AO73 Frequently Asked Questions

1. In regard to M21-1 V.iii.1.J.5.c, what evidence is needed to corroborate a claim that fraud, misrepresentation, or unfair business practice occurred related to the sale or marketing of financial products or services for purposes of establishing entitlement to VA pension?
    a. Do we need name of law firm? Name of individual that assisted them? What type of evidence (other than the example listed in V.iii.1.J.5.c) is acceptable evidence?

       Response: Evidence substantiating the application of this exception may include a complaint contemporaneously filed with state, local, or Federal authorities reporting the incident. Evaluate each situation on a case by case basis.

    b. Should that individual still be their appointed representative if properly requested on VAF 21-22a?

       Response: Do not adjust the appointed representative without a properly submitted or rescinded 21-22a.

    c. Are we required to report this information to OIG, OGC, or any other source?

       Response: There are no changes to reporting requirements.

2. In regard to 38 CFR 3.278(b)(7), does development need to be issued on a residential facility to ensure it is staffed 24 hours a day? What is the definition of a "residential facility?"

   Response: Yes, if the information is not provided, it must be developed. This is a required question on the Worksheet for an Assisted Living, Adult Day Care, or Similar Facility that is attached to the updates for the 534s and 527s. A care facility other than a nursing home means a facility in which a disabled individual receives health care or custodial care. A facility must be licensed if facilities of that type are required to be licensed in the State or country in which the facility is located. A facility that is residential must be staffed 24 hours per day with care providers.

3. Can funeral expenses be used to reduce IVAP in the NW calculation?

   Response: No, funeral expenses cannot be used to reduce IVAP for NW calculation.

4. Must we have the claimant tell us the value of land or the amount of land owned or can processors use google.

   Response: The claimant must self-report the value of land.

5. Are they excluded from FDC if we have to develop for the Assets Transfer?

   Response: Yes, any claim which requires development is excluded from FDC.

6. What if a rater has a RFD on a claim that needs a penalty period?

   Response: A claim should not be sent for a rating unless the penalty period has already expired at the time of processing or will expire at the end of the month in which the claim is being processed.

7. Does a quit claim deed count as a transfer?

   Response: VA will evaluate transfers that were made for less than fair market value. If the quit claim deed involved a transfer for less than fair market value, it may result in a penalty period.

8. Real estate value over 2 acres, if they don't know or provide an ambiguous answer for the value, do we develop?

   Response: Yes.

9. Will we still need to develop for from 21P-8049 when net worth is an issue?

   Response: We may need to develop with an 21P-8049 for cases received before October 18, 2018. Claims received on or after October 18, 2019 will not require this form.

10. When calculating IVAP to evaluate Net Worth, do Prospective Medical Expenses include the 5% Deduction?

    Response: Yes.

11. If any of those sections are completed but we do not have a 2680 can we assume they are claiming SMP and ask for the 2680?

    Response: The new versions of the form specifically request the Claimant answer if they are claiming SMP.

12. Do we need to now DEV on all 0779s to ask for what ADLs are being provided?

    Response: The information received on VA Form 21-0779 *Request for Nursing Home Information in Connection with Claim for Aid and Attendance* is sufficient to allow the claimed expense as long as the nursing home official signing the form indicates the claimant is a patient in the nursing home who receives either skilled or intermediate nursing care. If the facility is not a nursing home and the claimant does not receive skilled or intermediate nursing care, other information may need to be developed before the expense can be allowed.

13. With the new forms update. were there spots for other important things added like the vets SN and a place for SMP to clearly be claimed.

    Response: There are specific questions on the application forms that ask, "Are You Claiming Special Monthly Pension Because You Need the Regular Assistance of Another Person, Have Severe Visual Problems, Or Are Generally Confined to Your Immediate Premises?". The claimant is then directed to complete the applicable worksheet attached to the application.

    - Worksheet for An Assisted Living, Adult Day Care, Or Similar Facility
    - Worksheet for In-Home Attendant Expenses

14. Should the caregiver worksheet that will be attached to the new applications be considered the only caregiver forms that we will be able to accept? OR, can we continue to accept other caregiver forms?

