



PENSION AND FIDUCIARY SERVICE

PMC VSR Advanced Core Course
Phase 5: Stages of a Claim
Part 5: Award Adjustments

Lesson 5: Apply/Issue Due Process Provisions

Lesson Plan

May 12, 2017

Version 1.0

Lesson 5: Apply/Issue Due Process Provisions
Lesson Plan

Apply/Issue Due Process Provisions

Lesson Overview

Topic	Description
Time Estimate:	2 hours
Purpose of the Lesson:	This lesson is part of the entry-level curriculum course for PMC VSRs. The purpose of this lesson is to prepare PMC VSRs to determine when due process is required, apply due process provisions, and determine time limits for response from the claimant.
Prerequisite Training Requirements:	Prior to taking the Apply/Issue Due Process Provisions lesson, trainees must complete the entry-level course Phases 1–4, Phase 5, Parts 1-4, and Phase 5 part 5 lessons 1-4. (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 • VA Form 27-0820 (Report of General Information) • M21-1 I.2.A (General Information on Due Process) • M21-1 I.2.A.1.a (Due Process and the U.S. Constitution) • M21-1 I.2.A.1.b (Due Process and VA) • M21-1 I.2.A.2.a (Types of Notification Concerning Change in Benefits) • M21-1 I.2.B.2 (Required Elements for a Notice of Proposed Adverse Action) • M21-1 I.2.C (Adverse Action Proposal Period) <ul style="list-style-type: none"> ○ M21-1 I.2.C.3 (Hearings Requested in Response to a Proposed Adverse Action) • M21-1 I.2.D (Contemporaneous Notice) • M21-1 III.iii.5.K (Verification of Marital Status and the Status of Dependents) <ul style="list-style-type: none"> ○ M21-1 III.iii.5.K.4 (Failure to Return a Questionnaire)

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Topic	Description
	<ul style="list-style-type: none">• M21-1 III.iii.6.B (Awards and Adjustments Based upon School Attendance)<ul style="list-style-type: none">◦ M21-1 III.iii.6.B.6.f (Failure to Certify School Attendance)• M21-1 III.iv.8.A.5.a (Decree by a Court as Notice and Hearing)• M21-1 III.v.1.A.3.d (Sample Format for an Administrative Decision)• M21-1 III.v.1.I.1 (Overview of Erroneous Payments)• M21-1 III.v.1.I.2 (Adjusting Awards for Erroneous Benefits (Based on Duplicate Payment(s)))• M21-1 III.v.3.B (Adjusting Apportioned Awards)• M21-1 III.v.6.C.1.d (Due Process and Control Procedures for Hospitalization)• M21-1 III.v.8.A.2 (Benefit-Specific Effects of a Beneficiary's Incarceration)• M21-1 III.v.8.C.2.b (Providing Notification to an Incarcerated Surviving Spouse)• M21-1 III.v.9.B.3 (Due Process Requirements for Incompetency Determinations)• M21-1 III.vi.2.A.1 (General Information About Simultaneous Award Adjustments)• M21-1 III.vi.2.A.2 (Processing Simultaneous Award Adjustments)• M21-1 X.2.5.n (Monthly Entitlement Amount is Erroneous)• M21-1 X.5.2.h (DMF Match Identifies Veteran's Spouse)• M21-1 X.9.F (Income Verification Match)• M21-1 X.15.2 (Social Security Prison Match Worksheets)• M21-1 X.16.2.d (Deciding Whether an Individual Is a Fugitive Felon and Notifying the Beneficiary of the Decision)• 38 CFR 3.103 (Procedural Due Process and Appellate Rights)• 38 CFR 3.551 (Reduction Because of Hospitalization)

