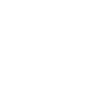
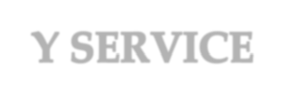
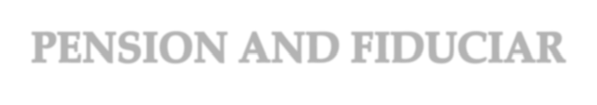
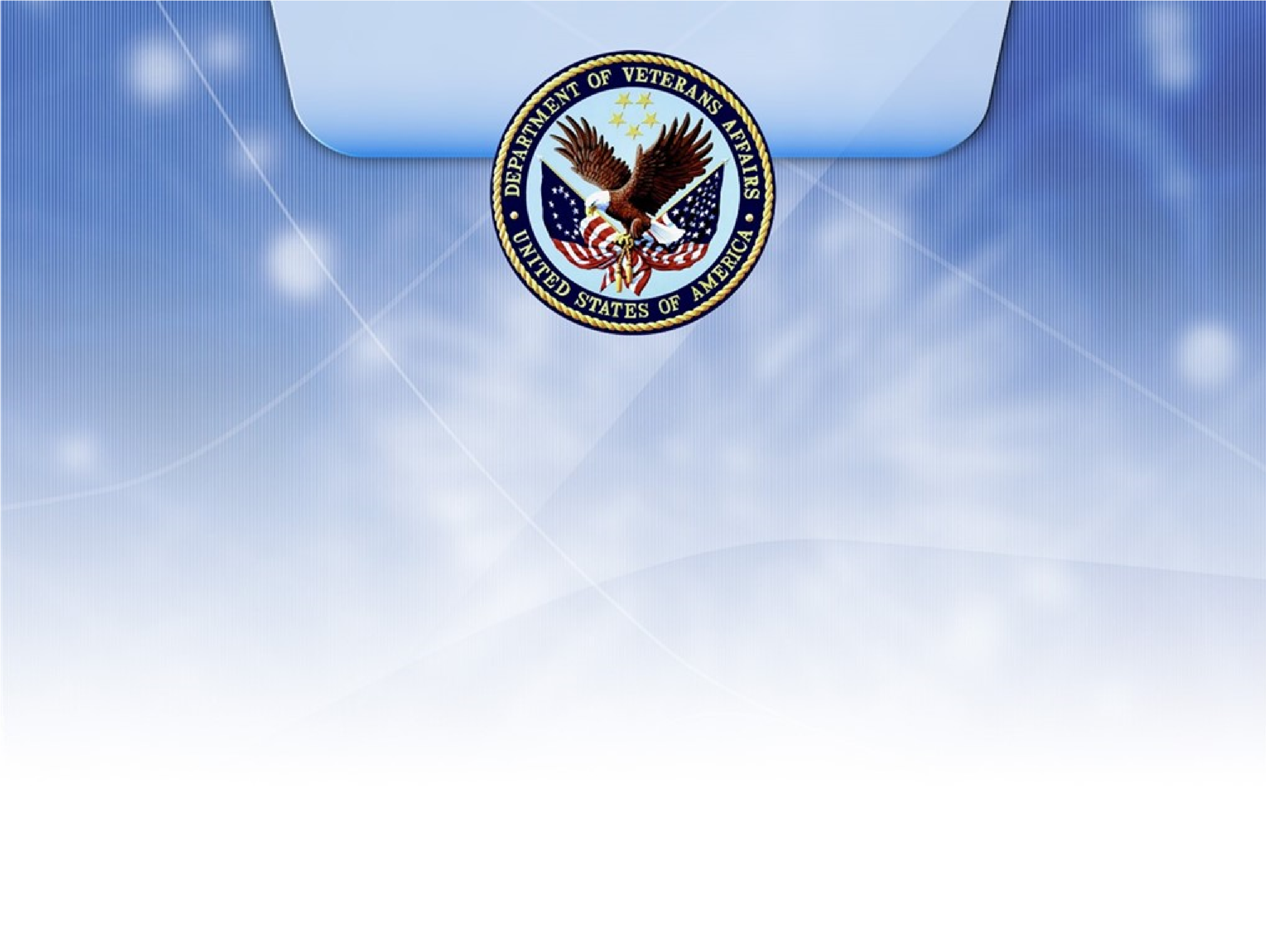
**Introduction to Incarceration Adjustments**