    Response: VA may accept information submitted by the claimant in any form or method, as long as the initial claim is submitted on a prescribed form. If a claimant provides sufficient information to decide a claim for facility expenses without using the new worksheets, do not develop for a completed worksheet. If development is required for information from a facility, that can be accomplished by sending VA Form 21P-8416, the latest version of which includes the worksheets for non-nursing home facilities and in-home care.

    VA may only solicit information from a claimant (i.e. development) using forms approved for use by the Office of Management and Budget under the Paperwork Reduction Act. Therefore, PMCs must discontinue sending "Care Expense Statements" or similar, locally-developed instruments for collecting information from claimants.

15. We were previously informed that a medical expense cannot be taken as a claim for SMP, so if a claimant were to put XYZ expenses for a NH we would not infer this as an SMP claim. However, the new questions shown today, specifically reference ADLs and ask questions related to what ADLs a person may need help with, this is extremely similar to the questions on a 2680, so much so, that would it be possible to at least accept this as an indication of a claim for SMP?

    Response: The worksheet asks the claimant if he or she is applying for SMP, and refers back to the question (Did you claim special monthly pension on Page 5, Item 22A of the attached form?). For information about when to Infer a claim for A&A or housebound refer to M21-1, V.ii.3.1.e.

    Note also, per M21-1, V.ii.3.1.f., a Veteran or surviving spouse entitled to pension is presumed to need A&A if he/she is a patient in a nursing home on account of a mental or physical disability.

16. What is the definition of "health care" as referenced in new 38 CFR 3.278(b)(7)?

    Response: Health care is defined as the maintenance and improvement of physical and mental health through services performed within the scope of the provider's professional capacity.

17. Should an explanation and/or proof of depletion of assets ever be requested if the claimant was previously denied for net worth and later comes in with substantially lower assets?

    Response: Per M21-1, V.iii.1.J.4.f, VA may require receipts or other documentation if there is reason to question an asset reduction.

18. Based on new 38 CFR 3.278(c)(2) and new development text released for "UMEs Vitamins and Supplements," are we now required to develop on ANY claimed amount (not just amounts more than $1,500 per person) of food, vitamins, and supplements to determine if they are medically necessary?

    Response: Per M21-1 V.iii.1.G.3.r**.**, develop to the claimant for proof that a health care provider authorized to write prescriptions has instructed the claimant or relative to purchase nonprescription drugs, medical supplies, vitamins, food supplements, and/or herbal remedies ***only if*** the amount claimed is over $1,500.00 per household member per calendar year. If the amount is less than, or equal to, $1,500.00 per household member per calendar year, development is unnecessary.

    If development is initiated and the claimant does not respond to the request, allow a medical expense deduction up to $1,500 (per household member per calendar year) for nonprescription drugs, medical supplies, vitamins, food supplements and/or herbal remedies.

    38 CFR 3.278(c)(2) does not distinguish a specific amount at which point a doctor's note or prescription for these items is necessary; it only states that these items can only be considered medical expenses if they are medically necessary and prescribed or directed by a health care provider.

    P&F Service determined the policy is to allow such claimed expenses as long as the amount claimed is less than or equal to $1,500.00 per household member per calendar year, or to allow the claimed amount if prescribed by a health care provider authorized to write prescriptions.

19. In what situations should we be sending the new VAF 21P-0969? Neither the CFR nor the M21-1 explain when this form should be utilized.

    Response: VA Form 21-P-0969 is intended to be used when a claimant or his/her dependents has income other than Social Security benefits or had such income in the year preceding the application, assets exceeding $10,000, or transferred any assets in the three years prior to the application. If a claimant indicates one of these situations exists or has

occurred, or if VA has reason to believe the situation exists or has occurred, VA Form 21P-0969 should be used to develop the necessary information. The claimant may provide the information necessary to complete the application on VA Form 21P-0969 or by any other means, if the information is complete and allows VA to decide on the claim for Pension.

