

VSO Call – November 17, 2021

Topics

- [Resumption of FTI](#)
- [VA Form 2680s - No Running Award and No Application Received](#)
- [VA Form 2680 – Not Outdated on VA Forms Website](#)
- [Impact of MVA AMA Interim Guidance](#)
- [Other Topics and Questions Raised During the Meeting](#)

Resumption of Federal Tax Information (FTI)

- **Effective November 1, 2021**, VA resumed the use of FTI in claims processing.
- PMCs will resume the use of FTI for the purpose of upfront verification of income as noted in [M21-1 Part IX, Subpart iii, 1.A.2.e-j](#) effective November 1, 2021.
- **This will apply to all eligible claims noted below** and in [M21-1 Part XIV, 4.A.1.d](#) in the pending inventory on November 1, 2021 and after.

Impacted End Products

Payee Code 00	Payee Code 10
120 - PMC - Reopened Pension	120 - PMC - Reopened Pension
120 - PMC - Incompetency Review-Pension	120 - PMC - Incompetency Review-Pension
120 - PMC - Special Monthly Pension	120 - PMC - PMC - Reopened Helpless Child
120 - PMC - PMC - Reopened Helpless Child	190 - PMC - Initial Death Pension
180 - PMC - Initial Live Pension	

- For any claim pending on or after November 1, 2021, an upfront verification of income with FTI is required. Claims processors should follow the process noted in [M21-1 Part IX, Subpart iii, 1.A.2.e-j](#).
- If a claim subject to FTI has already been developed, rated, or is pending authorization, re-evaluate the claim using FTI. This will ensure that all claims pending on the date of FTI resumption are reviewed to avoid improper payments and minimize the number of claims that require a subsequent audit.
- The PMCs are to resume their local practices for the printing and scanning of FTI letters along with the maintenance and disposal of FTI materials in accordance with existing VA policies and procedures.

VA Form 2680s - No Running Award and No Application Received

Reported Issue: I have received claims where they are attempting to get A&A using a VA Form 21-2680 without having pension established or submitting a prescribed form for pension (i.e. VA Form 534EZ/527EZ). There is some argument in the office that the manual states that you can claim A&A using a 2680 only (without a prescribed form/application or running pension award). Apparently, there is bad information out there and misunderstanding that A&A is a separate benefit, when it's actually an "add-on benefit."

QRT Response: Please see [M21-1 II.iii.1.A.3.a. Reviewing VA Form 21-2680 to Identify Claims for SMC or SMP](#). This reference is copied directly below:

[VA Form 21-2680](#), can be used as a standalone form if the claimant and/or the supporting documentation identifies whether the benefit sought is **SMP (only when there is a running pension award)** or SMC. Revisions to the form (effective September 2018) allow the claimant to identify the benefit sought.

The identification of the benefit sought can be

- specific, with the Veteran identifying on the form whether the claim is for SMC or SMP, or
- based on sympathetic reading of the claim via reviewing the issues raised on [VA Form 21-2680](#) in the context of the benefits the Veteran is receiving.

When [VA Form 21-2680](#) is submitted, the Veteran is identified as the claimant, and the benefit sought is

- *not* identified, determine the benefit sought and next action by applying the principles in the table below, or
- identified, and is a claim for
 - SMC
 - if a prior original claim for compensation is of record (whether granted or denied), accept the claim for SMC and issue a decision based on the evidence of record, or
 - if no prior original claim for compensation is of record, consider the [VA Form 21-2680](#) a request for application, and/or
 - if the evidence of record suggests that pension with SMP may be payable as a greater benefit, then *also* apply the principles in the table below that correspond with the SMP claim and the Veteran's benefit status to determine the appropriate next action to take.
 - SMP, apply the principles in the table below that correspond with the SMP claim *and* the Veteran's benefit status to determine the appropriate next action to take.

Note: Although [VA Form 21-2680](#) may be accepted as a prescribed claim form for SMC or SMP, it is not *required* to grant entitlement to either benefit. Do not undertake routine development for completion of this form when deciding a claim for

SMC or SMP. For more information on use of [VA Form 21-2680](#), see [M21-1, Part VIII, Subpart iv, 4.A.1.i](#).

Use the table below to determine the benefits being sought by reviewing the Veteran's benefit status and [VA Form 21-2680](#).