PMC VSR Intermediate Core Course

Phase 5: Proficiency Development

Part 6: Award Adjustments Extension

Trainee Guide

July 2024

**Introduction to Incarceration Adjustments**

# Lesson Overview

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| **Topic** | **Description** | |
| Time Estimate: | 4 hours | |
| Purpose of the Lesson: | This lesson is part of the entry-level course for PMC VSRs. The purpose of this lesson is to introduce trainees to incarceration adjustments to the awards of beneficiaries. | |
| Prerequisite  Training  Requirements: | Prior to taking the Introduction to Incarceration Adjustments lesson, trainees must complete the entry-level course Phases 1-5.5. | |
| Target  Audience: | This lesson is for entry-level PMC VSRs. | |
| Lesson  References: | * VAOPGCPREC 59-91, Jun, 24, 1991, Reduction of Compensation During Incarceration Pursuant to 38 U.S.C. 3113 (now 5313) - Community Control * 38 USC 1313 (Dependency and Indemnity Compensation to Children) * 38 USC 1505 (Payment of Pension During Confinement in Penal Institutions) * 38 USC 1542 (Children of Veterans of a Period of War) * 38 USC 5313B (Prohibition on Providing Certain Benefits with Respect to Persons who are Fugitive Felons) * 38 CFR 3.31 (Commencement of the Period of Payment) * 38 CFR 3.450 (General) * 38 CFR 3.451 (Special Apportionments) * 38 CFR 3.665 (Incarcerated Beneficiaries and Fugitive Felons – Compensation * 38 CFR 3.666 (Incarcerated Beneficiaries and Fugitive Felons – Pension) * 38 CFR 3.2500 (Review of Decisions) * M21-1 VI.iii.1.A.5.d. (Principles that Apply to the Resumption or Adjustment of a Beneficiary’s Award After Incarceration Ends) * M21-1 VI.iii.1.A.5.e. (Determining the Proper Effective Date for Resuming Benefits After Incarceration Ends) * M21-1 VI.iii.1.B.3 (Incarcerated Veterans Entitled to Both Compensation and Pension * M21-1 VI.iii.1.B.1.g. (Procedure for Reducing/Eliminating an Overpayment Resulting from a Veteran’s Incarceration) * M21-1 VI.iii.1.B.1.j. (Discontinuing the Payment of Pension to a Veteran’s Dependent(s) After Incarceration Ends) * M21-1 VI.iii.1.C (Incarceration of Dependents and Certain Survivors) * M21-1 VII.i.1.C.4.b. (When the End-of-the-Month Rule Applies to the removal of a Dependent from a Beneficiary’s Award) * M21-1 VII.iii.1.A (Apportionment Process) | |
| **Topic** | **Description** |
| Technical  Competencies: | * Program Benefits and Eligibility (PMC VSR) * Processing Claims (PMC VSR) * VBA Applications (PMC VSR) * Income Counting and Net Worth |
| Knowledge Check: | Introduction to Incarceration Adjustments Knowledge Check |
| Lesson  Objectives: | By the end of this lesson, you should be able to:   * Determine actions based on the source of the incarceration notification * Apply the correct development actions for the information/evidence missing from claim * Decide the award action(s) * Create decision notice |
| **Topic** | **Description** |
| What You Need: | * Trainee Guide * Access to the following job aids from VSR Assistant for the following job aids:   + **Incarceration/Fugitive Felon** job aid   + **Processing an Award Adjustment** job aid   + **Notification Language** job aid   + **Prepare the Decision Notification** job aid   + **Prepare Administrative Decision** job aid   + **Annotate the Award Checklist** job aid * Access to[BOP: Federal Bureau of Prisons Web Site](https://www.bop.gov/) * Access to[VINELink - Empowering Victims of Crime](https://www.vinelink.com/#state-selection) |

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| **PowerPoint Slides** | **Notes** |
| **Introduction to Incarceration**  **Adjustments** |  |
| **Objectives**  By the end of this lesson, you should be able to:   * Determine actions based on the source of the incarceration notification * Apply the correct development actions for the information/evidence missing from claim * Decide the award action(s) * Create decision notice |  |
| **Why This Course Matters**  The **Introduction to Incarceration Adjustments** course is important because according to federal regulations, individuals to or for whom pension is being paid under a public or private law administered by VA who are imprisoned in a Federal, State or local penal institution resulting in conviction of a felony or misdemeanor, payments of pension be discontinued effective on the 61st day of imprisonment following conviction. |  |

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| **PowerPoint Slides** | **Notes** |
| **Definitions**   * ***Incarceration*** refers to the confinement of an individual in a penal institution, even though the individual may be allowed outside the institution temporarily on furlough or for medical treatment, and includes confinement at any of the following, if confinement is pursuant to a criminal sentence:   + medical facility or mental institution, or   + other locations, such as work camps, forestry camps, or boot camps * **Residential re-entry center** is a term used by the Bureau of Prisons (BOP) in lieu of the traditional term “halfway house.” * “**Nunc pro tunc**,” means that the court order applies retroactively to correct an earlier court order. |  |

| **PowerPoint Slides** | **Notes** |
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| **Reducing or Discontinuing Benefits During Incarceration**   * [**38 CFR 3.665**](http://www.ecfr.gov/cgi-bin/text-idx?SID=1b6a528f90d9b9f9560fd80bdfcb0880&node=se38.1.3_1665&rgn=div8) requires the ***reduction*** of a beneficiary’s***Dependency and Indemnity Compensation (DIC)*** when the beneficiary is incarcerated more than 60 days following conviction of a ***felony***.   + A person incarcerated for conviction of a felony may not receive full DIC after 60 full days of incarceration, under [**38 CFR 3.665(a)**](https://www.ecfr.gov/cgi-bin/text-idx?SID=d589e6e17068acb5d01428ea33eea509&mc=true&node=se38.1.3_1665&rgn=div8).   + Payment is reduced to one-half the rate that is payable to a Veteran for a service-connected (SC) disability VA has rated 10-percent disabling, according to [**38 CFR 3.665(d)(3)**](https://www.ecfr.gov/cgi-bin/text-idx?SID=d589e6e17068acb5d01428ea33eea509&mc=true&node=se38.1.3_1665&rgn=div8). * [**38 CFR 3.666**](http://www.ecfr.gov/cgi-bin/text-idx?SID=1b6a528f90d9b9f9560fd80bdfcb0880&node=se38.1.3_1666&rgn=div8) requires the ***discontinuance*** of a beneficiary’s ***pension*** when the beneficiary is incarcerated more than 60 days following conviction of a ***felony or misdemeanor***.   + The proper effective date for reducing or discontinuing benefits is the 61st day of incarceration. |  |

