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Section B. Notice of Disagreement (NOD)

Overview

In this Section This section contains the following topics:

Topic	Topic Name	See Page
3	NOD Definition	5-B-2
4	Time Limits for Filing an NOD	5-B-4
5	Receipt of an NOD	5-B-6
6	Multiple NOD Issues	5-B-10
7	Reviewing an NOD for Further Development	5-B-12
8	Exhibit 1: Appeal Process Request Letter	5-B-16
9	Exhibit 2: Decision Review Officer (DRO) Process Explanation Letter	5-B-18

3. NOD Definition

Introduction This topic contains information about an NOD, including

- definition of an NOD
- requesting clarification from claimants, and
- a response to a notice of proposed adverse action.

Change Date December 10, 2009

a. Definition: NOD A *notice of disagreement (NOD)* is a written communication from a claimant or his/her representative expressing

- dissatisfaction or disagreement with a decision, and
- a desire to contest the result.

Although no specific wording is required in the NOD, it must be in terms that can be reasonably interpreted as a disagreement with a decision and a desire for appellate review.

Note: A transcript of either a formal hearing or informal conference containing an expression of disagreement fulfills the requirement that the statement be “in writing.”

Reference: For more information on what constitutes an NOD, see [38 CFR 20.201](#).

b. Requesting Clarification from Claimants If you are uncertain as to whether or not a letter from the claimant is an NOD, follow the procedure in [M21-1MR, Part I, 5.B.6.b](#) to request clarification from the claimant.

Continued on next page

3. NOD Definition, Continued

c. Response to Notice of Proposed Adverse Action	Do <i>not</i> accept an NOD in response to a notice of proposed adverse action as a valid NOD.
	Advise the beneficiary 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.
	Delete any Veterans Appeals Control and Locator System (VACOLS) record that was erroneously established.

4. Time Limits for Filing an NOD

Introduction An appellant must file an NOD within a specified time limit. This topic provides information on filing an NOD, including

- NOD time limits
 - computing the NOD time limit
 - informing the appellant of an NOD that was not timely filed, and
 - handling a time limit extension request.
-

Change Date December 10, 2009

a. NOD Time Limits The table below describes the time limits for an appellant to file an NOD.

An NOD for ...	Must be filed ...
a contested claim, including an apportionment claim	60 days from the date the Department of Veterans Affairs (VA) mailed the notification of the decision to the unsuccessful claimant. <i>References:</i> For more information on <ul style="list-style-type: none"> • contested claims, see M21-1MR, Part III, Subpart vi, 6, and • apportionment claims, see M21-1MR, Part III, Subpart v, 3.
all other claims	one year from the date VA mailed the notification of the decision to the claimant.

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4. Time Limits for Filing an NOD, Continued

b. Computing the NOD Time Limit

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.

If the postmark date is

- prior to the expiration of the NOD period
 - consider the NOD timely filed, and
 - retain the postmarked envelope, or
 - *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.
-

c. Informing the Appellant of an NOD That Was Not Timely Filed

If an appellant files an NOD past the time limit

- inform the appellant via letter, and
- send *VA Form 4107, Your Rights to Appeal Our Decision*, with the letter.

The issue that an NOD was not timely filed is, itself, appealable to the Board of Veterans' Appeals (BVA). See [M21-1MR, Part I, 5.B.5.d](#).

d. Handling a Time Limit Extension Request

An appellant may request an extension of the time limit for filing an NOD.

In this situation, the time limit may be extended if the appellant shows good cause. [38 CFR 3.109](#) provides that a request to extend the time limit may be made either before or after the expiration of the NOD period, although this regulation does *not* define good cause.

An appellant may appeal a denial of a request for a time limit extension to BVA.

5. Receipt of an NOD

Introduction When an NOD is received, VA must review it to clarify any issues. This topic contains information on

- accepting an NOD
 - receiving an NOD with a request for a hearing
 - handling an NOD not timely filed
 - handling disagreements regarding inadequate or not timely filed NODs, and
 - new issues raised on an NOD.
-

Change Date December 10, 2009

a. Accepting an NOD Follow the steps in the table below to accept an NOD when it is received.

