



PENSION AND FIDUCIARY SERVICE

PMC VSR Advanced Core Course
Phase 5: Stages of a Claim
Part 1: Determine Eligibility

Lesson 22: Apply Liberalizing Law to Pension Eligibility

Lesson Plan

October 28, 2016

Version 1.0

Lesson 22: Apply Liberalizing Law to Pension Eligibility
Lesson Plan

Apply Liberalizing Law to Pension Eligibility

Lesson Overview

Topic	Description
Time Estimate:	1 hour
Purpose of the Lesson:	This lesson is part of the entry-level curriculum Core Course for PMC VSRs. The purpose of this lesson is to prepare PMC VSRs to apply liberalizing legislation for pension claims.
Prerequisite Training Requirements:	Prior to taking the Apply Liberalizing Law to Pension Eligibility lesson, trainees must complete PMC VSR Core Course Phases 1–4, Phase 5, Part 1, Lessons 1–21. (Refer to the Master Course Map learning aid for a list of lessons.)
Target Audience:	This lesson is for entry-level PMC VSRs.
Lesson References:	<ul style="list-style-type: none"> • Master Course Map learning aid • M21-1 III.vi.8.1 (Changes to the Law or Department of Veterans Affairs Issue) • M21-1 III.vi.8.1.b (Provisions of 38 CFR 3.114(a) on Eligibility for Retroactive Benefits) • M21-1 III.vi.8.1.c. (Awarding or Increasing Benefits Retroactively Based on a Change to the Law) • M21-1 V.iii.1.A.4.d. (Retroactive Effect Dates to Pension Due to Liberalizing Law) • 38 CFR 3.114 (Change of law or Department of Veterans Affairs issue)
Knowledge Check:	Phase 5: Stages of a Claim, Part 1(d): Beyond Basic Eligibility and Ready to Rate
Technical Competencies:	<ul style="list-style-type: none"> • Program Benefits and Eligibility (PMC VSR) • Processing Claims (PMC VSR)
Lesson Objectives:	<ul style="list-style-type: none"> • Determine whether Veteran meets criteria for liberalizing law. • Determine whether to apply liberalizing legislation eligibility.

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What You Need:	<ul style="list-style-type: none"> • Lesson plan • Master Course Map learning aid • Slides • Projector • Access to VBA intranet • Pen and paper or access to a whiteboard • A personal experience applying liberalizing law to use as a teaching scenario • Access to the following systems: <ul style="list-style-type: none"> ○ SHARE ○ VBMS • Claim 1 (pmc_vsr_case_8) Access to Academy mode claim application including evidence to demonstrate a claim eligible for liberalizing law • Claim 2 (pmc_vsr_excerpt_s) Access to Academy mode claim application including evidence to demonstrate a claim not eligible for liberalizing law

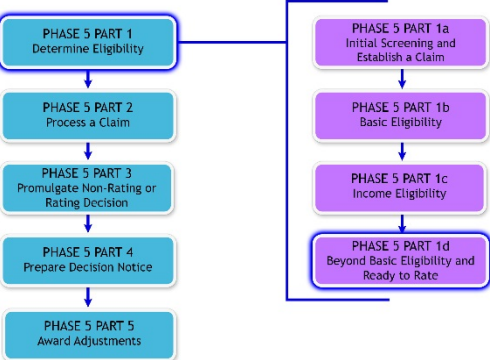


Instructor Notes

This lesson provides trainees with references, resources, and examples to determine whether to apply liberalizing law to pension claims.

PowerPoint Slides	Instructor Activities
Lesson 22: Apply Liberalizing Law to Pension Eligibility	<p>DISPLAY slide</p> <p>1. "Lesson 22: Apply Liberalizing Law to Pension Eligibility"</p> <p>INTRODUCE yourself as the instructor.</p> <p>INTRODUCE the lesson.</p>

