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# 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

OAR released a new AAFC training course on November 13, 2023.

**Course Title**: [Agent and Attorney Fee Notification Requirements (VA 4650850)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4650850)

**Course Description**: This course teaches learners to recognize when an agent/attorney fee decision is required and to generate the appropriate decision notice.

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

* Discuss when to complete a fee decision.
* Identify the correct letter type.
* Generate the Summary of Case fee decision notice.

**The required completion date for this training is December 12, 2023.**

OAR has previously released the below AAFC courses which are available in TMS for review:

* [Overview of Agent Attorney Fee Awards and eMPWR Functionality (VA 4629273)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4629273)
* [Automated Agent and Attorney Processing Overview (VA 4632973)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4629273)
* [Agent and Attorney Fee Overview (VA 4633627)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4629273)
* [Releasing Agent and Attorney Fees (VA 4635197)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4629273)
* [Calculating Agent and Attorney Fees (VA 4635201)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4629273)
* [Processing Agent and Attorney Fees with Proposal of Incompetency (VA 4641408)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4629273)
* [Historical Processing Agent and Attorney Fees with Proposal of Incompetency (VA 4641403)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4629273)

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

# Assessment Fee Reminder

**Target Audience:** AAFCs, AAFC Management, AQRSs, and QRT Management

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

**References:**

* [M21-5 8.B.2.b, *VBMS-A Agent/Attorney Fee Calculator Overrides*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#2)
* [M21-5 8.B.3.e, *Calculating Agent or Attorney Assessments When Making the Fee Decision*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#3)
* [M21-5 8.B.4.d, *Releasing Funds When an Assessment Is Required*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#4)
* December 2022 National AAFC Call [Presentation](https://vbaw.vba.va.gov/OAR/docs/dec-22-aafc-call-presentation.pdf) and [Bulletin](https://vbaw.vba.va.gov/OAR/docs/dec-22-aafc-call-bulletin.pdf)
* May 2023 National AAFC Call [Presentation](https://vbaw.vba.va.gov/OAR/docs/may-2023-national-aafc-call-presentation.pdf) and [Bulletin](https://vbaw.vba.va.gov/OAR/docs/may-2023-national-aafc-call-bulletin-updated.pdf)

OAR has been notified that users are not including the assessment fee amount (if applicable) in the Agent/Attorney Fee field. This field is the only field that is being communicated to eMPWR. This field represents the full deduction.



The**Agent/Attorney Fee** field must include the VA Assessment amount. For example, the total fee amount including the VA assessment is $1,500. If the calculator override function is used, the AAFC must enter $1,500 in the Agent/Attorney Fee field. The amount entered in the agent/attorney fee field is the **total fee deduction** that will be taken from the award. If the AAFC enters $1,400, then only $1,400 will be deducted from the award. The AAFC will then have to issue due process to collect the assessment fee.

The “Calculate Through Date” is the date of the decision that benefits are being calculated through, it is not the following day. For example, the user will enter April 26, 2023, if fees are due based on rating decision dated April 26, 2023.

OAR has submitted an enhancement request to change the name of the field from “Agent/Attorney Fee” field to “Total Fee Including Assessment”.

**Scenario**: The Retroactive Amount for Fees is $132,877.01. The total fee amount is $26,575.40 including an assessment fee in the amount of $100.00.

**Question**: What amount does the AAFC enter in the Agent/Attorney Fee field?

**Answer:** $26,575.40. The AAFC must enter the total fee amount to include the VA assessment in the Agent/Attorney Fee field. The Agent/Attorney Fee field is the only data point transmitted to eMPWR for the fee deduction.

**When an Assessment Fee is Not Applicable**

An assessment fee is not charged in the following circumstances:

* Processing a claim based on the same rating that has already charged an assessment fee (e.g., dependency, AEW)
* Notice of disagreement was received on or before June 19, 2007,
* Fees withheld are released to the claimant.

AAFCs processing downstream dependency claims, must not collect an assessment fee even if the original assessment fee is less than $100.00.