Step	Action
1	Review the NOD. <i>Note:</i> The correspondence accepted as the notice of disagreement will be stamped in the lower right corner on the top page as follows: NOTICE OF DISAGREEMENT RECORDED _____ [DATE]

Continued on next page

5. Receipt of an NOD, Continued

a. Accepting an NOD (continued)

Step	Action
2	<p>Establish a VACOLS record and diary within 7 days.</p> <p>Notes:</p> <ul style="list-style-type: none"> • If it is unclear as to whether or not a letter from the claimant is an NOD, follow the procedures for clarification of issues in M21-1MR, Part I, 5.B.6.b. • The NOD need not be associated with the claimant's records prior to establishing the appeal record in VACOLS, or referral to the proper operating element. <p>Reference: For more information on VACOLS, see</p> <ul style="list-style-type: none"> • M21-1MR, Part I, 5.K, and • the VACOLS User's Guide.
3	<p>Did the appellant request the Decision Review Officer (DRO) review process on his/her NOD?</p> <ul style="list-style-type: none"> • If yes, send the appellant the <i>DRO Process Explanation Letter</i>. • If no <ul style="list-style-type: none"> – send the appellant the <i>Appeal Process Request Letter</i> – give the appellant 60 days from the date the letter is sent to elect the DRO review process. This time limit cannot be extended. (Note: 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.) <p>References: For a sample of the</p> <ul style="list-style-type: none"> • <i>DRO Process Explanation Letter</i>, see M21-1MR, Part I, 5.B.9, and • <i>Appeal Process Request Letter</i>, see M21-1MR, Part I, 5.B.8.

Continued on next page

5. Receipt of an NOD, Continued

- b. Receiving an NOD with Request for a Hearing** If a hearing request is received with an NOD
- schedule and hold the hearing, and then
 - send the statement of the case (SOC).

Note: This policy applies to both the DRO and the traditional appellate review process.

References: For more information on

- the filing of NODs and appeals, see [38 U.S.C. 7105](#)
 - the DRO review process, see [M21-1MR, Part I, 5.C](#)
 - hearings, see [M21-1MR, Part I, 4](#), and
 - sending an SOC, see [M21-1MR, Part I, 5.D](#).
-

- c. Handling an NOD Not Timely Filed** If an NOD is received that is not timely filed, inform the appellant, in writing, that the
- decision became final at the expiration of the applicable time limit, and
 - decision as to whether an appeal is timely filed is appealable.

Note: Send *VA Form 4107* with the letter.

- d. Handling Disagreements About Inadequate or Not Timely Filed NODs** If the appellant disagrees with a determination that an NOD was not adequate or timely filed, send him/her an SOC because that determination may be appealed.

References: For more information on

- disputes of NODs, see
 - [38 CFR 19.28](#), and
 - [38 CFR 19.34](#), and
 - sending an SOC, see [M21-1MR, Part I, 5.D](#).
-

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5. Receipt of an NOD, Continued

**e. New Issues
Raised on an
NOD**

If the appellant raises issues on the NOD that have not yet been adjudicated

- do *not* delay sending an SOC covering those issues that were previously decided provided there is no outstanding evidence identified by the appellant or the Veterans Service Representative (VSR), Rating Veterans Service Representative (RVSR), or DRO, and
- treat the new issues as a new claim, establish the appropriate end product (EP) control, and undertake the development needed to decide the new issue.

References: For more information on

- handling new issues, see [M21-1MR, Part I, 5.E.24.](#)
 - including appeal rights with the decision of the new issue, see [M21-1MR, Part III, Subpart v, 2.B.](#)
-

6. Multiple NOD Issues

Introduction An NOD may be received that pertains to a decision with multiple issues. This topic contains information on

- multiple issue NODs, and
 - clarifying multiple issue NODs.
-

Change Date December 10, 2009

a. Multiple Issue NODs An NOD may express disagreement with a decision that contains multiple issues, but may not be clear as to which issue is being appealed.

Note: A single-issue NOD does not require clarification.

b. Clarifying Multiple Issue NODs Follow the steps in the table below when an NOD contains multiple issues, and at least one of the issues requires clarification.

