**Failed Dependency Submissions**

**Standard Operating Procedure (SOP)**

**Purpose**

This SOP serves to guide claims processors in chronologically reviewing and processing dependency claims affected by technical defects in VA online application submission platforms. The Under Secretary for Benefits has authorized application of administrative error procedures for overpayments occurring after a failed dependency application submission. Application of this policy is limited to cases affected by the failed dependency submissions.

**Background**

The Office of Chief Technology Officer (OCTO) identified a system error relating to dependency claims submitted online through eBenefits and subsequent electronic platforms. The system failed to establish an end product upon submission. In some cases, the applications were also not uploaded to the Veterans Benefits Management System (VBMS) eFolder. The Veterans Benefits Administration (VBA) identified over 45,000 dependency claims that require claim establishment and review for proper adjudication.

**Policy Analysis**

Per 38 C.F.R. § 3.155(d)(1), a complete claim is generally considered filed as of the date received by VA for an evaluation or award of benefits under the laws administered by the Department of Veterans Affairs. 38 C.F.R. § 3.160(a) sets the requirements for a complete claim, while information regarding VA’s duty to notify claimants of necessary information or evidence when developing claims is addressed in 38 C.F.R. § 3.159(b)(1). Effective dates that apply to dependency claims may be found in 38 C.F.R. §§ 3.401(b) and 3.660(c). 38 C.F.R. § 3.660 addresses reductions, discontinuance, and effective dates with changes in dependency for a Veteran, surviving spouse or child who is receiving pension. Section 3.660(a)(3) states overpayments created by retroactive discontinuance of benefits will be subject to recovery, if not waived.

All applicable regulations must be considered. 38 C.F.R. § 3.500(g)(2)(ii) provides information on reductions or termination when death of a dependent payee has occurred. Marriage reductions or terminations are addressed in 38 C.F.R. § 3.500(n)(2)(ii). 38 C.F.R. § 3.501(d)(2) covers divorce and termination of school attendance is addressed in 38 C.F.R. § 3.667(c). [38 U.S.C. § 5112(b)(2) and (7)](https://www.law.cornell.edu/uscode/text/38/5112) specify effective dates of reductions based on changes in dependents’ status in several circumstances. VA must generally apply those provisions when a change in dependency status occurs. Modest overpayments subject to recoupment are anticipated as a result of those statutes because they set the effective date of reductions as the date of specified events, even in scenarios when VA becomes aware of such events at a later date.

In the claim population of the failed dependency submissions, there is potential for large overpayments resulting from a VA failure to process the claimant’s submission. 38 U.S.C. § 5112(b)(10), implemented in 38 C.F.R. § 3.500(b)(2), indicates that the effective date of a reduction by reason of an erroneous award based solely on administrative error or error in judgment shall be the date of last payment.

Recently enacted 38 U.S.C. § 5302B states that no individual may incur a debt that arises from participation in a program or benefit administered by VBA and is attributable to the failure of an employee to process information provided by, or on behalf of that individual, within applicable timeliness standards established by the Secretary.

While most revisions based on dependency changes should be governed by 38 U.S.C. § 5112(b)(2) or (7), and reasonable and inherently unavoidable delays in processing a claim or a change in dependency status do not ordinarily constitute an administrative error defined in 38 U.S.C. § 5112(b)(10), the failed dependency submissions are different. These delays, which are purely due to a VA system error where VA effectively overlooked information submitted by Veterans, constitute an administrative error subject to section 38 U.S.C. § 5112(b)(10). A Veteran should not be expected to provide multiple submissions to VBA when there is a change in their dependents.

The Under Secretary for Benefits has authorized application of the administrative error procedures to make claimants “whole” in so far as eliminating or refunding debts from the date the failed dependency submission occurred to the date of last payment, or the end date of a previously established debt.

