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# OGC Follow-up date

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

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

**References:**

* [M21-5, 8.B.5h.,](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#5:~:text=8.B.5.h.%20Reasonableness%20Referral%20Follow%2DUp) – Reasonable Referral Follow-up

The Office of General Counsel (OGC) reported misuse of the current follow-up procedures, citing several offices with a cadence of weekly follow-ups for any given case. This frequency is not directed in the manual (or internally by OAR) and ultimately leads to further delay in processing. Based on discussion with OGC and consideration of their procedures to work the earliest referrals first, new follow-up guidance has been implemented/published in the M21-5.

OGC decides reasonableness reviews based upon the date that VBA refers the case to OGC (or when the reasonableness review request is received from the claimant). As such, AAFC’s should refrain from sending follow-up requests to OGC unless the referral date is prior to the date published in the monthly Agent and Attorney Fee Call Bulletin (provided monthly by OGC).

If an AAFC receives a case based on expiration of the initial 60-day suspense period that is pending with OGC, they should ensure that the case was properly referred to OGC and update the suspense for another 60 days without follow-up when the referral date is after the date published in the monthly Agent and Attorney Fee Call Bulletin.

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.

# System Compliance Reminder

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

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

**References:**

* [M21-5, 8.A.2.d.,](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205495/M21-5-Chapter-8-Section-A-Introduction-to-Fees#:~:text=8.A.2.d.%C2%A0%20Using%20Flashes%20in%20Fee%20Cases) Using Flashes in Fee Cases
* [M21-5, 8.B.1.a.,](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#:~:text=8.B.1.a.%C2%A0%20Process%20for%20Possible%20Direct%20Payment%20of%20Fees) Process for Possible Direct Payment of Fees
* [M21-5, 8.B.6.d.,](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#6:~:text=8.B.6.d.%C2%A0%20Corrective%20Action%20for%20Failure%20to%20Make%20Funds%20Available%20for%20Payment%20of%20Fees%20when%20a%20Retroactive%20Payment%20of%20Past%2DDue%20Benefits%20has%20been%20Released) Corrective Action for Failure to Make Funds Available for Payments of Fees when a Retroactive Payment of Past-Due Benefits has been released

**System Compliance Reminders**

* Upload award information screenshots (M21-5 8.B.1.a Step 3)
* Review the VBMS file for accuracy of the corporate flash (M-21-5, 8.B.1.a and M-21-5, 8.A.2.d.)
* Review claim attributes and date of claim:
* EP290 date of the fee decision notice was generated (M21-5, 8.B.1.a.)
* EP400 date the decision notice is generated (M-21-5, 8.B.1.a) – except in cases for failure to make funds available (see M-21-5, 8.B.6.d) and
* EP600 date the failure to make funds available was initiated (M21-5, 8.B.6)

# Question and Answer – System Compliance Reminder

**1. Question:** Should the date of claim (DOC) of the EP400 be the same date that the SOC was sent?

Answer - No. M-21-5, 8.B.1.a. Process for Possible Direct Payment of Fees. Stage 3, states that an EP400 date of claim will be the date the decision notice is generated - except in case for failure to make funds available (see M21-5, 8.B.6.d.).

Please note that the Authorizing AAFC should be the individual who is completing the fee decision and thus should also be the person to complete the EP290 one-time PCLR and the establishment of the EP400.

This has been accounted for within the M21-5 using the specific verbiage shown above. Both dates of claim reference using the date that the fee decision is ***generated,*** not when it is finally adjudicated or authorized, which allows for the correct personnel to still complete and get credit for the fee decision notice.

OAR also recently published a manual update to Section B on M21-5, noting that the “Attorney Fee” tracked item associated with the EP 400 appeal period can and should be manually updated to reflect 65 days from the date on the fee decision.  Using the date that automatically generates on the fee decision notice (rather than 65 days from *today)*, whether that is tomorrow or next Monday if completing on a Friday will allow for immediate action once the suspense expires.

