

# GAME CHANGE

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## Overview of the Fully Developed Claims (FDC) Program

# FDC OVERVIEW

## What is an FDC Claim?

- In general (with some important exceptions), it is a claim filed on the proper form (an EZ form) that is either ready to rate, or would be ready to rate after the VA obtains federal records and/or conducts a VA examination.
- If Guard or Reserve records are needed, the claim will not qualify for the FDC program.

# FDC OVERVIEW

- **ADDITIONAL EXCEPTIONS**

- EZ FORM NOT SIGNED
- NON-FDC CLAIMS PENDING
- NON-FDC CLAIMS ARRIVE WITH FDC CLAIM
- APPEAL PENDING
- NEEDS CHARACTER OF DISCHARGE DETERMINATION
- DEVELOPMENT BEYOND VA OBTAINING FED RECORDS IN POSSESSION OF FED GOV'T OR CONDUCTING VA EXAM

## **MOST OTHER CLAIMS QUALIFY**

- Example – Vet correctly asserts that he was exposed to a toxic agent in service and now has symptoms that she thinks are linked to that exposure

# FDC OVERVIEW

## VA Forms and Guidance

- New VA Forms, as of 8/11/12:
  - 21-526EZ (Application for Disability Compensation and Related Compensation Benefits)
  - 21-527EZ (Application for Pension)
  - 21-534EZ (Application for DIC, Death Pension, and/or Accrued Benefits)

# FDC OVERVIEW

## VA Forms and Guidance (continued)

- Only claims filed on the 8/11/12 EZ forms can qualify for the FDC program.
- **DO NOT USE THE EARLIER 2/10 EZ FORM.**
- Fast Letters (FL) on the FDC Program: 12-25 and 10-22.
  - NOTE – FL 10-22 was rescinded by 12-25.

# Filing an FDC Claim

- Veterans can file FDC claims electronically through the VA eBenefits portal, but service representatives do not have access to this program.
- All EZ forms have a notice section.
  - This section covers claims for most compensation, pension, and DIC/Accrued claims.

# Filing an FDC Claim

- Claimants or their reps must sign the certification in the appropriate VA form.
- The claimant has two options:
  - 1) Submit the claim as FDC, **or**
  - 2) Check the box indicating they have additional information to submit.

# Filing an FDC Claim

- If “2” on the prior slide is checked – indicating claimant has add’l info to submit – then the claim will be adjudicated in the traditional fashion
  - BUT VA will not send out a 38 U.S.C. § 5103 notice and the claimant may obtain a decision at an earlier time – relative to claims adjudicated after “5103” notice is provided.
- The VA will likely take several months less time to process even if the box is checked.



# Filing an FDC Claim

- If the veteran indicates that he/she wants to file a claim through the FDC program (in a letter or on VAF 21-4138), the VA will send an EZ form to the claimant.
- This policy extends to both informal claims and incomplete applications
  - *see* 38 U.S.C. § 5102 and 38 C.F.R. § 3.109

# Filing an FDC Claim

- The VA will accept:
  - Claims for compensation on **Form 21-526EZ** as an FDC claim,
  - Claims for pension on **Form 21-527EZ** as an FDC claim,
  - Claims for both pension and compensation when **Forms 21-526EZ** and **21-527EZ** are both **filed simultaneously**, and
  - Claims for DIC, death pension, and/or accrued benefits are filed on **Form 21-534EZ**.

# EFFECTIVE DATE ISSUES

## **VA Instructions on “Incomplete FDC Claims”**

- Page 4 of FL 12-25

“Consider any communication or action that identifies intent to file a compensation, pension, or survivor claim for processing in the FDC Program as an incomplete FDC application.”