20. Do we develop for helpless child if the claimant established a trust for an adult child's maintenance?

    Response: Do not infer claims for helpless children; the issue must be specifically claimed. If claimant specifically claims a helpless child, but there is not enough information to establish helpless status, development is required.

21. If they don't tell us the market value of land over 2 acres after development should we deny the claim for failure to prosecute?

    Response: Yes, deny the claim for failure to prosecute.

22. Please explain what has changed regarding the $90 Medicaid rate and surviving children.

    Response: Prior to 2010, VA did not have the legal authority to pay the $90 Medicaid rate to surviving children who receive pension as the primary beneficiary. The law changed in 2010 to allow this, but VA had not updated 38 CFR §3.551(i) to reflect the change. The regulation now reflects the change in law.

23. Are VA retroactive payments considered for NW (if the retro puts the Veteran over the bright line limit?

    Response: Don't automatically add a VA retroactive benefit to a claimant's or beneficiary's assets. However, if a claimant reports an increase in assets on a running award (from any source that is not specifically excluded), VA must terminate benefits from the first of the next calendar year.

    Please review M21-1 V.iii.1.J.1.r. Discontinuance for Excessive Net Worth.

24. Can we deny for NW over the bright-line limit before basic eligibility is determined? Are entitlement and eligibility the same for purposes of NW denial? And, if we deny for NW, what EP should we use for a subsequent reopened claim?

    Response: If a claimant reports his or her net worth is over the bright-line limit the claim may be denied for that reason prior to evaluating basic eligibility. However, if there is enough information to make the basic eligibility determination, (for example: if the Veteran has verified wartime service and is over the age of 65), those decisions should be entered in the awards application at the same time as the denial for net worth. This will become extremely important with the implementation of the Veterans Appeals Improvement and Modernization Act of 2017.

Per M21-4 Appendix B, an EP 120 is used for supplemental pension claims after a period of non-entitlement if basic eligibility factors need to be determined. Net worth, income, look-back periods, and dependency issues are not considered basic eligibility determinations.

The determination of the appropriate end product credit for a claim submitted after a net worth denial will depend on the circumstances of the claim. If there are no rating or basic eligibility issues to be decided, EP 150 is appropriate. If there is a rating or basic eligibility issue which must be decided, EP 120 is appropriate. As stated above, if there is sufficient evidence in the claim file to make a basic eligibility determination on the first claim, that decision should be entered in the awards application.

25. If a claimant was denied for excessive net worth (for example: $100,000) prior to the law change, and the claimant reapplies within the reconsideration period after the law change (at the same net worth value), do we grant on the new date of claim or can we grant on the date of the law change?

    Response: Any claims received on or after October 18, 2018, will be evaluated using the new procedures, regardless of effective date. In the example given, yes, grant the claim with the appropriate effective date prior to October 18, 2018, (assuming all other factors allow a grant of benefits).

26. The bottom of the calculator states that if the IRA owner is under age 59.5, only 90% of the IRA is considered an asset. Why is that? And is that in the new CFR or manual changes? How should we be reevaluating net worth once they are over age 59.5? (Diary, etc.)

    Response: Per M21-1, V..iii.1.J.1.n, Individuals are assessed a 10% penalty if they withdraw from an IRA prior to reaching age 59.5, therefore we won't consider 100% of an IRA to be an asset until a person reaches age 59.5. Do not set a diary for age 59.5 or plan any such reevaluation.

27. How do we determine fair market value? Example: the claimant sells a painting.

    Response: See V.iii.1.J.1.h. for the definition of Fair Market Value and possible sources of information about the value of property.

28. We require clarification on the chart in M21-1 V.iii.1.J.5.s.
    a. <u>In Step 5 and 6</u>: What does "reported by the claimant" mean?

        i. **Example**: If interest income is shown on FTI ($22 from one source and $108 from another source), and the claimant reports $60 in expected annual interest income, is this sufficiently "reported by the claimant?" Or is development required if the amount reported by the claimant does not exactly match the immediate FTI year?