Lastly, just a few reminders for concurring personnel: the Accept/Reject banner will be prompted for that employee, so it is imperative that they are aware of their part in the process. We have had several notifications of letters not finalizing based on incorrect rejections.  The final update of the tracked item to reflect 65 days from the date of the fee decision will also be the responsibility of the concurring personnel in those cases as the concur may not happen on the same day as the authorization.

# VBMS-A Calculator Overrides

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

**Presenter:** Joseph White, Management & Program, OAR

**References:**

* [M21-5, 8.B.1.a.,](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#:~:text=8.B.1.a.%C2%A0%20Process%20for%20Possible%20Direct%20Payment%20of%20Fees) Process for Possible Direct Payment of Fees
* [M21-5, 8.B.2.b.,](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#2:~:text=8.B.2.b.%C2%A0%20%C2%A0VBMS%2DA%20Agent/Attorney%20Fee%20Calculator%20Overrides) VBMS-A Agent/Attorney Fee Calculator Overrides
* [February 2024 National AAFC Call Bulletin](https://vbaw.vba.va.gov/OAR/docs/february2024-oar-aafc-call-bulletin.pdf)
* [July 2024 National AAFC Call Bulletin](https://vbaw.vba.va.gov/OAR/docs/july-2024-national-aafc-cal-bulletin-final-508.pdf)

The Automated Fee Calculator functionality was released in VBMS-A on April 23, 2023, with the intention of increasing the efficiency of the attorney fee process. Use of the manual agent/attorney fee calculator has been required since the release of the automated calculator. OAR wishes to rescind the requirement to complete the manual agent/attorney fee calculator but must verify the efficacy of the automated calculator first.

**Common Reasons for Calculator Override**

* The VBMS-A Automated Fee Calculator cannot correctly calculate fees for awards involving any of the following:
* the entry of priors,
* use of the generate award override (GAO),
* use of pension protected rates, or

 unprocessed Cost of Living Adjustment (COLA) adjustments.

* In any case listed above, users must:
* complete the manual Agent/Attorney fee calculator, and
* Select the "Calculator Override" box to input the correct fee deduction amount.

**Denials without Deductions Calculator Override**

* Drafting a Summary of the Case fee decision letter which denies fees and no deduction is required.
* No NOD/Review, Direct Payment Denied (Non-Original Claim)
* NOD/Review Filed When Another Law in Effect
* To draft the letter in VBMS-A without a deduction, users must select the "Calculator Override" box and input zeros in the *Total Fee Including Assessment* and *Assessment Fee Amount* fields.
	+ - *The Retroactive Amount for Fees* box should not be changed if it matches the manual calculator.
* Remember that a deduction is required if there is a grant of individual unemployability or clear and unmistakable error as explained in M21-5, 8.B.2.a

**Discrepancy Greater than ¢1 Calculator Override**

* If there is a discrepancy ***greater than one cent*** between the attorney fee amount in the VBMS-A Automated Fee Calculator and the manual Agent/Attorney Fee Calculator.
* Double check your manual calculator and ask an authorizer to review it.

**When not to use the Calculator Override**

* If there is a discrepancy of ***exactly*** one cent between the attorney fee amount in the VBMS-A Automated Fee Calculator and the manual Agent/Attorney Fee Calculator.
* In any instance that attorney fees should be withheld upfront and not deducted in VBMS-A, such as:
* Month of death awards,
* Burial awards, and
* Cases involving current or historical apportionments.

**Actions Requested**

* OAR will be performing an audit of claims that used to calculator override to determine if we can cease the requirement to use the manual calculator on every claim.
* Any time a Calculator Override is used please include a brief note on the Award Print explaining why it was required.
* “Fee overrides due to COLA adjustment.”
* “Calc override to not withhold fees.”
* “Calculator discrepancy, override used.”

If the Calculator Override is used due to a discrepancy greater than one cent between the automated and manual calculator, please inform the OAR Agent/Attorney Fee mailbox at AFC.VBACO@va.gov. Please ***only*** send emails for a claim with a discrepancy greater than one cent.

