Incarceration Adjustments

Instructor Lesson Plan

Time Required: 5 Hours

**Table of Contents**

[Lesson Description 2](#_Toc445816767)

[Introduction to Incarceration-Related Award Adjustments 4](#_Toc445816768)

[Topic 1: Terms and Definitions Associated with Incarceration Adjustments 6](#_Toc445816769)

[Topic 2: Regulatory Requirements 7](#_Toc445816770)

[Topic 3: Due Process and Incarceration Adjustments 12](#_Toc445816771)

[Topic 4: Apportionment Benefits 15](#_Toc445816772)

[Topic 5: Incarcerated Dependent Adjustments 19](#_Toc445816773)

[Lesson Review, Assessment, and Wrap-up 22](#_Toc445816774)

|  |
| --- |
| Lesson Description |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. |
| TMS # | 1197943 |
| Prerequisites | Prior to this lesson, the Veteran Service Representatives (VSRs) should have completed VSR Challenge. Trainees should also understand the process used to determine effective dates, completed the Due Process and Processing Computer Writeouts lessons, and be able to process awards in VBMS-A. |
| target audience | The target audience for Incarceration-Related Award Adjustmentsis entry-level VSRs.Although this lesson is targeted to teach entry-level VSRs, it may be taught to other VA personnel as mandatory or refresher type training. It may also be used to teach entry-level PMC VSRs. |
| Time Required | 5 hours  |
| Materials/TRAINING AIDS | Lesson materials:* Incarceration-Related Award Adjustments Presentation
* Incarceration-Related Award Adjustments Handouts
* Incarceration-Related Award Adjustments Job Aids
* VSR Assistant Resources - Calculators
 |
| Training Area/Tools  | The following are required to ensure the trainees are able to meet the lesson objectives: * Classroom or private area suitable for participatory discussions
* Seating, writing materials, and writing surfaces for trainees
* Handouts, which include a practical exercise
* Large writing surface (easel pad, chalkboard, dry erase board, etc.) with appropriate writing materials
* Computer with PowerPoint software to present the lesson material

Trainees require access to the following tools: * VA TMS to complete the assessment
* VSR Assistant Resources – Calculators
* VBApps systems to include SHARE VBMS- Core and VBMS-A
 |
| Pre-Planning  | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session.
* Become familiar with the content of the trainee handouts and their association to the Lesson Plan.
* Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson.
* Ensure that there are copies of all handouts before the training session.
* When required, reserve the training room.
* Arrange for equipment such as easel charts, an overhead projector, and any other equipment (as needed).
* Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson.
* This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins.
 |
| Training Day  | * Arrive as early as possible to ensure access to the facility and computers.
* Become familiar with the location of restrooms and other facilities the trainees will require.
* Test the computer and projector to ensure they are working properly.
* Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly.
* Make sure that a whiteboard or easel chart and the associated markers are available.
* Complete a roll call attendance sheet or provide a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers.
 |