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PowerPoint Slides	Instructor Activities
<p>You Are Here</p>  <pre>graph TD; P1[PHASE 5 PART 1 Determine Eligibility] --> P2[PHASE 5 PART 2 Process a Claim]; P2 --> P3[PHASE 5 PART 3 Promulgate Non-Rating or Rating Decision]; P3 --> P4[PHASE 5 PART 4 Prepare Decision Notice]; P4 --> P5[PHASE 5 PART 5 Award Adjustments]; P1 --> P1a[PHASE 5 PART 1a Initial Screening and Establish a Claim]; P1a --> P1b[PHASE 5 PART 1b Basic Eligibility]; P1b --> P1c[PHASE 5 PART 1c Income Eligibility]; P1c --> P1d[PHASE 5 PART 1d Beyond Basic Eligibility and Ready to Rate];</pre>	<p>DISPLAY slide 2. "You Are Here"</p>  <p>REFER trainees to the Master Course Map learning aid in the Trainee Guide.</p> <p>EXPLAIN where the trainees are in the phase, what they have completed, and where they are headed next.</p> <p>INFORM trainees that Phase 5, Part 1: Determine Eligibility contains four subparts. The fourth subpart contains several lessons that focus on eligibility issues that are beyond basic because they occur less frequently and/or are more complex.</p>  <p>EMPHASIZE to trainees that each of these lessons relates to the others as part of the tasks beyond basic eligibility and determining if a claim is ready to rate.</p>

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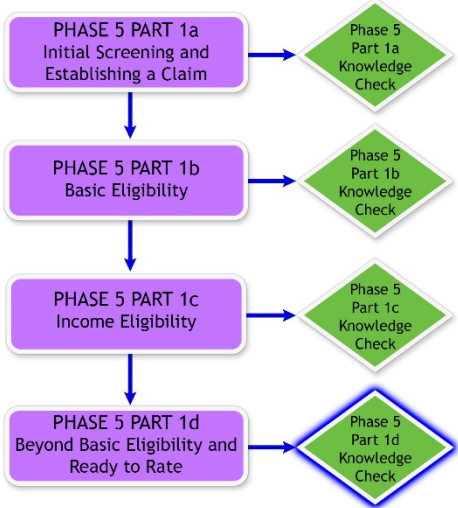




PowerPoint Slides	Instructor Activities
<p>Beyond Basic Eligibility and Ready to Rate</p> <ul style="list-style-type: none"> • Verify Proof of Death of Veteran for Survivors' Benefits • Apply Liberalizing Law to Pension Eligibility • Process Vet Married to Vet Cases • Determine Accrued Benefits Eligibility • Determine Burial Benefits Eligibility • Determine Month of Death (MOD) Eligibility • Overview of Ready to Rate • Determine Eligibility for DIC and Parents' DIC 	<p>DISPLAY slide</p> <p>3. "Beyond Basic Eligibility and Ready to Rate"</p> <p>REMIND trainees of the basic eligibility process.</p> <p>EXPLAIN that they will be learning about the tasks that go beyond basic eligibility as well as how to determine if a claim is ready to rate.</p> <p>INFORM trainees that this lesson will focus on how to determine whether to apply liberalizing legislation to a pension claim.</p>
<p>What Is Liberalizing Law?</p> <ul style="list-style-type: none"> • Definition of liberalizing law • Retroactive benefits 	<p>DISPLAY slide</p> <p>4. "What Is Liberalizing Law?"</p> <p>PROVIDE trainees with the following definition of liberalizing law:</p> <p><i>A liberalizing law is any law that brings about a substantive change to the law, creating a new and different entitlement to a benefit.</i></p> <p>EXPLAIN that retroactive benefits can be authorized if the claimant had potential entitlement on the date the law/regulation became effective and entitlement continued through the effective date of the award.</p>

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PowerPoint Slides	Instructor Activities
<p>Scenario—Potential Claim for Liberalizing Law</p> <p>An 82-year-old Veteran applied for VA pension benefits on July 3, 2016. The Veteran met all of the eligibility criteria and was granted nonservice-connected pension benefits effective July 3, 2016, payable August 1, 2016.</p>	<p>DISPLAY slide</p> <p>5. "Scenario—Potential Claim for Liberalizing Law"</p> <p>EXPLAIN that this is an example of when you would apply liberalizing law because the Veteran would have met the presumptive criteria of age 65 continuously from September 17, 2001. The Veteran may be eligible for retroactive benefits up to one year prior to his date of claim. Therefore, you would be required to send a development letter in addition to the award grant requesting income and expense information for the liberalizing law period of July 3, 2015, through July 31, 2016.</p> <p style="text-align: center;"></p> <p>EMPHASIZE that the criteria for apply liberalizing law will be covered in greater detail later in the lesson.</p>
<p>Technical Competencies</p> <ul style="list-style-type: none"> • Program Benefits and Eligibility (PMC VSR) • Processing Claims (PMC VSR) 	<p>DISPLAY slide</p> <p>6. "Technical Competencies"</p> <p>REVIEW technical competencies with trainees.</p>
<p>Lesson Objectives</p> <ul style="list-style-type: none"> • Determine whether Veteran meets criteria for liberalizing law. • Determine whether to apply liberalizing legislation eligibility. 	<p>DISPLAY slide</p> <p>7. "Lesson Objectives"</p> <p>PRESENT the objectives for the lesson.</p>


