

**Pension & Fiduciary Service**

**Inquiry Response Highlights**

**June 2020**

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# **Pension Management Center Related Inquiries**

# Last Expenses

**Target Audience**: PMC Claims Processors

**Question 1**: Do LEs need to be claimed on a prescribed form? Or can we use burial expenses claimed along with a VAF 530 as LEs?

**Response 1**: Per 38 CFR 3.152, VA must receive at least one standard form for the pension benefit to increase pension benefits due to payment of last expenses. VA Form 21P-530, Application for Burial Benefits, submitted without a claim for survivors pension is not sufficient as a claim for last expenses. Burial benefits are considered a separate benefit from Survivors Pension.

Per M21-1 Part V, Subpart i, 3.D.3.j, Survivors Pension application forms, VA Form 21P-534, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation If Applicable), and VA Form 21P-534EZ, Application for DIC, Death Pension, and/or Accrued Benefits, provide space for reporting final expenses. When developing for final expenses, use VA Form 21-8049, Request for Details of Expenses.

**Question 2**: When an expense is not explicitly claimed, can we assume the expense was not reimbursed?

**Response 2**: Determine if the evidence of record indicates that a paid expense was not reimbursed. Adjudicators may development to resolve a questionable situation. Refer to M21-1 Part III, Subpart ii, 2.B.1.f for more information about processing additional correspondence with a prescribed form.

**Result:** Clarification provided.

# Quality Call Topic Solicitation

**Target Audience**: PMC claims processors

**Question:** It would be helpful to receive guidance on, including having the manual updated, to include all eligible burial expenses. This is especially critical when considering last expenses for survivor claimants to reduce their income on survivor pension claims. A further explanation and current guidance being followed in Milwaukee is below:

Per [M21-1, Part V, Subpart i, 3.D.3.d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000014370/M21-1-Part-V-Subpart-i-Chapter-3-Section-D-Reduction-of-Income-Due-to-Unreimbursed-Expenses#3), the term burial expenses includes all normal expenses incident to disposition of the remains of deceased persons.  Per a response from P&F, the reference should be interpreted to mean only expenses related to the disposition of the deceased person, such as casket and grave opening.  However, funeral home statements include many expenses that could be related to the disposition of the remains of deceased persons.

Per [M21-1, Part V, Subpart i, 3.D.3.d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000014370/M21-1-Part-V-Subpart-i-Chapter-3-Section-D-Reduction-of-Income-Due-to-Unreimbursed-Expenses#3), the term burial expenses includes all normal expenses incident to disposition of the remains of deceased persons.  The reference should be interpreted to mean only expenses related to the disposition of the deceased person such as casket and grave opening.  This does not mean we would develop for a receipt for the sole purpose of verifying the expense, unless there is a suspicion of fraud.  When reducing income due to unreimbursed last expenses or paying burial benefits, the claims processor can continue to accept the reported amounts unless a non-burial expense is noted by the evidence of record.   This means the acceptable burial expenses countable as last expenses need to be related to the actual burial/internment of the deceased’s remains.  As it stands, we do not accept flowers, death certificates, etc. as last expenses.  We will take the amount reported directly by the claimant, unless the claimant submits a funeral statement.  If a funeral statement is submitted, VSRs should review to accept only burial-related expenses.

Basedon our current guidance, these were our thoughts on some of the itemized expenses that what we should count/not count.  It would be very helpful to have a full understanding of what is acceptable, or perhaps would NOT be acceptable, in terms of allowable burial expenses.

Embalming? Yes

Other preparation of the body for viewing? Yes

Funeral ceremony? No

Visitation/viewing time?  No

Facilities and Equipment? Yes

Graveside service? No

Stationary/programs for funeral service? No

Visitor register book? No

Clergy? No

Organist/soloist? No

Funeral home weekend service fee? No

Coroner’s office/Medical Examiner’s fee? Yes

Obituary/funeral service announcements? No

**Response**: The M21-1 is a set of general guidelines and it is not designed to provide policies or procedures for every possible scenario.  Claims processors should use sound judgment based on the law and basic adjudication principles.

A previous P&F response (Burial Expense Definition, April 2020 Field Inquiry Response Highlights released on June 2, 2020) clarified the burial expense definition under [M21-1, Part V, Subpart i, 3.D.3.d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000014370/M21-1-Part-V-Subpart-i-Chapter-3-Section-D-Reduction-of-Income-Due-to-Unreimbursed-Expenses#3), should be interpreted to mean only expenses related to the disposition of the deceased person such as casket and grave opening.  Therefore, all expenses related to the burial/internment are acceptable.

