Pension and fiduciary service

PMC VSR Advanced Core Course
Phase 5: Stages of a Claim
Part 1: Determine Eligibility

Determine Substitution Eligibility

Lesson Plan

June 2023

Determine Substitution Eligibility

Lesson Overview

| Topic | Description |
| --- | --- |
| Time Estimate: | 2 hours |
| Purpose of the Lesson: | This lesson is part of the entry-level curriculum Core Course for PMC VSRs. The purpose of this lesson is to prepare PMC VSRs on processing a claimant’s request for substitution. |
| Prerequisite Training Requirements: | Prior to taking the Determine Substitution Eligibility lesson, trainees must complete PMC VSR Core Course Phases 1–4 and Phase 5, Part 1.a-c.  |
| Target Audience: | This lesson is for entry-level PMC VSRs.  |
| Lesson References: | * **VA Form 21P-601, Application for Accrued Amounts Due A Deceased Beneficiary**
* VA Form 21P-534EZ, Application for DIC, Survivors Pension, and/or Accrued Benefits
* VA Form 21P-0847, Request for Substitution of Claimant Upon Death of Claimant
* VA Form 21-4142, Authorization to Disclose Information to the Department of Veterans Affairs
* 38 USC 5121A, Substitution in Case of Death of Claimant
* 38 CFR 3.1000 (Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary)
* M21-1 XI ii.3 (Definition: Accrued Benefits)
* M21-1 XI.ii.3.A.2.a. (Definition: Claim Pending at the Date of Death)
* M21-1 XI.ii.3.B.1.a. (Definition: Substitution in Case of Death of Claimant)
* M21-1 XI.ii.3.B.1.b. (Definition: Original Claimant)
* M21-1 XI.ii.3.B.1.c. (Definition: Substitute Claimant)
* M21-1 XI.ii.3.B.2.b. (Definition: Categories of Eligible Persons)
* M21-1 XI.ii.3.C.3.b. (Definition: Evidence Needed to Complete the Request to Substitute)
* M21-1 XI.ii.3.A.4.b. Definition: (Evidence in the File at the Date of Death)
* M21-1 XI.ii.3.A.4.c. (Definition: Evidence in VA’s Possession)
* M21-1 XI.ii.3.A.5.f. (Evidence Requirements)
* M21-1 XI.ii.3.C.1.b. (Applications for a Request to Substitute)
* M21-1 XI.ii.3.C.4.a. (When Development, Including the 5103 Notice, Is Required)
* M21-1 XI.ii.3.C.4.b. (When Development, Including the Section 5103 Notice, Is Not Required)
* M21-1 XI.ii.3.E.17.c. (EP Control for Substitution and Accrued Claims)
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| Technical Competencies: | * Program Benefits and Eligibility (PMC VSR)
* Processing Claims (PMC VSR)
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| Lesson Objectives: | By the end of this lesson, the trainee will be able to:* Define key terms relating to a request to substitute
* Establish control of a request to substitute
* Determine eligibility to request substitution
* Explain the rights of the substitute claimant
 |
| What You Need: | * Lesson Plan
* Slides
* Projector
* Pen and paper or access to a whiteboard
* Access to VBA intranet
* Access to the following systems:
	+ SHARE
	+ VBMS
* Access to the **Determine Substitution Eligibility** job aid from VSR Assistant
* Access to the **Accrued Benefits** job aid from VSR Assistant
* [**Time and Date Online Calculator**](https://www.timeanddate.com/date/durationresult.html)
* Cases to use for demonstration:
	+ Completed substitution claim
* Access to a completed electronic version of 21P-0847 *Request for Substitution of Claimant Upon Death of Claimant*
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Instructor Notes

This lesson provides trainees with references, resources, and examples to determine a claimant’s eligibility for substitution.

