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# Fee Release Processing (Audit Error Worksheets/04E Transactions)

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), and Quality Review Team Management

**Presenter:** Ambria Davis, Management and Program Analyst, OAR

**References:**

* April 2023 National AAFC [Call Presentation](https://vbaw.vba.va.gov/OAR/docs/april-23-national-aafc-call-slides.pdf) and [Bulletin](https://vbaw.vba.va.gov/OAR/docs/april-23-national-aafc-bulletin.pdf)
* M21-5 8.B.6.a, *When to Consider Action for Failure to Make Funds Available for Fees*
* M21-5 8.B.6.e, *Recovery of Fees Paid by VA in the Absence of a Non-Recurrent Payment to the Claimant Because of Offset/Reduction*

**Fee Processing Timelines**

Prior to *Rosinski Jan 30, 2020*

* Cash payment to claimant required
* Fees sent from award net effect to the station’s suspense account (Fund 6279).
* The net effect of the award covered the fee
* Fees paid from the suspense account

*Rosinski* to July 10, 2022

* Cash payment to claimant NOT required
* Fees sent from award net effect to the station’s suspense account
* If net effect did not cover fee, then AAFC instructed SSD to process upfront 06A and funds were sent to the suspense account
* Fees paid from the suspense account

July 11, 2022, to present

* Cash payment to claimant NOT required
* Fees sent from award net effect to eMPWR. VBMS-A processes fee deduction instead of SSD
* If net effect did not cover fee, then SSD processes 06A from eMPWR at the time of the fee release
* Fees paid from eMPWR

**Fee Processing**

* Fees are based on the pre-reduction amount (M21-5 8.B.2.f)
* Fee release may be based on various scenarios (M21-5 8.B.2.h)
	+ Non-Rosinski
		- If there is no offset at issue (or if an offset is at issue but the retroactive payment covers the offset withholding and the entire fee)
	+ Partial Rosinski
		- An offset is at issue and the retroactive payment covers the offset withholding but only part of the fee
	+ Complete Rosinski
		- An offset is at issue and the retroactive payment covers the offset withholding but none of the fee

Review the fee release options from the standard release memorandum:

* Complete fee withheld (non-Rosinski):
	+ disburse \_\_\_\_\_\_\_\_\_ to the agent/attorney listed above using an 06J1 transaction; and
	+ disburse a VA assessment of to appropriations using an 06J3 transaction.
* Partial fee withheld (Partial *Rosinski*):
	+ disburse \_\_\_\_\_\_\_\_\_ to the agent/attorney listed above using an 06J1 transaction;
	+ disburse \_\_\_\_\_\_\_\_\_ to the agent/attorney listed above using an 06A transaction;
	+ disburse a VA assessment of to appropriations using an 06J3 transaction; and
	+ (if applicable) disburse a VA assessment of \_\_\_\_\_\_\_\_ to appropriations using an 06A transaction.
* No fee withheld (Complete *Rosinski*):
	+ disburse \_\_\_\_\_\_\_\_\_ to the agent/attorney listed above using an 06A transaction; and
	+ disburse a VA assessment of using an 06A transaction to the agent cashier for deposit into 3875.

**Audit Error Worksheets (AEWs) – Agent and Attorney Fees**

Please ensure that you refer to the April 2023 National CallPresentation and Bulletin.

* AAFCs processing the original award with the retired pay withholding will pay fees using an 06A
	+ Regardless of when the AEW award is processed
	+ Exception: AAFC determines the AEW was processed prior to the payment of fees and the BEST AAFC **did not** process the 04E transaction
* BEST AAFCs - Process 04E for fee related AEW awards
	+ Regardless of when the AEW award is processed (before or after the payment of fees via 06A)

**06A Exception**

If the AEW award was processed prior to the payment of the fees, then the AAFC must ensure the 04E was processed.

