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# OGC Follow-up Date

**References:**

* [M21-5, 8.B.5.h., *Reasonableness Referral Follow-Up*](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)

OGC has reported that they are working reasonableness reviews that were referred (or filed) **on or after January 1, 2022**. Follow-ups should only be performed on cases where you identify that the reasonableness request was referred to OGC PRIOR TO this date.

# Subsequent Accrued Processing

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

**Presenter:** Aaron Kittel, Lead Financial Systems Analyst, OFM

Initial accrued award fee deductions can be processed within VBMS-A.

Subsequent accrued awards can be processed in VBMS-A when the first award was authorized ***after May 25, 2016***.

If the first award was authorized on or before May 25, 2016, the fee deduction cannot be entered into VBMS-A or sent to finance for the manual fee deduction transaction. The fee transaction will not work. Please follow instructions below.

Please, do not utilize VBMS-A to enter a fee deduction for subsequent accrued awards **if the first award was done on or before May 25, 2016**. Additionally, users should not send finance a request to process the fee deduction manually (18/31J).

To process fee payments for subsequent accrued awards, please follow the steps listed below:

* Only enter 80% due to the claimant into VBMS-A.
* Generate and authorize the award.
* After the 65-day appeal period, pay the agent/attorney fee 20% with an 06A transaction.

Alternatively, stations previously utilizing the Agent Cashier method may resume this process.

# Agent and Attorney Fee Transactions

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

**Presenter:** Eric Colinarez, Management and Program Analyst, OAR

**References:**

* [M21-5 8.B.2.a., *When to Request Finance Transactions or Use Award Actions 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)

**Fee Deduction Processing**

* Transactions completed by SSD
  + Decisions involving Month of Death (MOD), Burials, and awards with current or terminated apportionments.
* Transactions completed in VBMS-A
  + All decisions not listed above (Dependency and Indemnity Compensation (DIC)/Death Pension/Accrued, etc.).

**VBMS-A Automated Fee Calculator Exceptions**

* The VBMS-A Automated Fee Calculator cannot be utilized for awards involving the following:
  + entry of priors
  + utilization of the generate award override (GAO) function
  + use of pension protected rates, and
  + unprocessed Cost of Living Adjustment (COLA) adjustments
* The Calculator Override box must be selected to input the correct fee deduction amount in the cases listed above, and during other scenarios that would prohibit the automated calculation.

**Transactions**

**06J1**

* Funds were made available from the VBMS-A award net effect or the automatic 06J6 transaction.
  + Fee deduction established by AAFC input into VBMS-A or 18/31J finance action.
* Used to pay the agent/attorney or can be used to return funds to the claimant.

**06J5 (VA assessment now included in 06J1)**

* Formerly 06J3 standalone transaction but now within 06J1.
* Funds were made available from the VBMS-A award net effect or the automatic 06J6 transaction.
  + Fee deduction established by AAFC input into VBMS-A or 18/31J finance action.
* Used to send the assessment fee that VA collects for processing fees to the appropriate fund.

**06J3**

* Used to send funds to appropriations.

**06J6**

* Automatic transaction.
* Funds pulled from appropriations after award authorization (overnight processing) and deposited into the accountable balance.
* Funds did not come from the VBMS-A award net effect.

**06A**

* Manual transaction.
* Funds pulled from appropriations at the time of payment processing.
* Funds did not come from the VBMS-A award net effect.
* Used to pay the agent/attorney including the assessment fee.

**06J7**

* Formerly 06B.
* Creates a debt on the claimant and simultaneously pays the fee.

**04E**

* Creates a debt.
* Establishes a collectible receivable.

**04E (AEW processing)**

* Creates a debt.
* Establishes a collectible receivable.
* Award must be authorized within 48 hours.
* Sends fund to appropriations NOT the eMPWR accountable balance.

# Question and Answer – Agent and Attorney Fee Transactions

**1. Question** - It was indicated that VBMS-A automated fee calculator cannot be utilized for awards involving 'entry of priors'. Please clarify 'entry of priors'

Answer – Essentially, the priors award payment screen in VBMS-A allows users to teach the award system what happened prior to what the system has of record. If you are not familiar with the use of this function, then please seek the guidance from quality personnel or a Senior Veteran Service Representative trained to use the function.

Priors screen functionality allows users:

* To add award lines prior to the first converted award line (Type 3 case processing).
* To override prior converted award lines, or prior award lines established by normal Awards processing.
* To adjust the Veteran’s award in situations where VA granted a waiver and now VA is granting a retroactive increase into the period in which the waiver was granted.
* To adjust the Veteran’s record to reflect when an out-of-system payment was made.

Please see the [VBMS-A user guide](https://www.vbms.vba.va.gov/vbms-a/help/index.htm#t=prior_payments%2Faward_priors.htm) and the [*Priors Award Payments Screen*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179491/M21-1-Part-VI-Subpart-ii-Chapter-4-Section-E-Processing-Audit-Error-Worksheets-AEWs?query=priors) document referenced in M21-1 VI.ii.4.E.1.g.