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| **PowerPoint Slides** | **Notes** |
| **When Not to Reduce or Discontinue Benefits**   * Do not reduce or discontinue benefits for any period during which the individual in question is: * participating in a work-release program * under community control (per [**VAOPGCPREC 59-1991**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000055677/VAOPGCPREC-59-91-Jun-24-1991-Reduction-of-Compensation-During-Incarceration-Pursuant-to-38-USC-3113-now-5313-Community-Control)) * incarcerated in a foreign penal institution, or * residing in a halfway house, residential re-entry center, or civil commitment center |  |

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| **PowerPoint Slides** | **Notes** |
| **Determining Whether Information was Received from an Official Source (1 of 3)**   * An official source of information regarding an individual’s 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/**](http://www.bop.gov/)), and official websites of individual correctional facilities * VA previously considered Vine ([**http://www.vinelink.com/**](http://www.vinelink.com/)), a privately operated, online, inmate locator service, an official source, which can still be used; however, it is considered an unofficial source of information regarding an individual’s incarceration, and any information received from this website must be verified through an official source. |  |

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| **PowerPoint Slides** | **Notes** |
| **Determining Whether Information was Received from an Official Source (2 of 3)**  Each of the following constitute official notice of incarceration:   * an 800 series work item that was system-generated as a result of the data-matching programs described in [**M21-1, Part XIV, 7**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000173307/M21-1-Part-XIV-Chapter-7-Data-Matching-Programs-That-Identify-Incarcerated-Beneficiaries-and-Dependents) * a completed [***VA Form 21-4193, Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution***](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-4193-ARE.pdf), from a correctional facility, and evidence of incarceration that originated from an official source, including statements affirming incarceration from   + - prison or law enforcement authorities     - prosecutors, or     - parole officers |  |

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| **PowerPoint Slides** | **Notes** |
| **Determining Whether Information was Received from an Official Source (3 of 3)**  Apply the following to determine if the appropriate documentation method for information obtained from an official source regarding a beneficiary’s or dependent’s incarceration. |  |

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| **PowerPoint Slides** | **Notes** |
| **End Product (EP) Control**   * Establish EP290, using the claim label *Bureau of Prisons Match* or *Social Security Prison Match* if notice of incarceration was obtained via the data-matching programs. * If information obtained from official sources shows the beneficiary or dependent was incarcerate at least 60 days after conviction for a felony or misdemeanor, clear the EP290, establish EP600, using the current date as the DOC and the *Bur*eau *of Prisons* or *SSA Prison Match* claim label, if applicable, and add *Potential Under/Overpayment*as a special issue, if the beneficiary is in receipt of disability. |  |

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| **PowerPoint Slides** | **Notes** |
| **Compensation in Lieu of Pension (1 of 3)**   * 38 CFR 3.665 requires VA to reduce the payment of compensation to a Veteran incarcerated for more than 60 days following conviction of a felony. * Because the law allows Veterans entitled to compensation to continue receiving at least a portion of their benefits during incarceration, compensation is often the greater benefit for Veterans entitled to both compensation and pension whose awards are subject to adjustment due to incarceration. * If discontinuation of a Veteran’s pension is required and the Veteran is entitled to both compensation and pension   + begin paying the Veteran compensation at the rate specified in [**38 CFR 3.665(d)**](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1665&rgn=div8) effective the 61st day of incarceration if the Veteran has neither spouse nor child. |  |

| **PowerPoint Slides** | **Notes** |
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| **Compensation in Lieu of Pension (2 of 3)**   * If discontinuation of a Veteran’s pension is required and the Veteran is entitled to both compensation and pension and the Veteran has a spouse and/or child,   + notify the Veteran of the right of any dependent(s) to the payment of pension during the Veteran’s incarceration   + the Veteran’s right to elect compensation, and   + the effect the election would have on the amount of benefits payable to the Veteran and any dependent(s) during the Veteran’s incarceration, and   + notify the Veteran’s dependent(s) of their right to receive pension if the evidence of record indicates the existence of an eligible dependent(s), and contact information for the dependent(s) is obtainable |  |

| **PowerPoint Slides** | **Notes** |
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| **Compensation in Lieu of Pension (3 of 3)**  If a Veteran entitled to both compensation and pension was receiving compensation in lieu of pension during incarceration and pension is the greater benefit after incarceration ends, and VA was apportioning the Veteran’s compensation to dependent(s) while the Veteran was incarcerated,   * discontinue the apportionment to the Veteran’s dependent(s) effective the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE * for the period between the date incarceration ended and the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, pay the Veteran the difference between   + the full amount of pension to which he/she is entitled, and the amount of the apportionment and resume payment of the full amount of pension to which the Veteran is entitled effective the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, and   + notify both the Veteran and the dependent(s) of the adjustments made to their individual awards |  |