If ...	Then accept the <i>VA Form 21-2680</i> as ...
<p>the Veteran is</p> <ul style="list-style-type: none"> • receiving compensation • entitled to receive compensation but has elected to receive military retired pay, or • submitting any initial claim for compensation 	<p>a claim for SMC regardless of the conditions listed on the VA Form 21-2680.</p> <p>Exception: If the evidence of record suggests that pension with SMP may be payable as a greater benefit if claimed, then also accept the VA Form 21-2680 as a request for application for pension with SMP.</p>
<p>the Veteran is</p> <ul style="list-style-type: none"> • receiving pension, or • submitting any initial claim for pension 	<p>a claim for SMP regardless of the conditions listed on VA Form 21-2680.</p>
<p>dual entitlement exists</p>	<p>a claim for</p> <ul style="list-style-type: none"> • SMC if the Veteran is in receipt of compensation, or • SMP if in receipt of pension. <p>Important: In addition to accepting the VA Form 21-2680 as a claim for SMC or SMP based on the benefit currently being received (as directed above), <i>also</i> accept the VA Form 21-2680 as a</p> <ul style="list-style-type: none"> • claim for the opposite benefit (the benefit the Veteran is not currently in receipt of) <i>only if</i> the opposite benefit can be granted and the grant results in a greater benefit to the Veteran, or • request for application if the Veteran is currently receiving compensation <i>and</i> the evidence suggests that pension may be the greater benefit but no income information is of record.

<p>has <i>not</i> submitted a prior or current original claim for compensation or pension</p>	<p>a request for application.</p> <p>Reference: For more information on handling a request for application, see M21-1, Part II, Subpart iii, 2.G.</p>
<ul style="list-style-type: none"> the Veteran is not in receipt of, entitled to receive, or currently claiming VA compensation or pension benefits, and has previously submitted an original claim for either pension or compensation which has been denied 	<p>a request for application.</p> <p>Note: When a Veteran is SC with a zero-percent combined disability evaluation, accept the VA Form 21-2680 as a request for application since the Veteran is not in receipt of monetary compensation.</p> <p>Reference: For more information on handling a request for application, see M21-1, Part II, Subpart iii, 2.G.</p>
<ul style="list-style-type: none"> a prior claim for SMC or SMP has been denied, and VA Form 20-0995 is submitted with VA Form 21-2680 within one year of the prior denial 	<p>a supplemental claim.</p> <p>Notes:</p> <ul style="list-style-type: none"> Submission of VA Form 21-2680 is not required for the supplemental claim. When a prior claim for SMC or SMP has been denied but VA Form 21-2680 is not accompanied by VA Form 20-0995, then accept the submission of VA Form 21-2680 as an initial claim for <ul style="list-style-type: none"> SMC, or SMP only if there is a running award or pending pension claim, and follow the applicable procedure based on corresponding claim status or benefit entitlement as directed in the remaining guidance in this table.
<p>the Veteran is already in receipt of A&A for compensation</p>	<p>a request for application.</p>

	Reference: For more information on handling a request for application, see M21-1, Part II, Subpart iii, 2.G.
the Veteran is already in receipt of A&A for pension	a duplicate request for SMP, unless following the above procedures within this table allows for acceptance of the VA Form 21-2680 as a claim for SMC. Note: If the claim is accepted as a duplicate request for SMP, provide notice that the claimed benefit has previously been awarded.

Reminder: When accepting [VA Form 21-2680](#) as a claim for SMC or SMP, the form is a potential claim for *both* A&A and housebound benefits.

- A grant of A&A renders the issue of housebound moot for the same type of benefit (either SMC or SMP) since A&A is the greater benefit. The issue of entitlement to SMC or SMP based on housebound status need not be addressed when A&A is granted for the same type of benefit (SMC or SMP).
- [VA Form 21-2680](#) is a claim for both A&A and housebound benefits. If A&A is denied, the rating decision must address the issue of housebound status. If, however, housebound has been previously granted, the issue of entitlement to housebound need not be readdressed and/or continued in the rating decision.

References: For more information on

- reviewing [VA Form 21-2680](#) for claims for spousal A&A, surviving spouse's A&A or housebound benefits, or parent's A&A, see [M21-1, Part II, Subpart iii, 1.A.3.b](#)
- signature requirements when accepting [VA Form 21-2680](#) as a claim for SMC or SMP, see [M21-1, Part II, Subpart iii, 1.A.4.e](#)
- considering competency information included on [VA Form 21-2680](#), see [M21-1, Part X, Subpart ii, 6.A.2.b](#), and
- procedures for addressing A&A or housebound status as an unclaimed issue within scope of another claimed issue, see
 - [M21-1, Part V, Subpart ii, 3.A.2.b](#), and
 - [M21-1, Part VIII, Subpart iv, 4.A.8.h](#).

VA Form 2680 Is Not Outdated on the VA Forms Website

Please note that [on the VA forms website](#), the VA Form 2680 has a blurb in the upper right hand corner that alludes to it having expired on "09-30-21." We received confirmation from P&F that the current version, which is from September 2018, is still valid and should be accepted. Keep in mind that it is the version date that drives which form is accepted or not. The 2680 on the VA forms website is still acceptable as it is the only version available at this time. Even though it indicates that it is expired as depicted upper right hand corner, the form is still acceptable until a new version is released.