Per [M21-1, Part V, Subpart iii,1.K.1.c](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000115811/M21-1-Part-V-Subpart-iii-Chapter-1-Section-K-Pension-Other-Deductible-Expenses)- if the expense is allowable for purposes of paying VA burial benefits, consider it a burial expense for purposes of the final expense deduction.  A funeral bill is not required for consideration of last expenses.  However, when the evidence of record exists and includes non-burial expenses, the claims processor should review and accept cost related to the disposition of the deceased person.  In the example above any of the expenses related to burial should be accepted.  VA Pension pays a subsistence level of benefits to Veterans and survivors with limited income and net worth, claims processors should be liberal in accepting expenses related to burial.

**Result:** Clarification provided.

# CARES Act Unemployment Income

**Target Audience**: PMC Claims Processors

**Question:** The CARES Act stimulus package also includes a $600 weekly increase to those registered as unemployed. Unemployment income is normally considered countable income for VA Pension purposes (M21-1 Part V, Subpart iii, 1.l.1.a.). However, M21-1 Part V, Subpart iii, 1.l.3.y. Payments Under the CARES Act of 2020, tells us not to count any payments received from the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. This $600 increase in unemployment income has characteristics of income that is normally excluded for VA Pension purposes, as well as characteristics of income that is normally included as countable income for VA Pension purposes.

Is the additional $600 weekly unemployment income paid under the CARES Act countable for VA Pension purposes? If this income is not countable because it is part of the CARES act, could you please clarify if the portion the claimant’s state pays as unemployment benefits will still be countable as income for VA Pension purposes?

**Response**: Yes, the additional $600 weekly unemployment income paid under the CARES Act is countable for VA Pension purposes. Although the CARES Act includes the 2020 Recovery Rebate, unemployment benefits are separate from the 2020 Recovery Rebate, and are countable.

**Result:** Clarification provided.

# DOC for Novel Coronavirus (COVID-19) Claims

**Target Audience**: PMC Claims Processors

**Question:**  Page 4 of Policy Letter 20-02 outlines if there is a postmark, then VA will consider the claim received on the date of the USPS postmark. If there is no postmark but there is a VA date stamp or claims Center COVID 19 watermark, then the claim will be considered received no later than February 29, 2020.

The PMC requests clarification on the Date of Claim (DOC) when there is no USPS postmark; however, there is a VA date stamp.

Example:

* Veteran passed away March 26, 2020
* EP 190 is received with no USPS postmark
* VA date stamp is 04/16/2020

If the DOC in the above example should be February 29, 2020, from which date would income and medical expenses be counted as it is after the Veteran’s date of death?

**Response:**  The guidance on page 4 of [Policy Letter 20-02](https://vbaw.vba.va.gov/bl/21/PL%2020-02%20COVID-19%20.pdf) states that VA will consider any correspondence with a VA date stamp that does not have a USPS postmark as received no later than February 29, 2020. However, it also clarifies the note of “COVID-19 postmark accepted” is for informational purposes for claims processors and does not negate the requirement to consider other effective date policies that may apply.  In the scenario provided, the Veteran died March 26, 2020.  In this case, it would not be appropriate to use a date of claim that is earlier than the Veteran’s death.  The claims processor should use the Veteran’s date of death as the date of claim as it is the earliest date upon which a valid claim could have been filed. This guidance will be clarified in a forthcoming update to Policy Letter 20-02.

The widow applied within a year of the Veteran’s death, therefore income and medical expenses would be counted from the Veteran’s date of death per [M21-1, Part V, Subpart i, 2.1.d.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014360/M21-1-Part-V-Subpart-i-Chapter-2-Original-Disability-Pension-Claims?query=survivor%20pension)  The reference says VA does not count income that a surviving spouse or child received before the Veteran’s death which means the claims processor cannot use a February 29, 2020, date of claim.  [M21-1, Part V, Subpart iii,1.G.4.n](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014430/M21-1-Part-V-Subpart-iii-Chapter-1-Section-G-Pension-Deductible-Medical-Expenses?query=counting%20medical%20expense%20for%20initial%20year#4) also says medical expenses paid between the Veteran’s date of death and 12 months after can be applied against income for the initial year.