Response: Per M21-1 V.iii.1.J.5.s., the new applications ask claimants if assets were transferred and asks about income that was received in the last year that is no longer received. If they answer yes, they must provide more information on *the VA Form 21P-0969, Income and Asset Statement in Support of a Claim for Pension or Parents' Dependency and Indemnity Compensation (DIC).* In your situation, the type of income is consistent and it is reasonable to accept the claimants word that interest income will reduce.

29. Is there a reason why we are not checking (and developing, if needed) on the third FTI year so the full 36-month look back period is covered?
    a. We understand that a portion of the third tax year may cover one or more months prior to the look-back period; however, we would not know if the asset associated income was transferred before or after the look-back period begins unless this information is requested from the claimant.

    Response:M21-1 V.iii.1.J.5.b., defines VA the look-back period. One of the reasons VA implemented a look-back period is to deter pension poachers. It is not intended to place an extra burden on Veterans and survivors.

    Please consider this example:
    DOC is February 1, 2022 – the most recent FTI data available is from 2020, which makes 2020 the immediate FTI year and 2019 the second FTI year. Please refer to M21-1 V.iii.1.J.5.p. and M21-1 V.iii.1.J.5.q.

30. So I am assuming that we must first develop for FTI before making that NW decision using the FTI income, just like excess income. If the only things that makes them excess NW is the FTI, we must develop first, is that correct?

    Response: Yes. Please follow manual guidance per M21-1 V.iii.1.J.4, net worth determinations for claims received on or after October 18, 2018.

31. If there are multiple dates of transferred assets and they span multiple years, is the Vet + dependent w/ A/A rate used based on the date of the final transfer?

    Response: Per M21-1 V.iii.1.J.5.j, the monthly penalty rate is the MAPR, for a Veteran in need of aid and attendance (A&A) with one dependent on the effective date of payment

32. Some annuities are reported as having no value while the individual is alive while others do have a value so if the amount of an annuity is reported is that counted and if not what next?

    Response: Per M21-1 V.iii.1.J.4.j, Count the total value of an annuity, trust or other similar financial instrument as an asset if the claimant establishes that he or she has the ability to liquidate the entire balance.

If the claimant cannot liquidate the value of the annuity trust or other similar financial instrument or information about the liquidity of an annuity is unavailable, count the monthly income received as income for net worth purposes and exclude the financial instrument value from assets.

33. Is the 90-day time limit intended to be the appeal period as opposed to the 4107-appeal period?

    Response: A claimant can appeal any decision at any time, however, if the claimant does not provide evidence within 90 days of the notification of the penalty period, the appeal should be denied. For more information see manual reference M21-1 V.iii.1.J.5.o, penalty period recalculations.

34. Can UMEs be used to reduce the NW beyond the IVAP portion?

    Response: Medical expenses may not be used in the calculation of a claimant's assets. Continuing medical expenses may be used to reduce IVAP for net worth calculations. The lowest possible IVAP is $0.00.

35. Should all one-time incomes (countable on the effective date in which net worth is being calculated) also be included in the IVAP calculation for net worth? Common examples include the SSA death benefit or SSA retroactive payments.

    Response: Yes, please refer to M21-1 V.iii.1.J.4.a for the specific exclusions from traditional IVAP.

36. When should net worth be recalculated on a maintenance claim in which the claimant has a running award? The CFR states that anytime net worth changes, VA should recalculate net worth. Net worth is defined in CFR 38 3.274 as "the sum of a beneficiary's assets and annual income."

    Response: VA should recalculate NW anytime there is a significant change in income or assets; or, if it appears that a small change in income and/or assets may cause NW to exceed the net worth limit on a running award. If a claimant reports a change in income (that does not terminate benefits), and that requires a new NW determination, but does not report current asset information, use the asset information of record to determine NW. Develop for current income and asset information if you determine there is a need.