Applicable references on handling outdated forms are below.

The image shows the top portion of VA Form 21-2680. On the right side, there is a yellow box containing the text: "OMB Control No. 2900-0721", "Respondent Burden: 30 minutes", and "Expiration Date: 09-30-2021". Below this, the form header is divided into two main sections. The left section has a black background with the VA logo and the text "Department of Veterans Affairs". Below this, in a white box, is the title "EXAMINATION FOR HOUSEBOUND STATUS OR PERMANENT NEED FOR REGULAR AID AND ATTENDANCE". Underneath the title is a line of text: "IMPORTANT: Please read Privacy Act and Respondent Burden information before completing the form." The right section is a white box with the text "VA DATE STAMP (DO NOT WRITE IN THIS SPACE)". Below the header sections is a grey bar with the text "SECTION I: VETERAN'S IDENTIFICATION INFORMATION". At the bottom of the page, there is a footer area with a yellow box on the left containing "VA FORM SEP 2018" and "21-2680", and the text "SUPERSEDES VA FORM 21-2680, MAY 2015." on the right. The page number "Page 1" is located in the bottom right corner.

Applicable References on Outdated Forms

II.i.2.B.4.b. Determining the Date a Form Becomes Outdated

In most cases, as described in [M21-1, Part II, Subpart i, 2.B.4.a](#), a prior version of a form becomes outdated one year after the date that the form is revised. Determine the current version date of a form by referring to the

- date at the bottom left corner of the form, which identifies the month and year the form was approved or revised (normally near the form number), or
- REVISION DATE field on the [VA Forms Website](#) or the [Publications Index](#) from the [Compensation Service Intranet Home Page](#). The ISSUE DATE field on these websites is not relevant to determining the date of the current version or the date the form became outdated.

Note: The current version of the form normally provides the prior version of the form that has been superseded. This information is customarily located near the form number and version date at the bottom of the form.

II.i.2.B.4.c. Example of Outdated Form Determination

As noted in [M21-1, Part II, Subpart i, 2.B.4.b](#), information on the *current* version of the form can be used to determine whether a prior version is outdated.

Example: A Veteran submitted [VA Form 21-526EZ](#) on August 22, 2018, using the February 2016 version of the form. As of August 22, 2018, the current version of [VA Form 21-526EZ](#) is dated March 2018 as indicated by the version date on the form and the REVISION DATE field on the VA forms websites. The current version of [VA Form 21-526EZ](#) also shows that the February 2016 version was the prior version.

The image shows a portion of a VA form with two highlighted boxes. The first box, labeled 'Current Version Date', points to the text 'VA FORM 21-526EZ MAR 2018'. The second box, labeled 'Prior Version Information', points to the text 'SUPERSEDES VA FORM 21-526EZ, FEB 2016'. The background text is partially obscured but includes instructions about processing claims.

A prior version of a form may be accepted for one year after the form has been revised as directed at [M21-1, Part II, Subpart i, 2.B.4.a](#). Thus, the February 2016 version of [VA Form 21-526EZ](#) is acceptable through March 2019, one year after the current version date. The claim is valid, and development should begin.

Impact of MVA AMA Interim Guidance

On July 30, 2021, the Court issued a decision in [Military-Veterans Advocacy v. Secretary of Veterans Affairs, et al.](#) This precedential opinion invalidated three regulations issued by the Department as inconsistent with the text of the AMA. Specifically [38 C.F.R. § 14.636\(c\)\(1\)\(i\)](#), a portion of [38 C.F.R. § 3.2500](#) and a portion of the preamble to [38 C.F.R. § 3.155](#).

On October 7, 2021, the PMCs and VSCs were given interim guidance to follow for this decision. We have summarized the interim guidance below. VBA will be issuing additional guidance to include updates to the M21-1 in the near future. **Note:** as of the date of this meeting, there have been no updates to the M21-1.

- We must consider whether an active ITF of record applies to a subsequent supplemental claim submitted on or after July 30, 2021, **even if the ITF was filed prior to that date.** VBMS will be updated soon so it is important to pay close attention to the ITF tab, dates of ITFs, claims associated with the ITF and supplemental claims.
- An ITF filed within one year of a VA decision may operate to maintain continuous pursuit if the ITF is applicable to a supplemental claim filed after the one-year continuous pursuit period.
- We may discover decisions completed on or after July 30, 2021 (or we may receive a claim for CUE), which assigned an effective date that is improper based on this Court decision and interim guidance. In such cases where application of the ITF to the supplemental claim is more beneficial to the claimant, corrective action under [38 CFR 3.105\(a\)](#) should be taken.