**Process**

1. For all affected living and deceased claimants, VA Central Office (VACO) will batch establish an EP 330, with a date of claim (DOC) reflecting the date of the earliest failed dependency submission.
* An EP 330 VACO NR Review will be established for cases in which the Veteran is currently in receipt of disability compensation.
* An EP 330 PMC-VACO NR Review will be established for pension beneficiaries.
* EP 330 contentions will reflect those indicated on the failed dependency submission with corresponding dates.
* An associated claim level VBMS note will state: *The batched EP 330 DOC reflects the earliest date of the failed application submission to VA.gov*.
* OFO Review Project #1 special issue will be affixed to the EP 330 at batch establishment. This special issue must remain affixed through the life of the claim. If a new or other existing EP is used to address the claimed issues, the OFO Review Project #1 special issue must be added to the appropriate contentions.
1. A batch letter will be issued to all living claimants affected by the failed dependency submissions. Even in cases involving no additional action, the Dependency Notification Letter – No Action Needed must be issued to inform the claimant of the outcome of our review when applicable (refer to Table 1 of this SOP for more information).
2. Claims processors will review the documents associated with the failed dependency submission to determine appropriate actions. The associated evidence will reflect a receipt date matching the DOC of the pending EP 330. Claims processors will need to review any additional relevant evidence in the VBMS eFolder.

**Special Considerations**

While the system failed to establish the necessary EP, the documents were often uploaded to the VBMS eFolder. This means dependency information associated with the failed submission may have been considered and adjudicated in conjunction with another claim. There may be claims where no dependency change is needed. If the claimed dependency issue(s) have been subsequently adjudicated, the prior claim will still warrant adjudication if the failed dependency submission changes the outcome of the prior decision or includes evidence not considered in the prior decision. Claims processors must also consider eligibility for an earlier effective date. Further, for cases involving debt establishment due to loss of a dependent(s), claims processors must carefully assess the period of overpayment and apply the administrative error procedures outlined in this SOP.

***Important*:** This SOP does not address previously adjudicated cases *in which a debt was established* due to loss of a dependent. If a previously adjudicated dependency claim associated with the failed dependency submission established a debt and is identified during review, add the *Secondary Action Required* tracked item with a 30-day suspense. Input the following VBMS note: *Hold pending further guidance on debt* and allow the EP to recall to NWQ (refer to [Table 1](#Table1) for more information). These cases will be redistributed upon release of an SOP addendum with additional procedures.

**Procedures Quick Links**

[Table 1: Failed Dependency Submission Review Overview](#Table1)

[Table 2: Failed Dependency Submission EP Control](#Table2)

[Table 3: Authorization Action on Failed Dependency Submission](#Table3)

[Administrative Error Case Example](#Example)

[Table 4: Reviewing for Accrued Claims](#Table4)

|  |
| --- |
| **Table 1: Failed Dependency Submission Review Overview** |
| **Step** | **Action** |
| 1 | NWQ assignment of the EP 330 will be eligible for distribution to BEST sites or PMCs based on available capacity. The claims will be distributed in the Idle Development lifecycle. |
| 2 | Identify the failed dependency submission in the eFolder by the contentions, and the corresponding VBMS note: *The batched EP 330 NR Review DOC reflects the earliest date of the failed application submission to VA.gov*. |
| 3 | Determine whether the failed dependency submission was a complete claim on the prescribed form\* at the time the failed submission occurred. See [M21-1, Part II, Subpart iii, 1.C](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174872/M21-1-Part-II-Subpart-iii-Chapter-1-Section-C-Screening-Applications-for-Substantial-Completeness-and-Notification-Requirements).* If yes, go to the next step.
* If no, send the request for application letter in accordance with [M21-1 Part II, Subpart iii, 2.G](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174879/M21-1-Part-II-Subpart-iii-Chapter-2-Section-G-Requests-for-Application-and-Claims-Solicitation).