| PowerPoint Slides | Instructor Activities |
| --- | --- |
| **Determine Substitution Eligibility** | **DISPLAY** slide “Determine Substitution Eligibility”**INTRODUCE** yourself as the instructor**INTRODUCE** the lesson**REFER** trainees to the technical competencies, and reference list in their trainee guide.**STATE** that the worksheet for this lesson is found at the end of the trainee guide. |
| **Lesson Objectives****By the end of this lesson, you will be able to:*** Define key terms relating to a request to substitute
* Establish control of a request to substitute
* Determine eligibility to request substitution
* Explain the rights of the substitute claimant
 | **DISPLAY** slide “Lesson Objectives”**PRESENT the objectives for the lesson.** |
| **Why This Matters!*** Determining Substitution Eligibility is important because it offers an eligible living claimant the ability to submit evidence in support of a claim that was pending at the time death of an original claimant
 | **DISPLAY** slide “Why This Matters!”**STATE** that determining Substitution Eligibility is important because it offers an eligible living claimant the ability to submit evidence in support of a claim that was pending at the time death of an original claimant |
| **Definitions (1 of 2)*** ***Substitution***is the right of a living person to submit additional evidence in support of the deceased claimant’s pending claim, request for decision review, or appeal of decision.
* An ***original claimant***is the deceased claimant whose claim, decision review request, or appeal of an adverse decision on the claim was pending when he or she died.
* A ***substitute claimant*** is an individual whom the VA has recognized to replace the original claimant in a pending claim, decision review request, or pending appeal
 | **DISPLAY** slide “Definitions (1 of 2)”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to CPKM and have trainees navigate to the following M21-1 references:** * M21-1XI.ii.3.B.1.a. (Definition: Substitution in Case of Death of Claimant)
* M21-1 XI.ii.3.B.1.b.  Definition:  Original Claimant
* M21-1 XI.ii.3.B.1.c.  Definition: Substitute Claimant

**SELECT two or three students to read each definition on the slide.** **This icon prompts you to ask trainees a discussion question or to ask trainees if they have any questions before proceeding with instruction.****ASK if they have any questions or require any clarification.** |
| **Definitions (2 of 2)*** ***Joint class*** is a group of two or more individuals in which each individual is an eligible substitute of the same preference such as two or more surviving children or persons who bore the expense of last sickness or burial, or two surviving parents
 | **DISPLAY** slide “Definitions (2 of 2)”**SELECT a student to read the full definitions found in the references provided.** This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER trainees to the example in the Determine Substitution Eligibility job aid for a list of definitions.****This icon prompts you to ask trainees a discussion question or to ask trainees if they have any questions before proceeding with instruction.****ASK if they have any questions or require any clarification.** |
| **Applications for a Request to Substitute*** A standard application is not required to request to substitute.
* A request to substitute, from eligible persons, is deemed to be included when VA receives a
	+ claim for accrued benefits, Survivors Pension, or Dependency and Indemnity Compensation (DIC)
	+ a written request containing intent, name of substitute and the name, claim number, social security number or appeal number of the deceased claimant
 | **DISPLAY** slide **“Applications for a Request to Substitute**”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to** M21-1 XI.ii.3.C.1.b. (Applications for a Request to Substitute)**INFORM** trainees that a standard application is not required to request to substitute.  A request to substitute, from an individual in the categories of eligible persons, is deemed to be included when VA receives a* claim for
	+ accrued benefits
	+ Survivors Pension, or
	+ Dependency and Indemnity Compensation (DIC), or
* a written request to substitute containing the
	+ intent to substitute
	+ name of the person requesting to substitute
	+ name of the deceased claimant, and
	+ deceased claimant’s
		- claim number
		- Social Security number, or
		- appeal number