Claimants can file supplemental claims while a claim for the same issue is pending at the Court

- To allow for timely consideration of new and relevant evidence, effective July 30, 2021, VA must accept a supplemental claim when the same issue is appealed and pending before a federal court.
 - This includes cases before the U.S. District Courts, the U.S. Courts of Appeals for Veterans Claims, and the U.S. Supreme Court.
- **The Board of Veterans Appeals (BVA) does NOT fall under this definition of a federal court.** The existing guidance in [M21-1, II.i.2.A.3.a-c](#) still applies when determining if a claimed issue is duplicative of a legacy or BVA appeal. **Note:** this detail was included in the CS version of the attachments.
 - This means we cannot have a supplemental claim for the same issue that is appealed to BVA (i.e. filed on the VAF 10182), whether the supplemental claim is submitted at the same time as the appeal to BVA or later on prior to a BVA decision.

Other Topics/Questions Asked During the Meeting

Use of the VA Form 530EZ

P&F has removed the 530EZ from circulation until further notice. However, VBA should accept and process any claims that were filed using the 530EZ, as those claims are still valid.

Law Change - Intent to File (ITF) applies to all supplemental claims

There were several questions relating to the law change, which we [discussed above](#). Because each case can present its own unique set of circumstances, we ask that if you have any questions on whether the ITF should apply to a supplemental claim and how that impacts the effective date, to please email the VSO inbox or contact Kim and we will work to give you the best answer.

VA must now accept an ITF for a supplemental claim. Claim processors must consider whether an ITF of record is applicable to a subsequently received supplemental claim under [§ 3.155](#). This includes all supplemental claims, whether filed within one year of a decision or after the continuous pursuit period has ended. An ITF filed within one year of a VA decision may, therefore, operate to maintain continuous pursuit if the ITF is applicable to a supplemental claim filed after expiration of the one-year period following notice of a decision. **However, this ruling *does not* extend the evidentiary submission timeframes for issues like dependency and income as outlined in [38 C.F.R. §3.401\(b\)](#) and [38 C.F.R. § 3.660](#).**

Keep in mind the following:

- If an issue is continuously pursued under [38 CFR 3.2500\(c\)](#) as an HLR, supplemental claim, or appeal to BVA (or a timely combination of any of those review options, in succession), decision makers must apply the effective date provisions of [38 CFR 3.2500\(h\)\(1\)](#), which allows for an effective date based on the date of receipt of the initial claim, or the date entitlement arose, whichever is later.
- This means that if the prior decision is continuously pursued within one year of the prior decision notification via supplemental claim, HLR, or appeal to BVA, the ITF is moot as the receipt of the supplemental claim, HLR, or appeal to BVA will allow VBA to consider the earliest possible entitlement. If there was an ITF and supplemental claim filed within a year of the prior decision, the ITF is moot as the receipt of the supplemental claim itself allows VBA to consider the earliest entitlement.

- The impact of the law change for applying an ITF for a supplemental claim on or after July 30, 2021 would come into play after a period of non-entitlement or possibly for the purpose of acting as a place holder for continuous pursuit of a prior decision. Two examples are provided below to help give a basic understanding of how this may apply. Please note these examples do not consider the submission timeframes for issues like income.
 - **Example 1 – ITF Received after period of non-entitlement:** A Veteran’s original pension claim is denied in a decision notification dated **01-01-2020**. The one-year review period expires on 01-01-2021 and there is no continuous pursuit of the prior decision before the expiration of the one-year period. We then receive an ITF for the Veteran’s pension on **08-01-2021**. Subsequently, we receive a supplemental claim for the Veteran’s pension on **09-01-2021** stating that they are seeking a review of the decision dated **01-01-2020** for consideration to pension entitlement.
 - With respect to the law change on July 30th, 2021, IF we can establish entitlement to pension in this case, then we can apply the ITF received on 08-01-2021 associated with the supplemental claim received 09-01-2021 and establish benefits from 08-01-2021.
 - **Example 2 - ITF as a potential placeholder for continuous pursuit of a prior decision:** We receive a Veteran’s original pension claim on **10-01-2021** and deny the claim in a decision notification dated **11-01-2021**. The one-year review period expires on 11-01-2022. We receive an ITF on **10-20-2022** (within one year of the prior decision) and then a supplemental claim on **11-10-2022**, for the prior decision regarding the denial of pension.
 - In this case, the ITF acts as a placeholder for continuous pursuit of the prior decision as the ITF was received within one year of the prior decision and the supplemental claim was received within one year of the receipt of the ITF. IF we can grant entitlement to pension, we could consider going back to the original date of claim of **10-01-2021** if all criteria are met.