***Exception***: If the Veteran is deceased do ***not*** send a request for application letter. Instead, clear the EP 330, with a VBMS note: *Reviewed failed submission, not a complete claim. Veteran deceased.* ” and proceed no further.***\*Note***: Prior to March 24, 2015, a prescribed form was ***not*** required if VA previously processed an original claim for benefits. See [M21-1, Part II, Subpart iii,1.A.4.f](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000174869/M21-1-Part-II-Subpart-iii-Chapter-1-Section-A-Applications-for-Benefits?query=%22March%2024,%202015%22) and [M21-1, Part VII, Subpart i, 1.A.4.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000176613/M21-1-Part-VII-Subpart-i-Chapter-1-Section-A-General-Information-on-Relationship-and-Dependency?query=%22incomplete%22) for more information. |
| 4 | Review the file to determine if the failed dependency submission(s) issues have been adjudicated and follow the actions in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| **If the failed submission application was …** | **And the Veteran was in receipt of …** | **And …**  | **Then …** |
| previously adjudicated | compensation | resulted in the ***loss of a dependent(s)*** that was on the Veteran’s compensation award at the time the application was received | * add the *Secondary Action Required* tracked item, with a 30-day suspense
* input the following VBMS note: *Hold pending further guidance on debt.*
* allow NWQ to recall the EP, and
* proceed no further.
 |
| * did ***not*** result in the loss of a dependent(s)
* was processed ***correctly*** (i.e., all dependents addressed/correct effective dates applied), ***and***
* listed the failed dependency submission(s) as evidence in the decision notice
 | * prepare and send the *Dependency Notification Letter – No Action Needed*,
* clear the EP 330
* input VBMS note: *Reviewed the EP 330 failed dependency submission. No action necessary. Claimed dependency changes were made in the <insert date(s) of decision notice(s)*, and
* proceed no further.
 |
| * did ***not*** result in the loss of a dependent(s)
* was processed ***incorrectly*** (i.e., not all dependents addressed, incorrect effective dates applied, or failed dependency submission(s) not listed as evidence on the decision notice)
 | * go to the next step if the Veteran is *not* deceased, ***or***
* go to [Table 4](#Table4) if the Veteran is deceased.
 |
| pension | * resulted in the ***reduction or termination*** of the Veteran’s pension
 | * add the *Secondary Action Required* tracked item with a 30-day suspense
* input the following VBMS note: *Hold pending further guidance on debt.*
* allow NWQ to recall the EP, and
* proceed no further.
 |
| * resulted in ***increase or no change*** of the Veteran’s pension.
* was processed ***correctly*** (i.e., all dependents addressed/correct effective dates applied), ***and***
* listed the failed dependency submission (s) as evidence in the decision notice
 | * prepare and send the *Dependency Notification Letter – No Action Needed*,
* clear the EP 330
* input VBMS note: *Reviewed the EP 330 failed dependency submission. No action necessary. Claimed dependency changes were made in the <insert date(s) of decision notice(s)>*, and
* proceed no further.
 |
| * resulted in ***increase or no change*** of the Veteran’s pension, *and*
* was processed ***incorrectly*** (i.e., not all dependents addressed/incorrect effective dates applied/failed dependency submission (s) not listed as evidence on the decision notice)
 | * go to the next step if the Veteran is *not* deceased, ***or***
* go to [Table 4](#Table4) if the Veteran is deceased.
 |
| not previously adjudicated | N/A | the Veteran is ***not*** deceased | go to the next step. |
| the Veteran ***is*** deceased | go to [Table 4](#Table4). |

  |
| 5 | Review the eFolder and take appropriate action as outlined in [Table 2](#Table2) below.***Important***: If no other dependency claim was pending at the time of or filed after the failed dependency submission * change the EP 330 to an EP 130, and
* go to Step 6 of [Table 1](#Table1).
 |
| 6 | Determine if development action is needed.* If yes, complete development actions.
* If no, complete award action and refer to authorization for finalization of the generated award.

For more information on determining whether and how to take development on dependency claims refer to* [M21-1, Part VII, Subpart i, 1.A.5-6](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000176613/M21-1-Part-VII-Subpart-i-Chapter-1-Section-A-General-Information-on-Relationship-and-Dependency), and
* [M21-1, Part VII, Subpart ii, 1](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/topic/554400000020299/Chapter-01-School-Attendance).

***Notes***:* If a failed dependency submission is a duplicate claim (VAF 21-686c and/or VAF 21-674), no additional development is required unless **new** relevant evidence was identified and requires development.
* If a development letter is required, include the following text in the free text portion of the letter:

*The Veterans Benefits Administration (VBA) discovered a technical defect that may have affected one of your previous online dependency application submissions. VBA is completing a review of your electronic submission(s) and any supporting documentation to ensure your claim was processed appropriately.* |
| 7 | Authorization activity completes final authorization and claimant notification by taking the steps in [Table 3](#Table3).***Note***: The guidance within [Table 3](#Table3) is specific to scenarios regarding the dependency submissions that failed to have a claim established due to the electronic submission defect. Claims processors must also consider any other factors pertinent to the claim, such as, but ***not limited to***, receipt of military retired pay, drill pay adjustments, and possible attorney/agent fees, in addition to the guidance in [Table 3](#Table3). ***References***: For more information on * military retired pay, see [M21-1, Part VI, Subpart II, 4](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000020971/Chapter-04-Military-Retired-Pay-MRP),
* drill pay adjustments, see [M21-1, Part VI, Subpart II, 3](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000020970/Chapter-03-Drill-Pay-and-Active-Service-Pay), and
* attorney/agent fees, see [M21-5, Chapter 8](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000023087/Chapter-8-Agent-and-Attorney-Fee-Processing).
 |