**STATE** that an exception would be when an accrued claim is received that does not indicate a request to substitute, and there is *not* a pending claim or appeal pending, do not address substitution. |
| **Request for Substitution Forms** | **DISPLAY** slide“Request for Substitution Forms”**INFORM** trainees that this form may be utilized to request for substitution. However, this form is not considered a prescribed form for accrued benefits for claimants other than a surviving spouse recognized as a valid substitute.Indicates you should demonstrate an action**DEMONSTRATE** VA Form 21P-0847 *Request for Substitution of Claimant Upon Death of Claimant* **STATE** that the forms for accrued claims and survivor benefits claims already imply the request for substitution if a claim was pending at the time of the original claimant’s death. |
| **Scenario—Request for Substitution**April Spouse, surviving spouse of Willie Veteran, submits a claim for survivor benefits in VA Form 21P-534EZ, Application for DIC, Survivors Pension, and/or Accrued Benefits. The Veteran had a claim pending at time of death.**Based on the information received, what would be your next step and why?** | **DISPLAY** slide “Scenario—Request for Substitution”**READ** the scenario with trainees.**ASK trainees** what would be their next step and why?**REMAIN** on this slide to allow trainees time to provide answers to the question. **MOVE** to the next slide to reveal the answer. |
| **Scenario—Request for Substitution Answer**Based on the information received, what would be your next step and why?**Answer:** Deem the claim a request for substitution for the claim that was pending at the time of the Veteran’s death. VA Form 21P-534EZ, Application for DIC, Survivors Pension, and/or Accrued Benefits, submitted by the surviving spouse, is considered a request for substitution. | **DISPLAY** slide “Scenario—Request for Substitution Answer”**REVIEW** the answer with trainees. **This icon prompts you to ask trainees a discussion question or to ask trainees if they have any questions before proceeding with instruction.****ASK the trainees if they have any questions and address them accordingly.**  |
| **Evidence Requirements*** Evidence is required to eliminate persons who have a higher status of preference only if the record indicates that a person survived the deceased beneficiary, or
	+ Statements of record received by VA prior to the death of the Veteran or primary beneficiary are adequate
* Evidence needed to complete the request to substitute means information necessary to establish the claimant is in the categories of eligible persons, and first in priority order, and proof of payment, if the claim is based on reimbursement
 | **DISPLAY** slide “Evidence Requirements”**REFER** trainees to M21-1 XI.ii.3.B.2.f. (Evidence Requirements) **EXPLAIN** that evidence is required to eliminate persons who would have a higher status of preference only if the record indicates that the person of higher status of preference survived the deceased beneficiary:• A person could claim to be the substitute claimant but would be denied if there were evidence of a spouse (who is of higher status of preference). **EXPLAIN** that statements of record received by VA prior to the death of the Veteran or primary beneficiary are also adequate to establish preference. |
| **Time Limits for Evidence of Eligibility*** When a claim is a request for substitution, VA must receive the evidence of eligibility the later date of the following:
	+ 60 days after the date of the original VA notification, or
	+ within one year of the claimant’s death
 | **DISPLAY** slide “Time Limits for Evidence of Eligibility”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual references:**M21-1 XI.ii.3.C.3.f. (Time Limits for Evidence of Eligibility)M21-1 XI.ii.3.C.3.g. (Notifications for Requests of Substitution)**STATE** that trainees may use the table displayed to determine the proper time limit for receiving evidence of eligibility after an initial notification. **EXPLAIN** that once the period to submit evidence of eligibility for substitution has expired, they should issue a denial or grant of substitution decision notification letter to include decision review rights in accordance with 38 CFR 3.103(b)(1). |
| **Considering FTI Income in Substitution (1 of 2)*** Federal tax information (FTI) should be considered in substitution that have a valid substitute claimant when a claim for pension waspending at the time of the original claimant’s death and the
	+ FTI is available
	+ Sum of the total income reported by the IRS/SSA is higher than the sum of the total income reported on the original application, and
	+ FTI income is considered countable for VA purposes
 | **DISPLAY** slide “Considering FTI Income in Substitution (1 of 2)”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual references:**M21-1, XI.ii.3.C.4.d.  Considering FTI Income in Substitution and Accrued Claim**DISCUSS** each point on the slide. |
| **Considering FTI Income in Substitution (2 of 2)*** For claimants providing evidence that verifies the actual income to be the same, more or less than reported by IRS/SSA use the amounts verified by the valid substitute claimant
* For claimants who do not provide evidence clarifying the actual income amounts in question, or who provides evidence that appears to be incomplete, or does not respond, deny the claim for failure to prosecute
 | **DISPLAY** slide “Considering FTI Income in Substitution (2 of 2)”**DISCUSS** each point on the slide.**STATE that** evidence received from the valid substitute claimant is considered first-party evidence for VA purposes.  **TELL** trainees to not disclose FTI itself to a substitute claimant unless financial information has been verified as first-party evidence from a claimant. |
| Jurisdiction of Accrued and Substitution Claims* If the Veteran’s claim or request for decision review pending at the time of death is intertwined with the cause of the Veteran’s death, the claim, request for decision review, or appeal for substitution is worked by the PMC of jurisdiction
* If the Veteran’s claim or request for decision review pending at the time of death is not intertwined with the cause of the Veteran’s death the claim, request for decision review, or appeal for substitution is worked by the VSC of original jurisdiction
* If the Veteran’s claim or request for decision review pending at the time of death is pending appeal at the time of death the claim, request for decision review, or appeal for substitution is worked by the DROC of jurisdiction
 | **DISPLAY** slide “Jurisdiction of Accrued and Substitution Claims”**SELECT one or two trainees to read over each point on the slide.****STATE** that if the Veteran’s claim or request for decision review pending at the time of death is intertwined with the cause of the Veteran’s death and there is a claim for service connection (SC) for the cause of the Veteran’s death pending, the PMC has jurisdiction.This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual reference:**M21-1 XI.ii.3.E.17.a. (General Jurisdiction of Accrued Claims and Requests for Substitution) |
| **Control for Substitution Claim*** Most often the request to substitute is received as part of a claim for accrued benefits
* Establish end product (EP) 165 to record work credit for a valid request for accrued benefits. Use the appropriate accrued claim label when establishing an EP 165
* An EP (either 140 or 190, as appropriate) is authorized when a survivor’s claim for death benefits is received in addition to the request for substitution and accrued
 | **DISPLAY** slide “Control for Substitution Claim”**STATE that** most often the request to substitute is received as part of a claim for accrued benefits.**EXPLAIN** that end product (EP) 165 is established to record work credit for a valid request for accrued benefits.  Use the appropriate accrued claim label when establishing an EP 165. An EP (either 140 or 190, as appropriate) is authorized when a survivor’s claim for death benefits is received in addition to the request for substitution and accrued.**EXPLAIN** that an accrued EP 165 should never be pending concurrently with an EP 290 based on a substitution request. More information will be provided concerning the use of EP 290. This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual reference:**M21-1 XI.ii.3.E.17.c. (EP Control for Substitution and Accrued Claims)**DICUSS** the actions to take when a valid request to substitute a claim is received. |
| **Prohibition of Substitution** | **DISPLAY** slide “Prohibition of Substitution”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual reference:*** **M21-1 XI.ii.3.B.2.c. (Substitution by Subordinate Members Prohibited)**

