC. The RO notified the Veteran that his NOD was not timely filed. He then filed an NOD disagreeing with VA’s determination that his NOD was untimely. The IPC established a VACOLS record as follows:



# Practical Exercise

Answer the following questions.

1. When the IPC receives a valid and timely NOD they should establish an
	1. EP 170
	2. VACOLS record
	3. EP 930
	4. Both A and B
2. What standardized form is required for contesting a decision regarding a claimant’s entitlement to accrued benefits?
	1. VA Form 21-0958
	2. VA Form 21-526
	3. VA Form 21-686c
	4. A standardized form is not required.
3. An NOD is incomplete if it lacks any of the following information.
4. Information necessary to identify the claimant
5. The decision to which the NOD pertains
6. Information necessary to identify the category of disagreement
7. All of the above
8. True of false. A pension related NOD EP should be established in SHARE.
9. An NOD for a simultaneously contested claim, including an apportionment claim, must be filed within \_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	1. 60 days from the date the VA mailed the decision notice to the unsuccessful claimant
	2. One year from the date VA mailed the decision notice to the claimant
	3. One year from the date the valid NOD was received