

**Pension & Fiduciary Service**

**Inquiry Response Highlights**

**February 2020**

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# **Pension Management Center Related Inquiries**

# Claim Label for AMA EP 930

**Target Audience**: PMC Claims Processors

**Question**:Currently, there is a issue with 040s not being properly established with the “PMC HLR DTA Errors” claim label, however, if the EP is changed in SHARE at any point it will disconnect from CASEFLOW and not auto-CEST the proper 040 for DTA error for processing. The issue is the inability to cest the 040 now at this point. We are unable to cest it in Caseflow because it will require us go through the CEST procedure and create a new 030 of which we received credit for. While we could CEST the 030 through Caseflow again, and (it appears) we can then PChange it in Share to an AMA 930 for control; however, while there is a claim label for AMA DTA Errors for both Rating and Non-Rating, the same claim labels don't exist with a PMC prefix. They would all look like Comp 930s. The Philadelphia PMC is requesting a creation of an EP 930 with the PMC AMA HLR DTA Error Non-Rating and PMC AMA HLR DTA Error Rating claim labels. Also guidance on the proper work around in this situation is appreciated.

**Response**: In general, the EP 930 are used for reviews and issues where no specified EP is applicable and where the appropriate EP credit has already been taken to include the following: missed issues or prematurely cleared EPs and correction of previous erroneous actions identified during quality review (per [M21-1 Appendix B](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000011474/Appendix-B-End-Product-Codes?query=930#930)).

In the December 2019 Coordinated Install, additional PMC EP 930 HLR related claim labels were made available in Caseflow. The following new claim labels were deployed to solve the issues with EP 930s associated with HLR processing.



**Result:** M21-5, Chapter 5.7.b was published on March 2, 2020.

# Clarification Requested: AO73

**Target Audience**: PMC Claims Processors

**Questions on lot size:** There is differing interpretation as to when the size of a claimant’s residential lot may or may not be needed, specifically when considering 38 CFR 3.275(a)(3), which speaks to marketability. Also, see

M21-1 V.iii.1.J.6.e

**Question 1**: In the screenshot below, is development for the size of the lot required?

**Response 1**: Yes, the size of his/her residential lot is needed to determine marketability.

**Question 2**: In the screenshot above, is there ANY square footage amount that the claimant could report that would automatically be considered “contradictory,” as noted under M21-1 V.iii.1.J.6.e?

a) If so, what would this amount be? We understand that this may be a subjective issue, but assuming AO73 procedures were enacted to reduce the amount of subjectivity regarding net worth issues, it seems to make most sense to have a definitive number.

**Response 2 and 2 a**: The cited reference has nothing to do with additional acreage amount but contradictory evidence of record showing the additional acreage is marketable.

**Questions on asset associated income:** Requesting clarification for manual references M21-1 V.iii.1.J.5.q through M21-1 V.iii.1.J.5.u.

**Question 3**: While it would be possible to follow the instructions without being provided approved text for development, for the sake of consistency, can Pension and Fiduciary please provide specific text to be used in situations based on development under M21-1.V.iii.1.J.5.t?

**Response 3**: As long as the language within the development letter meets the requirements outlined within M21-1.V.iii.1.J.5.t, it is within the appropriate guidelines and is correct. Pension and Fiduciary Service is working on creating standardized language within fiscal year 2020 and will review your submitted text for inclusion.

**Question 4**: M21-1 V.iii.1.J.5.s defines asset associated income as income that may have an underlying asset, and provides rental income, capital gains, and interest and dividends as examples. Question #48 on the AO73 FAQ adds real estate sales, income from stocks and bonds, and distributions from pension/annuities/retirement or profit sharing plans/IRAs/insurance contracts/etc. to the list. Can Pension and Fiduciary Service please provide an all-inclusive list of incomes that would be found in FTI that are considered to be asset associated income? Possibly an amended Enclosure B that includes a column to identify if an income type is considered to be asset associated income?