**Result:** Clarification provided.

# Question regarding survivor pension HLRs

**Target Audience**: PMC Claims Processors

**Question:** We have a question regarding Higher Level Review requests and Survivor Pension. We recognize that when we receive a VA Form 21-534EZ, we must make a decision on all three benefits M21-1 III.ii.2.B.1.k. There are times when required information for the Survivor Pension portion of the claim is not provided (particularly information regarding income, net worth and expenses). In those cases, we would typically deny the Survivor Pension claim by noting the requested information was not provided to make a complete determination regarding entitlement to Survivor Pension and we would provide favorable findings as applicable. These types of cases are often processed as 140s where the survivor may have even noted that he/she is only seeking DIC benefits.

The question we have is how should we address a higher level review for Survivor Pension that might come subsequent to this decision? Should we simply uphold the Survivor Pension decision (denied/not considered because we did not receive income/net worth information with the original claim) or should this be considered a DTA error under M21-5 5.a?

**Response**: In one of the scenarios you provided, a VA Form 21P-534, Application For Dependency And Indemnity Compensation (DIC), Survivors Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), was received and on the application the claimant indicated the application was solely for DIC. In these instances, you indicated, typically, Survivors Pension is denied due to the claimant not providing information to make a complete determination regarding entitlement and in the decision letter, favorable findings regarding Survivors Pension are provided.

In this instance where DIC is specifically claimed, this would not result in a higher-level review (HLR) Duty to Assist (DTA) error. M21-1, Part IV, Subpart iii, 1.B.1.c specifically denotes that no development should occur when a claimant alleges the death of the Veteran was service-connected and all income and net worth information was omitted. However, the decision notice should not include favorable findings for Survivors Pension, and instead the claimant should be informed that

* because no income or net worth information was provided on the application, VA considers the pension portion of the claim to be incomplete
* if they wish to claim pension, they should submit a completed VA Form 21P-534EZ within one year after the date of the letter, and
* if they do not wish to claim pension, no further action is needed.

In any other scenario where a VA Form 21P-534 is received, and the claimant has not specifically indicated that the application is solely service-connected death/DIC, and development for Survivors Pension does not occur, an HLR DTA error exists.

**Result:** Clarification provided.

# Question Regarding Hearings and EP Control

**Target Audience**: PMC claims processors

**Question:** We have a question regarding hearings and proper control of them. We are specifically asking about non appeals related hearings. M21-1 MR I.4.1.a states that post-determination or post- decisional hearings can be held on matters related to an adjudicated issue in connection with a proposed reduction or termination where the claimant or beneficiary requested a pre-decisional hearing but the hearing request was not timely. M21-1 MR III.ii.3.D.4.a outlines the steps to control these requests, via a special issue and tracked item. However step 3 states that if the issue is no longer pending as part of a legacy appeal or claim, we would follow the request for application process.

Our question is, can someone have a hearing if they request it after VA has made the adverse decision? Or can they only request and have hearings if submitted at some point within the due process period? If they can have a hearing after VA has made an adverse decision, what is the proper method to control that (since the underlying EP will be cleared)?

Example: Veteran is provided due process to stop VA Pension due to Social Security on May 18, 2020. If on June 1, 2020 we receive a hearing request, we would add tracked item/special issue, schedule hearing, and delay action until hearing is held (because request was within 30 days). If on July 1, 2020 we receive a hearing request we would add tracked item/special issue, schedule hearing, but would take action prior to hearing being held (because request was not within 30 days) but continue EP to manage the hearing issue. But what if we took action on July 30, 2020 (due process expired) and a hearing request was received August 1, 2020? Is the Veteran not entitled to a hearing then? If they are entitled to a hearing, how do we manage the case?

**Response**: According to [38 CFR 3.103(d)](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8d438f42c7076eff0071d1c3c192a806&mc=true&n=pt38.1.3&r=PART&ty=HTML" \l "se38.1.3_1103) a claimant is entitled to a hearing on any issue involved in a claim *before* VA issues a notice of a decision on an initial or supplemental claim.

A claimant can request a hearing more than 30 days after a notice of proposed adverse action while the EP remains pending.  However, if the hearing is requested on an issue that is no longer pending, as part of a legacy appeal or claim, claims processors must follow [M21-1, Part III, Subpart ii, 3.D.4.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000031819/M21-1-Part-III-Subpart-ii-Chapter-3-Section-D-Claims-Establishment#4), specifically, Step 3,  and send the claimant a request for application letter.