# Question and Answer – VBMS-A Calculator Overrides

**1. Question** - Is OAR aware of the 'Object Error' issue with the attorney fees generation in VBMS-A. Do we submit a ticket or are we to use the override?

Answer - OAR is aware of the 'Object Error' issue which sometimes occurs when users attempt to enter attorney fees. Please continue to submit IT tickets when the error occurs and inform OAR via email. Submitting the IT tickets will demonstrate the breath of the issue and ensure that a fix is developed. Utilizing the override function without submitting IT tickets may result in IT issues not being resolved.

**2. Question -** Can you confirm that we can use the calculator override (entering all zeroes) to not withhold fees?

Answer - Users may draft the *No NOD/Review, Direct Payment Denied (Non-Original Claim)* and *NOD/Review Filed When Another Law in Effect* letters in VBMS-A without a deduction, but they must select the “Calculator Override” box and input zeros in the *Total Fee Including Assessment* and *Assessment Fee Amount* fields. The *Retroactive Amount for Fees* box should not be changed if it matches the manual calculator.

However, the Office of Administrative review continues to recommend utilizing Letter Creator when a No NOD/Review, Direct Payment Denied or NOD/Review Filed When Another Law in Effect letter must be sent to deny eligibility to direct payment of attorney fees and no deduction is required.

Using Letter Creator allows AAFCs to remove the last two sentences of the first paragraph under Summary of the Case which discusses the calculated amount of past-due benefits and amount withheld for fees. The sentences to remove are highlighted below: When VBMS-A it utilized, along with the override functionality, the AAFC is unable to remove the information above. While the statement that withheld fees is $0 would be accurate, the amount of past-due benefits (for fees) would need to reflect the appropriate retroactive amount for fees and be verified through the manual Agent and Attorney Fee calculator as directed in the February 2024 National Agent and Attorney Fee Call.

In the instance that attorney fees should be denied, and a deduction is required (such as claims with a grant of a TDIU or CUE which were not identified as under appeal), AAFCs may use VBMS-A to first calculate the attorney fees and generate the Summary of the Case fee decision letter denying fees. The appropriate letter type should be selected.

**3. Question** -When users receive an error message when using VBMS-A fee calculator button, can VSRs use the 'Calculator Override' button without submitting new IT trouble tickets?

Answer - Please continue to submit tickets when an IT error occurs and inform OAR via email. Submitting the IT tickets will demonstrate the breath of the issue and ensure that a fix is developed. Utilizing the override function without submitting IT tickets may result in IT issues not being resolved.

**4. Question** - Would we set a tracked item for awaiting OARs review of the discrepancy greater than 1 cent, or just hold the claim until we get a response?

Answer - It is preferred that a claim with a discrepancy greater than 1 cent remain pending authorization when notification is sent to OAR so that we may review and confirm the error. However, we understand that circumstances may sometimes not allow this. In either case, if a claim remains pending OARs review, a tracked item is not required.

# Fee Decision Issuance on Original Claims

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

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

**References:**

* [M21-5, 8.B.3.a.,](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#3:~:text=8.B.3.a.%C2%A0%20When%20to%20Make%20a%20Fee%20Decision%20and%20Send%20Decision%20Notice) When to Make a Fee Decision and Send Decision Notice

The Office of Administrative Review is updating VBA’s procedures regarding issuance of a fee eligibility decision on original claims. Attorneys and claim agents are not eligible for fees for original or initial claims under 38 CFR 14.636(c); however, VBA has determined that fee eligibility decisions should be sent for original/initial claims when there is a valid fee agreement of record.

Effective November 19, 2024, [M21-5 8.B.3.a. When to Make a Fee Decision and Send Decision Notice](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fvaww.vrm.km.va.gov%2Fsystem%2Ftemplates%2Fselfservice%2Fva_kanew%2Fhelp%2Fagent%2Flocale%2Fen-US%2Fportal%2F554400000001034%2Fcontent%2F554400000205497%2FM21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees&data=05%7C02%7C%7Cbb84cebcfbd64ba1f75008dcfff79422%7Ce95f1b23abaf45ee821db7ab251ab3bf%7C0%7C0%7C638666686007016359%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=olMQqvyGglo7lL6O2zR8gKiqmKfZ%2F3jTmEYuYJNSps0%3D&reserved=0) was updated to instruct Agent and Attorney Fee Coordinators to **issue fee decisions for all original/initial decisions** that result in a grant of benefits. A fee deduction is not required.