**Table 2: Failed Dependency Submission EP Control**

|  |  |  |  |
| --- | --- | --- | --- |
| **If the Veteran successfully filed a …** | **And the successful dependency claim submission occurred…** | **And the claim is…** | **Then ...** |
| non-AMA dependency claim regardless of the claimed dependent(s) | before the failed dependency submission | currently pending | * ensure all appropriate contentions are reflected in the current EP.
* affix OFO Review Project #1 to the appropriate contentions
* clear the EP 330, and
* go to Step 6 of [Table 1](#Table1).
 |
| no longer pending | * change the EP 330 to an EP 930 with the applicable claim label in accordance with M21-4 (i.e., Non-Rating Control), and
* go to Step 6 of [Table 1](#Table1).
 |
| after the failed dependency submission | currently pending | * ensure all appropriate contentions are reflected in the current EP.
* affix OFO Review Project #1 to the appropriate contentions on the current EP
* change the date of claim to reflect the earlier date of the claim associated with the failed dependency submission.
* clear the EP 330, and
* go to Step 6 of [Table 1](#Table1).
 |
| no longer pending | * change the EP 330 to an EP 930 with the applicable claim label in accordance with M21-4 (i.e., Non-Rating Control), and
* go to Step 6 of [Table 1](#Table1).
 |
| higher-level review (HLR) or supplemental claim for the same dependent(s) | before the failed dependency submission | currently pending | * send the *Claim Already on Appeal* letter, and
* change EP 330 to an EP 400 and clear, as outlined in [M21-1, Part II, Subpart i, 2.A.3.c](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174858/M21-1-Part-II-Subpart-i-Chapter-2-Section-A-Process-Overview-for-Screening-Mail).

***Note***: If there is at least one claimed dependent on the failed dependency submission that is not part of the HLR or supplemental claim, do ***not*** change the EP 330. Instead, take the appropriate action for the remaining contention(s) based on the relevant row of this table. |
| no longer pending | * change the EP 330 to an EP 930 with the applicable claim label in accordance with M21-4 (i.e., Non-Rating Control), and
* go to Step 6 of [Table 1](#Table1).
 |
| after the failed dependency submission | currently pending | * allow the HLR or supplemental claim to proceed
* clear the EP 330, and
* go to Step 6 of [Table 1](#Table1).
* ***Note***: The claims processor who addresses the HLR or supplemental claim must also address the failed dependency submission.
 |
| no longer pending | * change the EP 330 to an EP 930 with applicable claim label in accordance with M21-4 (i.e., Non-Rating Control), and
* go to Step 6 of [Table 1](#Table1).
 |
| appeal with the Board for the same contention(s)***Note***: Claims processors should review VA electronic systems, to include Caseflow, to determine if there was/is a pending HLR, supplemental claim, or appeal with the Board. | N/A | pending | * send the *Claim Already on Appeal* letter, and
* change EP 330 to an EP 400 and clear, as outlined in [M21-1, Part II, Subpart i, 2.A.3.c](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174858/M21-1-Part-II-Subpart-i-Chapter-2-Section-A-Process-Overview-for-Screening-Mail).

***Note***: If there is at least one claimed dependent on the failed dependency submission that is not part of the appeal, do ***not*** change the EP 330. Instead, take the appropriate action for the remaining contention(s) based on the relevant row of this table. |

***Important***: If the Veteran claimed a child’s permanent incapacity for self-support on the failed dependency submission(s) follow the guidance in the table above and establish the appropriate *rating* EP (vs. non-rating control – i.e., 930 Rating Control *or* 020 Helpless child), in addition to any non-rating EP needed for any other claimed dependents.