# Agent and Attorney Fee Memorandums

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

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

**References:**

* [Agent and Attorney Fees Resources Site](https://vbaw.vba.va.gov/OAR/attorney-fees.asp)
* [Office of General Counsel Accreditation Search](https://www.va.gov/ogc/apps/accreditation/index.asp)

**Fee Release Reminders**

* Review Office of General Counsel Accreditation Website
* AAFC digital signature is no longer required.
* Provide additional instructions when needed.

**Fee Release Memorandum Update**

Several updates were made to the Fee Release Memorandum including the addition of the Power of Attorney (POA) code, clarification of the continued use of the 06A transaction, addition of a debt only field, and the addition of a legacy release field. Please utilize the OAR [Agent and Attorney Fees Resources Site](https://vbaw.vba.va.gov/OAR/attorney-fees.asp) to obtain the most recent version of the memorandum.

**Release Actions**

**Complete fee withheld**

* No offsets, therefore net effect covers entire fee
* Even after offsets, the net effect covers entire fee
* Net effect was less than the fee, but the award was authorized after the automated 06J6 *Rosinski v. Wilkie* transfer release date (December 22, 2023)
* Applicable awards authorized prior to December 22, 2023
* **All awards authorized on or after December 22, 2023, regardless if the net effect covered the fee**
* Finance transaction: 06J1

**Partial fee withheld**

* After offsets, net effect covers a portion of the fee
* Applicable awards authorized prior to December 22, 2023
* May be applicable to awards authorized after December 22, 2023
* Finance transactions: 06J1, 06A

**No fee withheld**

* After offsets, net effect does not cover any of the fee
* Applicable awards authorized prior to December 22, 2023
* May be applicable to awards authorized after December 22, 2023. For example, see stage 5 of 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.
* Finance transaction: 06A

**Failed to make funds available for payment of fees**

* Utilize when fees are not made available at the time of award processing. This selection will both create a debt on the claimant and make the payment of the fee.
* Applicable to all awards that require this action regardless of award authorization date
* Finance transactions: 06J7 (creates debt and sends funds for fee to the accountable balance), 06J1 (funds made available via the 06J7)

**Release to claimant**

* Utilize when fees were deducted and need to be released to the claimant
* Add explanation to additional instructions
* Applicable to all awards regardless of award authorization date
* Finance transaction: 06J1

**Create debt on claimant only**

* Fees previously paid
* Add reason to additional instructions
* Applicable to all awards regardless of award authorization date
* Finance transaction: 04E

**Funds for release to the agent/attorney available in CAATS**

* Utilize for awards authorized in the legacy system prior to eMPWR
* Funds are available in the station’s suspense account
* Applicable to awards authorized prior to July 10, 2022
* May be applicable to awards authorized after July 10, 2022. For example, accrued processing using the agent cashier method.
* Finance transactions: CAATS ZS, Miscellaneous Transfer Form

**Additional Instructions**

* Utilize to explain the release of fees to the claimant and for any circumstance not covered within the previous selections
* Applicable to all awards regardless of award authorization date

**Fee Deduction Memorandum**

OAR published a new standard fee deduction memorandum to cover fee cases that require finance to establish the deduction.

The memorandum also includes the 04E transaction require when VA funds were used or will be used to pay the fee. Please utilize the OAR [Agent and Attorney Fees Resources Site](https://vbaw.vba.va.gov/OAR/attorney-fees.asp) to obtain the new memorandum.

# Question and Answer – Agent and Attorney Fee Memorandums

**1. Question - Where can the new release memorandums be found?**

Answer - Both the Fee Release Memorandum and the Fee Deduction Memorandum can be found on the OAR [Agent and Attorney Fees Resources Site](https://vbaw.vba.va.gov/OAR/attorney-fees.asp).

**2. Question - What are the two new memorandums and what are they used for?**

Answer – The Fee Deduction Memorandums is the only new memorandum. However, the existing Fee Release Memorandum was updated. The Fee Release Memorandum will be used when a fee release is being requested. The Fee Deduction Memorandum will only be sent to SSD to establish a fee deduction when VBMS-A cannot be utilized.

**3. Question - If there is an accrued award and MOD award, can we put the entire atty fee under the accrued adjustment?**

Answer – OAR personnel are aware of AAFCs including the MOD fee with the accrued award adjustment to maximize efficiency. However, OAR is only providing guidance on how to complete the fee deduction for various award types.

# Review Questions

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

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

**References:**

* [M21-5 8.B.2.j, *Handling Cases Involving an Existing Debt Against the United States Government*](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)
* [VAOPGCPREC 12-93,](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000043484/VAOPGCPREC-12-93-Dec-21-1993-Payment-of-Attorney-Fees-from-Past-due-Benefits-when-Veterans-Indebtedness-to-the-US-Exceeds-Total-Amount-of-Past-due-Benefits) Payment of Attorney Fees from Past-due Benefits when Veteran's Indebtedness to the U.S. Exceeds Total Amount of Past-due Benefits
* [M21-5 8.B.6.a, *When to Consider Action for Failure to Make Funds Available for 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)
* [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*](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)
* [eMPWR Job Aids](https://empwr.va.gov/help/)
* [M24-1 Chapter 03 All Programs Part 06 Attorney Fee (NEW PROCEDURES) Section 6.01 (j)](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)

**Poll 1 Question:** Fees were entered into VBMS-A and withheld successfully.

True or False. If the net effect (after entering any applicable offsets) is greater than the fee, then the fee will be paid using “award funds”.