* If the AEW award did not process the 04E, then failure to make funds available procedures must be followed (06B) (M21-5 8.B.6.d). The 06A will not be used in this scenario.

**Memorandum to Request 04E**

* M21-5 8.B.6.e
	+ Please process an 04E transaction for [amount of fee] to recoup from the claimant the agent/attorney fees paid/to be paid via VA funds on [enter date of associated award with insufficient funds]. When complete, please notify the AAFC [name of employee who submitted the request].”
* Memorandum should be adjusted based on your case
	+ 06A has already been processed to pay fees
	+ 06A has not yet been processed to pay fees
	+ Locally generated memo
	+ Interim Procedures for AEWs on Agent and Attorney Fee Cases contains a sample memo that will only apply if the 06A has already been processed
* BEST AAFC must have the AEW award generated
* AEW award must be authorized within 48 hours of the 04E creation to avoid debt management notification

# Question and Answer – Fee Release Processing (Audit Error Worksheets/04E Transactions)

**1. How does this all apply to legacy cases prior to Rosinski and the SOJ?**

The AAFCs are responsible for the grant or denial of agent/attorney fees based on all the policies and procedures in effect at the time of processing. The AAFCs will inform SSD of the actions necessary to implement his/her decision. During legacy processing, funds were sent to the suspense account of the station that authorized the award.

**2. Can you give an example of offsets? Are they other debts that the Veteran has?**

Examples of offsets include military retired pay, separation pay, and incarceration. Debts are not included. OAR is pending final guidance from the Office of General Counsel concerning procedural guidance for debts and payment of attorney fees.

**3. What is an AEW?**

An AEW is a document containing data regarding a Veteran's military retired pay (MRP) and entitlement to Concurrent Retirement Disability Pay (CRDP) or Combat-Related Special Compensation (CRSC).

**4. In the case of slide 12 – 06A exception, how will we know if the 04E was completed by BEST?**

You will know if the BEST team completed the 04E by examining the documents surrounding the audit error worksheet award. The BEST AAFC is required to send a memo to finance requesting the 04E transaction. After the 04E is processed, finance will upload a fiscal print in the eFolder documenting the transaction establishment. Additionally, the 04E will reduce the payment of the award. Therefore, you will be able to compare the net effect of the AEW award with the payment history screen in Share to confirm the 04E transaction. For example, the 04E transaction was established for $500.00. The net effect of the AEW award reflects $2,000. The payment screen in Share will reflect $1,500.

**5. Is the 04E going to establish money in an account that we can see from an AAFC perspective?**

No, the 04E transaction does not transfer funds into the eMPWR accountable balance. The funds cannot be viewed by the AAFC. The funds are returned to the general fund that the 06A also originate from.

**6. If the 04E is processed, should the station that processed the attorney fee calculation use the release memo to indicate "Complete fee withheld (Non-Rosinski)" or complete the memo as instructed shown on the fee calculator?**

The AAFC should utilize the instructions on the original calculator to make the fee payment. However, there have been several procedural changes and system updates, so each case needs to be closely examined to ensure the appropriate actions are taken.

**7. Does end of month processing affect the 04E on AEWs?**

The Office of Financial Management (OFM) Fiscal System Staff presented system updates on the April 2023 National Agent and Attorney Fee Coordinator Call. A known issue is being addressed where attorney fees entered in VBMS on awards authorized during the last two business days of the month (the "End of Month" period or EOM) would fail to offset the retroactive payment. This is because payments authorized during EOM are future dated for the first business day of the following month for accounting purposes. As of this update, the attorney fees will be similarly future dated, so they offset properly. Therefore, there should be no impacts on any transactions after the implementation of the eMPWR update. If there are any instances of processing errors due to end of month processing after April 2023, please report it to OFM.