**Response 4**: The income within the FTI tab is pulled from numerous IRS Forms in which numerous types of income with differing codes to generate said income by the IRS is used. It is not feasible for Pension and Fiduciary Service to accurately provide an all-inclusive list of incomes that would be found in FTI that are considered to have an asset associated with it. A good starting point would be to review the ‘Income for VBA purposes’ and ‘Income for purposes of upfront verification’ columns of the [FTI Income Reference Sheet](https://vbaw.vba.va.gov/PENSIONANDFIDUCIARY/pension/docs/FTI_Reference_Sheet_Jan_2019.xlsx) . Generally, if either of those are ‘yes’, an asset would more than likely be associated with the income.

**Question** 5: Since asset transfers only apply to transactions made on or after October 18, 2018, what would the procedure be when the Immediate or Second FTI year is 2018? How would M21-1 V.iii.1.J.5.t be modified?

**Response 5**: M21-1.V.iii.1.J.5.b defines ‘look-back period’ and also states, “A look-back period will not include any date prior to October 18, 2018.” Therefore, the procedures would be the same as outlined in M21-1.V.iii.1.J.5.t if the Immediate or Second FTI year is 2018.

**Result:** Clarification provided.

# AO73 - Related Questions for Follow-up Training

**Target Audience**: PMC Claims Processors

**Question** **1**: Should we accept the claimant’s statement that additional acreage is not marketable as fact when they do not tell us the size of their residential lot?

**Response 1**: An individual must first self-report the size of his/her residential lot before VA accepts his/her statement regarding the marketability of any additional acreage pertaining to his/her residential lot.

**Question 2**: Are the number of hours that an in-home attendant cares for a disabled claimant required in order to count attendant fees?

**Response 2**: Yes, the number of hours is required to determine if the payments are commensurate with the number of hours care was provided and to determine if additional documentation is warranted. See M21-1V.iii.1.G.3.m-o which were updated on January 16, 2020.

**Question 3**: Are we required to develop when a claimant tells us that they have less than $10,000 in assets, but does not give us an exact amount (because it’s not requested on the form) and do not tell us an amount of interest earned from that net worth?

**Response 3**: VA Form 21-P-0969 is intended to be used when a claimant or his/her dependents has income other than Social Security benefits or had such income in the year preceding the application, assets exceeding $10,000, or transferred any assets in the three years prior to the application. If a claimant indicates one of these situations exists or has occurred, or if VA has reason to believe the situation exists or has occurred, VA Form 21P-0969 should be used to develop the necessary information. The claimant may provide the information necessary to complete the application on VA Form 21P-0969 or by any other means, if the information is complete and allows VA to decide on the claim for Pension.

Per M21-1.V.iii.1.E.5.f, interest income is defined as irregular income: an intermediate category of income that has characteristics of both recurring and nonrecurring income. Therefore, adjudicators should utilize M21-1.V.iii.1.A.2.e to analyze FTI and use his/her discretion if development is required per M21-1.V.iii.1.J.4.i.

**Question 4**: When the exact amount of net worth is unknown because the claimant tells us they have less than $10,000 in assets, what amount of net worth should be entered in the “Net Worth Amount” field in VBMS-A?

**Response 4**: Per M21-1.V.iii.1.J.4.a, net worth is assets plus IVAP (assets + IVAP). Therefore, if a claimant marks box 31C, Do you or your dependents have more than $10,000 in assets?, as ‘No’, calculate net worth utilizing $10,000 for ‘assets’ and add any IVAP to arrive at the ‘Improved Pension Family Net Worth Amount’.

**Result:** M21-1 updated on January 16, 2020.

# Question Regarding Indian Income

**Target Audience**: PMC Claims Processors

**Question:** Veterans father is receiving income from the Navajo Nation Retirement Plan. Please provide guidance regarding counting this income.

**Response**: While there are specific Indian income exclusions, as listed in [M21-1, Part V, Subpart iii, 1.I.8](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014447/M21-1-Part-V-Subpart-iii-Chapter-1-Section-I-Improved-Pension-Counting-Specific-Types-of-Income), retirement income is not an exclusion.  [38 USC. 1503](https://www.law.cornell.edu/uscode/text/38/1503) dictates that retirement payments are countable income for VA pension purposes, therefore, count income from the Navajo Nation Retirement Plan.