# Systems Compliance Reminders

**Target Audience:** AAFCs, AAFC Management, AQRSs, and QRT Management

**Presenter:** Christina Brown, Management and Program Analyst, OAR

**References:**

* [M21-5, 8.B.1.a, *Process for Possible Direct Payment of Fees*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#1)
* [M21-5 8.A.2.d, *Using Flashes in Fee Cases*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205495/M21-5-Chapter-8-Section-A-Introduction-to-Fees#2)
* [M21-5 8.B.6.d, *Corrective Action for Failure to Make Funds Available*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#6)

OAR would like to provide AAFCs with the following reminders regarding systems compliance based on recent quality error trends.

* Upload award information screenshots (M21-5 8.B.1.a. Step 3)
* Review the VBMS file for accuracy of the corporate flash (M21-5, 8.B.1.a. and M21-5 8.A.2.d.)
* Review claim attributes and date of claim:
	+ EP290 date of the fee decision notice is generated (M21-5. 8.B.1.a.)
	+ EP400 date the decision notice is generated (M21-5. 8.B.1.a.) – except in cases for failure to make funds available (see M21-5 8.B.6.d.), and
	+ EP600 date the failure to make funds available was initiated (M21-5 8.B.6.).

# VBMS Letters Announcement

**Target Audience:** AAFCs, AAFC Management, AQRSs, and QRT Management

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

**References:**

* [Agent and Attorney Fee Notification Training in TMS (VA 4650850)](https://va-hcm03.ns2cloud.com/learning/user/catalogsearch/catalogSearchDispatchAction.do?searchType=filteredSearch&keywords=4650850)

The Office of Administrative Review alongside Product Optimization delivered several Agent/Attorney fee related letters to the VBMS Letters User Interface (UI). Many of these letters have been updated so that they reflect the most accurate VA policies. Agent and Attorney Fee coordinators should begin utilizing this new functionality for all available letters, which include:

* Invalid Fee Agreement
* OGC Reasonableness Referral Notice – which include both the Veteran and Attorney versions
* Attorney Not Acknowledged
* Debt to Veteran for Failure to Withhold Attorney Fee
* Attorney Revocation Letter which also includes both the Veteran and Attorney versions

This will allow claims processors to create and send letters directly from VBMS without having to use the outside letter creator application to generate and subsequently package manager to build the letter package and send.

Product Optimization is in the process of uploading these three additional letters in the VBMS UI, anticipating release by the end of the calendar year. The field can expect to see the following letters in that second release:

* Fee Recoupment Procedures – Final Notice to Veteran (Debt Established & No Debt Established versions)
* All Requirements Met – No Fees Withheld (Veteran & Attorney versions)
* No Direct Pay Fee Agreement was Filed SOC (Veteran & Attorney versions)

OAR’s intent is for these letters to help streamline the process for the field, but please continue to notify OAR via the Attorney Fee corporate mailbox of any gaps or errors claims processors may experience in this new functionality.

# Supplemental Claim Fee Eligibility Clarification

**Target Audience:** AAFCs, AAFC Management, AQRSs, and QRT Management

**Presenter:** Crystal Kappelman, Management and Program Analyst, OAR

**References:**

* [38 CFR §14.636(c), *Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans’ Appeals*](https://www.ecfr.gov/current/title-38/chapter-I/part-14/subject-group-ECFRe2d861683c66a39/section-14.636)
* [38 CFR §19.2(a), *Appellant’s election for review of a legacy appeal in the modernized system*](https://www.ecfr.gov/current/title-38/chapter-I/part-19/subpart-A/section-19.2)
* [38 U.S.C. §5104C, *Options following decision by agency of original jurisdiction*](https://www.govinfo.gov/content/pkg/USCODE-2021-title38/pdf/USCODE-2021-title38-partIV-chap51-subchapI-sec5104C.pdf)
* [M21-5 8. A.1.h, *Fees for Representation Involving Supplemental Claims*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205495/M21-5-Chapter-8-Section-A-Introduction-to-Fees#1)
* [*Military-Veterans Advocacy v. Secretary of Veterans Affairs, et al (MVA v. VA)*](http://cafc.uscourts.gov/sites/default/files/opinions-orders/19-1600.OPINION.7-30-2021_1811957.pdf)

OAR has received inquiries from field staff and attorneys regarding supplemental claim fee eligibility.