**8. What happens if the AEW has NOT been released at the time the AAFC needs to release fees to the attorney and process a 06A transaction thus clearing the pending EP 400? Is the AAFC still responsible to track and confirm the AEW is used to pay these fees or do we NOT process a 06A transaction until AFTER the AEW has been process.**

The original AAFC is not responsible for ensuring the BEST AAFC processed the 04E transaction if the AEW generates AFTER the payment of the fees via 06A. However, if the AEW generated PRIOR to the release of fees, then the original AAFC must ensure the 04E transaction was processed.

# Verification of Payment Address

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), and Quality Review Team Management, SSD staff

**Presenter:** Adelle Degan, Management and Program Analyst, OAR

**References:**

* M24-1 Chapter 3 6.02.f.2, *Financial Procedures for Attorney Fee*

AAFCs must check the Office of General Counsel (OGC) website to verify the current address. It is imperative to include the current firm/agency and address as shown on the OGC website on the fee release memorandum.

Please follow the OGC address for the release memorandum unless the agent/attorney has been formally contacted (with an uploaded VA Form 27-0820) verifying the change. AAFCs must report the discrepancy to OAR by e-mailing the AFC corporate mailbox.

When an Attorney Fee Release Memo is received, the Financial Administrative Specialist (FAS) must obtain the attorney’s bank routing number and account information from OFM’s [Attorney Fee Vendor Information SharePoint site](https://dvagov.sharepoint.com/%3Ax%3A/r/sites/VBAORMFiscalSystems241D/AttorneyFeeVendor/_layouts/15/Doc.aspx?sourcedoc=%7B9E4F9506-49B1-4143-92A2-4165162E76DD%7D&file=Attorney%20Fee%20Vendor%20Info.xlsx&action=default&mobileredirect=true&DefaultItemOpen=1).

If the Attorney/Agent information is not available on SharePoint, or you find a discrepancy, open a FIRE ticket so OFM can verify the attorney’s vendor information and update SharePoint appropriately.

If the attorney is not vendorized, contact the attorney and advise them to take the necessary actions to get vendorized with Financial Services Center (FSC) or update their EFT/banking information.

See [M24-1 Chapter 03 Part 06](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001057/content/554400000204941/M24-1-Chapter-03-All-Programs-Part-06-Attorney-Fee-NEW-PROCEDURES) attachment *FSC News Flash FY 2022, Issue 27* for instructions on vendorizing, which you should provide to the attorney to vendorize themselves through the FSC Customer Engagement Portal.

**DO NOT** issue a **check** to the attorney unless a waiver has been granted and is noted on the Attorney Fee Vendor Information SharePoint site.

[Title 31 of the Code of Federal Regulations (C.F.R), Section 208.3](https://www.ecfr.gov/current/title-31/subtitle-B/chapter-II/subchapter-A/part-208/section-208.3) requires that all Federal payments made by an agency shall be made by electronic funds transfer (EFT).  Also, In accordance with [31 C.F.R. Section 206.4](https://www.ecfr.gov/current/title-31/subtitle-B/chapter-II/subchapter-A/part-208/section-208.4) and [VA Financial Policy, Volume VII, Chapter 2, Section 020501, Paragraph A](https://www.va.gov/finance/docs/VA-FinancialPolicyVolumeVIIIChapter02.pdf), VA will, when cost-effective, practicable and consistent with current statutory authority, use EFT as the primary disbursement mechanism.

These regulations and VA policy apply to all attorney fee disbursements; therefore, VBA will make efforts to enforce compliance with the EFT mandate.  If an agent or attorney refuses to comply, the Support Services Division (SSD) Finance will submit a FIRE General Operations Mailbox Inquiry via the OFM Salesforce notifying OFM of the agent or attorney’s refusal to comply with the EFT mandate. OFM will refer the agent or attorney’s case to OGC for further action.

# Question and Answer – Verification of Payment Address

**1. If the attorney is not vendorized, who should be contacting the attorney?**

Finance will contact the attorney to provide instruction on vendorization with FSC.