Therefore, in the example provided, on July 30, 2020 due process expired and a hearing request was received on August 1, 2020.  The Veteran is not entitled to a hearing and we would send him a request for application.

Additionally, please note that the Manual Rewrite (MR) was sunset in 2015.  The M21-1 is the current adjudication procedures manual.

**Result:** [M21-1, Part I, 4.1.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014080/M21-1%2C%20Part%20I%2C%20Chapter%204%20-%20%20Regional%20Office%20%28RO%29%20Hearings#1) was updated on June 30, 2020.

# Question Regarding Reduction in Net Worth

**Target Audience**: PMC claims processors

**Question:** We have come across several cases recently where a claimant has filed a supplemental claim with a prior denial for excess net worth. They have alleged that due to depressed market conditions that have occurred recently, their net worth is now under the prescribed limit. M21-1 MR V.iii.1.J.4.f states that net worth can be decreased 2 ways: via spending them on products or services for fair market value, or via IVAP decreases due to decreased income or prospective expenses. 38 CFR 3.274(f) states something similar, noting that a “veteran, surviving spouse, or child, or someone acting on their behalf, may decrease assets by spending them on any item or service for which fair market value is received unless the item or items purchased are themselves part of net worth.”

Our question is does the loss in the value of investments qualify as a valid way to decrease assets? Many investments are tied to the stock markets, which have shown significant losses since March 2020.

**Response**: Yes, the loss in the value of investments does qualify as a valid way to decrease assets.

**Result:** M21-1 Part V, Subpart iii, 1.J.4.f will be updated.

# DEA Clarification Request

**Target Audience**: PMC claims processors

**Background:** I would like follow-up to make sure we are understanding everything in correctly.  Our current guidance, and I thought amongst the three PMCs, was to put DEA at issue so long as the claimant would come in with a 534/534EZ after DIC was granted automatically.  Based on this latest inquiry and response, our stations are not in agreement so I wanted to seek clarification both about the interpretation of this latest guidance, and then how to handle this latest guidance without a rating/administratively, if it should stand.

**The guidance we follow is this:**

If DIC/burial payments have been made under a 149/169 and the surviving spouse comes in with a 534EZ, an 020 should be established. VSRs should be screening for proper surviving spouse (some of the auto grants have been paid to incorrect spouses), and then send the case to an RVSR to address DIC and DEA. The RVSR should review for service connection for the cause of death in addition to entitlement under 38 USC 1318. If SC death cannot be granted, the RVSR should note in their decision that SC death was not put at issue because entitlement to DIC is being paid under 1318 (which they already are in the practice of doing). DEA should also be put at issue in the rating due to M21-1 IV.iii.2.A.1.f.

There are a number of reasons we have this guidance, which are listed below.

M21-1.IX.ii.2.1.l, states: “Consider entitlement to DEA without a rating decision when SC is granted for the cause of death without a rating decision.”  The problem with that reference is that we don’t grant SC death when we auto pay DIC.  You need a rating decision to determine SC death.  We don’t grant SC death automatically. We auto pay DIC under the umbrella of entitlement to 1318.  SC death is a different type of decision than 1318.

Below are references which supports the concept of addressing DEA by rating after DIC is granted under 1318. If the surviving spouse is coming in with a 534 or 534EZ after being automatically granted, we believe we should then be considering this a claim for consideration of SC death and DEA under Ch. 35.