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<p>Knowledge Check</p>  <pre> graph TD A[PHASE 5 PART 1a Initial Screening and Establishing a Claim] --> B[PHASE 5 PART 1b Basic Eligibility] B --> C[PHASE 5 PART 1c Income Eligibility] C --> D[PHASE 5 PART 1d Beyond Basic Eligibility and Ready to Rate] A --- AC{Phase 5 Part 1a Knowledge Check} B --- BC{Phase 5 Part 1b Knowledge Check} C --- CC{Phase 5 Part 1c Knowledge Check} D --- DC{Phase 5 Part 1d Knowledge Check} </pre>	<p>DISPLAY slide 8. "Knowledge Check"</p> <p>EXPLAIN that a Knowledge Check will be given at the end of Phase 5, Part 1d, which covers all material learned in Phase 5, Part 1d.</p>  <p>REFER to the Master Course Map learning aid, <i>Lessons by Phase</i> section, to review the lessons included within the Knowledge Check.</p>
<p>Why Is Liberalizing Law Important?</p> <p>Applies to:</p> <ul style="list-style-type: none"> • Cases involving pending or previously denied claims • Original claims filed after the change in law or administrative issue 	<p>DISPLAY slide 9. "Why Is Liberalizing Law Important?"</p>  <p>ASK why knowing when to apply liberalizing law is important. Select a few trainees for answers. Provide any additional information or clarification based on the answers received.</p>  <p>EMPHASIZE that it is rare that they will have to apply liberalizing law to a pending claim. In the event that a claim is pending, but all information for the period of one year prior is provided, you would award liberalizing legislation in addition to the original grant. In most cases, you will grant liberalizing legislation, then, develop for information.</p> 


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	<p>REFER to the CFR and manual references regarding liberalizing law:</p> <ul style="list-style-type: none"> • 38 CFR 3.114 (Change of law or Department of Veterans Affairs issue) • M21-1 III.vi.8.1 (Changes to the Law or Department of Veterans Affairs Issue) • M21-1 V.iii.1.A.4.d. (Retroactive Effect Dates to Pension Due to Liberalizing Law) <p>PROVIDE a brief overview of each reference, emphasizing the effect liberalizing law has on awarding pension benefits for pending, denied, and original claims.</p> <p>INFORM trainees that these references and passages associated with these references will be provided throughout the lesson on how and when to apply liberalizing law for pension.</p>
<p>Criteria for Applying Liberalizing Law</p> <ul style="list-style-type: none"> • Public Law 107-103 • Liberalizing law and pension • Liberalizing law claims 	<p>DISPLAY slide 10. "Criteria for Applying Liberalizing Law"</p> <p>EXPLAIN that liberalizing law applies to pension in that under Public Law 107-103, pension may be awarded to a Veteran retroactively for up to one year prior to the date of receipt of claim if any of the following criteria are continuously met from 9/17/01 until the date of claim:</p> <ul style="list-style-type: none"> • The Veteran is 65 or older. • The Veteran is recognized as disabled by the Social Security Administration. • The Veteran is a patient in a nursing home. <div style="text-align: center;">  </div> <p>REFER to the CFR and manual references regarding liberalizing law:</p> <ul style="list-style-type: none"> • 38 CFR 3.114 (Change of law or Department


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	<p>of Veterans Affairs issue)</p> <ul style="list-style-type: none">• M21-1 III.vi.8.1 (Changes to the Law or Department of Veterans Affairs Issue)• M21-1 V.iii.1.A.4.d. (Retroactive Effect Dates to Pension Due to Liberalizing Law) <p></p> <p>EMPHASIZE the following sections:</p> <ul style="list-style-type: none">• M21-1 III.vi.8.1.b. (Provisions of 38 CFR 3.114(a) on Eligibility for Retroactive Benefits), specifically the eligibility requirements to receive retroactive rewards under liberalizing law. The claimant must meet the eligibility requirements:<ul style="list-style-type: none">○ On the effective date of the liberalizing law or regulation,○ On the effective date of the award○ During the entire retroactive period• M21-1 III.vi.8.1.c. (Awarding or Increasing Benefits Retroactively Based on a Change to the Law), specifically the table of when to establish liberalized standards of entitlement and award or increase benefits retroactively. <p>EXPLAIN that liberalizing law should be applied in the following situations:</p> <ul style="list-style-type: none">• The Veteran is granted pension (presumptively).• The Veteran met one of the presumptive requirements on the date of the law change (9/17/2001) through the present date of claim.• The Veteran has never received pension. <p>EXPLAIN that if a claim is received for</p>