Step	Action
1	<p>Can you identify one or more issues that are being appealed?</p> <ul style="list-style-type: none"> • If yes but other issues require clarification <ul style="list-style-type: none"> – inform the appellant of the appealed issues – track the issue(s) identified as being appealed as an NOD in VACOLS – go to M21-1MR, Part I, 5.B.7, for action on the issues identified as being appealed, and – go to Step 2 for action on the issue(s) requiring clarification. • If no, go to Step 2. <p><i>Note:</i> If the NOD contained issues that do not require clarification, explain in the letter that these issues are considered to be under appeal.</p>

Continued on next page

6. Multiple NOD Issues, Continued

b. Clarifying Multiple Issue NODs (continued)

Step	Action
2	<ul style="list-style-type: none"> • Contact the appellant by telephone or in writing to request clarification of which issue(s) is being appealed, and • notify the appellant that if he/she fails to respond within the remainder of the appeal period, the earlier, unclear communication will not be considered an NOD. <p><i>Note:</i></p> <ul style="list-style-type: none"> • If the appeal period is over, or has less than 60 days remaining, give the appellant 60 days to respond to the request for clarification in order to keep the appeal viable. Explain this 60-day time limit in your oral or written contact with the appellant. • Document any telephone conversation with the appellant on <i>VA Form 27-0820, Report of General Information</i>.
3	<p>Did the appellant send clarification within the given time limit?</p> <ul style="list-style-type: none"> • If yes <ul style="list-style-type: none"> – inform the appellant of the appealed issues – track the issue(s) as an NOD in VACOLS, and – go to M21-1MR, Part I, 5.B.7. • If no, delete any VACOLS record that was erroneously established. <p><i>Notes:</i></p> <ul style="list-style-type: none"> • If the issue(s) requiring clarification is determined to be an NOD, the date of the NOD is the date of receipt of the initial written communication, not the date of clarification. • If the appellant files a response past the time limit, follow the procedures in M21-1MR, Part I, 5.B.5.e.

Note: If, after following the procedures in the above table, it is still not clear whether the issue(s) can be considered an NOD, follow the procedures for an administrative appeal in [M21-1MR, Part I, 5.J.49](#).

Reference: For more information on clarification of issues under appeal, see [38 CFR 19.26](#) and [38 CFR 19.27](#).

7. Reviewing an NOD for Further Development

Introduction Once an NOD has been received, further development of evidence may be required. This topic contains information on

- who reviews the claim
 - VA's duty to assist the appellant in obtaining any necessary evidence
 - reviewing an NOD, and
 - developing an NOD.
-

Change Date December 10, 2009

a. Who Reviews the Claim When an NOD is timely received, the VSR, RVSR, or DRO, as appropriate, reviews the claim to determine if

- the prior decision was correct, and
 - any development or other action is needed.
-

Continued on next page

7. Reviewing an NOD for Further Development, Continued

b. Duty to Assist Appellant in Obtaining Necessary Evidence

VA has a duty to assist the appellant in obtaining the necessary evidence to substantiate his/her claim. This may include the following evidence:

- evidence from leads supplied by the appellant and his/her representatives
- service department and VA records, including records pertaining to injury or disease and treatment
- hospital reports
- reports of private medical examinations
- complete medical, surgical, and hospital clinical records
- the Counseling, Evaluation and Rehabilitation (CER) folder and training subfolder, if based on injury resulting from pursuit of a course of vocational rehabilitation, or in service-connection claims
- office records of physicians
- evidence relating to work history in a claim for permanent and total disability or a total rating based upon individual unemployability
- dental treatment folders, including the application for and denial of treatment in cases in which a dental condition is at issue
- medical reports from the Social Security Administration (SSA), and
- records related to eligibility for regular aid and attendance (A&A) or housebound status.

Reference: For more information on requesting non-Federal or private records, see [M21-1MR, Part I, 1.C.6.](#)

c. Reviewing an NOD

Follow the steps in the table below to review an NOD.

Step	Action
1	Review the entire record, including the appellant's statement on the NOD, to determine if additional development is needed.
2	Is additional evidence required? <ul style="list-style-type: none"> • If yes, go to M21-1MR, Part I, 5.B.7.d. • If no, go to Step 3.