|  |  |  |
| --- | --- | --- |
| **IV.iii.2.A.1.f****.  DEA under 38 U.S.C. Chapter 35** |  | Whenever DIC is granted under [**38 U.S.C. 1310**](https://www.law.cornell.edu/uscode/text/38/1310) or [**38 U.S.C. 1318**](https://www.law.cornell.edu/uscode/text/38/1318), the rating must address Dependents’ Education Assistance (DEA) under [**38 U.S.C. Chapter 35**](https://www.law.cornell.edu/uscode/text/38/part-III/chapter-35).***Note***:  Surviving spouses granted automated 38 U.S.C. 1318 DIC must apply separately for DEA under [**38 U.S.C. Chapter 35**](http://www.law.cornell.edu/uscode/text/38/part-III/chapter-35).***References***:  For more information on* when to address ancillary benefits, see [**M21-1, Part III, Subpart iv, 6.B.2.b**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014205/M21-1%2C-Part-III%2C-Subpart-iv%2C-Chapter-6%2C-Section-B---Determining-the-Issues), and
* determining entitlement to DEA, see [**M21-1, Part IX, Subpart ii, 2.1**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015112/M21-1%2C-Part-IX%2C-Subpart-ii%2C-Chapter-2---Ratings-for-Special-Purposes).
 |
| **III.iii.6.C.2.e****.  Rating Decisions for Death Claims** | A determination as to basic eligibility to DEA is generally addressed in a formal rating decision awarding entitlement to DIC, or when the claimant expressly raises the issue.  If this issue has not been disposed of by rating decision in the claims folder, refer the claim to the rating activity for the preparation of a rating decision. ***Note***:  When a total SC disability rating is in effect at the time of death, but the cause of death is not SC, consider the disability rating to be permanent for DEA eligibility purposes only, even when permanency was not established during the Veteran's lifetime. ***References***:  For more information on rating determinations of DEA eligibility, see [**M21-1, Part IX, Subpart ii, 2.1**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015112/M21-1%2C-Part-IX%2C-Subpart-ii%2C-Chapter-2---Ratings-for-Special-Purposes). |   |
| **IX.ii.2.1.k****.  Responsibility for Decision Making Related to DEA** |  | The DEA program is administered by Education Service which makes the ultimate determination on entitlement and payment of benefits. The regional office (RO) completes the ***initial rating decision***, as defined by [**38 CFR 21.302(q)**](http://www.ecfr.gov/cgi-bin/text-idx?SID=1ade2a2aaa470a921b0a3f407296613c&node=se38.2.21_13021&rgn=div8), establishing the basic eligibility factors such as SC for the cause of death or an SC P&T disability.The RO does not actually determine the effective date of the DEA benefit.  It makes a determination on the date of commencement of a P&T disability.  [**38 CFR 21.3021(r)**](http://www.ecfr.gov/cgi-bin/text-idx?SID=1ade2a2aaa470a921b0a3f407296613c&node=se38.2.21_13021&rgn=div8) defines ***effective date of the P&T rating*** as the date from which VA considers that P&T disability commenced for the purpose of VA benefits as determined in the initial rating decision. |   |

|  |  |  |
| --- | --- | --- |
| **IX.ii.2.1.l.  When DEA Is a Rating Issue** |  | Basic eligibility to DEA is a rating issue if* there is a claim for DEA or Chapter 35 benefits
* a beneficiary requests a determination on P&T disability
* an SC total disability (schedular or total disability due to IU) is awarded or confirmed/continued and permanency is also established (to include the determination that a future examination is not warranted)
* a previously-set future exam control is canceled/discontinued while there is total disability
* SC for the cause of death is awarded, or
* in connection with a claim for death benefits, the Veteran was rated 100-percent disabled due to SC disabilities or entitled to IU on the date of death.

***Exceptions***: * Do not consider basic eligibility to DEA when that matter has been previously established, but do ensure eligibility is properly reflected in all systems.  However, when evaluating a claim for survivors benefit(s) include DEA as an issue in the rating decision even though DEA was awarded on another basis during the Veteran’s lifetime.
* When an SC total disability is awarded or confirmed and continued you must consider whether there is basic entitlement to DEA.  However if permanency of disability is not proven, do not create a separate issue and make a decision that there is no basic eligibility.  To show consideration, discuss in the evaluation issue that permanency of disability was not established or that improvement was indicated.
* Do not consider basic eligibility to DEA when the qualifying disability is awarded P&T under [**38 U.S.C. 1151**](https://www.law.cornell.edu/uscode/text/38/1151).

***Notes***: * Not assigning a future examination control on a total disability, or canceling a future examination when there is total disability, implies that improvement is not indicated and that the disability is static.
* A rating decision *must* be prepared whenever permanency of a disability is established, whether the permanency is based on new evidence and/or on cancellation of a future examination regardless of whether or not there appear to be any potentially eligible dependents.
* The Veterans Benefits Management System – Rating (VBMS-R) automatically establishes the ancillary issue of DEA/Chapter 35 entitlement when there is a combined evaluation of 100 percent and no future examination identified.
* Consider entitlement to DEA without a rating decision when SC is granted for the cause of death without a rating decision.