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	<p>liberalizing law, the claim must be received within one year from the date of the final action letter notifying the Veteran of potential entitlement to an earlier effective date. Additional development may be required.</p>  <p>ASK if they have any questions regarding when to apply liberalizing law or how to award benefits once determining liberalizing law must be applied.</p>

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<p>Partial Grants of Liberalizing Law</p> <ul style="list-style-type: none">• When to grant partial liberalizing law• Pension and Parents' DIC	<p>DISPLAY slide 11. "Partial Grants of Liberalizing Law"</p>  <p>REFER to manual reference M21-1 III.vi.8.1.b (Provisions of 38 CFR 3.114(a) on Eligibility for Retroactive Benefits) regarding partial grant of liberalizing law.</p> <p>EXPLAIN that partial liberalizing law can only be granted under the following conditions:</p> <ul style="list-style-type: none">• If the claimant's net worth is a bar to benefits at the start of the liberalized period<ul style="list-style-type: none">○ If net worth is reduced and is no longer a bar at any time during the liberalized period, then benefits can be awarded for a partial retroactive payment.• If the MAPR changes during the liberalized period which results in the IVAP being under the limit<ul style="list-style-type: none">○ The MAPR can change if a dependent is added to the award or SMP is granted. It does not include just a change in medical expenses without a change in MAPR. Under this circumstance, benefits can be awarded for a partial liberalizing law retroactive payment.



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PowerPoint Slides	Instructor Activities
<p>Scenario—Apply Partial Liberalizing Law</p> <p>A Veteran applies for benefits July 3, 2016. The Veteran submits income, net worth, and medical expenses from July 3, 2015. The Veteran shows continuous entitlement from July 3, 2015; however, he receives an inheritance in May of 2016 that significantly reduces the original benefits. Depending on when this claim is worked, it may cause an overpayment or it may cause a retroactive payment. Future benefits would severely decrease.</p>	<p>DISPLAY slide 12. "Apply Partial Liberalizing Law"</p> <p>EXPLAIN that this is an example of when you could apply liberalizing law, however, if it is clear that granting liberalizing legislation and counting the inheritance would be detrimental to the Veteran in both the net effect and future rate, you would not grant liberalizing legislation and would not count the inheritance.</p>

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<p>Scenario—Does the Claim Meet Liberalizing Law Criteria?</p> <p><i>Instructor will provide a scenario based on a real-life experience.</i></p>	<p>DISPLAY slide</p> <p>13. "Scenario— Does the Claim Meet Liberalizing Law Criteria?"</p>  <p>REFER to the CPKM and have trainees navigate to the following CFR references:</p> <ul style="list-style-type: none">• 38 CFR 3.114 (Change of law or Department of Veterans Affairs issue)• M21-1 III.VI.8.1 (Changes to the Law or Department of Veterans Affairs Issue)• M21-1 III.vi.8.1.b (Provisions of 38 CFR 3.114(a) on Eligibility for Retroactive Benefits)• M21-1 V.iii.1.A.4.d. (Retroactive Effect Dates to Pension Due to Liberalizing Law) <p>PROVIDE a scenario of a time when you had to review a claim to determine if it met liberalizing law criteria. Do not provide the correct answer at this time.</p>  <p>ASK the trainees to determine if, based on the details provided in your scenario, the claim would meet the criteria for liberalizing law.</p> <p>NOTE that you will provide the correct answer on the next slide.</p>

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<p>Scenario—Does the Claim Meet Liberalizing Law Criteria? Answer</p> <ul style="list-style-type: none"> • Review the criteria for liberalizing law • Based on the information provided, is the claim a: <ul style="list-style-type: none"> ○ Pending or previously denied claim? ○ <i>Answer provided by instructor based on the information provided in the example claim.</i> ○ Original claim filed after a change in law or administrative issue? ○ <i>Answer provided by instructor based on the information provided in the example claim.</i> ○ Liberalizing law claim? ○ <i>Answer provided by instructor based on the information provided in the example claim.</i> 	<p>DISPLAY slide 14. "Scenario—Does the Claim Meet Liberalizing Law Criteria? Answer"</p> <p>REVIEW the scenario with trainees.</p> <p>PROVIDE any clarification or explanation needed based on the answer given by the trainee selected.</p> <div style="text-align: center;">  </div> <p>ASK if they have any questions about the scenario and how the conclusion was reached.</p>