**2. What is the 08E transaction, and what impact would it have on the 04E?**

The 08E transaction decreases a receivable. It would impact the 04E if both are done for the same receivable.

**3. And what happens if the award is not authorized within 48 hours of the award being authorized?**

If the 04E is completed by finance, but the award is not authorized within 48 hours, the debt will be sent to the Debt Management Center (DMC) who will proceed with collection activity.

# Training Announcement

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), and Quality Review Team Management

**Presenter:** Suzi Ribish, Management and Program Analyst, OAR

**New Training Courses Released**

OAR released a new AAFC training course on July 3, 2023.

Course Title: Validity of Agent and Attorney Fees (VA 4645389).

Course Description: This course provides the learner with comprehension of VA requirements in accepting an Agent and Attorney fee agreement as valid.

Course Objectives: Upon completion of this lesson, the employee should be able to:

* Evaluate Agent or Attorney power of attorney appointment.
* Identify missing regulatory and statutory requirements on a fee agreement.
* Determine systems updates and required development actions following the validity determination.

The required completion date for this training is August 2, 2023.

**Previously Released Training Courses**

August 2022:

* Overview of Agent Attorney Fee Awards and eMPWR Functionality (VA 4629273)
* Automated Agent and Attorney Processing Overview (VA 4632973)
* Agent and Attorney Fee Overview (VA 4633627)

October 2022:

* Releasing Agent and Attorney Fees (VA 4635197)
* Calculating Agent and Attorney Fees (VA 4635201)

April 2023:

* Processing Agent and Attorney Fees with Proposal of Incompetency (VA 4641408)
* Historical Processing Agent and Attorney Fees with Proposal of Incompetency (VA 4641403)

**Upcoming Training Course Topics**

* Agent and Attorney Fee Notification Requirements
* Failure to Withhold Agent and Attorney Fees
* Appeals and Reasonableness Reviews

We are aware that there are other topics that require additional instruction. We are working with the necessary parties to clarify procedures. Training materials and manual updates will continue to be released as we receive clarification.

# Question and Answer Highlights

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), and Quality Review Team Management

**Presenter:** Lisa Troen, Management and Program Analyst, OAR

**Question #1 (**from the May call and bulletin) Do we invalidate the fee agreement when it indicates a VA *withholding* of 20% but does not clearly indicate that the VA will *pay* that 20% directly to the attorney?

Answer:There is no specific verbiage required for this statutory criterion. If the intent is clear and the fee agreement infers payment based on the requirement for VA to withhold, this would meet the threshold for a direct pay agreement.



This is an actual example that was received by OAR in the AFC mailbox. The verbiage in the agreement that states “client directs that DVA withhold 20% of past due benefits payable to the veteran, for attorney fees. Client acknowledges that client is personally responsible for payment of 20% of past due benefits into attorneys trust account in the even the secretary of VA or any of his agencies or agents pays such attorney fees directly to the client.”

While this does not use the word “pay” or “payment,” the intent is clear**.** Ideally the agreement would state in plain language that VA pays, and most do --- however, when we can reasonably infer this based upon intent, this would adequately comply with the regulation and is sufficient to determine that VA is to pay the attorney.

**Question #2** (from the May call) If a fee agreement was received that outlines specific issues in the agreement (for example the scope and duties might specify service connection for PTSD or increased evaluation for knee condition) that were previously resolved and new appellate issues are subsequently received outside of those specifications, are fees potentially payable? Would we need to request a new fee agreement from the attorney/agent?

Answer: If the fee agreement of record is limited, it would only pertain to the issues identified.  If new issues are being promulgated that are not within scope of the fee agreement of record, then fees are not potentially allowable or entitled.  It is not necessary to request a new fee agreement when issues outside the scope are pursued.

**Question #3** (from the June bulletin) Who makes the decision to deny the fees, we do as AAFC’s?

Answer:Per M21-5, 8.B.3.b, The AAFC at the station that processes the represented claimant’s award of past-due benefits is responsible for determining eligibility to direct payment of fees and generating and sending decision notice. Specifically, the authorizing AAFC is responsible for determining whether fees are payable and creating the fee decision notice.