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7. Reviewing an NOD for Further Development, Continued

c. Reviewing an NOD (continued)

Step	Action
3	<p>Was the decision a clear and unmistakable error (CUE)?</p> <ul style="list-style-type: none"> • If yes, take corrective action. • If no, go to Step 4. <p>Reference: For more information on the duty to assist the appellant in obtaining necessary evidence, see M21-1MR, Part I, 5.B.7.b.</p>
4	<p>Correct any previous oversights that are discovered.</p> <ul style="list-style-type: none"> • Do not forward the case to BVA until all reasonable assistance has been given to the appellant and all necessary evidence that can be obtained by VA is on file, and • Complete all development as quickly as possible to avoid undue delay. <p>Reference: For more information on the duty to assist the appellant in obtaining necessary evidence, see M21-1MR, Part I, 5.B.7.b.</p>
5	<p>Determine whether some other action is needed, such as a</p> <ul style="list-style-type: none"> • submission to the Veterans Service Center Manager (VSCM) or DRO with a request for the DRO appellate review process, or • request for an advisory opinion. <p>Important: Ensure that the decision notice sent to the appellant clearly indicates that after such action, the</p> <ul style="list-style-type: none"> • decision was not made by BVA, and • appellant still has the right to appeal.

Continued on next page

7. Reviewing an NOD for Further Development, Continued

d. Developing an NOD

Follow the steps in the table below to develop an NOD for further evidence.

Step	Action
1	Request evidence.
2	<p data-bbox="548 499 1252 531">Was the evidence received within the given time limit?</p> <ul style="list-style-type: none"> <li data-bbox="548 575 821 606">• If yes, go to Step 3. <li data-bbox="548 617 1393 877">• If no <ul style="list-style-type: none"> <li data-bbox="570 653 1040 684">– take no further development action <li data-bbox="570 695 1393 800">– send an SOC to the appellant and his/her representative on the basis of the evidence of record, explaining which requested evidence was not received <li data-bbox="570 810 1081 842">– take end product (EP) 172 or 174, and <li data-bbox="570 852 1105 884">– allow the claimant to perfect the appeal. <p data-bbox="548 919 1377 989">Reference: For more information on sending an SOC, see M21-1MR, Part I, 5.D.</p>
3	<p data-bbox="548 997 1382 1066">Did the evidence result in a complete grant of the benefits sought or did the appellant or his/her representative withdraw the NOD?</p> <ul style="list-style-type: none"> <li data-bbox="548 1108 1081 1140">• If yes, close out any VACOLS controls. <li data-bbox="548 1150 1029 1297">• If no <ul style="list-style-type: none"> <li data-bbox="570 1186 769 1218">– issue an SOC <li data-bbox="570 1228 878 1260">– update VACOLS, and <li data-bbox="570 1270 1029 1297">– take end product (EP) 172 or 174. <p data-bbox="548 1339 1382 1409">Note: Do not prepare an SOC until development is completed or the time limit for submission of evidence has expired.</p> <p data-bbox="548 1451 1192 1556">Reference: For more information on <ul style="list-style-type: none"> <li data-bbox="570 1486 1192 1518">• sending an SOC, see M21-1MR, Part I, 5.D., and <li data-bbox="570 1528 1192 1556">• what EP credit to take, see M21-4, Appendix C. </p>

8. Exhibit 1: Appeal Process Request Letter

Change Date December 10, 2009

a. Appeal Process Request Letter – Page 1 Page 1 of an example of the *Appeal Process Request Letter* is below.

Appeal Process Request Letter	
DEPARTMENT OF VETERANS AFFAIRS Regional Office	
[date] [appellant's name] [appellant's address]	In Reply Refer To:
[salutation]	
We received your written notice of disagreement with the Department of Veterans Affairs (VA) decision of [date]. This letter describes what happens next.	
Will VA try to resolve my disagreement?	
This local VA office will try to resolve your disagreement through the Post-Decision Review Process. As part of this process, you must decide how you would like us to handle your appeal. You may choose to have a Decision Review Officer (DRO) assigned to your case or to follow the traditional appeal process.	
How does the Decision Review Officer Process work?	
Complete review: The DRO will review the materials in your VA claims folder, including evidence and arguments, and statements from your representative. This may lead the DRO to request additional evidence from you, your doctor or some other source. You may be asked to participate in an informal conference with DRO to discuss your case.	
New decision: The DRO will then make a new decision. The DRO has the authority to grant benefits based on clear and unmistakable error, <i>de novo</i> review, or the receipt of new and material evidence. You will be notified of the decision and your appeal rights. If you are not satisfied with the DRO's decision, you may then appeal, using the traditional appeal process.	
How does the Traditional Appeal Process work?	
Complete review: A VA staff member will check your file for completeness. Then a review will be made of your evidence and arguments, statements from your representative and any other information available in your claims folder. This may lead to a request for additional evidence from you, your doctor or other sources. You may be asked to clarify questions about your disagreement.	