38 CFR §14.636(c) outlines when fees may be charged. When the Appeals Modernization Act became effective, (c)(1) and (c)(2) were broken out to distinguish between pre and post AMA procedures, with (c)(1) applicable after AMA and (c)(2) before. (c)(1), as written, requires that, for supplemental claims, it must be part of the earlier claim”, meaning within one year of the decision subject to review.

Attorneys and agents may charge fees for supplemental claim work after an initial decision is issued, *provided*, the initial decision was dated on or after 02/19/2019, the Appeals Modernization Act (AMA) effective date.

38 C.F.R. § 14.636(c)(1)(i) further requires that the supplemental claim must be “part of the earlier claim”, meaning, received within one year of the prior decision.

The MVA vs. VA court case, as described on the references slide, removed the one-year requirement. We will discuss the changes under MVA Vs. VA on the next slide.

**Changes under MVA vs. VA**

It is important to understand what did and did not change under MVA vs. VA. As mentioned on the previous slide, the court overturned the disparate treatment between supplemental claims received within one year of the decision subject to review, outlined at 38 USC 5104C(a), and those received more than one year after the decision subject to review, outlined at 38 USC 5104C(b). This is discussed in great detail within the MVA Vs. VA case linked on the reference page, specifically pp 38-49. Thus, this portion of 38 CFR §14.636(c)(1)(i) was invalidated.

However, the case DID NOT invalidate 38 CFR §14.636(c)(2)(i), which requires that, for initial decisions made prior to AMA, fees may only be charged with a valid Notice of Disagreement, which must have been received within one year of the decision subject to review. Thus, by the nature of this deadline, fee eligibility for pre-AMA decisions expired on 02/19/2020, one year after AMA was implemented.

**Summary of the Case**

When completing the summary of the case, use the “NOD/review filed when another law in effect” letter type in VBMS-A. Insert the following free text:

The notice of initial decision associated with this supplemental claim was not issued on or after the effective date of the modernized review system under 38 CFR §19.2(a) (February 19, 2019) and 38 CFR §14.636(c)(1)(i). The provisions of 38 CFR §14.646(c)(2)(i) apply.

**Scenario**: Rating decision dated 04/02/2014, with notification letter dated 04/04/2014, denied service connection for hearing loss. VA receives a supplemental claim 08/03/2022 with new & relevant evidence as well as a valid fee agreement/VAF 21-22a. Rating decision dated 11/05/2022, with notification letter dated 11/06/2022, grants s/c for hearing loss.

**Question**: Are attorney fees due?

**Answer:** No. The initial decision was prior to the AMA effective date, thus, 38 CFR §14.636(c)(2)(i) applies. Remember, even though the case is not eligible for fees, a Summary of the Case decision ***is*** required.

**Scenario**: Rating decision dated 04/02/2014, with notification letter dated 04/04/2014, denied s/c for hearing loss. VA receives a supplemental claim 08/03/2021 with new & relevant evidence as well as a valid fee agreement/VAF 21-22a. Rating decision dated 11/05/2021, with notification letter dated 11/06/2021, confirmed and continued the denial. VA receives another supplemental claim 12/03/2022, and this time service connection is granted in rating decision dated 01/03/2023 and notification letter dated 01/05/2023.

**Question**: Are attorney fees due?

**Answer:** Yes. The initial decision was after the AMA effective date, thus, 38 CFR §14.636(c)(1)(i), as modified by MVA Vs. VA applies. Initial decision is the decision subject to review. Even if the issue was denied multiple times since 2010, fees are eligible if the supplemental claim is based on a decision rendered after AMA, for instance, a confirmed and continued denial.