| **PowerPoint Slides** | **Notes** |
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| **Regulations for Apportioning Benefits**  When processing an apportionment claim, claims processors must first determine whether an apportionment is payable:    Effective March 24, 2015, a claimant must submit [*VA Form 21-0788*](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) to request payment of an incarcerated surviving spouse’s pension. |  |
| **Incarcerated Veteran: Dependent’s Eligibility to Pension (1 of 2)**   * The entitlement of a Veteran’s dependent(s) to pension during the Veteran’s incarceration is based on the following factors:   + except for the Veteran’s incarceration, the Veteran must otherwise remain eligible to receive pension, and   + the Veteran’s dependent(s) must meet the income requirements for Survivors Pension (*without* consideration of the Veteran’s income) * Payment of pension to an incarcerated Veteran’s dependent(s) are processed under end product (EP) 130 |  |

| **PowerPoint Slides** | **Notes** |
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| **Incarcerated Veteran: Dependent’s Eligibility to Pension (2 of 2)**  If VA finds the dependent(s) of an incarcerated Veteran ***entitled*** to pension from the 61st day of incarceration, to avoid paying the dependent(s) benefits VA has already overpaid to the Veteran, VA must   * ensure the effective date of ***payment*** of pension to the Veteran’s dependent(s) is no earlier than the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, and * follow the instructions in [**M21-1, Part VI, Subpart iii, 1.B.1.g**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179494/M21-1-Part-VI-Subpart-iii-Chapter-1-Section-B-Paying-Benefits-to-the-Dependents-of-an-Incarcerated-Veteran%3FarticleViewContext=article_view_related_article) to apply to the Veteran’s overpayment any pension due the Veteran’s dependent(s) for the period between the 61st day of incarceration and the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE |  |

| **PowerPoint Slides** | **Notes** |
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| **When Not to Develop for Apportionment**   * Do not routinely take the actions in connection with a request for an apportionment of benefits withheld due to incarceration, as actions may not be warranted if,   + notice of proposed adverse action issued in accordance with Step 17 of the procedure described in [**M21-1, Part VI, Subpart iii, 1.A.3.a**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179493/M21-1-Part-VI-Subpart-iii-Chapter-1-Section-A-Effects-of-an-Individuals-Incarceration-on-Department-of-Veterans-Affairs-VA-Benefits) will have informed the Veteran of eligible family members’ rights to an apportionment of benefits withheld due to incarceration   + Veteran’s monthly rate of payment will not be adversely impacted by any apportionment authorized to the dependent(s), and   + [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) required to request an apportionment will adequately portray factors material to apportionment consideration, including the income and living expenses of the dependent(s) at issue |  |

| **PowerPoint Slides** | **Notes** |
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| **Discontinuing Payment of Pension When Incarceration Ends**   * If VA receives notice that a Veteran’s incarceration has ended, and VA has been paying pension to the Veteran’sdependent(s) during incarceration,   + discontinue the payment of pension to the Veteran’s dependent(s) effective the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE   + for the period between the date incarceration ended and the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, pay the Veteran the difference between the full amount of pension to which the Veteran is entitled, and the amount of pension VA paid to the dependents during the same period of time |  |

| **PowerPoint Slides** | **Notes** |
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| **Discontinuing Payment of Pension When Incarceration Ends (2 of 2)**   * If VA receives notice that a Veteran’s incarceration has ended, and VA has been paying pension to the Veteran’s dependent(s) during incarceration,   + resume payment of the full amount of pension to which the Veteran is entitled effective the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, and notify both the Veteran and the dependent(s) of the adjustments made to their individual awards     - inform the dependent(s) that they may submit a claim for an apportionment of the Veteran’s benefits if, after incarceration, the Veteran no longer resides with the dependent(s) and include a blank [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) with the notification letter to the Veteran’s dependents |  |

| **PowerPoint Slides** | **Notes** |
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| **Notice Incarceration Has Ended: Effective Dates**   * Apply the exclusion identified in [**38 CFR 3.31(c)(3)(v)**](https://www.ecfr.gov/cgi-bin/text-idx?SID=719766d09b26f514231b5a375986f6b6&mc=true&node=se38.1.3_131&rgn=div8) when determining the effective date of payment.     **NOTE:** This **does** ***not*** include a former apportionee whose apportionment VA discontinued because the former apportionee was incarcerated. |  |
| **Scenario: Discontinuing Payment of Pension When Incarceration Ends (Question)**  In November 2008, VA discontinued the payment of pension to a Lucas Veteran due to his incarceration for conviction of a felony. The Veteran has a spouse, Lula and one child, Timmy. VA began paying pension to the Veteran’s spouse for herself and the child shortly after the Veteran’s incarceration. On February 9, 2022, VA received notice the Veteran had been released from prison on January 18, 2022.  The full amount of pension payable to the Veteran at this time, based on the annual IVAP of his household and the number of dependents he has, is $1075.00. VA last paid pension to the Veteran’s spouse in the amount of $750.00 for the month of January 2022.  **Based on the information provided, discuss actions needed, to include effective date, and amounts.** |  |
| **Handling Apportioned Awards When a Veteran Does Not Reunite with Dependents (1 of 2)**   * If the Veteran is not reunited with all of the same dependent(s) when incarceration ends, reduce the apportionment to the dependent(s) with whom the Veteran is not reunited to the additional amount of payable for thedependent(s), effective the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE * For the period between the date incarceration ended and the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, pay the Veteran the difference between   + the full amount payable for the Veteran and the dependent(s), and the amount of the apportionment |  |