**Question #4** (from May bulletin) In fee agreements which state that in the event VA does not withhold fees, the Veteran shall pay the attorney directly, do we initiate missed fee recoupment procedures or let the Veteran settle?

Answer: If a valid direct pay fee agreement is of record and VA failed to process the deduction of agent/attorney fees, the failure to process steps outlined in M21-5, 8.B.6 would need to be followed. During the 65-day appeal period, the agent/attorney and/or Veteran/claimant would have the opportunity to notify us that the matter was handled directly.

**Question #5** (from June bulletin) Why would we issue a fee eligibility decision if no money is going out? *(Directed towards a poll question resulting in the no change in combined evaluation summary of the case)*

Answer: A "no change in combined evaluation" summary of the case should be issued when a rating decision granted a benefit (compensable or not). While the overall combined evaluation did not change (thus resulting in a $0 award), we issue a decision in these cases because a benefit was granted on a qualifying review.

**Question #6** (from June bulletin) If the 21-22a or any communication such as a 27-0820 differs from the OGC address or agency/firm, then which address we use? Should we use the address from that recent communication and then email OGC to update their system?

Answer: Per M21-1, claims processors that identify a discrepancy between the private attorney/agent mailing address applied by a VA system (or simply identifies a discrepancy based on correspondence) and the representative’s mailing address found on the OGC Accreditation Search must report the discrepancy to the Office of Administrative Review by e-mailing the VAVBAWAS/CO/AFC corporate mailbox to report the discrepancy.

Please follow the OGC address for outgoing communication unless the agent/attorney has been formally contacted (with an uploaded VA Form 27-0820) verifying the change. The AAFC should clearly indicate the address found on the OGC website and the representative verified the alternate address.

# Question and Answer – Question and Answer Highlights

**1. Most fee agreements specify that if VA fails to withhold the fee, the claimant is responsible for payment. However, our procedures do not speak to this. Our procedures instruct us to issue due process to create a debt. Is there any consideration that a fee decision letter will be created that states the amount of fee owed to agent/attorney; but if the claimant fails to pay the agent/attorney within the time specified in the fee agreement, then VA will initiate debt procedure?**

If we have a valid fee agreement of record, we are to initiate failure to withhold procedures if the deduction was not processed. If, after the 65 days, we are notified that the money was paid directly, the funds will be released to the claimant.

**2. When we receive a 21-22a with a valid fee agreement, and the Veteran and Attorney signed and dated not just in blocks 22A and 24A but also signed and dated in blocks 16A and 17A inferring no compensation would be charged, do we invalidate the fee agreement, or do we process regardless of these additional blocks being completed?**

If, under 15B, "Agent" or "Attorney" is marked; yet 16A and 17A are completed/signed, then the "type" of representation would not be clear. If VA is unable to reasonably identify the type of representation, then per M21-1, I.i.2.C.1.e. the form would not be considered complete; therefore, subsequently invalidating the associated fee agreement. //// If, however, they do mark "Individual Providing Representation Under Section 14.630" in 15B and sign and complete 16A/17A, then the fee agreement would need to be invalidated based on the type/basis of the representation.

**3. Regarding Question 4, and M21-5 8.B.6.c, *Corrective Action for Failure to Make Funds Available for Payment of Fees when the Award did not Result in a Retroactive Payment:* Will there be a future training? I think the EP 400 needs to be the tracking EP throughout the process in conjunction with the EP 600. Only because you have 2 transactions happening at the same time, AF decision and debt to Vet.**

As stated during the Training Announcement topic, OAR will be releasing training on failure to withhold in the future. Regarding the EP statement in the question, OAR has determined that only the EP 600 is needed in this scenario, and steps for tracking are outlined in the M21-5.