# EFFECTIVE DATE ISSUES

## VA Instructions on “Incomplete FDC Claims”

- Page 4 of FL 12-25

Upon receipt of an incomplete FDC application:

- Establish EP 400
- Send the claimant the *Incomplete FDC Claim Letter* (see Enclosure 3) **generated via MAP-D** (important) and enclose the appropriate AUG 2011 EZ form.
- Associate the incomplete FDC application with the claims folder or the eFolder, as appropriate.
- PCAN the EP 400
- No further action on the incomplete FDC application is required at this time

# EFFECTIVE DATE ISSUES

## VA Instructions on “Incomplete FDC Claims”

- Page 4 of FL 12-25
- If a claims folder does not exist, and eFolder is not appropriate, establish a claims folder
  - see M21-1 MR, Part III, Subpart ii, Chapter 3.

# EFFECTIVE DATE ISSUES

## VA Instructions on “Incomplete FDC Claims”

*Important:* If a claimant in a communication identifies a **specific** contention (e.g., left leg, diabetes, etc.) for consideration **and** a signed, completed VA Form 21-526 or EZ form is of record, consider it a formal application. Place the claim under end product control (e.g., EP 110, 020, 010) effective the date of receipt of the completed application, and forward it for processing.

# EFFECTIVE DATE ISSUES

## VA Instructions

- The date of receipt of an incomplete FDC application should never be input into Share as the date of claim.

# EFFECTIVE DATE ISSUES

## VA Instructions on “Incomplete FDC Claims”

\*NOTE: Enclosure 3 states

***“We received your FDC incomplete claim on MM/DD/YYYY. We will use this date to pay benefits from the earliest possible date if you submit your completed FDC within one year from the date of this letter and your claim is later approved.”***



# FDC AUTHORITIES

## **38 U.S.C. § 5102**

Application forms furnished upon request; notice to claimants of incomplete applications.

(a) Furnishing forms. Upon request made by any person claiming or applying for, or expressing an intent to claim or apply for, a benefit under the laws administered by the Secretary, the Secretary shall furnish such person, free of all expense, all instructions and forms necessary to apply for that benefit.

# FDC AUTHORITIES

## **38 U.S.C. § 5102**

Application forms furnished upon request; notice to claimants of incomplete applications.

**(b) Incomplete applications. If a claimant's application for a benefit under the laws administered by the Secretary is incomplete, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application.**

# FDC AUTHORITIES

## **38 U.S.C. § 5102**

Application forms furnished upon request; notice to claimants of incomplete applications.

### **(c) Time limitation.**

(1) If information that a claimant and the claimant's representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary ***within one year from the date such notice is sent, no benefit may be paid or furnished by reason of the claimant's application.***

# FDC CLAIMS PROCESSING AND NEW 38 U.S.C. § 5110(b)

The statute states:

(2)(A) The effective date of an award of disability compensation to a veteran who submits an application therefore that sets forth an original claim that is fully-developed (as determined by the Secretary) as of the date of submittal shall be fixed in accordance with the facts found, but shall not be earlier than the date that is **one year before** the date of receipt of the application.

# 38 U.S.C. Section 5110(b)

- (B) For purposes of this paragraph, an original claim is an initial claim filed by a veteran for disability compensation.
- (C) This paragraph shall take effect on the date that is one year after the date of the enactment of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 and shall not apply with respect to claims filed after the date that is three years after the date of the enactment of such Act.

# FAQ

1. What is an incomplete FDC application? [See 38 U.S.C. § 5102]
  - Where the documents provided to the VA do not constitute a claim – simply a somewhat vague intent to file a claim.
  - Example: unsigned application, or “I want compensation benefits.”

# FAQ – INCOMPLETE APPLICATIONS

## **FROM THE M21-1 MR Part I, Section 1(B)(3)(b)**

- If the application is substantially complete ...
- Then . . . send Section 5103 notice to the claimant (and the claimant's representative, if any).

# FAQ – INCOMPLETE APPLICATIONS

## FROM THE M21-1 MR Part I, Section 1(B)(3)(b)

- This notice must:
  - ❖ Inform the claimant of the info or medical or lay evidence
    - That the claimant is responsible for submitting to VA, and
    - VA will attempt to obtain on the claimant's behalf,

## **AND**

- ❖ Include VCAA Notice Response form, which the claimant may use to:
  - Notify VA that he has no further information or evidence to submit, and
  - Request a decision on his claim w/out further delay.



