Pension and fiduciary service

PMC VSR Intermediate Core Course
Phase 5.2: Proficiency Development
Defining Omnibus Budget Reconciliation Act of 1982 (OBRA) and Cost of Living Adjustment(COLA)

Lesson Plan

December 2024

*Defining Omnibus Budget Reconciliation Act of 1982 (OBRA)* and Cost of Living Adjustment (COLA)

Lesson Overview

| Topic | Description |
| --- | --- |
| Time Estimate: | 3 hours |
| Purpose of the Lesson: | This lesson is intended introduce to the student to the complex Omnibus and COLA procedures by providing information on why there is a process, how to approach all complex decision-making, and how to produce a complete well-reasoned decision. This lesson will contain discussions and exercises that will allow you to gain a better understanding of Omnibus Application and COLA Adjustments. |
| Prerequisite Training Requirements: | Prior to taking the Establish a Claim lesson, trainees must complete PMC VSR Core Course Phases 1–4 and Phase 5, Part 1.a-d.  |
| Target Audience: | This lesson is for entry level PMC VSRs. |
| Lesson References: | * 3.27 - Automatic Adjustment of Benefit Rates
* 38 CFR 3.31 - Commencement of the Period of Payment
* M21-1 IX.iii.1.A.5.a. – Definition: Payment Date
* M21-1 IX.iii.1.A.5.c. – History of 38 CFR 3.31
* M21-1 IX.iii.1.A.5.c. – Determining Whether to Apply 38 CFR 3.31
* M21-1 IX.iii.1.A.5.k. - **Applying 38 CFR 3.31 When Effective Dates of the MAPR and Income Change Coincide**
* M21-1 IX.iii.1.A.6.e. - **Reduction or Discontinuance of an Award After Receipt of Non-Recurring Income**
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| Lesson Objectives: | At the end of this lesson, you should be able to: * Define Omnibus and the requirements to apply omnibus
* Define COLA and the requirements to adjust various types of COLA
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| Knowledge Check | * Phase 5.2 Defining Omnibus Budget Reconciliation Act of 1982 (OBRA) and Cost of Living Adjustment (COLA)
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| What You Need: | * Trainee Guide
* Access to VBA Intranet
* Access to the Assessment Portal
* Pen and paper or access to a whiteboard
* Access to the following systems:
	+ SHARE
	+ MAP-D
	+ VBMS
* Access to Appendix A
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| PowerPoint Slides | Notes |
| --- | --- |
| Defining Omnibus Budget Reconciliation Act of 1982 (OBRA) and Cost of Living Adjustment (COLA) |  |
| **Lesson Objectives**At the end of this lesson, you should be able to: * Define Omnibus and the requirements to apply omnibus
* Define COLA and the requirements to adjust various types of COLA
 |  |
| **Why This Matters!*** The **Omnibus and COLA** course is important because in cases where there is a mishandling of Omnibus, it can cause an overpayment, resulting in a hardship on the Veteran, whereas in accurately applying COLA, beneficiaries will receive an annual increase in benefits.
 |  |
| **Definitions (1 of 3)**38 CFR 3.31 defines Omnibus as: The payment of monetary benefits based on original, new, initial, supplemental, or increased awards may not be made for any period before the first day of the calendar month following the month in which the award would have otherwise been effective. **Example:** The Veteran applies for VA pension benefits on January 30, 2024. Benefits are not payable until February 1, 2024, the first of the month following the date the Veteran applied for benefits. |  |
| **Definitions (2 of 3)*** **COLA** is the annual increase in benefit rates due federal beneficiaries. (e.g. SSA, Improved Pension, Civil Service, Military, SBP, etc.).
* An **increased award** is an award that is increased because of an added dependent, anincrease in disability or a reduction in IVAP (A reduction in IVAP can result from a change in income and/or deductible expenses).
* The **effective date, also called the “event date” or “entitlement date”**, will be the date of receipt of claim or the date entitlement arose, whichever is later.
 |  |
| **Definitions (3 of 3)**The payment date, also called the “award effective date”, is the beginning date of a period of time for which payment of a specific amount, based on entitlement to a specific benefit, is due to a beneficiary after application of Omnibus has transpired.**Example:** Veteran is determined to have a PT disability from July 19. What is the effective date? What is the payment date? **Effective Date: July 19****Payment Date: August 1** |  |
| **Applying 38 CFR 3.31*** If an award is an*original or new award*(regardless if awarded due to an initial or supplemental claim, or higher-level review), or an increased award, [38 CFR 3.31](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8) *applies*
	+ if the increase in payment is due to an added dependent, an increase in disability, or areduction in IVAP, apply 38 CFR 3.31
	+ if the increase in payment is not due to an added dependent, an increase in disability, or a reduction in IVAP, 38 CFR 3.31, does not apply