***Notes***:

* If a pending claim is required to complete appropriate actions prior to disposal of the EP 330 and that claim is assigned to NWQ, follow local procedures to have the *request claims functionality* within VBMS utilized to retrieve the claim. If there is an additional non-rating claim that is already assigned to another BEST site or PMC, coordination should occur between the locations to transfer the claim.
* If the failed dependency submission is claiming addition of a dependent(s) that was already on the Veteran’s award at the time the application was received, and will have no effect on the award, change the EP 330 to EP 400, notify the Veteran accordingly, and clear the EP 400, as outlined in [M21-4, Appendix B.2, EP 130](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000011474/Appendix-B-End-Product-EP-Codes#2).

**Table 3: Authorization Action on Failed Dependency Submission**

|  |  |
| --- | --- |
| **If the ...** | **Then ...** |
| Veteran never successfully filed a claim for the same dependent(s) on the failed submission, and therefore, the dependent(s) on the failed dependency submission was never adjudicated | complete authorization activity under the EP established per [Table 2](#Table2) and award any benefits from the appropriate effective date based on the failed dependency submission’s date of claim (or other applicable effective date).***Exceptions***: If the failed submission resulted in * the loss of a dependent currently on the Veteran’s
* *pension* award, follow the instructions in the third-to-last row of this table (in addition to this row if multiple dependents were claimed), *or*
* *compensation* award that will result in a debt due to the failed submission, as discussed in the *Policy Analysis* section of this SOP,follow the instructions in the last row of this table (in addition to this row if multiple dependents were claimed), *or*
* reduction or termination of *pension benefits* due to *addition* of a dependent not currently on the Veteran’s award follow the instructions in the second to last row of this table.
 |
| Veteran successfully filed a claim for the same dependent(s) on the failed submission, and the failed dependency submission would affect the effective date of a prior decision | complete authorization activity under the EP established per [Table 2](#Table2) to revise the previous decision based on the failed dependency submission, to include awarding any benefits from the appropriate date of claim (or other applicable effective date).***Exceptions***: If the failed submission resulted in * the loss of a dependent currently on the Veteran’s
* *pension* award, follow the instructions in [the third-to-last row of this table](#Thirdtolast) (in addition to this row if multiple dependents were claimed), *or*
* *compensation* award that will result in a debt due to the failed submission, as discussed in the *Policy Analysis* section of this SOP,follow the instructions [in the last row of this table](#Lastrow) (in addition to this row if multiple dependents were claimed), *or*
* reduction or termination of *pension benefits* due to *addition* of a dependent not currently on the Veteran’s award follow the instructions in the [second to last row of this table](#Sectolast).

***Note***: If the failed dependency submission affects the prior decision unfavorably due to an administrative error other than the failed submission issue expressed in the *Policy Analysis* section of this SOP, follow * any applicable due process procedures outlined in [M21-1, Part X, Subpart ii, 3.A-D](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/topic/554400000020827/Chapter-03-Applicability-of-Due-Process), and
* the procedures in [M21-1, Part VI, Subpart i, 2.B.3](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000179474/M21-1-Part-VI-Subpart-i-Chapter-2-Section-B-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary) for handling administrative error.
 |
| Veteran successfully filed a claim for the same dependents on the failed dependency submission, which has been adjudicated, and the failed submission does *not* change the outcome of that prior adjudication | complete authorization activity under the EP established per [Table 2](#Table2) to confirm and continue the previous decision(s) and list the failed dependency submission application(s) as evidence in the decision notice that meets requirements in [M21-1, Part VI, Subpart i, 1.B.1.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179469/M21-1-Part-VI-Subpart-i-Chapter-1-Section-B-Decision-Notices) (to include review rights). |
| failed dependency submission results in the loss of a dependent(s) currently on the Veteran’s ***pension*** award | review the following table to determine the actions needed.

|  |  |
| --- | --- |
| **If removal of the dependent and their income results in …** | **Then ...** |
| an ***increase*** to the Veteran’s pension award | * Follow the guidance in [M21-1, Part IX, Subpart iii, 1.F.3.i](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000177521/M21-1-Part-IX-Subpart-iii-Chapter-1-Section-F-Dependents-for-Current-Law-Pension-Purposes) and [M21-1, Part IX, Subpart iii, 1.F.4.c](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000177521/M21-1-Part-IX-Subpart-iii-Chapter-1-Section-F-Dependents-for-Current-Law-Pension-Purposes#4) to remove the dependent and their income (if applicable) and
* pay the increase.