***Reference***:  For more information on the automatic establishment of the ancillary issue of DEA/Chapter 35 in VBMS-R, see the [***VBMS-R User Guide***](http://vbaw.vba.va.gov/VBMS/docs/VBMS-Rating_10_0_User_Guide.pdf). |

If this guidance should stand (“a rating decision should not be completed to grant Dependents Education Assistance (DEA) when a VA Form 21-534EZ, Application for DIC, Death Pension, and Accrued Benefits, has been received after an automated payment of Dependency Indemnity Compensation (DIC)”), then how are we handling the entitlement of DEA?  If there is nothing else at issue, is the proper end product a 290, which is consistent with prior guidance from the September 2015 P&F Bulletin?

**Granting Chapter 35 DEA Without A Rating (from September 2015 P&F Bulletin)**

When granting DEA solely without a rating decision, such as when VA has granted DIC automatically, it is considered an authorization Pension Update Bulletin 3 decision and the PMC should take an EP 297 credit. This is consistent with the M21-4, Appendix B, Section I, EP 290 – Eligibility Determinations – Other, which states, “The independent determinations applicable to EP 290 are those which require separate formal rating or authorization decisions.” Dependents’ Educational Assistance (DEA) – Ch. 35 eligibility is listed as one of the decisions where an EP 290 (or 297 as is the case of PMCs) should be used. When DEA is the sole issue and a rating is required, the M21-4 instructs that an EP 297 be used at the PMCs.

**Question 1**: If this guidance should stand (“a rating decision should not be completed to grant Dependents Education Assistance (DEA) when a VA Form 21-534EZ, Application for DIC, Death Pension, and Accrued Benefits, has been received after an automated payment of Dependency Indemnity Compensation (DIC)”), then how are we handling the entitlement of DEA?

**Response 1**: The previous guidance referred to in this question is incorrect. The VSR cannot determine entitlement to DEA administratively as a grant of DEA cannot be stored to the database without completion of a rating decision.  A rating decision is required.  Along with the promulgation of the rating decision, claims processors will provide the claimant a notification letter outlining VA’s decision pertaining to his/her entitlement to DEA along with all applicable decision notification requirements, to include, but not limited to, appellate rights, forms, brochures, and/or pamphlets.

M21-1 Part IX, Subpart ii, 2.1.l was changed on July 1, 2020, to ensure consistency with M21-1 Part III, Subpart iii, 6.C.2.e.

**Question 2**:  If there is nothing else at issue, is the proper end product a 290, which is consistent with prior guidance from the September 2015 P&F Bulletin?

**Response 2**: When a 21-534EZ is submitted and if survivor’s pension, DIC, and accrued have all previously addressed and are not specifically being claimed and requiring a new decision, and the only benefit being addressed is DEA, then an EP 290 is appropriate. If any of the three benefits have not been previously addressed or require re-adjudication, then the appropriate 020, 120, or 165 EP should be used.

**Result:** [M21-1, Part IX, Subpart ii, 2.1.l.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015112/M21-1%2C-Part-IX%2C-Subpart-ii%2C-Chapter-2---Ratings-for-Special-Purposes) was updated on July 1, 2020.

# Question on Policy Letter 20-02

**Target Audience**: PMC Claims Processors

We would like to ask a couple of questions regarding Policy Letter 20-02, particular the “Date of Receipt Guidance.” As noted “In the event there is no postmark or date stamp by USPS, VA will consider any correspondence with a VA date stamp or Claims Intake Center COVID-19 watermark during the designated period as received no later than February 29, 2020.” We are starting to see some situations that require clarification.

**Question 1:** In situations where the claimant has written that he or she signed the documents after February 29, 2020, would we continue to follow this guidance?

**Response 1:** Yes, generally PMCs should follow Policy Letter 20-02 in situations where the claimant has written that he or she signed the documents after February 29, 2020. However, there are exceptions such as the scenarios described below in the Inquiries 2 & 3.

**Question 2:** If we receive a non-postmarked original survivor claim where the Veteran passed away after February 29, 2020, how do we handle that?  We cannot establish a date of claim or entitlement date for survivor benefits prior to the Veteran’s passing.

**Response 2:** In scenarios like this, it would not be appropriate to use a date of claim that is earlier than the Veteran’s death, processors should use the Veteran’s date of death as the date of claim. This guidance will be clarified in a forthcoming update to Policy Letter 20-02 and is reiterated in our response to ‘DOC FOR NOVEL CORONAVIRUS (COVID-19) CLAIMS’, shown above in this same document.