    Exception: It is not necessary to recalculate NW if the change in IVAP only includes a medical expense adjustment on a running award.

    a. Does a new net worth calculator need to be completed every time there is a change in IVAP?

       Response: No

b. If not, at what point are we required to do a new net worth determination when annual income or annual expenses change? Is there a line at which an income or expense change is considered significant enough to warrant a new net worth calculation?

Response: VA should recalculate NW anytime there is a significant change in income or assets; or, if it appears that a small change in income and/or assets may cause net worth to exceed the limit on a running award. If a claimant reports a change in income (that does not terminate benefits), and that requires a new NW determination, but does not report current asset information, use the asset information of record to determine NW. Develop for current income and asset information if you determine there is a need.

Exception: It is not necessary to recalculate NW if the change in IVAP only includes a medical expense adjustment on a running award.

c. If there is a significant income or expense change, in order to do an accurate net worth calculation, should we also be developing for the current value of assets if the prior asset report we have is over one year old?

Response: If it appears net worth may have increased close to or above the bright-line limit, recalculate Net Worth. Develop for current income and asset information if you determine there is a need.

37. Do we have to upload a copy of the calculator to LCM?

Response: The calculator will need to be scanned to LCM on any claim that has either a denial or discontinuance for NW, a transfer for less than fair market value, and/or a penalty period is assessed. See V.iii.1.J.4.a. Bright line Net Worth Limits and V.iii.1.J.5.c.Transfers for Less Than Fair Market Value.

38. Can we call to get the updated info?

Response: Telephone development is always encouraged.

39. For cases pending currently that we are going to work and consider granting when NW is under the bright line limit, we are not considering IVAP in calculations, correct?

Response: Use the applicable rules for NW determinations depending on DOC.

40. If someone is over income limit and NW limit, is there a preference which one to deny?

Response: Because VA cannot grant benefits until NW is reduced to an appropriate level, we recommend denying for NW if both NW and income are over the limit.

41. If there is a penalty period, does lib law apply?

    Response: If a penalty period affects any portion of a lib law year, the claimant is not entitled to the entire lib law year. See V.iii.1.J.5.i.

42. For our decision on look back period, are we solely using what is listed on the application?

    Response: No, you should also evaluate FTI information. See V.iii.1.J.5.s., **E**valuating Asset Transfers**.**

43. What justification is there in the CFR to use only CMEs when calculating IVAP for net worth purposes?

    Response: One of the functions of Pension and Fiduciary Service (P&F) is to provide claims processing policies and procedures, and to ensure consistent decisions for our Veterans and their survivors. P&F decided that the only applicable deductible expenses are continuing medical expenses for calculating income for Net Worth determinations.

    a. CFR 38 3.274(b)(3) states "In calculating annual income for this purpose. VA will subtract all applicable deductible expenses, to include appropriate prospective medical expenses under 3.272(g)."
    b. It does not state *only* to subtract prospective medical expenses, only that they are included. It also states that *all* applicable deductible expenses should be subtracted. Based on this regulation, how can VA justify only using prospective medical expenses, especially if the difference between entitlement and non-entitlement for net worth purposes lies in non-continuing expenses.

       Response: Net worth is calculated on a single date in time. If funeral expenses were paid before the date of claim, those expenses already should be factored into the claimants reported asset amount. U-meds paid after the date of claim will reduce assets at the time of payment. If last expenses, medical expenses or any other expenses reduce assets below the bright-line limit after a denial for NW, a claimant can re-apply and VA can grant benefits from the date NW ceased to be excessive.

44. When calculating IVAP for net worth purposes, what CMEs should be used if the continuing expense amounts change during the IY period?
    a. Example: If claimant moved care facilities 6 months after entitlement date, 6 months of first care facility (at $2,000 per month) and 6 months of second care facility (at $2,500 per month) is countable during the initial year period. In this situation, what CMEs would be used to calculate IVAP for net worth purposes?