***Note***:  Do not prepare an administrative decision. |
| a ***reduction or termination*** of the Veteran’s pension award | * Follow the guidance in [M21-1, Part IX, Subpart iii, 1.F.3.a-f](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000177521/M21-1-Part-IX-Subpart-iii-Chapter-1-Section-F-Dependents-for-Current-Law-Pension-Purposes) and [M21-1, Part IX, Subpart iii,1. F.4.c](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000177521/M21-1-Part-IX-Subpart-iii-Chapter-1-Section-F-Dependents-for-Current-Law-Pension-Purposes#4) to remove dependent and their income (if applicable).
* Prepare an administrative decision to remove the debt due to the electronic submission defect by following the instructions in [the last row of this table](#Lastrow).
 |

 |
| failed dependency submission results in a reduction or termination of the Veteran’s ***pension*** award due to addition of a dependent *not currently* in the Veteran’s award | * Follow the guidance in [M21-1, Part IX, Subpart iii, 1.F.2](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000177521/M21-1-Part-IX-Subpart-iii-Chapter-1-Section-F-Dependents-for-Current-Law-Pension-Purposes?query=add%20the%20dependent%20income%20same%20day%20as%20adding%20dependent)  to adjust the award appropriately, and
* prepare an administrative decision to remove the debt due to the failed submission by following the instructions in [the last row of this table](#Lastrow).
 |
| failed dependency submission results in the loss of a dependent(s) currently on the Veteran’s ***compensation*** award | complete the actions in the table below to eliminate the overpayment amount resulting from the failed dependency submission.

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Determine the timeframe the administrative error occurred by identifying* the date of receipt of the affected claim, and
* the LAST PAID DATE field on the CURRENT AND HISTORICAL AWARD INFORMATION page in VBMS.

***Exception***: The beneficiary may not receive additional compensation for more than one spouse. If the beneficiary reported the loss of a spouse and claimed a new spouse that can be added as a dependent with an earlier effective date than* the LAST PAID DATE, but ***not*** earlier than the date of receipt of the affected claim, use the award effective date the new spouse is being added instead of the LAST PAID DATE, *or*
* the date of receipt of the affected claim, do ***not*** complete the remaining steps of this table. Instead, complete regular procedures to remove the current spouse and add the new spouse as a dependent.
 |
| 2 | Determine the amount of overpayment that resulted from the failed dependency submission by removing the dependent(s) effective the date of receipt of the claim within the *Enhanced Non-Permanent Award Display (ENAD)* function in VBMS-Awards.***Note***: Ensure to * input the date of receipt of the claim in both the EVENT DATE *and* AWARD EFF DT fields, *and*
* delete the ENAD workspace prior to final promulgation and authorization.

***Important***: For Pension claims use the “[*Administrative Error Paid/Due Calculator Over $25k*](http://vbaw.vba.va.gov/bl/21/star/National%20Quality%20Assurance%20%28214%29%20Administrative%20Decision%20Paid_Due%20Calculator%20Over%20%2425K.xls)*”* to determine amount of overpayment instead of the ENAD function and upload the calculator results to the beneficiary’s eFolder.  |
| 3 | Prepare an administrative decision, documenting the period for which VA considers to be VA administrative error using the Administrative Decision Template.In the *Reasons and Bases* section of the administrative decision provide* a brief description that the error resulted from the failed electronic dependency submission
* the date the error occurred as the date of receipt of the dependency claim that failed to be established, and
* the amount of additional benefits VA paid as a result of the error, using the dates identified in Step 1, and the amount determined in Step 2.

***Note***: Cite [38 CFR 3.500(b)(2)](https://www.ecfr.gov/current/title-38/part-3/section-3.500#p-3.500(b)(2)) in the *Pertinent Laws and Regulations* section of the administrative decision if the correction of the administrative error results in the reduction of the beneficiary’s ***current*** rate of payment. ***References***: For more information on * preparing administrative decisions, see
* [M21-1, Part VI, Subpart i, 2.B.3.i](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179474/M21-1-Part-VI-Subpart-i-Chapter-2-Section-B-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary#3i), and