**NOTE:** Pension COLA increases under [38 CFR 3.27](http://www.ecfr.gov/cgi-bin/text-idx?SID=ed44fb8f826c2e73b1676e2c4cdbb87a&node=se38.1.3_127&rgn=div8) and other increases attributable to legislation are not subject to [38 CFR 3.31](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8). |  |
| **Do Not Apply Omnibus****Omnibus does not** apply to the following claims: * Veteran’s Hospitalization
* Apportionment
* Incarceration, or
* Recoupment of an overpayment
* Cost of Living Adjustments (COLA)

In some cases, the award is subsequently restored to the preadjustment rate because the circumstances that necessitated the adjustment no longer exist.  |  |
| **Example 1: Omnibus (1 of 2)****Example 1:** A Veteran’s Pension has been reduced because a minor child attained age 18. [*VA Form 21-674*](http://www.vba.va.gov/pubs/forms/VBA-21-674-ARE.pdf)*, Request for Approval of School Attendance,* is received showing the child’s continuous enrollment in an approved school from age 18.**Does Omnibus apply?**  |  |
| **Example 2: Omnibus (1 of 2)****Example 2:** Veteran without dependents whose pension was reduced under [38 CFR 3.551(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ed44fb8f826c2e73b1676e2c4cdbb87a&node=se38.1.3_1551&rgn=div8) is now discharged from nursing home care at VA expense. **Does omnibus apply?**  |  |
| **Omnibus: Non-Recurring Income and the Reduction or Termination of Benefits*** If a pension beneficiary receives non-recurring income, the income is counted on the award for 12 months.
	+ the effect of pension payments depends on whether the income causes a reduction or termination of the running award

 |  |
| **Applying COLA: MAPR**Maximum Annual Pension Rates (MAPR) is adjusted on 12-01-YY to include a COLA and:* Normally, a SSA COLA adjustment will not reduce the pension rate that a claimant is receiving.
* If the SSA COLA does not reduce the rate of VA pension, count the increased rate of SSA from the effective date of the COLA (generally December 1).
	+ - This is an exception to the general end-of-the-month rule that increased income is counted from the first day of the month after the monthduring which it is received.
 |  |
| **Example 3: COLA**A Veteran is receiving current-law pension based on SS of $5,000 per year (monthly pension rate is $637). Effective December 1, 2020, the rate of SS goes up to $5,205 as a result of the COLA. **What would be the outcome?** |  |
| **Increased Rate – Elections-COLA*** When an election of current-law pension from Section 306 Pension or Old-Law Pension results in an increased rate, the new rate commences as of the first of the month following the date of the election.
* Elections between disability compensation and pension (including assumed elections) are subject to [38 CFR 3.31](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8), but [38 CFR 3.31](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8) does *not* apply if an assumed election results solely from a legislative change, such as when a COLA under [38 CFR 3.27](http://www.ecfr.gov/cgi-bin/text-idx?SID=ed44fb8f826c2e73b1676e2c4cdbb87a&node=se38.1.3_127&rgn=div8) makes an election of the other benefit advantageous.