| **PowerPoint Slides** | **Notes** |
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| **Handling Apportioned Awards When a Veteran Does Not Reunite with Dependents (2 of 2)**   * Pay the Veteran the full amount of compensation to which the Veteran is entitled, ***minus*** any additional benefits for the dependents with whom the Veteran is ***not*** reunited, effective the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE * Notify both the Veteran and the dependent(s) of the adjustments made to their individual awards, according to the instructions in [**M21-1, Part VI, Subpart i, 1.B**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179469/M21-1-Part-VI-Subpart-i-Chapter-1-Section-B-Decision-Notices)and follow the instructions in [**M21-1, Part II, Subpart iii, 3.A.2**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000174881/M21-1-Part-II-Subpart-iii-Chapter-3-Section-A-Claims-Establishment), for establishing EP(s) 130, using the payee code(s) for the dependent(s) with whom the Veteran was ***not*** reunited |  |

| **PowerPoint Slides** | **Notes** |
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| **Letter to Dependents NOT Reunited With Veteran AFTER Incarceration**   * If a Veteran does not reunite with dependents after incarceration, send notification to the dependent(s) and include the following in the letter:   + remind the dependent(s) the apportionment VA granted based on the Veteran’s incarceration was temporary and subject to discontinuance when incarceration ended   + ask the dependent(s) to complete and return [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) within 30 days, and   + inform the dependent(s) that VA will continue the apportionment only upon receipt of evidence/information showing an apportionment is still warranted   **NOTE**: If the dependent(s) does not to the request for completion of VA Form 21-0788, discontinue the apportionment effective the date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, and notify the Veteran and the dependent of VA’s decision. |  |

| **PowerPoint Slides** | **Notes** |
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| **Responses Required After Discontinuing an Apportionment**  If dependents respond to letter after discontinuing the apportionment take the following steps: |  |
| **Late Notice of Incarceration**   * If VA does not receive notice of a Veteran’s incarceration until after incarceration has ended, and discontinuation of the Veteran’s benefits due to incarceration is otherwise in order, no pension is payable to the Veteran’s dependent(s)   + Pension can still be awarded to the Veteran’s dependent(s) under these circumstances, but only for the purpose of reducing the overpayment resulting from retroactive discontinuance of the Veteran’s benefits due to incarceration |  |

| **PowerPoint Slides** | **Notes** |
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| **Incarcerated Dependents**   * [**38 CFR 3.666**](http://www.ecfr.gov/cgi-bin/text-idx?SID=1b6a528f90d9b9f9560fd80bdfcb0880&node=se38.1.3_1666&rgn=div8) requires the removal of an incarcerated dependent from a beneficiary’s award if the beneficiary receives ***pension***.   + There is no such requirement, however, if the beneficiary is a surviving spouse receiving DIC if a Veteran’s or surviving spouse's entitlement to pension under the applicable income limitation is contingent on a sole dependent who is incarcerated in excess of 60 full days following conviction, discontinue the Veteran’s or surviving spouse's pension. |  |

| **PowerPoint Slides** | **Notes** |
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| **Reducing or Discontinuing Benefits During Dependent’s Incarceration**   * 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   + the effective date of a reduction or discontinuance is the 61st day of incarceration     - the end-of-month rule applies to the total award amount paid to the Veteran or surviving spouse as the primary beneficiary   + ignore any income of the incarcerated dependent and recalculate the countable income |  |

| **PowerPoint Slides** | **Notes** |
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| **Incarcerated Dependent Released**   * If an incarcerated dependent is released, any resumption or increase of the Veteran’s or surviving spouse's pension due to the release is effective from the date of release if the notice is received within one year after that date   + otherwise, any resumption or increase is effective from the date that such notice is received |  |
| **Incarcerated Surviving Spouse**   * VA may pay pension to the Veteran’s child(ren) when a surviving spouse is incarcerated **and** the child(ren) meet the income requirements for Survivors Pension **without** consideration of the surviving spouse’s income.   + pay Survivors Pension at a rate as if the incarcerated surviving spouse did not exist. * Payments to a child(ren) are permissible **only** when the surviving spouse is receiving current-law Survivors Pension and the child(ren) are in the custody of the surviving spouse at the time the surviving spouse is incarcerated, or Section 306 Pension |  |

| **PowerPoint Slides** | **Notes** |
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| **Apportioning DIC**   * Follow the instructions in [**M21-1, Part VI, Subpart iii, 1.A.3.a**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179493/M21-1-Part-VI-Subpart-iii-Chapter-1-Section-A-Effects-of-an-Individuals-Incarceration-on-Department-of-Veterans-Affairs-VA-Benefits), following receipt of notice that a surviving spouse in receipt of DIC has been incarcerated. * VA may apportion to a child(ren) all or part of the DIC no longer payable to the surviving spouse. * Apportionment claimants must submit [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) or an ITF (as expressed in [**M21-1, Part VI, Subpart iii, 1.C.2.c**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179495/M21-1-Part-VI-Subpart-iii-Chapter-1-Section-C-Incarceration-of-Dependents-and-Certain-Survivors%3FarticleViewContext=article_view_related_article)).   **NOTE**:  If an apportionment is awarded, inform the apportionee of the temporary nature of the apportionment. Only the amount of DIC that is **not** payable to the surviving spouse while he/she is incarcerated is subject to apportionment.  Of that amount, determine the amount of DIC, if any, to apportion based on the child(ren)’s individual need. |  |