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Topic	Description
	<ul style="list-style-type: none"> • 38 CFR 3.552 (Adjustment of allowance for aid and attendance) • Due Process job aid • Initial Year job aid • Processing an Award Adjustment job aid
Knowledge Check:	Phase 5: Stages of a Claim, Part 5b: Award Adjustments
Technical Competencies:	<ul style="list-style-type: none"> • Program Benefits and Eligibility (PMC VSR) • Processing Claims (PMC VSR) • Income Counting and Net Worth • VBA Applications (PMC VSR) • Special Monthly Pension (SMP) Processes
Lesson Objectives:	<p>Apply due process provisions to a claim.</p> <ul style="list-style-type: none"> • Determine if due process is applicable to a claim. • Determine effective dates for the proposed change in benefits. • Determine if change requires contemporaneous notice or due process notification letter. • Identify due process elements for PCGL/contemporaneous notice.
What You Need:	<ul style="list-style-type: none"> • Lesson plan • Master Course Map learning aid • Slides • Projector • Additional Instructors to achieve a 1:4 Instructor/Trainee ratio during the Guided Practice portion of the lesson • Access to VBA intranet • Pen and paper or access to a whiteboard • Access to Effective Dates EPSS • Access to the following VBA systems in academy mode:

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	<ul style="list-style-type: none"> ○ VBMS ○ PCGL ○ SHARE • Access to the following job aids from VSR Assistant: <ul style="list-style-type: none"> ○ Due Process job aid ○ Initial Year job aid ○ Processing an Award Adjustment job aid • Three live claims: <ul style="list-style-type: none"> ○ Live claim 1 and 2 to show: <ul style="list-style-type: none"> ▪ Determining new effective date based on the reason for due process ▪ Determining proposed benefit amount based on reason for due process ○ Live claim 3 to demonstrate: <ul style="list-style-type: none"> ▪ Determining the reason to apply due process ▪ Determining new effective date based on the reason for due process ▪ Determining proposed benefit amount based on reason for due process ▪ Determining if due process letter or contemporaneous notice is required • Claim 1 for practice activity for trainees to use for determining: <ul style="list-style-type: none"> ○ Reason for due process ○ New effective date ○ Proposed benefit change ○ Determining if claim requires contemporaneous notice or due process letter ○ Identify elements for due process letter/contemporaneous notice. • Two to three examples of contemporaneous notices

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	<p>regarding either income, net worth, marital status, or dependency</p> <ul style="list-style-type: none"> Two completed examples of VA Form 27-0820s to show how a call to a beneficiary should be documented

Instructor Notes


This lesson provides trainees with references, resources, and examples to apply due process provisions, determine if due process is applicable to a claim, determine the new effective date for reduction or termination of benefits, and determine whether the claim requires a due process notification or contemporaneous notice.

PowerPoint Slides	Instructor Activities
<p>Lesson 5: Apply/Issue Due Process Provisions</p>	<p>DISPLAY slide</p> <p>1. "Lesson 5: Apply/Issue Due Process Provisions"</p> <p>INTRODUCE yourself as the instructor.</p> <p>INTRODUCE the lesson.</p>
<p>You Are Here</p>	<p>DISPLAY slide</p> <p>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 5: Award Adjustments contains seven lessons. The fifth lesson focuses on determining when to apply due process to a claim.</p>


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PowerPoint Slides	Instructor Activities
<p>Technical Competencies</p> <ul style="list-style-type: none"> • Program Benefits and Eligibility (PMC VSR) • Processing Claims (PMC VSR) • Income Counting and Net Worth • VBA Applications (PMC VSR) • Special Monthly Pension (SMP) Processes 	<p>DISPLAY slide 3. "Technical Competencies"</p> <p>REVIEW technical competencies with trainees.</p>
<p>Lesson Objectives</p> <p>Apply due process provisions to a claim.</p> <ul style="list-style-type: none"> • Determine if due process is applicable to a claim. • Determine effective dates for the proposed change in benefits. • Determine if the change in benefits requires contemporaneous notice or due process notification letter. • Identify elements for due process letter/contemporaneous notice. 	<p>DISPLAY slide 4. "Lesson Objectives"</p> <p>PRESENT the objectives for the lesson.</p>


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PowerPoint Slides	Instructor Activities
<p>Knowledge Check</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] P2 --> KC2{Phase 5 Part 2 Knowledge Check} P3 --> KC3{Phase 5 Part 3 Knowledge Check} P4 --> KC4{Phase 5 Part 4 Knowledge Check} P5 --> KC5a{Phase 5 Part 5a Knowledge Check} P5 --> KC5b{Phase 5 Part 5b Knowledge Check} </pre>	<p>DISPLAY slide 5. "Knowledge Check"</p> <p>EXPLAIN that a knowledge check will be given at the end of Phase 5, Part 5b that covers all material learned in this lesson.</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>