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8. Exhibit 1: Appeal Process Request Letter, Continued

**b. Appeal
Process
Request Letter
– Page 2**

Page 2 of an example of the *Appeal Process Request Letter* is below.

Statement of the Case: If we cannot grant your appeal based on the review and an examination of any additional evidence, we will then prepare a Statement of the Case (SOC) and send you a copy. The SOC will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision. If you still do not agree with that decision and wish to continue your appeal, you need to submit a substantive appeal so that your case can be sent to the Board of Veterans' Appeals. Instructions on how to file a substantive appeal will be provided in our letter notifying you of the decision.

May I be represented?

[Use this paragraph if appellant has a representative.]

You designated **[name]** from **[organization]** to represent you in presenting your claim to VA. The DRO will work with this representative while trying to resolve your disagreement. If you have not already done so, you should contact your representative directly to discuss your case.

[Use this paragraph if appellant does not have a representative.]

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. §5904 and 38 C.F.R. §14.636 and VA's website at <http://www.va.gov/ogc/accreditation.asp>. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

How do I select the Decision Review Officer process or traditional appeal process?

You must notify us within 60 days from the date of this letter whether you want to have your case reviewed by the Decision Review Officer process or by the traditional appeal process. If we do not hear from you within 60 days, your case will be reviewed under the traditional appeal process.

We hope we will be able to resolve your disagreement to your satisfaction. If you have questions about the information in this letter please call us at 1-800-827-1000.

9. Exhibit 2: Decision Review Officer (DRO) Process Explanation Letter

Change Date December 10, 2009

a. DRO Process Explanation Letter – Page 1 Page 1 of an example of the *DRO Process Explanation Letter* is below.

DRO Process Explanation Letter	
DEPARTMENT OF VETERANS AFFAIRS Regional Office	
[date] [appellant's name] [appellant's address]	In Reply Refer To:
[salutation]	
We received your election of the Decision Review Officer (DRO) process to handle your appeal. Our records show that you filed a notice of disagreement with the Department of Veterans Affairs (VA) decision of [date] . This letter describes what happens next.	
Will VA try to resolve my disagreement?	
This local office of VA will try to resolve your disagreement through the Post-Decision Review process. As part of this process, you have elected to have a DRO assigned to your case.	
How does the Post-Decision Review Process Work?	
Complete review: The DRO will check your file for completeness. Then a review will be made of your evidence and arguments, statements from your representative, and any other information available in your claims folder. This may lead to a request for additional evidence. You may be asked to participate in an informal conference by the DRO to clarify questions about your disagreement.	
New decision: The DRO will then make a new decision. You will be notified of the decision and your appeal rights	
Note: You are still entitled to a formal hearing to present evidence or testimony at any time during this process.	

Continued on next page

9. Exhibit 2: Decision Review Officer (DRO) Process Explanation Letter, Continued

**b. DRO
Process
Explanation
Letter – Page 2**

Page 2 of an example of the *DRO Process Explanation Letter* is below.

May I be represented?

[Use this paragraph if appellant has a representative.]

You designated [name] from [organization] to represent you in presenting your claim to VA. The DRO will work with this representative while trying to resolve your disagreement. If you have not already done so, you should contact your representative directly to discuss your case.

[Use this paragraph if appellant does not have a representative.]

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. §5904 and 38 C.F.R. §14.636 and VA's website at <http://www.va.gov/ogc/accreditation.asp>. You can find the necessary power of attorney forms on this website, or if you ask us, we can send you the forms. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

We hope we will be able to resolve your disagreement to your satisfaction. If you have questions about the information in this letter please call us at 1-800-827-1000.