    Response: AO73 did not change the process for calculating C-meds. In your scenario, it depends on the date of processing. If you know about the change in C-meds prior to

processing, use $2,500 per month as the C-med amount. If you process the claim before being informed about the change in C-meds, use $2,000 per month.

45. Are all transfers evaluated for a penalty period?

    Response: Only evaluate transfers for less than fair market value.

46. A lot of individuals sell their primary residence and use the proceeds to buy into a continuing care community which requires an up-front buy in amount which can exceed the net worth line. In these cases, how would that transaction affect the net worth calculation?

    Response:
    a. If the house is sold for fair market value, there is no penalty.
    b. If the house is sold for less than fair market value, a penalty may be assessed.
    c. A person can sell their house and spend down assets. See **V.iii.1.J.4.e.** How Net Worth Decreases

47. Will the calculator be built into VBMS eventually?

    Response: Yes. We are working to have it added as a future system enhancement similar to how the medical expenses calculator is built in. In the meantime, the calculator is housed on the Pension and Fiduciary Service Intranet site.

48. New M21-1 V.iii.1.J.5.r states that asset associated income includes examples such as rental income, capital gains, interest, and dividends.
    a. Are these the *only* examples of asset associated income?

       Response: No, the four listed income types are examples. Adjudicators may see claims with income types that share characteristics with the four listed types, but are not exactly the same. The adjudicator should review the evidence of record to determine if the associated income possibly has an underlying asset.

    b. Should we be also considering the following types of income as asset associated income?
       i. Real estate sales. -Yes.
       ii. Income from stocks and bonds.-Yes.
       iii. Distributions from pension/annuities/retirement or profit sharing plans/IRAs/insurance contracts/etc.? - Yes.

49. Based on new M21-1 V.iii.1.J.5.r and s, are VSRs required to use FTI data when considering possible prior asset transfers?

    For example, if FTI shows a claimant received $250,000 from real estate sales in 2018 and they apply for benefits in 2019 reporting only $15,000.00 in assets, are VSRs supposed to request more information about the spend-down of assets?

Response: Yes, the information displayed on the IRS/SSA screens should be reviewed to determine if there were possibly any asset transfers during the look back period. The steps outlined in V.iii.1.J.5.s. state, if there are discrepancies between what the claimant reported on his or her application and what FTI is showing in the immediate and second FTI year, development is required.

50. Historically, PMCs consider claimant's total monthly expenses in NW determinations (utilities, rent, clothing, food, etc.). Going forward, those are no longer considered and only medical expenses?

    Response: For claims received on or after October 18, 2018, a claimant's total monthly expenses such as utility bills, rent, food, clothing are not considered in determining net worth. As stated in M21-1 V.iii.1.J.4.a., only consider reasonably predictable (continuous) medical expenses in calculating IVAP for the purpose of determining a claimant's net wort.

51. How could FTI be found on the calculators and are the calculators required to be scanned into LCM?

    Response: The calculators are required to be scanned into LCM efolder. The Internal Revenue Service (IRS) considers any source of information a derivative of FTI, if FTI related data is contained within it. This includes the asset and income amounts that could be used within a calculator.

52. Going back to the FTI / IVAP issue. If the IVAP doesn't contain FTI, can we upload the calculator to VBMS?

    Response: No. To eliminate any errors in determining if FTI information is contained within the IVAP used in a calculator and to prevent any possible FTI violations, P&F Service decided that all calculators to be placed within the LCM efolder.

    Do we have authorization to grant pension for future effective dates - after penalty period - or must they reapply? Or if by the time we work the claim the penalty period is past, we can grant benefits?

    Response: Per M21-1 V.iii.1.J.5.k., claimants must apply during the last month of the penalty period to receive benefits with a payment date as of the first day of the month following the penalty period. If benefits are paid from the first of the month following a penalty period, the initial year also starts on the first of the month following the penalty period. Claims made after the expiration of the penalty period will be paid based on the date of claim.

    However, if the penalty period expires before the claim is processed, benefits can be awarded from the first of the month after the penalty period expired. There is no need for the claimant to resubmit a claim.