**Poll 1 Answer:** True

**Poll 1 Explanation:**

Net Effect Covers Fee

* Funds from the award are used to pay the fee.
* Upon authorization, a portion of the past-due benefits is deducted and sent to the eMPWR accountable balance.

**Poll 2 Question:** VA funds were used to pay the fee; however, finance was able to utilize the 06J1 transaction. The 06J1 transaction is utilized when funds are available in the eMPWR accountable balance. Which circumstance below would allow for this scenario to be true?

**Poll 2 Answer:** Award was authorized on January 1, 2024, and all past-due benefits were withheld for military retired pay.

**Poll 2 Explanation:**

Net Effect $0.00 (or any amount less than the fee)

* VA funds are used to pay the agent/attorney fee
  + Prior to December 22, 2023, finance utilized the 06A transaction to pay fees that were not covered by the net effect.
  + On/after December 22, 2023, the finance transaction 06J6 runs in the background to bring funds to the eMPWR accountable balance to cover the fee that is not covered by the net effect.
* If the withheld award funds are subsequently released, then VA funds used to pay fee must be recouped.

**Poll 3 Question:** Fees were processed correctly and timely. Mr. John was granted VA benefits during a higher-level review of his claim, but separation pay withholdings reduced the net effect to $0.00. The award was authorized on January 1, 2023, prior to the automated 06J6 transaction. Separation pay withholdings are still reflected in the system. Should the AAFC complete the “No fee withheld” section of the release memo instructing finance to pay fees using the 06A or the “Failed to make funds available for payment of fees” section instructing finance to process the 06J7 transaction?

**Poll 3 Answer:** “No fee withheld” (06A) section should be completed.

**Poll 4 Question:** Fees were not addressed at the time of the award processing. The attorney contacts VA for a missed fee payment. Mr. John was granted VA benefits during a higher-level review of his claim, but separation pay withholdings reduced the net effect to $0.00. Separation pay withholdings are still reflected in the system. The AAFC follows the procedures outlined in 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. Should the AAFC complete the “No fee withheld” section of the release memo instructing finance to pay fees using the 06A or the “Failed to make funds available for payment of fees” section instructing finance to process the 06J7 transaction?

**Poll 4 Answer:** “No fee withheld” (06A) section should be completed.

\*\*\*The use of the 06A transaction may be warranted in limited scenarios for cases authorized after December 22, 2023. Please explain the use of the 06A transaction in the additional instructions section.

**Poll 3 and 4 Explanation:**

If the funds for that award are still withheld in the VBMS-A system, a debt cannot be created to recoup the agent/attorney fee. For example, separation pay is withheld and is never released. The agent/attorney will be paid from VA funds and a debt should not be created.

If a future award releases the withheld benefits, then the AAFC must instruct finance to recoup the fee amount previously paid out of VA funds when processing that award (ex. Audit Error Worksheet).

M24-1 Chapter 03 All Programs Part 06 Attorney Fee (NEW PROCEDURES) (va.gov) Section 6.01, e.

Please note that VA has no authority to establish a debt against the Veteran to recoup any attorney fee nor offset any future benefit to recoup when the past due benefit is insufficient to offset military retirement pay, incarceration, survivor benefit plan payment, etc. and /or overpayment. However, this does not apply to administrative errors when VA failed to properly withhold the attorney fee and/or erroneously released the attorney fee portion to the Veteran/beneficiary claimant. For example, when the 18/31J or the Veterans Benefits Management System – Awards (VBMS-A) fails to withhold the attorney fee properly, or Finance Activity fails to process an 18/31J (on an accrued award) before the past due benefit is released, or when part of the “retroactive” award is for a “current” period then a debt (06J7) will be established against the Veteran to recoup the attorney fee.

The procedure for creating a debt is separate from the procedure to process fees when there is an existing debt.

Fee Cases Involving Existing Debt Procedures

* Fee entitlement is calculated based on gross rates available on the draft award and the award information screen.
* The existence of the debt impacts the **direct payment** of fees by VBA to the agent/attorney.
* AAFCs should still enter the entire fee into VBMS-A.
* Do not use VA Funds (06A)
  + 06J6 will not trigger

In VAOPGCPREC 12-93 Payment of Attorney Fees from Past-due Benefits when Veteran's Indebtedness to the U.S. Exceeds Total Amount of Past-due Benefits, the Office of General Counsel concluded that the **direct payment** of fees under section 38 U.S.C. § 5904(d) would be based on the amount available after the indebtedness was satisfied.

AAFCs will need to review the award information screen to determine if there is an existing debt against the United States Government. The award information screen can be located within VBMS and Share. Any existing debt will be found in the receivables field.

Please note that the *Rosinski* holding does not impact these cases.