|  |
| --- |
| Introduction to Incarceration Adjustments |
| INSTRUCTOR INTRODUCTION | Complete the following:* Introduce yourself
* Orient learners to the facilities
* Ensure that all learners have the required handout
 |
| Purpose of Lesson | This lesson is intended to provide an overview of incarceration-related award adjustments. This lesson will also provide opportunities to practice identifying and accurately promulgating incarceration-related award adjustments. This lesson will contain discussions and exercises that will assist you in understanding: * Terms and definitions associated with incarceration adjustments
* Regulatory requirements
* Due process notices and incarceration adjustments
* Apportionment benefits
* Incarcerated dependent adjustments
 |
| Lesson ObjectivesDiscuss the following:Slide 2 Handout 2 | To accomplish the purpose of this lesson, the VSR will be required to accomplish the following objectives.TheVSR will be able to: * Define terms associated with incarceration
* Understand the regulatory requirements for reducing compensation and discontinuing pension benefits involving incarceration
* Understand and apply the necessary steps for sending due process notification and completing reductions of compensation and discontinuance of pension payments during incarceration
* Identify and apply the methods used to properly adjust awards of incarcerated dependents
* Identify and apply the methods used to properly apportion benefits of an incarcerated beneficiary
 |
| Explain the following: | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed.  |
| Motivation | Compensation and Pension (C&P) benefits for Veterans incarcerated in excess of 60 days in penal institutions must be adjusted. Electronic work items are generated monthly as a result of database cross-matches between the C&P Master Records File and Federal Bureau of Prisons (BOP) and Social Security Administration (SSA) records to identify beneficiaries who have been incarcerated. ROs review the incarcerated beneficiary’s file and reduce or discontinue benefits when necessary. It is critical to adjust these awards expeditiously to minimize overpayments. |
| STAR Error code(s) | Tasks 1, 4, 6, 7, 9, 10, 11 |
| ReferencesSlide 3-4 Handout 3 | Explain these references.All M21-1 references are found in the [Compensation and Pension Knowledge Management Portal](https://vaww.compensation.pension.km.va.gov/).* [38 U.S.C. § 5313](https://www.law.cornell.edu/uscode/text/38/5313), Limitation on payment of compensation and DIC to persons incarcerated for conviction of a felony
* [38 U.S.C. § 1505](https://www.law.cornell.edu/uscode/text/38/1505), Payment of pension during confinement in penal institutions
* [38 CFR 3.665](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1665), Incarcerated beneficiaries and fugitive felons-compensation.
* [38 CFR 3.666](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1666), Incarcerated beneficiaries and fugitive felons-pension
* [M21-1, Part III, Subpart v, 8](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000003109%2FChapter-08-Incarceration), Incarceration
* [M21-1, Part X, 7](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000015004%2FM21-1-Part-X-Chapter-12-Bureau-of-Prisons-BOP-Match), Bureau of Prisons (BOP) Match
* [M21-1, Part X, 2](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000015010%2FM21-1-Part-X-Chapter-15-Social-Security-Administration-SSA-Prison-Match).D, SSA Prison Match
* VBMS-A User Guide (Log in to VBMS-A and click “Awards Help”)
* [VSR Assistant – Resources](http://epss.vba.va.gov/vsr_assistant/resource_index.html), 61-Day Rule Incarceration Calculator
 |

|  |
| --- |
| Topic 1: Terms and Definitions Associated with Incarceration Adjustments |
| **INTRODUCTION** | This topic will assist the trainrr in understanding terms often encountered when conducting case reviews triggered by a beneficiary’s or dependent’s incarceration. |
| **OBJECTIVES/TEACHING POINTS** | Topic objectives:* Define terms associated with incarceration-related award adjustments

The following topic teaching points support the topic objectives: * Terms and definitions
 |
| **NOTE(S)** | The list of terms and definitions is not all inclusive, but it does contain terms the trainees will likely encounter when conducting case reviews triggered by a beneficiary’s or dependent’s incarceration. |
| Terms and DefinitionsDiscuss the following:Slide 5Handout 4 | After discussing the terms and definitions with the trainees, allow time to ask questions. The following terms and definitions are frequently associated with incarceration claims**:** * **Arrest warrant** is an order from a magistrate or other official authorized to issue such warrants directing that a named individual be arrested and brought before the issuing official.
* **Incarcerated beneficiary** means any beneficiary receiving compensation incarcerated in a penal institution for committing a felony or receiving pension and committing a felony or misdemeanor.