# Question and Answer – Fee Decision Issuance on Original Claims

**1. Question** - When processing a decision on original claims, do we clear an EP290?

Answer - Yes. Per M21-5, 8.B.3.a., a one-time clear of EP290 is warranted for the generation of the fee eligibility decision notice.

**2. Question** - Do grants of dependents on a claim where there is a valid fee agreement of record require a denial of fees letter?

Answer - Please review M21-5, 8.A.1.k Fees for Representation Involving Dependency Claims, to include examples. For fee purposes, when fees are not inherently due based on the dependency claim being pursued under one of the AMA review lanes, the AAFC must review the facts of the case to determine whether the current entitlement to dependency (or earlier effective date for previously established dependents) is the result of a qualifying review.

If entitlement to dependency (or earlier effective date for previously established dependents) arose based on the grant of benefits from a qualifying review and was received within a year of the notification of the grant of benefits, then fees are warranted. If the entitlement was based upon an event (marriage, birth, etc.) or natural progression of an already established dependent (minor child to school child) and was not the result of the grant benefits from a qualifying review, then fees are not warranted.

**3. Question** - Can a clarification be provided on the type of letter will be issued for original claims when there is a grant?

Answer - 38 CFR § 14.636 requires that an initial decision be issued before any claim can be eligible for attorney fees. Since original claims will be the initial decision, they are not eligible for attorney fees. Therefore, in almost all cases, the Summary of the Case fee decision for an original claim would utilize the No NOD/Review, Direct Payment Denied (Non-Original Claim) language to deny entitlement to attorney fees.

# Resource Updates

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

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

**References:**

* [OAR, Agent and Attorney Fees (va.gov)](https://vbaw.vba.va.gov/OAR/attorney-fees.asp)

OAR made several updates to both the M21-5, Appeals and Reviews, Resources and the Office of Administrative Review Agent and Attorney Fees site.

M21-5, Appeals and Reviews Resources had two main updates; one was to the Fee Release Memo; this information was published in October discussed in the October National Call. The update included 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.

Several updates were made to the resources found on the Agent and Attorney Fee intranet site, some minor and some more substantial. The major change was to Interim Procedures for AEW’s and attorney fees. We updated the process chart and all of the examples to remove the reference to using an 06A since procedures transitioned to completing an 04E transaction during the AEW processing regardless of whether the AEW is processed before or after the release of fees. The other main update was to the verbiage that goes into the AEW notification. OAR receives numerous inquiries from agents and attorneys surrounding their desire to obtain a fee decision on the AEW award. Our staff responds explaining that the decision was made on the original award that generated the retroactive payment; however, the verbiage updates will hopefully assist with the confusion.

Several updates were made to the resources found on the Agent and Attorney Fee intranet site, some minor and some more substantial. The major change was to Interim Procedures for AEW’s and attorney fees. We updated the process chart and all the examples to remove the reference to using an 06A since procedures transitioned to completing an 04E transaction during the AEW processing regardless of whether the AEW is processed before or after the release of fees. The other main update was to the verbiage that goes into the AEW notification. OAR receives numerous inquiries from agents and attorneys surrounding their desire to obtain a fee decision on the AEW award. Our staff responds explaining and will continue to explain that the decision was made on the original award that generated the retroactive payment; however, we’re hoping that the addition of the text you see on this slide that says “In our Summary of Case Fee Decision notice letter we told you that VA paid XXXX of your attorney fees as the attorney fee calculation performed at that time was based on pre-reduction (pre-MRP withholding) amounts for the calculation of attorney fees. That amount must be subtracted from your retroactive Concurrent Retirement and Disability Pay or Combat Related Special Compensation payment.”

Please refer to the corresponding PowerPoint for a list of the additional minor resource updates.