Interim Guidance for *Barry v. McDonough* Flash Application
Compensation Service
October 2026

Purpose

This guidance helps claims processors quickly identify when a claim may be impacted by *Barry v. McDonough* and when to apply the "***Barry SMC Review***" corporate flash.

Claims processors should begin identifying any claims potentially affected by *Barry v. McDonough* and apply the "***Barry SMC Review***" corporate flash. It is critical that claims processors identify any claim potentially affected by *Barry* even when a decision will not be made on the potential *Barry* issue at this time. Applying the flash ensures these claims are properly marked for future processing and supports consistent case handling and oversight.

Background

In *Barry v. McDonough*, 101 F.4th 1348 (Fed. Cir. 2024), the Federal Circuit held that 38 C.F.R. § 3.350(f)(3) does not limit the number of intermediate (half-step) SMC increases a Veteran may receive. Instead, the regulation permits multiple half-step increases for each additional permanent disability or combination of disabilities rated 50 percent or more, up to the statutory limit of SMC (o).

Although *Barry* addressed only half-steps under 38 C.F.R. § 3.350(f)(3), VA's Office of General Counsel advised that the same principle also applies to full-step increases under 38 C.F.R. § 3.350(f)(4). Since both regulations derive from the same statutory authority, 38 U.S.C. § 1114(p), Compensation Service determined that VBA may grant multiple half- and full-step increases, up to the statutory limit of SMC (o).

When *Barry* Applies

A claim may be impacted by *Barry* when all of the following are true:

- There is a compensation entitlement issue pending on or after May 16, 2024 (or is under continuous pursuit).
  - ***Note***: *Barry* applies even if the pending issue is not an SMC issue, including decisions involving denial, non-compensable evaluations, or clear and unmistakable error (CUE).
  - ***Note***: *Barry* does not apply to final decisions before May 16, 2024, and cannot be the basis for a CUE for those decisions.
- The Veteran is receiving, or evidence may support, SMC (l) or above.
- The claim includes **at least one additional permanent disability** that is:
  - 100% (supports a full-step increase under 38 C.F.R. § 3.350(f)(4)), or
  - 50% or more, single or combined, permanent (supports a half-step increase under 38 C.F.R. § 3.350(f)(3)).
  - ***Note***: The disability(ies) used for the additional step(s) must be permanent. Disabilities subject to future examinations do not qualify.

- The Veteran is not already entitled to SMC (o), (r)(1), (r)(2), or (t) from the **earliest effective date of the current or continuously pursued claim**.

***Barry SMC Review* Corporate Flash**
If the claim meets the criteria above, add the "***Barry SMC Review***" corporate flash to the Veteran's profile in VBMS (if not already applied). If there is any uncertainty about whether *Barry* applies, the "***Barry SMC Review***" corporate flash must be applied to ensure the claim is captured for proper future adjudication.

Otherwise, continue to follow existing procedures until additional interim field guidance regarding *Barry* claim processing is provided. Do **not** create deferred issues or address *Barry* in the rating decisions until instructed to do so.

Policy questions concerning this guidance should be directed via email through station leadership to Compensation Service Policy mailbox at 211_Policy.Vbavaco@va.gov. If there are any other questions, contact the Office of Field Operations at OFO.VBACO@va.gov