It does **not** include any Veteran who is pursuing a rehabilitation program under the Vocational Rehabilitation and Employment Program (Chapter 31) while residing in a halfway house or participating in a work-release program in connection with conviction of a felony.* **Felony**is any offense punishable by death or imprisonment for a term exceeding one year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.
* **Misdemeanor**is any offense lower than a felony and generally punishable by fine, penalty, forfeiture, or imprisonment other than in a penitentiary.
* **Release from incarceration** includes participation in a work release or halfway house program, parole, and completion of sentence.
 |

|  |
| --- |
| Topic 2: Regulatory Requirements |
| Introduction | This topic will assist the trainee in understanding regulatory requirements as they relate to the adjustment of benefits because of a beneficiary’s or dependent’s incarceration. |
| OBJECTIVES/Teaching Points | Topic objectives:* Understand the regulatory requirements for reducing compensation and discontinuing pension benefits involving incarceration

The following topic teaching points support the topic objectives: * Incarcerated Beneficiaries and Fugitive Felons – Compensation
* Incarcerated Beneficiaries and Fugitive Felons – Pension
* Limitation of Compensation and DIC and Effective Dates for Public Law 96-385
* Authority to Adjust Compensation and DIC and Discontinue Pension
* Periods During Which VA May Not Reduce or Discontinue Benefits
* Effect of Incarceration on Payments of VA Benefits
* Notice of a Beneficiary’s Incarceration
 |
| Incarcerated Beneficiaries and Fugitive Felons*Discuss the following:* Slide 6Handout 5-6 | Discuss the basics of 38 CFR 3.665 as it applies to compensation and DIC:* Reduction effective the 61st full day of confinement following conviction of a felony offense
* Dependent’s potential entitlement to an apportionment
* Resumption of benefits upon release from prison

Discuss the basics of 38 CFR 3.666 as it applies to pension:* Discontinuance pension effective the 61st full day of confinement following conviction of a felony or misdemeanor offense
* Dependent’s potential entitlement to payment of the beneficiary’s pension
* Resumption of benefits when incarceration ends
 |
| **DISCUSSION** | Discuss the similarities and differences of the two regulations. Add any differences and similarities that are overlooked, e.g., 38 CFR 3.665 deals with compensation and 38 CFR 3.666 deals with pension. |
| Public Law 96-385Slide 7*Handout 6* | Effective October 7, 1980, Public Law 96-385, added 38 U.S.C. 5313, which prohibits VA from paying full compensation or DIC to beneficiaries who are incarcerated in a penal institution in excess of 60 days for conviction of a felony. Beginning on the 61st day of incarceration or re-incarceration (due to violation of parole/probation), compensation or DIC is not to be paid at a rate higher than the rate of disability compensation payable for a disability evaluated as 10 % disabling. *Inform trainees the rates will be discussed under the “Effect of Incarceration on Payments of VA Benefits” section.*Discuss the specifics regarding the effective dates of PL 96-385. |
| **Authority to Adjust Payments**Slide 8*Handout 6* | Inform the trainees that these are the laws that mandate that benefits be adjusted based on incarceration.VA is responsible for adjusting payments of incarcerated beneficiaries.* **38 U.S.C. 5313** - Authority to reduce compensation and dependency and indemnity compensation payment to persons incarcerated for a conviction of a felony
* **38 U.S.C. 1505** - Authority to discontinue pension payment during confinement in a penal institution for a conviction of a felony or misdemeanor
 |
| Do Not Reduce or Discontinue BenefitsSlide 9Handout 7 | In addition to a general release from prison due to completing the sentence, VA would not withhold benefits in the following situations:* Participation in a work-release program
* Previously incarcerated individual is under community control
* Incarceration in a foreign penal institution
* Residing in a halfway house, residential re-entry center, or civil commitment center

*Inform the trainees a “residential re-entry center,” is a term used in lieu of “halfway house.”* |
| Effect of Incarceration on Benefits Slide 10*Handout 7-8* | *Overview – Reduction of Compensation and Discontinuance of Pension Payments*

|  |  |
| --- | --- |
| **Beneficiary is Receiving:** | **Beneficiary will receive payment at:** |
| 20% or more compensation | 10% SC Rate |
| Less than 10% compensation | ½ of 10% SC rate (round down if a half-cent) |
| 0% compensation with SMC K | ½ 10% SC rate |
| DIC (surviving spouse, child, or parent) | ½ of the 10% SC rateNote: Do not adjust parent’s DIC award if it is less than ½ of the 10% SC comp rate |
| Improved Pension or Death Pension | Payment must be discontinued (check to see if Veteran is entitled to compensation) |