**Question 3:** There are situations that establishing an earlier date of claim for a Pension claim may not be to a claimant’s advantage, especially in a situation where the Veteran experienced a dependency change (death of spouse) after February 29, 2020 or a medical expense change (moved into assisted living) after February 29, 2020.  Are we compelled to follow this guidance even when delaying the effective date may prove to be more advantageous (especially in instances where it appears the claimant did not file before February 29, 2020)?

**Response 3:** In situations where a later date of claim is more advantageous to the claimant, use the date of claim that is most advantageous to the claimant. This guidance will be clarified in a forthcoming update to Policy Letter 20-02.

**Example:** VA receives an original claim for Veterans Pension with no postmark or date stamp by USPS, but a VA date stamp of April 20, 2020. The Veteran received an inheritance of $50,000 on April 4, 2020. PMCs should use the April 20, 2020 as the date of claim since that is more advantageous to the Veteran and not include the inheritance as income for calculating pension.

**Result:** Clarification provided.

# **Fiduciary HUB Related Inquiries**

# Policy Question

**Target Audience**: Fiduciary Hub personnel

**Question 1**: What are the acceptable methods of verifying VA FUM when auditing an accounting?

**Response 1**: When auditing an accounting, FPM 3.D.5.b provides the steps required when verifying all known accounts and funds under management. The first step requires verification of receipt of all original, photocopied, or computer-generated bank statements. Receipt of these documents assist in verifying funds under management.

**Question 2**: Is the guidance received in April 2019 still valid? Explanation – State and Federal agencies are not required to obtain a surety bond if the VA is unable to verify FUM. Because State and Federal agencies are not required to obtain a properly titled account (PTA) and they use locally maintained ledgers and RTAs, we are unable to verify VA FUM.

**Response 2**: P&F Service has conducted research and consulted with the Office of General Counsel regarding whether a blanket insurance policy managed by a State for a State agency is acceptable in lieu of a corporate surety bond. Although prior guidance received by your hub indicated that State and Federal agencies are not required to obtain a surety bond if the VA is unable to verify funds under management, VA may accept liability insurance, or a state blanket bond in lieu of a corporate surety bond from State agencies that are serving as a VA fiduciary. As a result, verification of funds under management for the purpose of obtaining a surety bond from a State or local agency is not required when the agency has liability insurance or a blanket bond and verification of this is obtained by VA.

**Result:** Clarification provided.

# Advanced Find Criteria

**Target Audience**: Field Examiners

**Question**: We understand how you are wanting us to report in the Flag of how to put into system. But you are only giving VVC, Telephone, or Skype. So for FaceTime do the FEs put it down as FaceTime-Fiduciary?

**Response**: Currently, the only acceptable methods for video conferencing are VVC and Skype.

We are aware of the email sent on April 22, 2020 by the Office of Information and Technology.  Even though Facetime and other apps have been approved for meetings, we consider field exams to be equivalent to VHA clinical activities because the discussions potentially involve protected health information (PHI) and personally identifiable information (PII).  As such, Facetime is specifically prohibited in the category below:

All VA personnel not engaged in clinical activities may use non-public facing remote audio or video communication technology outside of VA network systems provided it does not involve PHI or PII.

Also note that the[*Expansion of Temporary Field Examination Protocols- Testing Video Connect*](https://vbaw.vba.va.gov/PENSIONANDFIDUCIARY/pension/docs/Updated_Temporary_Field_Examination_Protocols_3-23-20_Final_.pdf)states, “To assess the beneficiary's environmental and social conditions, ask the beneficiary probing questions about their environment. Do not require a beneficiary/fiduciary to walk around to show living conditions.”  Hopefully this resolves any need for Facetime when the beneficiary is unable to participate in VVC or Skype calls.

**Result:** Clarification provided.

# Fiduciary Program Manual Updates

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

**Question:** On June 3rd you updated 5.E.1.d to change the Notifications to the OIG for misuse cases to be completed once the Determination is completed and the letter is sent to the Fiduciary.  You moved this up in the workflow to be before the Reconsideration phase.   This seems premature since the Reconsideration can overturn the Determination and prevent the need to refer the case to the OIG, but our concern goes to 5.A.1.l BFFS Misuse Process.  That reference currently shows:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **5.A.1.l****.  BFFS Misuse Processing Timeliness and Misuse Protocol** |  | The misuse work item within the Beneficiary Fiduciary Field System (BFFS) calculates misuse process timeliness from the receipt date of an allegation through the completion of the allegation or determination, as appropriate.Use the table below to identify the key steps in the misuse protocol.

| **Step** | **Action** |
| --- | --- |
| 1 | Complete the initial review of the misuse allegation. |
| 2 | Complete the misuse investigation. |
| 3 | Refer to Regional Counsel in court cases. |
| 4 | Complete the misuse determination. |
| 5 | Complete the misuse reconsideration determination. |
| 6 | Refer to OIG. |
| 7 | Refer to the regional office finance activity for debt establishment. |
| 8 | Reissue benefits. |

 |

In this reference, does step 6 have to flipflop with step 5?