**NOTE:** The award of current-law pension is not an election and is not subject to [38 CFR 3.31](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8). |  |
| **Increased Rate for Purposes of**[**38 CFR 3.31**](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8)* A claimant or beneficiary has until the end of the calendar year that follows a calendar year or the end of an initial period to furnish new income information and get a retroactive increase.
	+ Until the time limit has expired, the pension or parents’ DIC payment amount (“rate”) is always provisional.
* The adjustment of a provisional rate does not constitute an *increased rate* for purposes of [38 CFR 3.31](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8), unless the change in income results in an increased rate compared to the month immediately preceding the date that the income change is effective.
 |  |
| **Increased Rate for Purposes of**[**38 CFR 3.31**](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8) **cont.*** If a change in income *does* cause an increased rate (compared to the month immediately preceding the date that the income change is effective), [**38 CFR 3.31**](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8) applies.
	+ carry forward the preceding month’s rate for the so-called *stub month*.
		- The stub month is the month during which payment of the increased rate is barred by [**38 CFR 3.31**](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a9fd37e6b8aa36ab0e5b8daf48d45e7&mc=true&node=se38.1.3_131&rgn=div8).
 |  |
| **Practice Exercise 1: New Income & COLA**Frank Veteran’s pension rate for the period January 1, 2021, through November 30, 2021, is $700 per month.  Effective December 1, 2021, the rate increases to $750 per month due to the COLA.  The pension rate is reduced to $380 per month for the period January 1, 2022, through December 31, 2022, because of the removal of 2021 UMEs. In March 2022, the Veteran reports calendar-year 2021 medical expenses. After re-computation, it is determined that the Veteran is entitled to $450 per month for the period January 1, 2022, through December 31, 2022.**Based on the information, explain the results and provide a rationale.** |  |
| **Reduction of COLA*** We will never allow theSSA COLA increase to create a VA rate reduction on 12/01/YY.
* If an SSA COLA adjustment results in a decrease in the rate of current law pension, decrease the pension rate effective the first of the month after the effective date of the COLA/MAPR increase. (“Protected COLA”)
	+ However, if deductible expenses for the calendar year associated with the COLA are projected to increase, then carry forward the previous year’s pension payment rate until February 1
 |  |
| **Practice Exercise 2: Protected COLA**Effective January 1, 2023, the Lyle Veteran’s monthly pension rate is $1088. You input the new SSA rate effective December 1, 2023, and the monthly pension rate is decreased to $1022. **Based on the information, provide an answer and rationale to the following questions:**1. Does “Protected COLA” guidelines apply?
2. Discuss when and/or if the pension rate is payable.
	* Give a breakdown of the award?
 |  |
| **Battle of the Omnibus & COLA**If medical expenses increase the following year, the following guidelines apply: 1. Do not pay the increased monthly pension rate on 01-01-xx (continue the previous rate on this date 01-01-xx)
2. Pay the increase monthly pension rate on 02-01-xx
 |  |
| **Practice Exercise 3: Battle of the Omnibus & COLA**January 1, 2023, monthly pension rate is $888. Effective December 1, 2023, monthly pension rate is $850 (reduction based on SSA COLA). Effective 2024, monthly pension rate increases to $920 based on projected 2024 CMEDS (CMEDS increased for 2024).**Based on the information, provide an answer and rationale to the following questions:*** What would be the monthly pension rate effective December 1, 2023?
* Effective January 1, 2024?
 |  |
| **COLA – Other Federal Benefits*** Black Lung Retirement benefit is generally counted effective March 1, 20xx following the COLA adjustment
	+ *Must ensure due process will not be required based on counting the increased COLA rate (first party vs. third party information)*
* Military/SBP, Railroad retirement benefits are generally counted effective February 1, 20xx following the COLA adjustment (2-month rule applies)

**Question**: Military pay increases to $1,800 effective December 1, 2019, what is the effective date to count the increase? |  |
| **Group Activity: Omnibus – COLA Worksheet*** **Instructions:**
	+ Work in groups of four.
	+ Review the content in Appendix A: Omnibus – COLA Worksheet to provide a response.
	+ Complete each item listed.
	+ Be prepared to share your responses and rationale with the class.
* **Time allowed: 15 minutes**
 |  |
| **Due Process*** If the decreased COLA adjustment will pay a lower rate than what we are currently paying, may be necessary to issue due process for proposed adverse action.
 |  |
| **Knowledge Check: Lesson Summary Review****Time Allowed: 10 minutes** |  |
| What’s NextComplete the *Defining Omnibus Budget Reconciliation Act of 1982 (OBRA)* and Cost of Living Adjustment (COLA) course evaluation. | **DISPLAY** slide**38.** “What’s Next”**INSTRUCT trainees to Complete the** *Defining Omnibus Budget Reconciliation Act of 1982 (OBRA)* and Cost of Living Adjustment (COLA) course evaluation**.** |

Appendix

**Omnibus: Non-Recurring Income and the Reduction or Termination of Benefits**