**EXPLAIN** that failure to timely file a request to substitute, or a waiver of the right to request substitution, by a person of preferred category of eligible person will not serve to vest the right to request substitution in a person* in a lower category, or
* who bore the expense of last sickness or burial.

**INFORM** trainees thatfailure to timely file or request waiver by a person(s) in a joint class will not serve to increase the amount payable to other persons in the class. |
| **Death of a Substitute Claimant*** If a substitute claimant dies while a claim, decision review request, or appeal is pending, a request to continue the original claimant’s claim may be granted to:
	+ another member of the same joint class, or
	+ a member of the next preferred class
 | **DISPLAY** slide “Death of a Substitute Claimant”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual references:*** **M21-1 XI.ii.3.B.2.d. (Death of a Substitute Claimant)**
* **M21-1 XI.ii.3.B.2.e. (Time Limit to File a Claim Based on Death of a Substitute Claimant)**

**EXPLAIN that if a VA recognized substitute claimant dies while a claim, decision review request, or appeal is pending, a request to continue the original claimant’s claim may be granted to*** **another member of the same joint class, or**
* **a member of the next preferred class.**

**NOTE that the request to substitute for a substitute claimant must be received no later than one year after the date of the substitute’s death.**Sign with exclamation point**EMPHASIZE that the year limit is not from the original claimant’s death.** |
| **Substitution Notification Requirement*** If a person's request to substitute does notinclude evidence of eligibility when it is originally submitted and the person may be an eligible person, notify the person
	+ of the evidence ofeligibility required to complete the request to substitute
	+ that VA will take no further action on the request tosubstitute unless the evidence of eligibility isreceived, and
	+ that VA must receive the evidence of eligibility no later than 60 days after the date of notification or 1 year after the claimant'sdeath, whichever is later, or VA will deny the request to substitute
 | **DISPLAY** slide “Substitution Notification Requirement”**REFER trainees to M21-1 XI.ii.3.C.3.e. (Notification Requirements for Requests for Substitution)** **INFORM trainees that if a claimant’s request to substitute does not include evidence of eligibility when originally submitted and he/she may be an eligible, notify the person** * **of the evidence of eligibility required to complete the request to substitute**
* **that VA will take no further action on the request to substitute unless the evidence of eligibility is received, and**
* **that VA must receive the evidence of eligibility no later than 60 days after the date of notification or 1 year after the claimant's death, whichever is later, or VA will deny the request to substitute.**