| **PowerPoint Slides** | **Notes** |
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| **Incarceration of a Surviving Spouse: Providing VA Form 21-0788**  •If VA is paying the surviving spouse for a child(ren), attach [***VA Form 21-0788,***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf)  to the notice of   * advise the surviving spouse to furnish the name and address of the person or persons responsible for the child(ren)’s care during incarceration, and * inform the surviving spouse that VA may pay benefits to his/her child(ren) from as early as the 61st date of incarceration following conviction only if VA receives a completed and signed [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf)within one year after the date of the notice   **NOTE**: A decision to pay an incarcerated surviving spouse’s pension to his/her child(ren) is *not* based on need |  |

| **PowerPoint Slides** | **Notes** |
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| **Incarceration of a Surviving Spouse: Completed VA Form 21-0788**  If VA receives a completed and signed [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) or an ITF within one year after the date VA notified the surviving spouse of the child(ren)’s potential right to receive pension during the surviving spouse’s incarceration, the effective date of entitlement, if entitlement exists, is the 61st day of incarceration following conviction.   * otherwise, the effective date can be no earlier than the date VA receives the form or ITF. * if there is a delay between the 61st day of incarceration following conviction and the date VA discontinues an incarcerated surviving spouse’s pension, avoid paying the child(ren) benefits VA has already overpaid to the surviving spouse by * ensuring the effective date of payment of pension to the child(ren) is no earlier than the first of the month following the month for which VA last paid the surviving spouse pension **and** applying any pension due the child(ren), for the period between the 61st day of incarceration following conviction and the first of the month following the month for which VA last paid the surviving spouse pension, to the surviving spouse’s overpayment. |  |
| **Incarcerated Surviving Spouse: Notifying Child(ren) of Payment**   * When notifying a child(ren) of VA’s decision to pay him/her(them) the surviving spouse’s pension during the surviving spouse’s period of incarceration, advise the child(ren) that   + entitlement to the benefit is temporary   + payments are subject to immediate discontinuance when incarceration ends, and   + the child(ren) may submit a claim for an apportionment of the surviving spouse’s pension if the child(ren) and surviving spouse do not reside together after incarceration ends |  |
| **Surviving Spouse Released**   * After receiving notice from any official source that an incarcerated surviving spouse has been released, resume DIC or pension payments under [38 CFR 3.666(c)](https://www.ecfr.gov/cgi-bin/text-idx?SID=d589e6e17068acb5d01428ea33eea509&mc=true&node=se38.1.3_1666&rgn=div8). * The effective date is either   + the date of release, if notification is received within one year, or   + the date of receipt of the notice, if notification is not received within one year after release   VA does *not* require the submission of a specific form to report that incarceration has ended or request a resumption of benefits after incarceration has ended**.** |  |

| **PowerPoint Slides** | **Notes** |
| --- | --- |
| **Practice Activity: Discontinuation of Surviving Spouse Pension Award (1 of 2)**  June, the surviving spouse of Tom Veteran is in receipt of Survivors Pension, and had no income, but was convicted on July 19, 2021, and remains incarcerated after conviction. Records show one eligible child, Brenda, was in the legal custody of the June.  The child was born on September 19, 2003. On November 4, 2021, VA sends notice of proposed adverse action to June, and informs her and the child of the child’s right to request payment of the surviving spouse’s pension. On January 9, 2022, VA receives a completed and signed [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf)for payment of the surviving spouse’s benefits.  The child and custodian have no income.  **Based on the information provided answer the following questions:**   1. What is the effective date June’s pension should be discontinued? 2. What is the amount Brenda should receive? 3. What is the effective date for the child’s award? 4. What additional actions, if any, are needed? |  |

| **PowerPoint Slides** | **Notes** |
| --- | --- |
| **Surviving Spouse Release: Child Not in Custody**   * Adjust an award to a child who was not in the surviving spouse’s custody at the time of incarceration, except in current-law pension cases, to the apportioned rate effective the date of release, if notification is received within one year.  Otherwise, the effective date is the   + date of receipt of notice, or   + date in the **LAST PAID DATE** field on the **AWARD INFORMATION** tab in SHARE, if an overpayment would result |  |