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PowerPoint Slides	Instructor Activities
<p>Why It Matters!</p> <ul style="list-style-type: none"> • Could reduce or terminate benefits for the beneficiary • Provides the beneficiary with the opportunity to: <ul style="list-style-type: none"> ○ Provide additional evidence to contest the action ○ Hold a hearing before VA decision-makers • In some situations, such as a character of discharge determination, due process applies before VA determines eligibility for benefits • If contemporaneous notice applies, benefits are reduced or terminated immediately 	<p>DISPLAY slide 6. "Why It Matters!"</p>  <p>REFER to the following references:</p> <ul style="list-style-type: none"> • M21-1 I.2.A (General Information on Due Process) • M21-1 2.D (Contemporaneous Notice) <p>Allow 5-7 minutes to review the sections.</p> <p>EXPLAIN the purpose of due process is to:</p> <ul style="list-style-type: none"> • Inform the beneficiary of any proposed adverse action that could reduce or terminate benefits • Provide the beneficiary with the opportunity to: <ul style="list-style-type: none"> ○ Provide additional evidence ○ Request a hearing <p>EXPLAIN that, depending on how the information is received, a contemporaneous notice may be appropriate in lieu of a notice of proposed adverse action.</p> <p>NOTE: This will be explained in further detail later in this presentation.</p>


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<p>Job Aids for Applying Due Process</p> <ul style="list-style-type: none">• Processing an Award Adjustment job aid• Initial Year job aid• Due Process job aid	<p>DISPLAY slide 7. "Job Aids for Applying Due Process"</p>  <p>REFER to the job aids listed on the slide. Have the trainees access each job aid.</p> <p>REMIND trainees that they have used some of these job aids in previous lessons and that each job aid has information regarding the elements of due process for specific situations.</p> <p>PROVIDE a brief review of the information found in each job aid.</p>




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<p>Due Process vs. Contemporaneous Notice</p> <p>Due process</p> <ul style="list-style-type: none"> • Informs beneficiary of proposed reduction or termination of benefits • Applied when information is received from a third party regarding the beneficiary <p>Contemporaneous notice</p> <ul style="list-style-type: none"> • Informs beneficiary of a change in benefits that was implemented at the time the notice was sent • Sent when information is received from the beneficiary or designated POA 	<p>DISPLAY slide 8. "Due Process vs. Contemporaneous Notice"</p> <p></p> <p>REFER to M21-1 I.2.A.2.a (Types of Notification Concerning Change in Benefits) and the Due Process job aid.</p> <p>DEFINE contemporaneous notice:</p> <ul style="list-style-type: none"> • A contemporaneous notice informs the beneficiary of a change in benefits that was implemented at the time the notice was sent. <p>EXPLAIN that depending on how the information was received, you may be required to send a contemporaneous notice instead of a due process letter.</p> <p></p> <p>SHOW an example of a contemporaneous notice and a due process letter and highlight the differences in wording for action taken vs. proposed action in the due process letter.</p> <p></p> <p>EMPHASIZE that due process applies if the information received is from a third party. If the information is received from the beneficiary or designate POA, a contemporaneous notice should be sent, not a due process letter.</p>
<p>Most Common Reasons for Due Process</p> <ul style="list-style-type: none"> • Overpayment caused by: <ul style="list-style-type: none"> ○ Claimant did not 	<p>DISPLAY slide 9. & 10. "Most Common Reasons for Due Process"</p>



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<p>respond to request for additional information</p> <ul style="list-style-type: none"> ○ Change in income received from third party ○ Excess net worth ○ Write-outs ○ Hospital adjustments ○ Apportionments ○ Incarceration/fugitive felon ○ Dependency status changes ○ Renouncement request with a report of change in income <ul style="list-style-type: none"> ● Other circumstances for due process include: <ul style="list-style-type: none"> ○ Additional children apply for Dependency and Indemnity Compensation (DIC) ○ \$90 Medicaid rate ○ Removal of administrative Aid and Attendance (A&A) ○ Incompetency ○ VA error ○ Character of discharge ○ Special Monthly Pension (SMP) reduction 	<div style="text-align: center;">  </div> <p>REFER to the Due Process job aid.</p> <p>EXPLAIN that specific information for each reason can be found in the job aid.</p> <p>SELECT two or three reasons from the job aid with which you have the most experience. Explain these reasons in more detail using the information provided in the job aid.</p> <p>NOTE: References for the various reasons for due process can be found in the job aid.</p> <p>PROVIDE any best practices for the reasons listed.</p>