**Response**: Follow most recent guidance as outlined in FPM 5.E.1.d, which states that hubs must refer all misuse determinations to VA OIG concurrent to sending the fiduciary the finding of misuse.

P&F Service will update FPM 5.A.1.l to be consistent with the direction in FPM 5.E.1.d in the future. The correct order of the step action table in FPM 5.E.1.d is outlined below with key changes highlighted in yellow.

| **Step** | **Action** |
| --- | --- |
| 1 | Complete the initial review of the misuse allegation. |
| 2 | Complete the misuse investigation. |
| 3 | Refer to Regional Counsel in court cases. |
| 4 | Complete the misuse determination. |
| 5 | Refer to OIG. |
| 6 | Complete the misuse reconsideration determination, if necessary. |
| 7 | Refer to the regional office finance activity for debt establishment. |
| 8 | Reissue benefits. |

**Result:** FPM 5.A.1.l will be updated.

# Question Regarding Foreign Field Exams

**Target Audience**: Fiduciary Hub personnel

**Question 1**: Is the Hub required to secure and review a CBI and Credit Report check on proposed fiduciaries that reside outside the United States, unless they otherwise meet an exemption reason listed in FPM 2.D.5.m.

**Response 1**: Per FPM 2.B.2.c, all foreign field examinations, with the exception of initial and successor initial appointments, follow the streamlined field examination guidelines. Per 38 U.S.C 5507, the hub must attempt to obtain a copy of a proposed fiduciary’s credit report, when practicable. Per 38 CFR 13.100(f)(iii), the hub must review the proposed fiduciary’s criminal background to the extent possible. Therefore, the hub must request and review the credit and background report of a proposed fiduciary who lives in a foreign country prior to appointment.

**Question 2**: May a hub appoint a foreign fiduciary if the credit report returns no information?

**Response 2**: If the credit report does not return information for a foreign proposed fiduciary, records may not exist because the individual is not a United States citizen. The hub must determine if a bar to service per 38 CFR 13.130 applies, or if negative credit information exists through interview that would indicate that the appointment of the fiduciary is not in the best interest of the beneficiary.

**Question 3**: Are we allowed to appoint the proposed fiduciary if the CBI returns a red color code, so long as we can determine that the score was given based on multiple aliases and/or no previous credit history?

**Response 3**: On May 26, 2020, P&F Service provided guidance that the CLEAR Risk Assessment Scoring criteria has had been revised. Proposed foreign fiduciaries for whom a criminal background assessment returns red should not be appointed as red is an indicator of a bar to service under 38 CFR 13.130.

**Question 4**: Are we allowed to adjust the Risk Indicators in CLEAR to remove multiple aliases and no previous credit history from the computation on foreign Hispanic proposed fiduciaries?

**Response 4**: On May 26, 2020, P&F Service provided guidance that the CLEAR Risk Assessment Scoring criteria had been revised.

**Question 5**: May we manually deduct 5 points from the CLEAR provided score for each alias and compute a more accurate final score, thus possibly allowing us to appoint the proposed fiduciary?

**Response 5**: No, hubs must use the score provided by the CLEAR Risk Assessment without modification.

**Question 6**: If the foreign fiduciary is receiving a fee for fiduciary service for a foreign beneficiary and the beneficiary does not reside in a VAMC or a facility under VA Contract Care, may we conduct the follow up field exam as a Streamlined exam?

**Response 6**: Yes, per FPM 2.B.2.c all foreign field exams with the exception of initial appointments and successor initial appointments follow streamlined protocol. Therefore, all follow-up foreign field examinations are conducted through streamlined field exam procedures.

**Question 7**: If we are unable to conduct the aforementioned follow up field exam as a Streamlined exam, what is the recommended course of action the Hub should take to conduct a proper follow-up field exam?

**Response 7**: Hubs should follow the guidance in FPM 7.E.2 if the fiduciary or beneficiary withholds cooperation.

**Result:** Clarification provided.

# **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.