***Compensation***As discussed under the Limitation of Compensation and DIC, benefits must be reduced effective the 61st full day of incarceration following conviction of a felony offense. * Increased compensation during incarceration – refer to slide 11 of the PowerPoint, also located on p. 8 of the handout
* Re-incarceration following a period of release – usually due to a violation of the terms of release on parole, probation, work-release, etc. Due process required again, and the effective date of reduction would be the 61st full day of re-incarceration.

***Dependency and Indemnity Compensation (DIC)***As discussed under the Limitation of Compensation and DIC, benefits must be reduced effective the 61st full day of incarceration following conviction of a felony offense. Rate payable is ½ of the rate of disability compensation payable for a disability evaluated as 10% disabling. |
| Increased Evaluations During Incarceration Slide 11*Handout 8* | If an incarcerated beneficiary files a claim for compensation, we have a duty to assist that Veteran in developing his/her claim. If a Veteran’s combined disability evaluation is increased from a date that falls within a period during which VA reduced the Veteran’s compensation due to incarceration, adjust the award as follows:

|  |  |
| --- | --- |
| **IF** | **Then:** |
| VA increased the combined disability evaluation from 10% to 20% or higher | Increase the Veteran’s benefits to the 10% rate during the period of incarceration |
| The Veteran’s combined disability evaluation was 20% or higher before the increase | Process the corresponding rating decision but do not increase the Veteran’s benefits until incarceration ends.  |

 |
| VA Benefits Effected by IncarcerationSlide 12*Handout 9* | VSCs have jurisdiction over incarceration cases if the beneficiary is entitled to disability compensation. Pension management centers (PMCs have jurisdiction over incarceration cases if the beneficiary is receiving DIC or pension. Forward such cases to the appropriate PMC for processing.*.****Other Programs Affected***The following benefit programs may also be affected by a beneficiary’s incarceration:* Clothing Allowance (handled by VAMC)

Education Benefits (handled by Regional Processing Offices) |
| Official Notice of Incarceration Matching ProgramsSlide 13*Handout 9-10* | *For Action to Take upon Receipt of Notice of Incarceration, see* [*M21-1 III.v.8.A.3.a*](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=5544000000010343)*. (Both official and unofficial notice). This provides step-by-step instruction on how to handle the notices****Official Notice***Official notice usually comes via the matching programs with the Bureau of Prisons (BOP) and the Social Security Administration (SSA)* BOP and SSA matches are generated when the Social Security number (SSN) of a VA beneficiary or dependent matches the SSN of an individual BOP or SSA records indicate is as incarcerated
* Before taking action, the match must be manually compared to the beneficiary’s information in VA systems

**\*Refer to Attachment A of the trainee handout for an example of match worksheet.** |
| Official Notice of Incarceration (cont.)Slide 14Handout 9-10 | Establish an EP 290 when a BOP/SSA worksheet is received and/or EP 840 work item is identified* + Claim Label for EP 290 use:
		- *Social Security Prison Match* if notice was received from SSA match,
		- *Bureau of Prisons* claim label if notice came from BOP match, or
		- *Incarceration Adjustment* in all other instances
	+ Date of claim (DOC) for EP 290 use:
		- Run date of the BOP/SSA match, or
		- Same DOC as the EP 840, if one was established