**Result:** Clarification provided.

# **Fiduciary HUB Related Inquiries**

# Waiver of Due Process by Making a Call

**Target Audience**: Fiduciary Service Representatives

**Question**: I am over the promulgation team and a lot of our workload is waiting on due process to expire. Therefore, if we could call the beneficiary to waive due process this will help with workload and enrolling  a lot of our beneficiaries into the program. I have tried to find a manual references that support calling the beneficiary to waive due process but all are unclear. The following references are my findings and I am reaching out to you for clarification if we could call the beneficiary to waive due process.

**j.  Processing a Waiver of Due Process for Proposed Incompetency** If the SOO receives a waiver of due process concerning proposed incompetency from the beneficiary, the SOO will

* ensure the waiver is available in the beneficiary’s claims folder
* immediately notify the fiduciary hub of jurisdiction by sending an e-mail with the subject line *“Due Process Waived- Incompetency Proposal*,*”* and
* include the following information in the e-mail to the fiduciary hub of jurisdiction
* claim number
* beneficiary’s name, and
* receipt date of evidence.

***Note***:  The fiduciary hub will maintain jurisdiction of the pending EP 600.

***Reference***:  For more information on fiduciary hubs of jurisdiction, see M21-1, Part III,

Subpart v, 9.A.1.e

**7.B.2.h****.  Waivers of Due Process** If VA receives a waiver of due process

* ensure the waiver is available in the beneficiary’s electronic claims folder(eFolder)
* annotate receipt of the waiver under the IA work item in BFFS, and
* and refer to [**FPM 7.B.3.a**](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000043965/FPM-7.B.3--Procedures-for-Final-Determinations-of-a-Beneficiary%E2%80%99s-Inability-to-Manage-Financial-Affairs) to finalize the determination.

**Updated Response**: VA may accept a beneficiary’s waiver of due process

* by telephone or written notice from the beneficiary or his/her authorized representative, or
* during a telephone call to the beneficiary initiated by the hub as outlined in the table below.

If VA receives a waiver of due process

* ensure the waiver is available in the beneficiary’s electronic claims folder(eFolder)
* annotate receipt of the waiver under the IA work item in BFFS, and
* refer to [FPM 7.B.3.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000043965/FPM-7.B.3--Procedures-for-Final-Determinations-of-a-Beneficiary%E2%80%99s-Inability-to-Manage-Financial-Affairs) to finalize the determination.

Follow the steps in the table below if the hub initiates a waiver of due process, by telephone, to the beneficiary.

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Review the beneficiary’s eFolder to determine if either action exists* a telephone waiver is already of record on [VA Form 27-0820](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-27-0820-ARE.pdf), or
* a VBMS note or [VA Form 27-0820](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-27-0820-ARE.pdf) indicating that a review was conducted but a decision was made to not request a waiver by telephone.

If yes, no further action is necessary. If no, go to step 2. |
| 2 | Review the beneficiary’s eFolder to determine if a telephone call is appropriate.  A telephone call to the beneficiary is not appropriate if documentation in the eFolder shows any of the following:* the beneficiary has documented moderate to severe cognitive impairment as evidenced by
* a rating of special monthly compensation under [38 U.S.C. 1114(t)](https://www.law.cornell.edu/uscode/text/38/1114)
* medical or lay evidence indicating current symptoms of dementia such as
	+ memory loss of both recent and distant past events
	+ significant confusion, and/or
	+ the inability to recall simple details about themselves, or
* current institutionalization of the beneficiary due to mental health
* evidence within the beneficiary’s eFolder indicates the inability to understand verbal instructions, or
* the due process notification letter is either not of record or is inadequate.