**DISCUSS the example listed in the reference.****REFER trainees to M21-1, Part XI, Subpart ii, 3.E.17.c. for guidance if there is no accrued claim, but a request to substitute.** |
| **Denial Without Development*** It is not required to issue development when
	+ accrued benefits do not exist
	+ there is a lack of legal eligibility
	+ the claim lacks merit, or
	+ the claimant is not entitled to the benefit as a matter of law
 | **DISPLAY** slide “Denial Without Development”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual reference:****M21-1 XI.ii.3.C.3.c. (When to Deny Accrued or Substitution Claims Without Development)****INFORM** trainees that it is not required to issue development when* accrued benefits do not exist
* there is a lack of legal eligibility
* the claim lacks merit, or
* the claimant is not entitled to the benefit as a matter of law.
 |
| **Denying a Request to Substitute** * Only three findings potentially relevant to a denial of a request to substitute.  The three potentially relevant findings are whether
	+ there was a claim, request for decision review, or appeal pending at the time of the deceased claimant’s death
	+ evidence of eligibility has been received, or
	+ the request was submitted timely
* Therefore, any findings listed on a decision to deny the request to substitute should be limited to these three findings
 | **DISPLAY** slide “Denying a Request to Substitute”This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual reference:****M21-1 XI.ii.3.C.5.b. (Discussion of Findings When Denying the Request to Substitute)****INFORM trainees that there are only three findings potentially relevant to a denial of a request to substitute. The three potentially relevant findings are whether** * **there was a claim, request for decision review, or appeal pending at the time of the deceased claimant’s death**
* **evidence of eligibility has been received, or**
* **the request was submitted timely.**

**STATE that any findings listed on a decision to deny the request to substitute should be limited to these three findings.**This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual references:*** **M21-1 XI.ii.3.C.5.a. Language to Use When Denying the Request to Substitute​**
* **M21-1 XI.ii.3.C.5.b. Discussion of Findings When Denying the Request to Substitute​**
* **M21-1 XI.ii.3.C.5.c. Right to Appeal the Request to Substitute Decision​**