Upon establishment of EP 290, clear EP 840 (if one exists) and add the *Potential Over/Underpayment* special issue to the contention under the EP 290. |
| Unofficial Notice of IncarcerationSlide 15*Handout 10* | This can be any communication or information received from an individual or non-government third party. Establish EP 290 (DOC would be date VA received notice) and attempt to confirm the information through an official source. *Refer to the sources listed on p. 10 of the trainee handout.* |
| Verifying Incarceration*Slide 17**Handout 11* | Verifying Incarceration from an Official SourceAn official source, for the purpose of verifying incarceration, includes:* Federal, State, and local government authorities, such as
	+ - * + law enforcement officials
				+ officials at correctional facilities
				+ prosecutors, and
				+ parole officers
* BOP’s website (<http://www.bop.gov/>)
* official websites of individual correctional facilities, and
* Vine (<http://www.vinelink.com/>), a privately operated, online inmate locator service.
 |
| Information to Obtain from Official Source*Slide 18**Handout 11* | Information to obtain from the source:* Type of conviction (felony, misdemeanor, or other)
* Date (month, day, year) of conviction (month, day, year)
* Date (month, day, year) of incarceration following conviction
* Indication the beneficiary was incarcerated for more than 60 days following conviction

Can request information via telephone or letter. If information is obtained via telephone, document on VA Form 27-0820e. |
| Incarceration Verified?*Slide 19**Handout 11* | Use the table below to help you determine how to proceed after making contact with an official source:

|  |  |
| --- | --- |
| **If information from official source shows…** | **Then…** |
| Beneficiary/dependent was incarcerated: * For reasons other than a felony (for comp/DIC) or felony or misdemeanor (for pension)
* Less than 60 days, or
* Not yet convicted
 | Clear the EP 290; Take no further action unless notice of incarceration was received from the beneficiary, then notify them no adjustment is needed. |
| Beneficiary/dependent was incarcerated: at least 60 days after conviction for a:* Felony (for comp/DIC), or
* Felony or misdemeanor (for pension)
 | * Clear the EP 290
* Establish EP 600, using current date as DOC
* Add *Potential Over/Underpayment* special issue
* Add *Incarceration* flash
* Initiate due process
 |

 |
| Demonstration | Go to M21-1 III.v.8.A.3.a and discuss step-by-step instructions for action upon notification of incarceration. |
| Exercise | Have trainees turn to p.12 and 13 of the trainee handout to complete the practical exercises for Topic 1 and Topic 2. Once completed, review with the class. |
| Topic 3: Due Process and Incarceration Adjustments |
| Introduction | This topic will assist the trainee in identifying the elements that must be included in a notice of proposed adverse action. The trainees will also be presented with the calculations required when reducing or discontinuing benefits based on incarceration. |
| OBJECTIVES/Teaching Points | Topic objectives:* Understand and apply the necessary steps for sending due process notification and completing reductions of compensation and discontinuance of pension payments during incarceration

The following topic teaching points support the topic objectives: * Due Process for Discontinuance or Reduction
* Adjusting a Beneficiary’s Award in the Claims-Processing System
* Resuming Payments Upon Release from Incarceration
 |
| Due Process & IncarcerationSlide 20Handout 14 | Prior to reducing or discontinuing a beneficiary’s award, they are entitled to due process rights.Discuss the elements each notice of proposed adverse action must contain.**\*\*Refer to Attachment B in the trainee handout for a sample of a notice of proposed adverse action.** |
| Adjusting the AwardSlide 21Handout 14-15 | Discuss the steps to take when adjusting an award based on incarceration.Follow up with a demonstration of a live case.**Stress the importance of entering the information under the “ADJUST” button.** |

|  |  |
| --- | --- |
| Resuming PaymentSlide 22-23Handout 15-16 | If notice that an individual’s incarceration has ended, resume the payment of benefits (if otherwise in order) effective the date he/she:* is released from incarceration,
* is placed under community control,
* begins participation in a work-release program, or
* moves to a halfway house; civil commitment center; or a residential re-entry center (as defined in M21-1 III.v.8.A.1.d),