[M21-1, Part X, Subpart v, 1.C](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000177999/M21-1-Part-X-Subpart-v-Chapter-1-Section-C-Administrative-Decisions). |
| 4 | * Submit the administrative decision for approval, according to the instructions in [M21-1, Part VI, Subpart i, 2.B.3.h](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179474/M21-1-Part-VI-Subpart-i-Chapter-2-Section-B-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary#3).
* Go to the next step following receipt of approval.
 |
| 5 | Adjust the beneficiary’s award by * removing the dependent(s) in accordance with [38 CFR 3.500](https://www.ecfr.gov/current/title-38/section-3.500) and 38 [CFR 3.660](https://www.ecfr.gov/current/title-38/chapter-I/part-3/subpart-A/subject-group-ECFR24d035b1eee2d6f/section-3.660), and
* eliminate any overpayment that resulted from the failed dependency submission by following the Steps in [M21-1, Part VI, Subpart iii, 2.B.3.e](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179497/M21-1-Part-VI-Subpart-iii-Chapter-2-Section-B-The-Finance-Activity-at-the-Regional-Office-RO), through the dates identified in Step 1 of this table.

***Important***: The claim processor must add a permanent claim-level note in VBMS to identify the total amount of overpayment eliminated based on the submission error. This note should be entered as “*DEPWAV: <total amount>*” entering the total amount removed as indicated in the administrative decision. For example, if the administrative decision determined the Veteran was overpaid $75.00, the claim processor will enter a VBMS note that states “*DEPWAV: 75.00*”. Do NOT enter additional information pertaining to the claim within this VBMS note.  |
| 6 | Establish and clear an EP 960, using the date VA discovered the error as the date of claim. |
| 7 | Prepare a decision notice, including the determination of the administrative decision, and enclose a copy of the administrative decision. |

 |

***Important*:** The following verbiage must be included in the notification letter introduction:

*The Veterans Benefits Administration (VBA) discovered a technical defect that affected one of your previous online application submissions. VBA completed a review of your electronic submissions and any supporting documentation. This decision addresses the application affected by that defect.*

The above courses of actions do not include the portion of the overpayment that incurred as a result of the claimant not submitting a timely dependency claim. The date of the administrative error depends on the date of the receipt of the dependency claim that failed to establish. If the claimant did not promptly submit their claim to report a dependency change and the claim was not processed timely due to the system error, the portion of the overpayment related to the claimant’s delayed submission would require recoupment.

***Example:*** A Veteran is being paid disability compensation with a dependent spouse on their award. The Veteran and spouse divorced on April 12, 2019. The Veteran notified VA via an electronic claim submission on May 15, 2020. The electronic claim submission failed to establish an end product. The dependency change was not addressed in a subsequent decision.

A claims processor is assigned the case on October 10, 2023, as a part of the failed dependency submission error review. The claims processor must:

* Prepare an administrative error decision to write off the debt for the period of May 15, 2020 (date of VA notification of the dependent loss event), to November 1, 2023 (last paid date).
* Input award activity to create a debt for the period of May 1, 2019, (first of the month following the dependent loss event) to May 15, 2020 (date of VA notification of the dependent loss event) by removing the dependent as of the divorce date, thus reducing the award retroactively.
* Manually input a gross payment rate replacement to match the prior payment rates for the period of May 15, 2020, to November 1, 2023 (last paid date) to stop the debt from generating for this period. The award would then pay at the reduced rate due to the loss of the dependent November 1, 2023, forward.
* Complete award action and refer to authorization for finalization of the generated award.

Typically, the above scenario would result in a debt to the Veteran for the entire period of May 1, 2019, to November 1, 2023, regardless of the time it took VA to process the award adjustment.

***Note:*** The Veteran could utilize the debt waiver process for the period in which a debt was created.

**Table 4: Reviewing for Accrued Claims**

For all situations where the Veteran is now deceased, follow the steps in the table below to determine appropriate action(s) for accrued purposes.

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Steps 1-4 from [Table 1](#Table1) must be completed prior to following the steps in this table. |
| 2 | Was an accrued/substitution claim received within one year of the Veteran’s date of death? * If *yes*, continue to next step.
* If *no*, and the time limit has
* ***not*** expired, change the EP 330 to EP 400, send a *VA Form 21P-601*, and clear the EP 400 or
* expired, clear the EP 330, and enter the following VBMS note: *Reviewed failed claim submission accrued not submitted timely-Veteran deceased.*

***Important***: * A request to substitute does not require a standard application per [M21-1, Part XI, Subpart ii, 3.C.1.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174206/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-C-Development-for-Accrued-and-Requests-for-Substitution).
* All deceased Veteran’s awards currently suspended should be properly terminated and the FNOD process completed before EP 330/400 is cleared.