**EXPLAIN that when denying a request to substitute, the correct denial language must be used.** |
| **Steps to Deny Substitution Decisions** * An EP 290 with an appropriate *substitution of claimant*claim label should be established and cleared when the claimant requesting substitution is notified of anunfavorable decision pertaining to the request for substitution
	+ Notify the claimant of the decision and provide appeal rights
	+ If award action isneeded for the accrued, process or establish an EP 165 if there is no EP pending, to provide a formal accrued decision to the claimant
 | **DISPLAY** slide “**Steps to Deny Substitution Decisions**”**EXPLAIN to trainees that an EP 290 with an appropriate substitution of claimant claim label should be established and cleared when the claimant requesting substitution is notified of an unfavorable decision pertaining to the request for substitution.**This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the following manual reference:*** **M21-1 XI.ii.3.E.17.e. (Disposition of the EP Control for Unfavorable Substitution Decisions).**
 |
| **Steps to Granting Substitution Decisions** * An EP 290 with an appropriate substitutionof claimant claim label should be established and cleared when the claimant requesting substitution is notified of a favorable decision pertaining to the request for substitution
	+ Notify the claimant of the decision and provide appeal rights
	+ If award action is needed for the accrued, process or establish an EP 165 if there is no EP pending, to provide a formal accrued decision to the claimant
 | **DISPLAY** slide “**Steps to Granting Substitution Decisions**”**INFORM** trainees that an EP 290 with an appropriate *substitution of claimant* claim label should be established and cleared when the claimant requesting substitution is notified of a favorable decision pertaining to the request for substitution.**DISCUSS** the steps in M21-1 XI.ii.3.E.17.f. (Disposition of the EP Control for Favorable Substitution Decisions)This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to CPKM and have them navigate to the following M21-1:** * **M21-1 XI.ii.3.B.3.c. (Notification When the Period to File a Review Has Not Expired)**
* **M21-1 XI.ii.3.C.4.f. (Language to Include in the Development Letter if the Applicant Requested Substitution and it Is Granted)**
* **M21-1XI.ii.3.C.4.g. (Language to Include in the Development Letter in the How Soon Should You Send What We Need Section)**
 |
| **Scenario— When to Clear EP 290****Scenario:**An adult child submits a VA Form 21P-0847 with proof they paid last expenses. The Veteran had a claim pending at time of death. Based on the information received, what would be your next step and why? | **DISPLAY** slide “Scenario— When to Clear EP 290”**READ** the scenario with trainees.**ASK trainees** what would be their next step and why?**ALLOW** trainees to provide answers to the question. |
| **Scenario— When to Clear EP 290 Answer**Based on the information received, what would be your next step and why?**Answer**: Establish EP 290 and notify the claimant of the favorable substitution decision and continue EP 290 to process the claim pending at the time of the original claimant’s death. In the notification letter, explain that VA will continue to process the claim pending at the time of death but any money due cannot be paid unless an application for accrued is received timely. | **DISPLAY** slide “Scenario— When to Clear EP 290 Answer”**REVIEW** the answer with trainees. **This icon prompts you to ask trainees a discussion question or to ask trainees if they have any questions before proceeding with instruction.****ASK the trainees if they have any questions and address them accordingly.**  |
| **Rights Afforded to the Substitute Claimant** | **DISPLAY** slide “Rights Afforded to the Substitute Claimant”**INFORM trainees that substitute claimants have the same rights that would have applied to original claimants.** **These include rights to:*** **hearings**
* **representation**
* **legacy appeals**
* **decision review options for a claim not finally adjudicated, and**
* **submission of evidence.**