If the telephone call is inappropriate, go to step 3. If the telephone call is appropriate, go to step 4. |
| 3 | * Input a permanent note in VBMS stating the review was completed and [insert the rationale for not making the call], and
* await the expiration of due process.
 |
| 4 | If the hub initiates a telephone call to the beneficiary, the following text must be pasted into the [VA Form 27-0820](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-27-0820-ARE.pdf): *I certify I reviewed the proposal of incompetency letter and have verified it is correct.* *I certify I advised the beneficiary of the date of the proposal of incompetency letter.* *I certify I advised the beneficiary the date due process would expire if no waiver was obtained.* *I certify the beneficiary acknowledged that their waiver of due process would lead to a final determination of their inability to manage their financial affairs.* *The beneficiary communicated their waiver of due process in their own words as follows: [****Insert a summary of how the beneficiary expressed their waiver of due process****]*. *Additional call notes:* **Important**:  If the beneficiary does not appear to fully understand the intent of the waiver of due process after it is explained, annotate this on the [*VA Form 27-0820*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-27-0820-ARE.pdf), **do not** proceed with the waiver, and allow the original due process period to continue. **Notes**:* The official statement of a beneficiary’s waiver of due process should be more than a single word.  The summary of how the beneficiary expressed their waiver of due process should demonstrate the beneficiary’s understanding of the waiver.
* If the beneficiary instructs the caller to speak with another individual during the call, the call may continue.  However, when the call reaches the point of requiring the beneficiary’s official waiver of due process, the beneficiary must be the one providing such waiver.
 |
| 5 | Upload the completed [VA Form 27-0820](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-27-0820-ARE.pdf) to the beneficiary’s eFolder. |
| 6 | If a telephone waiver of due process is* received, refer to [FPM 7.B.3.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000043965/FPM-7.B.3--Procedures-for-Final-Determinations-of-a-Beneficiary%E2%80%99s-Inability-to-Manage-Financial-Affairs) to finalize the determination, or
* not received, take no further action and await the expiration of due process.
 |

**Result:** M21-1 III.v.9.B was updated on March 3, 2020. FPM 7.B.2 was updated on March 5, 2020.

# 21P-4703 Signature Clarification

**Target Audience**: All hub employees

**Question:**  The 21P-4703 has specific verbiage in the signature block indicating the document must be signed in ink. Recent FPM changes allow the 21P-4703 to be obtained via mail and fax. Regardless if the 21P-4703 is obtained via fax or mail, does the form still require an inked signed name or may the proposed fiduciary and/or the VA employee completing the document provide a digital signature?

**Response**: A review of M21-1 III.ii.1.C.2.f and M21-1 III.ii.1.C.2.g provides a definition for both electronic and digital signatures. Electronic signatures are also discussed in VBA Letter 20-17-11, which established policy that allows VBA employees to accept electronic signatures. Therefore, a digital or electronic signature can be accepted on VA Form 21P-4703.

**Result:** Clarification provided.

# Question Regarding Minor Beneficiary Accountings

**Target Audience**: Legal Instruments Examiners and Field Examiners

We posed the below questions regarding the requirements for accountings on minor beneficiary cases. At the time of the provided answer, P&F indicated that the FPM, specifically, FPM 2.F.9.c. and 2.F.8.c. were to be updated to provide clarity. Because those updates have not happened yet, we would like to reconfirm the answer regarding the frequency of minor beneficiary accountings.

2.F.8.c. states – “However, if funds under management exceed $10,000, the fiduciary is required to provide an accounting. Additionally, an accounting must be requested in situations where a one-time insurance payment is received and the funds will be immediately consumed.”

2.F.9.c. states – “When there is an agreement to save any part of the insurance proceeds, an eFolder is established and the appropriate follow-up action is taken. Follow-up actions consist of review of the eFolder, streamlined field examination, and annual accounting.”

The P&F answer below does not list the requirements of 2.F.9.c. as one of the required instances for an accounting.

If we are to follow both of these references and the P&F answer below, it appears as though we must require an accounting any time a one-time insurance payment will be immediately consumed and whenever the fiduciary saves any part of the insurance payment.

With both of these references combined, the $10,000 accounting rule, as listed in the P&F answer below, is totally dissolved. We will be requiring annual accountings for every minor beneficiary insurance payment case. If they spend 99% of the insurance payment and save even $1.00, we will require an accounting per 2.F.9.c. until the remaining funds are consumed. If they spend $1.00 and save the rest, we will require an accounting per 2.F.9.c. Additionally, if they spend all the insurance proceeds at once, we will require an accounting, per 2.F.8.c.