For notification received more than one year after these dates, resume payments effective the date VA received notification.Control notice that incarceration has ended with EP 290, using the date VA received the notice as the DOC:* Add *Potential Over/Underpayment* special issue
* If release from incarceration is verified, remove the *Incarceration* corporate flash

In pension cases, undertake development to obtain current income, expenses, and net worth before resuming the payment of benefits.Apportionments based on incarceration will be terminated upon release, unless there is evidence indicating the beneficiary has not reunited with the apportionee.*If the Veteran’s award was subject to a withholding to recoup separation benefits, or another withholding existed prior to the incarceration adjustment, review to determine if that adjustment needs to be reinstated following release from incarceration.* |
| DEMONSTRATION | * Demonstrate a notice of proposed adverse action using a live case.
* Demonstrate the reduction or discontinuance of an award using a live case.
* Demonstrate the resumption of benefits on a live case.
 |
| Exercise | Have the trainees turn to p.17 of the trainee handout to complete the practical exercises for Topic 3. Once completed, review with the class. |

|  |
| --- |
| Topic 4: Apportionment Benefits |
| Introduction | This topic will assist the trainee in better understanding the methods used to apportion/pay benefits of an incarcerated beneficiary to his/her dependent(s). |
| OBJECTIVES/Teaching Points | Topic objectives:* Identify and apply the methods used to properly apportion benefits of an incarcerated beneficiary

The following topic teaching points support the topic objectives: * Apportionments/Payment of Pension to Dependents When a Beneficiary Is Incarcerated
* Effective Dates for Apportionments/Payment of Pension to Dependents When a Beneficiary Is Incarcerated
 |
| Apportionment and Incarceration Slide 25Handout 18 | *General*Remind the trainees about the requirement to use standardized forms that went into effect March 24, 2015. VA Form 21-0788 is the standard form for apportionment claims and claims for the payment of an incarcerated beneficiary’s pension to his/her dependent(s).VA may be able to apportion part of an incarcerated beneficiary’s award, or pay part of an incarcerated beneficiary’s pension, to his/her dependents; however, VA cannot pay an apportionment/pension to, or on behalf of, any incarcerated dependent. |
| Notification of Apportionment Eligibility Slide 26*Handout 18* | VSRs must inform the beneficiary in the notice of proposed adverse action that his or her dependents may be entitled to an apportionment/payment of pension. Concurrently, if the existence and contact information of any dependents is known, VA must also invite a claim from such dependents by sending them a VA Form 21-0788. |
| Apportionment Factors Slide 27*Handout 18* | **Important** – for an apportionment to be paid, the claimant must still show financial need. |
| Apportionment Eligibility Slide 28-29Handout 19 | ***Compensation, Pension, Death Pension, DIC***Discuss each type of benefit and how much and who may be paid based on each benefit.  |

|  |  |
| --- | --- |
| Apportionment Effective DatesSlide 30Handout 19-20 | ***Potential Effective Dates***Elaborate on:* 61st day of incarceration – if claim received within one year of the date VA notified the Veteran or his/her dependents of the dependents’ potential entitlement to an apportionment

Explain that actual payment will be received earlier than the date of last payment based on the date the award action is taken, and any retroactive benefit will be used to reduce the beneficiary’s overpayment.* Date claim is received by VA – if claim received more than one year after date VA notified the Veteran or his/her dependent(s) of the dependents’ potential entitlement to an apportionment
 |
| Notification & Award AdjustmentSlide 31Handout 20 | ***Notification to the Claimant***When notifying a claimant of VA’s decision to grant an apportionment/pay an incarcerated beneficiary’s pension to his/her dependents, notify the claimant of the decision, the rate of payment, the effective date of the award, etc. Also inform the claimant:* The apportionment/payment is temporary and subject to immediate discontinuance upon the beneficiary’s release from incarceration, and
* The apportionee/dependent may submit a new claim for an apportionment if he or she does not reside with the beneficiary after incarceration ends