**STATE** that a claimant may waive, in writing, the right to substitute. In those instances, the accrued claim is processed solely based on evidence in the claims folder at the time of the original claimant’s death.  |
| **Rights Not Afforded to Substitute Claimants*** Rights that may have applied to the claimant prior to death but which cannot practically apply to a substitute are not available to the substitute
* The substitute claimant may not add an issue to the claim or expand the claim
* Entitlement to additional compensation for dependents does not always constitute adding an issue to the claim nor expanding the claim
 | **DISPLAY** slide “Rights Not Afforded to Substitute Claimants”**EXPLAIN to trainees that rights that may have applied to the claimant prior to death but which cannot practically apply to a substitute are not available to the substitute.****Example:  Medical examinations.****INFORM trainees that the substitute claimant may not add an issue to the claim or expand the claim.****STATE that the substitute claimant may raise new theories of entitlement in support of the claim.****EMPHASIZE that entitlement to additional compensation for dependents does not always constitute adding an issue to the claim nor expanding the claim.** |
| **Calculating Remaining Time to Act (1 of 3)*** Once a substitution request is granted, the substitute claimant must complete any action required within the time period remaining for the original claimant
* Determine the number of days that elapsed between the day after a decision notice is sent to the original claimant and date of their death by using the COUNT DAYS tab in the [**Time and Date online calculator**](https://www.timeanddate.com/date/durationresult.html)
* Check the box that says include the end date in calculation
 | **DISPLAY** slide “Calculating Remaining Time to Act (1 of 3)”**EXPLAIN to trainees that the next three slides will cover the steps to take when calculating the remaining time to act.**This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER trainees to the Determine Substitution Eligibility job aid.****REVIEW** each point on the slide. |
| **Calculating Remaining Time to Act (2 of 3)*** Calculate the total number of days in the original claimant’s decision review period
	+ (365 or 366 if the decision review period included February 29) minus the elapsed days calculated from Step 1 to determine the remaining days for the substitute claimant to file a disagreement
* Since the substitute claimant has the remainder of one year from when the decision notification letter was sent to the original claimant to complete the required actions, add the difference to the date VA sent the notice of approval for substitution by using the ADD DAYS tab in the [**Time and Date online calculator**](https://www.timeanddate.com/date/durationresult.html)
 | **DISPLAY** slide “Calculating Remaining Time to Act (2 of 3)”**SELECT one or two trainees to read each point on the slide.**This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER trainees to the example in the Determine Substitution Eligibility job aid.****READ over the example with the trainees.****RESTATE that** the substitute claimant has the remainder of one year from when the decision notification letter was sent to the original claimant to complete the required actions. This icon prompts you to ask students a discussion question or to ask students if they have any questions before proceeding with instruction.**ASK** if there are any questions before you continue with outlining the next steps. |
| **Calculating Remaining Time to Act (3 of 3)*** The calculated new date will reflect the date VA must receive the final actions to be considered timely
* If the new date for final action is a Saturday, Sunday, or holiday extend the time limit to the next succeeding workday
* PMCs must use and upload a copy of the [**Time and Date online calculator**](https://www.timeanddate.com/date/durationresult.html) to the claims folder when determining a substitute claimant’s timeline to complete any actions
 | **DISPLAY** slide “Calculating Remaining Time to Act (3 of 3)”**REVIEW** each point on the slide.**TELL trainees to follow the steps on the table displayed to calculate remaining time for a substitute claimant to complete any action by law or regulation.**Indicates you should demonstrate an action**DEMONSTRATE** the Time and Date online calculator using one of the cases you have chosen for this lesson**. A link for the calculator is attached to the Determine Substitution Eligibility job aid. The link for the calculator is also available in M21-1** XI.ii.3.B.3.a. (Timelines for Substitute Claimant to Take Action) |
| PACT Act – Request for Substitution* There is no language in the PACT Act that supersedes 38 CFR 3.1010(g), so a substitute claimant can only pursue claims and appeals that were pending, and such an individual could not pursue a new claim that was not filed by the deceased DIC claimant.
* For a PACT Act-related claim use EP 165 for accrued, including when substitution is at issue
	+ Apply either the PACT or PACT ACT DIC Reevaluation special issue
* For a PACT Act-related claim use EP 290 for request for substitution, without an accompanying accrued claim
	+ Appy either the PACT or PACT ACT DIC Reevaluation special issue
 | **DISPLAY** slide “PACT Act – Request for Substitution”**DISCUSS** each point on the slide.**INFORM** trainees that this will be covered in more detail in a later lesson. This lesson is only to introduce steps in the PACT Act. |
| Course Review Activity* Instructions:
	+ Divide into groups of three.
	+ Access CPKM to use the eCFR and M21-1 to complete the exercise.
	+ Locate each reference and provide the name for each
* Time allowed: 15 min.
 | **DISPLAY** slide “Course Review Activity”**INFORM the trainees that this activity will serve as a review of the lesson.**This icon indicates you should refer students to a document (e.g., a page in the Student Guide or a specific appendix)**REFER to the CPKM and have trainees locate each reference listed on their worksheet and provide the name for each.****REVIEW each manual reference with the trainees.****SELECT various trainees to provide you with the name of the references.** * **38 CFR 3.1000** (Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary)
* **38 CFR 4.25** (Combined ratings table)
* **M21-1 XI.ii.3.A.2.a.**  Definition: Claim Pending at the Date of Death
* **M21-1 XI.ii.3.B.1.a.** Definition: Substitution in Case of Death of Claimant
* **M21-1 XI.ii.3.C.1.b.**  Applications for a Request to Substitute
* **M21-1 XI.ii.3.C.4.a**. When Development, Including the Section 5103 Notice, Is Required
* **M21-1 XI.ii.3.A.4.b.** Definition: Evidence in the File at the Date of Death
* **M21-1 XI.ii.3.E.17.c** EP Control for Substitution and Accrued Claims
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| PowerPoint Slides | Instructor Activities |
| --- | --- |
| **Questions?**This icon prompts you to ask students a discussion question or to ask students if they have any questions before proceeding with instruction. | **DISPLAY** slide “Questions?”This icon prompts you to ask students a discussion question or to ask students if they have any questions before proceeding with instruction.**ASK** if there are any concepts that are unclear or may need further review. |
| **What’s Next*** TMS Evaluation Determine Substitution Eligibility: **TMS ID# 4624038**
 | **DISPLAY** slide “What’s Next”**DISCUSS** the upcoming lesson with trainees.**TELL** them to be sure to complete the TMS evaluation on Determine Substitution Eligibility: **TMS ID# 4624038** |