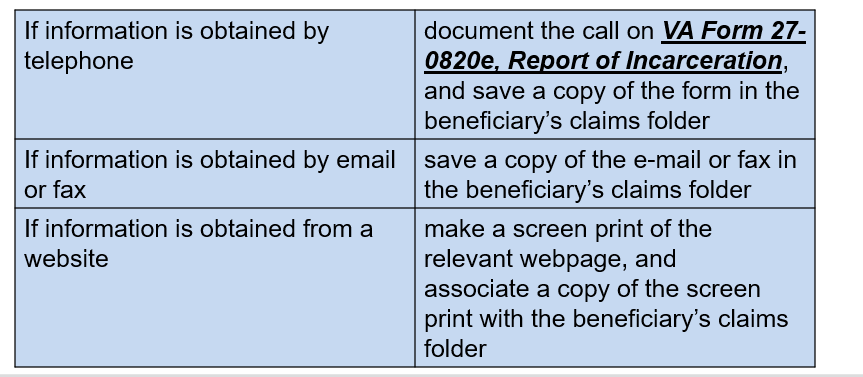
| **PowerPoint Slides** | **Notes** |
| --- | --- |
| **Incarceration Due Process Notification (1 of 2)**   * If the address of family members that are eligible for an apportionment or allotment of an incarcerated Veteran’s, surviving spouse’s, or surviving child’s (DIC only) benefits is known, send [*VA Form 21-0788*](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf), to them at the same time the notice of proposed adverse action is sent to the beneficiary. * A beneficiary is entitled to due process and the notice described in this cell *each**time* incarceration in excess of 60 days occurs, which includes re-incarceration because of a parole violation, or dismissal from a halfway house or work-release program. * Send notice of proposed adverse action to a beneficiary at the current address of record, even if the incarcerated individual is a dependent. |  |

| **PowerPoint Slides** | **Notes** |
| --- | --- |
| **Incarceration Due Process Notification (2 of 2)**   * If the incarcerated beneficiary is an apportionee to whom VA is apportioning a Veteran’s disability compensation or a surviving spouse’s DIC, there is no need to send notice of proposed adverse action to the Veteran or surviving spouse. * Do *not* send notice of proposed adverse action to the address of a prison unless that address happens to be a beneficiary’s current address of record.   + If the register or identification number a prison uses to identify an incarcerated beneficiary is known, include it after their name when sending correspondence to the beneficiary at the prison address. |  |