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<p>Scenario—What is the Reason to Apply Due Process?</p> <p>You receive information from Social Security showing that Veteran Gerald Jenkins has been incarcerated since November 14, 2014, for a hit-and-run accident after he sped through an intersection. He currently receives pension benefits but is not entitled to compensation benefits.</p> <p>What is the reason for due process?</p>	<p>DISPLAY slide</p> <p>11. "Scenario– What is the Reason to Apply Due Process?"</p> <p>PRESENT the scenario.</p>  <p>REFER to the Due Process job aid to use as a reference while reviewing the scenario.</p>
<p>Scenario—What is the Reason to Apply Due Process?</p> <p>Answer</p> <p>You receive information from Social Security showing that Veteran Gerald Jenkins has been incarcerated since November 14, 2014, for a hit-and-run accident after he sped through an intersection. He currently is receiving pension benefits but is not entitled to compensation benefits.</p> <p>What is the reason for due process?</p> <p><i>Due process is necessary because you have been informed by a third party the Veteran is incarcerated.</i></p>	<p>DISPLAY slide</p> <p>12. "Scenario– What is the Reason to Apply Due Process? Answer"</p> <p>PRESENT the scenario.</p>  <p>REFER to the Due Process job aid to use as a reference while reviewing the scenario.</p>  <p>ASK if any clarification is needed regarding the reason for due process.</p>




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<p>Effective Date and New Benefit Amount of Proposed Change to Benefits</p> <ul style="list-style-type: none"> • Effective date varies depending on the reason for due process (see the details for each reason in the Due Process job aid) • Most often, the proposed benefit amount will vary depending on the information received • Net worth is the exception as benefits will never be reduced due to a change in net worth • Due process due to administrative error may require an administrative decision 	<p>DISPLAY slide 13. "Effective Date and New Benefit Amount of Proposed Change to Benefits"</p>  <p>REFER to the following:</p> <ul style="list-style-type: none"> • Processing an Award Adjustment job aid • Initial Year job aid • Due Process job aid • Effective Dates EPSS <p>EXPLAIN that the effective date will depend on the reason for due process. The proposed change in benefits will also vary depending on the reason.</p> <p>SELECT one or two live claims that require due process. Provide the new effective dates and the proposed benefit change using the details for the corresponding reason provided in the Due Process job aid.</p> <p>REMIND trainees to use the Effective Dates EPSS and the Processing an Award Adjustment job aid for guidance in determining the effective date of benefits.</p>  <p>EMPHASIZE the following:</p> <ul style="list-style-type: none"> • Benefits can never be reduced due to a change in net worth; if net worth is excessive, benefits will be terminated. • If the need for due process is due to an administrative error, an administrative decision may be required.



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<p>Demonstration—Determine Award Amount and Effective Date for Claim Requiring Due Process</p> <ul style="list-style-type: none"> • Review claim for indications of adverse actions • Determine the effective date of the proposed benefit change • Determine the new benefit amount • Determine if the change in benefit requires due process or contemporaneous notice 	<p>DISPLAY slide</p> <p>14. "Demonstration—Determine Award Amount and Effective Date for Claim Requiring Due Process"</p>  <p>REFER to the following job aids:</p> <ul style="list-style-type: none"> • Processing an Award Adjustment job aid • Due Process job aid • Initial Year job aid  <p>DEMONSTRATE, using the job aids, determining:</p> <ul style="list-style-type: none"> • If a claim requires due process • The new effective date • The new benefit amount based on the proposed change • If the change in benefit requires a due process letter or contemporaneous notice <p>TRANSITION: Once you have determined the new effective date and the proposed change, your next step is to create the due process letter or contemporaneous notice.</p>
<p>Due Process Letter/Contemporaneous Notice</p> <p>Due Process Letter</p> <ul style="list-style-type: none"> • Create a due process letter in SHARE. • Ensure letter reflects the 	<p>DISPLAY slide</p> <p>15. "Due Process Letter/Contemporaneous Notice"</p> <p>REMIND trainees that they learned how to create a PCGL in a previous lesson.</p> 