***Reference***: For information on what to include in the notification letter requesting *VA Form 21P-601*, see [M21-1, Part XI, Subpart ii, 3.C.1.d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174206/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-C-Development-for-Accrued-and-Requests-for-Substitution). |
| 3 | Is there a pending EP 165 (accrued) or EP 290 (substitution)?* If *yes*,
* affix OFO Review Project #1 to the appropriate contentions
* clear the EP 330, and
* continue to next step.
* If *no*,
* establish the appropriate EP.
* affix OFO Review Project #1 to the appropriate contentions when establishing.
* EP 165 for accrued claims based on the appropriate jurisdiction described within [M21-1, Part XI, Subpart ii, 3.E.17.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174208/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-E-Accrued-Authorization-and-Notification#17), or
* EP 290 if the claim for substitution is received without a standard application for accrued as described in [M21-1, Part XI, Subpart ii, 3.E.17.c](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174208/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-E-Accrued-Authorization-and-Notification#17)
* clear the EP 330 and continue to next step.

***Notes***: * If a claim for accrued/substitution was previously denied without consideration of the failed dependency submission an EP 165 or EP 290 should be reestablished.
* If an EP 190 or 140 is pending, affix OFO Review Project #1 to the appropriate contentions to the pending EP. Do not establish a separate EP 165 unless the accrued benefit is granted and will be paid.
 |
| 4 | Review the eFolder to determine if accrued benefits exist.* If yes, go to the next step.
* If no, deny the claim and go to step 5.

***Important***: * If the failed dependency submission does not result in a favorable decision to a deceased Veteran’s award (for example the change would reduce the award instead of granting a retroactive payment), deny accrued benefits since no accrued exist.
* If the claim was previously adjudicated review the failed dependency submission for possible accrued benefits owed due to errors in effective dates or in the addition or removal of all dependents and their income (if applicable). If there is still no change to the deceased Veteran’s award, deny accrued benefits.
 |
| 5 | Claims processor determines if development action is needed. * Follow [M21-1, Part XI, Subpart ii, 3.C.4](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174206/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-C-Development-for-Accrued-and-Requests-for-Substitution#4) when developing for the original dependency claim or [M21-1, Part XI, Subpart ii, 3.C.3](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001030/content/554400000174206/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-C-Development-for-Accrued-and-Requests-for-Substitution#4) for the accrued/substitution claim.
* Once development is complete or if it is not required, continue to next step.

***Note***: If a development letter is required, include the following text in the free text portion of the letter: *The Veterans Benefits Administration (VBA) discovered a technical defect that may have affected one of the deceased Veteran’s previous online dependency application submissions. VBA is completing a review of the Veteran’s electronic submission(s) and any supporting documentation for potential survivor benefits due to you.*  |
| 6 | Authorization activity completes final authorization and claimant notification using the important verbiage listed below.  |

***Important*:** The following verbiage must be included in the notification letter introduction:

*The Veterans Benefits Administration (VBA) discovered a technical defect that affected one of the deceased Veteran’s previous online application submissions. VBA completed a review of the Veteran’s electronic submissions and any supporting documentation. This decision addresses any survivor benefits due as a result of the review.*

**Questions:**

Questions should be submitted as follows:

|  |  |
| --- | --- |
| **Business Line** | **POC** |
| OFO | VAVBAWAS/CO/OFO  |
| CS | VAVBAWAS/CO/211\_Policy |
| P&F Services | [Field Inquiry Tool (FIT)](https://apps.gov.powerapps.us/play/e/default-e95f1b23-abaf-45ee-821d-b7ab251ab3bf/a/0a333bae-1e5d-446f-b2d1-c25be963c99d?tenantId=e95f1b23-abaf-45ee-821d-b7ab251ab3bf&source=portal) |
| OAR | OARADMIN.VBAWAS@va.gov |

Enclosure: Dependency Notification Letter – No Action Needed

Enclosure: Administrative Decision Template