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<p>Group Activity—Does the Claim Meet Eligibility Requirements for Liberalizing Law?</p> <ul style="list-style-type: none">• Instructions:<ul style="list-style-type: none">○ Divide into groups of three.○ Access CPKM to use the eCFR and M21-1 to complete the exercise.○ Review Claim 1 and 2.○ Determine if liberalizing law can be applied.• Time allowed: 10 minutes	<p>DISPLAY slide 15. "Group Activity—Does the Claim Meet Eligibility Requirements for Liberalizing Law?"</p> <p>PROVIDE Claim 1 and 2 to trainees.</p> <p>READ the activity instructions on the slide to the trainees.</p>  <p>REFER to the CPKM and have trainees locate and review the following sections:</p> <ul style="list-style-type: none">• 38 CFR 3.114 (Change of law or Department of Veterans Affairs issue)• M21-1 III.VI.8.1 (Changes to the Law or Department of Veterans Affairs Issue)• M21-1 V.iii.1.A.4.d. (Retroactive Effect Dates to Pension Due to Liberalizing Law) <p>INSTRUCT trainees to review the information provided in the eCFR and manual sections and use the information to determine if liberalizing law can be applied.</p>

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<p>Claim 1—Does the Claim Meet Eligibility Requirements for Liberalizing Law?</p> <ul style="list-style-type: none">• Does the claim meet the criteria for liberalizing law?• <i>Answer provided by instructor based on the information provided in the example claim.</i>• Can liberalizing law be applied to the claim?• <i>Answer provided by instructor based on the information provided in the example claim.</i>• If yes, when should you establish liberalized standards of entitlement and award or increase benefits retroactively?• <i>Answer provided by instructor based on the information provided in the example claim.</i>	<p>DISPLAY slide 16. "Claim 1—Does the Claim Meet Eligibility Requirements for Liberalizing Law?"</p> <p>DIRECT trainees to Claim 1 you prepared for this exercise.</p> <p>INSTRUCT trainees to review the eCFR and manual sections for liberalizing law. Based on the information given in the eCFR and manual, request that each group review Claim 1 and answer the questions on the slide.</p> <p>DEBRIEF the exercise by discussing the answers to each question for Claim 1 using the answers you prepared ahead of time.</p>





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<p>Claim 2—Does the Claim Meet Eligibility Requirements for Liberalizing Law?</p> <ul style="list-style-type: none">• Does the claim meet the criteria for liberalizing law?• <i>Answer provided by instructor based on the information provided in the example claim.</i>• Can liberalizing law be applied to the claim?• <i>Answer provided by instructor based on the information provided in the example claim.</i>• If yes, when should you establish liberalized standards of entitlement and award or increase benefits retroactively?• <i>Answer provided by instructor based on the information provided in the example claim.</i>	<p>DISPLAY slide 17. "Claim 2—Does the Claim Meet Eligibility Requirements for Liberalizing Law?"</p> <p>DIRECT trainees to Claim 2 you prepared for this exercise.</p> <p>INSTRUCT trainees to review the eCFR and manual sections for liberalizing law. Based on the information given in the eCFR and manual, request that each group review Claim 2 and answer the questions on the slide.</p> <p>DEBRIEF the exercise by discussing the answers to each question for Claim 2 using the answers you prepared ahead of time.</p>

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PowerPoint Slides	Instructor Activities
<p>Liberalizing Law Review</p> <ul style="list-style-type: none"> • Definition of liberalizing law • Criteria for applying liberalizing law • Applying liberalizing law 	<p>DISPLAY slide 18. "Liberalizing Law Review"</p>  <p>REFER to the CPKM eCFR and manual references on changes to the law or Department of Veterans Affairs (VA) issue.</p> <p>REVIEW each point on the slide and remind the trainees where the information can be found using the eCFR references. If needed, review the criteria for liberalizing law and how to award benefits retroactively when applying liberalizing law.</p>
<p>Questions?</p> 	<p>DISPLAY slide 19. "Questions?"</p>  <p>ASK if there are any concepts that are unclear or may need further review.</p>
<p>What's Next</p> <ul style="list-style-type: none"> • Phase 5, Part 1, Lesson 23: Process Veteran-Married-to-Veteran Cases • Review of all references provided in this lesson 	<p>DISPLAY slide 20. "What's Next"</p> <p>DISCUSS the upcoming lesson with trainees.</p>  <p>EMPHASIZE that they review all previous lessons, handouts, and references if needed.</p>