# FAQ – INCOMPLETE APPLICATIONS

## **FROM THE M21-1 MR Part I, Section 1(B)(3)(b)**

- **Note: These requirements apply to all substantially complete applications, including those received prior to a service member's discharge from active duty.**

# FAQ – INCOMPLETE APPLICATIONS

- If the application is **not** substantially complete then:
  - ❖ Do not
    - establish end product (EP) control, or
    - undertake development.
  - ❖ Cancel any erroneously established EP after notifying the claimant about the incomplete application.

# FAQ – INCOMPLETE APPLICATIONS

- If the application is **not** substantially complete then:
  - ❖ Establish EP control only when a **substantially complete application** is received, using the date of receipt of the complete application as the date of claim.

# FAQ – INCOMPLETE APPLICATIONS

- From Page 4 of FL 12-25
- “Consider any communication or action that identifies an intent to file compensation, pension, or survivor claim for processing in the FDC program an incomplete FDC application.
- If a claimant in a communication identifies a specific contention (e.g. left leg, . . .), and a signed 21-526 or EZ form is of record, consider it a formal application.

# FAQ – INCOMPLETE APPLICATIONS

- If the application is **not** substantially complete then:
  - ❖ Notify claimant (and the claimant's rep, if any)
    - Of the information VA needs to consider the application complete, and
    - That failure to submit a substantially complete application within one year will result in no benefit being paid or furnished by reason of that application.

# FAQ – INCOMPLETE APPLICATIONS

- **Note**: Contact the claimant by telephone whenever possible to obtain the information needed to complete the application.

# FAQ – INCOMPLETE APPLICATIONS

- Otherwise:
  - mark the blocks on the application in red that require the claimant's attention
  - make a copy of the application
  - enclose the original application with a letter containing the notice described at the top of this cell, and
  - file a copy of the application and the notification letter in the claims folder.

**Reference:** For more information about incomplete applications, see 38 U.S.C. 5102(b) and (c).

## FAQ – INCOMPLETE APPLICATIONS

- **Note**: A claim for an increased evaluation of a service-connected disability based on a statement from the claimant that the disability has worsened constitutes a substantially complete application.



# FAQ – INCOMPLETE APPLICATIONS

- If the claimant does not identify or submit medical evidence in support of his/her claim:
  - ❖ Schedule an exam immediately, provided there are no new or reopened issues that will require development before an exam may be scheduled, and
  - ❖ Notify the claimant in the Section 5103 notice that
    - evidence collected in connection with the claim must show worsening of the disability, and
    - VA will request an examination to determine the current level of disability.

# ONE FOR YOU TO TRY!

- Can an *incomplete FDC application...*
- That is filed 3/1/13, and followed by a 21 - 526EZ filed 8/6/13, and then accepted by VA as an FDC claim;
- Generate an effective date of 3/1/12 if the veteran was otherwise entitled as of 3/1/12?

# ONE FOR YOU TO TRY!

- See FL 12-25 page 4, “Incomplete Claims”
- Also note that the language of § 5110(2)(C) clearly distinguishes between “claims filed after the date that is three years after date of enactment” and “this “paragraph shall take effect on the date that is one year after the date of enactment.”

# NOD FOR CLAIM ADJUDICATED BEFORE 8/6/13

- Next, assume an NOD is filed regarding the effective date of a claim that was adjudicated and granted under the FDC program prior to 8/6/13.
- Assume that the effective date assigned was the date of claim because it has not been one year since the bill was signed into law.

# NOD FOR CLAIM ADJUDICATED BEFORE 8/6/13

- If, as a result of the NOD the claim is now pending on or after 8/6/13 – would the VA have to consider the retroactive provisions of the new § 5110(b)?
- See VBM 12.5.6

# Questions?