**Question 1**: Are we to follow the P&F guidance provided on 07/23/2018, as indicated below?

**P&F Service guidance of July 23, 2018**

In situations of a minor beneficiary, an accounting is required:

* When funds under management exceed $10,000, no matter the source of the funds under management (retroactive payment or one-time insurance payment),
* When proceeds from the insurance payment are $10,000 or more, and
* In any case in which the proceeds from the insurance payment are to be immediately expended.

**Response 1**: The P&F guidance provided on July 23, 2018 is accurate.

**Question 2**: Are we to require an accounting anytime a one-time insurance payment will be immediately consumed and if they save any part of the one-time insurance payment?

**Response 2**: The authority and procedures for requiring an accounting for VA-appointed fiduciaries are the same for minors as for adult beneficiaries as outlined in FPM 3.B.1.  In addition to the requirements outlined in FPM 3.B.1.a, an accounting is required in minor beneficiary cases when a one-time insurance payment is received, and the funds will be immediately consumed. This includes cases where the one-time insurance payments are *less than* $10,000. The purpose of requiring an accounting when a one-time insurance payment is received, and the funds will be immediately consumed is so that the fiduciary hub can discontinue supervision and close the beneficiary record as soon as possible.

An accounting is *not* required in minor beneficiary cases when a one-time insurance payment is less than $10,000, and all or part of the funds will be saved, unless the case meets one of the other requirements outlined in FPM 3.B.1.

**Question 3**: If not, when should require an accounting for a minor beneficiary case?

**Response 3**: See response 2.

**Result:** Clarification provided.

# Surety Bond

**Target Audience**: Legal Instruments Examiners

**Question**: I am working with Regional Council regarding a surety bond and wanted to confirm that we are still pursuing bond even if the fiduciary repaid the misuse amount.

FPM 5.E.4.a states: “The fiduciary hub (hub) must attempt to collect any surety bond protecting the beneficiary's Department of Veterans Affairs (VA) funds. The hub must follow the procedures listed in FPM 5.E.4.c immediately following referral to the Office of Inspector General (OIG).”

There is no differentiation if the misuse was paid or not. It also does not address misuse with no loss. A follow up question is if those funds are recouped after the fiduciary has already made the beneficiary whole, where are those funds routed? Is this needed as it appears that the fiduciary may be repaying double the amount of misuse due to many indemnity agreements in the surety bond?

**Response**: When a fiduciary no longer has an outstanding misuse debt, it is not appropriate to file a claim on the surety bond. In instances where a fiduciary repays the misuse debt prior to VA receiving surety bond funds requested on a claim, hub personnel are to return those funds to the surety bond company. These funds must not be paid to the misusing fiduciary and are also duplicative of funds reissued to the beneficiary or their successor fiduciary.

**Result:** FPM 5.E.4.a updated on February 25, 2020.

# **P&F Service Information**

# P&F Service Contact Information

Policy and Procedure questions from the PMCs or Fiduciary Hubs should be submitted to P&F Service at VAVBAWAS/CO/P&F POL & PROC by the Quality Review coach or PMC/Fiduciary HUB Division Management.

P&F Service would like to remind you that all inquiries sent to the Policy and Procedures Mailbox must include the references previously researched, key words or phrases used to search in CPKM. P&F Service is available to assist when there is confusion about a certain policy or procedure, however, PMCs and Fiduciary Hubs are required to research and attempt to resolve the issue before sending the question to the P&F Service Policy and Procedures Mailbox. Additionally, including all words used to search topics in CPKM will allow P&F Service to add those search words into CPKM if they were not already in the metadata for a certain manual reference.

Training and Quality questions can be directed to: VAVBAWAS/CO/P&F TNG QUAL OVRST.

Systems-related questions can be directed to: VAVBAWAS/CO/P&F BUS MGMT.

# Disclaimer

Please note that all responses provided are for informational purposes only. If changes to the M21-1 Adjudication Procedures Manual or Fiduciary Program Manual (FPM) are needed, they are made in conjunction with the response. The M21-1 and FPM supersede any inquiry response.