**Note**: Upon release from incarceration, VA assumes the beneficiary has reunited with his/her dependents unless there is evidence to the contrary.  |
| Discontinuing Apportionment When Incarceration EndsSlide 32Handout 20 | Since apportionees should have been notified of the temporary nature of the apportionment at the time of the grant, there is no need to provide due process prior to terminating or reducing the apportionment.When determining the effective date to adjust the apportionment after the primary beneficiary’s incarceration ends, consider:* The date of release,
* The last paid date (from Award Information tab in Share), and
* Whether the primary beneficiary was reunited with the dependent(s)
 |
| **Discontinuing Apportionment-Pension**Slide 33Handout 20-21 | ***Pension***When the primary beneficiary is released from incarceration, VA will:* Discontinue the apportionment effective the last paid date
* For the period between the date incarceration ended and the last paid date for the apportionment, pay the primary beneficiary the difference between the full amount of pension to which he or she is entitled, and the amount of the apportionment
* Resume payment of the full amount of pension to which the primary beneficiary is entitled effective the last paid date of the apportionment, and
* Notify both the Veteran and his or her dependents of the adjustments made to their individual awards

**Note**: First obtain income and net worth information to determine pension entitlement amount following release from incarceration. |
| **Discontinuing Apportionment-Compensation**Slide 34-35Handout 20-21 | ***Compensation***When a Veteran is released from incarceration and reunited with his/her dependents, VA will:* Discontinue the apportionment effective the last paid date
* For the period between the date incarceration ended and the last paid date for the apportionment, pay the Veteran the difference between the full amount of compensation to which he or she is entitled, and the amount of the apportionment
* Resume payment of the full amount of compensation to which the Veteran is entitled effective the last paid date of the apportionment, and
* Notify both the Veteran and his or her dependents of the adjustments made to their individual awards

When a Veteran is released from incarceration, and is NOT reunited with *all* his/her dependents, VA will:* Reduce the apportionment to the dependent(s) with whom the Veteran is **not** reunited to the additional amount payable for the dependent(s) effective the last paid date
* For the period between the date incarceration ended and the last paid date for the apportionment, pay the Veteran the difference between the full amount of compensation to which he or she is entitled, and the amount of the apportionment
* Resume payment of the full amount of compensation to which the Veteran is entitled, **minus** the additional benefits for the dependent(s) with whom he/she is not reunited effective the last paid date of the apportionment, and
* Notify both the Veteran and his or her dependents of the adjustments made to their individual awards
* Develop to the apportionee to determine if the apportionment should continue per M21-1.III.v.3.A.2 and allow 60 days for a response. Follow instructions in M21-1.III.v.8.B.2.l-m once a response is received or 60 days has passed.

*If the Veteran’s award was subject to a withholding prior to the incarceration adjustment (ex. to recoup separation pay), special instructions may apply if an apportionment is claimed.* |
| Exercise | Have the trainees turn to p.22 of the handout to complete the practical exercises for Topic 4. Once completed, review with the class. |
| note(s) | Remind trainees to review [M21-1 III.v.3.A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=5544000000010343) for the apportionment process. |

|  |
| --- |
| Topic 5: Incarcerated Dependent Adjustments |
| Introduction | This topic will assist the trainee in understanding the methods used to adjust an award that involves an incarcerated dependent. |
| OBJECTIVES/Teaching Points | Topic objectives:* Identify and apply the methods used to properly adjust awards of incarcerated dependents