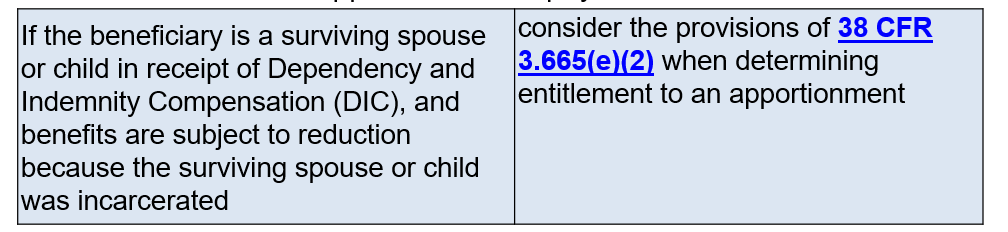
| **PowerPoint Slides** | **Notes** |
| --- | --- |
| **Incarcerated Child**   * If a surviving child is incarcerated for more than 60 days for a felony, DIC shall be one-half the rate of compensation that would be payable for an SC disability that is 10-percent disabling, under [**38 CFR 3.665(d)(3)**](https://www.ecfr.gov/cgi-bin/text-idx?SID=d589e6e17068acb5d01428ea33eea509&mc=true&node=se38.1.3_1665&rgn=div8). * If a surviving child is incarcerated for a felony and there is an eligible surviving spouse or another child(ren), apportion the amounts not paid to the incarcerated child to the surviving spouse or other child(ren). * Determine entitlement to the apportionment based on the needs of the surviving spouse or remaining child(ren). * If an apportionment is authorized, pay it effective the 61st day of the child’s incarceration following conviction for a felony *if* VA receives a completed and signed [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) or ITF within one year after the date VA notified the surviving spouse or other child(ren) of his/her(their) right to an apportionment. |  |
| **Child’s Incarceration Ends**   * After a child’s incarceration ends, adjust all awards effective the   + date of release, if VA received notice of release within one year of the release date   + date of receipt of the notice of release, if VA did **not** receive notice of release within one year of the release date, or   + first of the month following the month for which VA last paid the beneficiary, if an overpayment would result * Adjust the apportioned awards of any other children and continue to pay benefits, provided all eligibility factors are met |  |
| **Incarcerated Parent**   * If a parent is incarcerated for more than 60 days following conviction for a felony, the amount of DIC payable to the incarcerated parent shall be no more than one-half the rate of compensation that would be payable for an SC disability that is 10-percent disabling, under [**38 CFR 3.665(d)(3)**](https://www.ecfr.gov/cgi-bin/text-idx?SID=d589e6e17068acb5d01428ea33eea509&mc=true&node=se38.1.3_1665&rgn=div8). * If two parents are both entitled to DIC and were living together prior to the time the DIC payable to one parent was reduced due to incarceration, consider them as two parents not living together for the purpose of determining entitlement to DIC, under [**38 CFR 3.665(l)**](https://www.ecfr.gov/cgi-bin/text-idx?SID=d589e6e17068acb5d01428ea33eea509&mc=true&node=se38.1.3_1665&rgn=div8). * A parent’s DIC award is subject to reduction below the incarcerated rate due to increased income. |  |
| **Incarcerated Apportionee**   * After due process has been issued and a response is received within 65 days, and it is determined that discontinuation is warranted:   + discontinue the apportionment effective the 61st day of incarceration following conviction     - The benefits VA had been apportioning to the incarcerated apportionee are now payable to the primary beneficiary   + notify the apportionee of the action taken and inform the apportionee that he/she may reapply for an apportionment after the period of incarceration ends by submitting [*VA Form 21-0788*](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) |  |
| **Incarcerated Custodian**   * VA may not issue payments to an apportionee’s custodian if the custodian has been incarcerated *for any reason* for more than 60 days. * Attempt to determine who is now the custodian of the apportionee(s).   + Contact the primary beneficiary by letter only if attempts to contact him/her by telephone are unsuccessful.   + Contact the custodian by letter at his/her last known address * Send notice of VA’s proposal to discontinue the apportionment, effective the first day of the month following a 60-day period that begins with the date of the notice, to the incarcerated custodian at his/her last known address, and new custodian of the apportionee(s), if the new custodian’s name and address are known. * In the notice of proposed adverse action, invite the apportionee(s) (or the new custodian of the apportionee(s)) to submit a new claim for an apportionment by completing and returning [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf). * If a response to the proposed adverse action is received within 65 days, and no hearing is requested notify the custodian of the apportionee(s) that VA will *not* take the action it proposed * If evidence of record show that discontinuation of the apportionment is in order discontinue the apportionment effective the first day of the month following the month for which VA last paid the apportionment. |  |
| **Conviction Overturned or Dismissed**   * If charges that resulted in a beneficiary’s incarceration have been dismissed or were overturned take the following steps: * Establish EP 290, using the *PMC-Incarceration Adjustment* (DIC) claim label and attempt to confirm the credibility * Send an e-mail or letter to the appropriate Federal, State, or local government authority and   + send to the beneficiary a letter that notifies the beneficiary of the requirement that VA obtain confirmation from an official source that charges were dismissed or overturned, or the type of conviction was changed, and   + encourage the beneficiary to ask one of the government authorities, to send confirmation directly to VA   If confirmation is received was not received within 30 days:   * Notify the beneficiary that VA cannot restore benefits without confirmation from an official source that charges were dismissed or overturned   + Clear the EP290 and take no further action   If confirmation is received was received within 30 days:   * Remove the *Incarceration* corporate flash * Restore benefits that were reduced due to incarceration and to which the beneficiary is otherwise entitled   + If notice was received within one year of the date charges were dismissed or overturned use the same effective date to restore benefits that VA used when it reduced benefits because of incarceration   If notice was received more than year after the date charges were dismissed or overturned, restore benefits effective the date VA received the notice |  |
| **Notice Incarceration Has Ended**   * VA does not require beneficiaries to submit a specific form to report that incarceration has ended or to request the resumption or adjustment of the award after incarceration has ended. * A beneficiary may report incarceration has ended   + in writing   + by telephone or e-mail, or   + through a VA claimssubmission service website * A new report of income and net worth is not required to resume an award when a report that incarceration has ended is received   + follow the guidance in [M21-1, Part VI, Subpart iii, 1.A.5.d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179493/M21-1-Part-VI-Subpart-iii-Chapter-1-Section-A-Effects-of-an-Individuals-Incarceration-on-Department-of-Veterans-Affairs-VA-Benefits%3FarticleViewContext=article_view_related_article) for income information for the resumption of pension awards based on the end of incarceration. |  |
| **Notice that an Apportionee’s Incarceration Ended**  If an apportionee provides notice that incarceration has ended and provided [*VA Form 21-0788*](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf)   * Establish EP290 with the *PMC-Incarceration Adjustment* (DIC or pension) claim label, attempt to confirm the credibility of the notice * If credibility is established, remove the Incarceration corporate flash and Change the EP290 to EP130 * Decide the claim for an apportionment, and if entitlement to an apportionment exists, the proper effective date is the date VA received the [*VA Form 21-0788*](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) |  |
| **Accrued Benefits to Incarcerated Claimants**   * Accrued payments may be paid in full to an eligible claimant that is incarcerated. * These one-time, lump sum payments are not subject to the reductions of [38 U.S.C. 5313](https://www.law.cornell.edu/uscode/text/38/5313), which limits payments of running monthly awards to individuals incarcerated for conviction of a felony. * Full payment of a *Nehmer* award can also be made to an incarcerated Nehmer class member. |  |
| **Knowledge Check: Lesson Summary Review**    **Time Allowed: 15 minutes** |  |
| **What’s Next**   * Complete Introduction to Incarceration Adjustments evaluation course: **TMS ID: 4649124** |  |

# Appendix

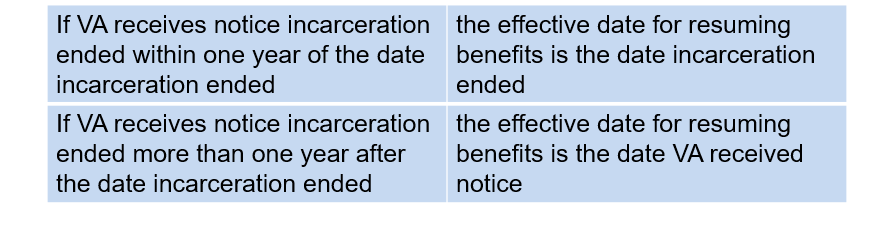
**Determining Whether Information was Received from an Official Source**



**Regulations for Apportioning Benefits**



**Notice Incarceration Ended: Effective Dates**



**Responses Required After Discontinuing an Appointment**