The following topic teaching points support the topic objectives: * Disability Compensation
* Veterans Pension
* Survivors Pension
* DIC
 |
| Incarcerated Dependents *Discuss the following:*Slide 37Handout 23-24 | ***Disability Compensation***If there is an apportionment being paid to or on behalf of the incarcerated dependent, the apportionment must be terminated effective the 61st full day of incarceration following conviction of a felony.If there is no apportionment being paid to or on behalf of the incarcerated dependent, no adjustment is necessary. ***Veterans Pension and Survivors Pension***No pension shall be paid for an individual incarcerated for a felony or misdemeanor, beginning the 61st day of confinement following conviction.If payments are made to a Veteran or surviving spouse with one or more dependents, and a dependent is incarcerated for a period in excess of 60 full days following conviction, amend the Veteran’s or surviving spouse's award to reflect the rate payable as if the incarcerated dependent did not exist. Ignore any income of the incarcerated dependent and recalculate the countable income.If the Veteran’s or surviving spouse’s entitlement to pension under the applicable income limitation is contingent on a sole dependent that is imprisoned in excess of 60 days following conviction, discontinue benefits. The effective date is the date on which the 61st day of confinement occurs.***Exception***: In some instances, a Veteran’s or surviving spouse’s pension rate could increase if the incarcerated dependent had income. In such cases, the delayed payment provision of 38 CFR 3.31 applies to the Veteran’s or surviving spouse’s increased pension rate.For death pension, if the surviving spouse’s award will be subject to adjustment, advise the beneficiary to provide the following information when sending the notice of proposed adverse action:* The child’s or children’s individual income and net worth, and
* The name and address of the person or persons responsible for their care during the incarceration
* Include VA Form 21-0788

Concurrently notify the child(ren) of their potential right to receive pension if:* The evidence of record indicates the existence of an eligible child(ren), and
* VA is able to obtain contact information for the child(ren)

*DIC* Surviving SpouseIf a surviving spouse, in receipt of DIC benefits, becomes incarcerated for conviction of a felony, VA must reduce the payment to one-half of the 10% service-connected disability rate, effective the 61st full day of confinement following conviction.In the notice of proposed adverse action sent to the incarcerated surviving spouse who has eligible children: * Notify him or her that an apportionment may be made to the children
* Include VA Form 21-0788, and
* Request that he or she furnish the name and address of the person responsible for the children’s care during the incarceration

Surviving ChildrenIf a child is incarcerated for a felony, on the 61st day of incarceration (following conviction) reduce the award to **one half of the 10% service-connected disability rate**. If there is an eligible surviving spouse or other children, we may be able to apportion the amounts not paid to the imprisoned child to the surviving spouse or other children. Determine entitlement to the apportionment based on the needs of the surviving spouse or remaining child(ren).If the apportionment is authorized, award payment effective the 61st full day of confinement following conviction of a felony, if claimed within one year of the date VA notified the dependents of potential entitlement to an apportionment, otherwise the effective date would be the date of claim.  |
| Exercise | Have the trainees turn to p.25 of the handout to complete the practical exercises for Topic 5. Once completed, review with the class. |
| Regional Office Specific Topics | At this time add any information pertaining to:* Station quality issues with this lesson
* Additional State-specific programs/guidance on this lesson
 |

|  |
| --- |
| Lesson Review, Assessment, and Wrap-up |
| IntroductionDiscuss the following: | The Incarceration-Related Award Adjustments lesson is complete. Review each lesson objective and ask the trainees for any questions or comments. |
| Lesson Objectives | You have completed the Incarceration-Related Award Adjustments lesson. The trainee should be able to: * Define terms associated with incarceration adjustments
* Understand the regulatory requirements for reducing compensation and discontinuing pension benefits involving incarceration
* Understand and apply the necessary steps for sending due process notification and completing reductions of compensation and discontinuance of pension payments during incarceration
* Identify and apply the methods used to properly apportion benefits of an incarcerated beneficiary
* Identify and apply the methods used to properly adjust awards of incarcerated dependents
 |
| Assessment  | Remind the trainees to complete the online assessment in TMS to receive credit for completion of the course.The assessment will allow the trainees to demonstrate their understanding of the information presented in this lesson. |