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<p>reason for the due process as well as the information listed in the Due Process section of the Processing an Award Adjustment job aid.</p> <ul style="list-style-type: none"> • Claimant has 60 days (plus 5 days for mail) to respond with new evidence or information <p>Contemporaneous Notice</p> <ul style="list-style-type: none"> • Create a notice in SHARE • Elements of a contemporaneous notice should include: <ul style="list-style-type: none"> ○ Statement of the decision (including new rates) ○ Effective date(s) ○ Detailed reasons for the decision ○ Overpayment information ○ Hearing, representation, and appeal rights 	<p>EMPHASIZE the time limit for the claimant to respond to a due process notice, per the PCGL, is 60 days (plus 5 days for mail). This does not apply to contemporaneous notice.</p> <p></p> <p>BEST PRACTICE: At the discretion of the VSR, it is acceptable to call the claimant and get permission to reduce and/or terminate benefits in lieu of sending a due process letter for the benefit of the claimant. This can reduce overpayments by taking action immediately rather than having to wait for the claimant to receive and respond to the letter with evidence. Document the call on VA Form 27-0820, Report of General Information.</p> <p></p> <p>EMPHASIZE that if they choose to call the claimant instead of sending the letter, they must still provide all the information on the slide as well as document the call on the proper form.</p> <p></p> <p>SHOW a few examples of completed VA Form 27-0820s from your station and highlight any pertinent parts.</p>


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<p>CEST Claim</p> <ul style="list-style-type: none"> • Claims Establishment (CEST) an EP 607 • Refer to local procedures for specific steps on when to send the due process letter and when to CEST the claim 	<p>DISPLAY slide 16. "CEST Claim"</p> <p>EXPLAIN that CESTing of the claim and completion of the PCGL may differ depending on the station. Local procedures should be followed.</p> <p>REMIND trainees that they learned about CESTing and EP Codes in a previous lesson.</p> <p>TRANSITION to steps to take if the beneficiary or POA requests a hearing.</p>
<p>Requesting a Hearing</p> <ul style="list-style-type: none"> • Claimant can request a hearing within 30 days of the due process letter. • If a hearing is requested, do not adjust the effective date. • Payments will continue at current rate until hearing has been conducted. • Continue with adjustment after the hearing has been conducted and the Veteran has had the opportunity to submit new evidence. 	<p>DISPLAY slide 17. "Requesting a Hearing"</p>  <p>REFER to M21-1 I.2.C.3 (Hearings Requested in Response to a Proposed Adverse Action).</p> <p>EXPLAIN that if the beneficiary or designated POA requests a hearing, benefits will remain at their current rate until the hearing has been conducted.</p> <p>TRANSITION to the opportunity for trainees to practice determining whether to apply due process.</p>
<p>Claim 1 Activity—Apply Due Process Provisions</p> <ul style="list-style-type: none"> • Instructions: <ul style="list-style-type: none"> ○ Access Claim 1 ○ Access the following job aids: <ul style="list-style-type: none"> ▪ Processing an Award Adjustment job aid 	<p>DISPLAY slide 18. "Claim 1 Activity—Apply Due Process Provisions"</p> <p>PROVIDE Claim 1 to trainees.</p> <p>READ the activity instructions on the slide to the trainees.</p>  <p>REFER to the job aids listed on the slide.</p>





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<ul style="list-style-type: none"> ▪ Initial Year job aid ▪ Due Process job aid ○ Complete Appendix A: Apply Due Process Provisions worksheet. ○ Be prepared to answer questions about how you determined the reason for due process, the effective date, adjusted amount, and type of letter to send. <ul style="list-style-type: none"> • Time allowed: 15 min. 	<p>INSTRUCT trainees to use the job aids as needed when reviewing the example claim information and making determinations regarding due process.</p> <p>ASSIST trainees by pointing them to the relevant job aids, references, and systems. Do NOT provide the outcomes until a majority of the trainees have completed the exercise.</p>


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<p>Claim 1 Activity—Apply Due Process Provisions Debrief</p> <ul style="list-style-type: none"> • Follow along as the instructor confirms: <ul style="list-style-type: none"> ○ Reason for due process ○ Effective date ○ Adjusted benefit amount ○ Specific information to include in the letter ○ CESTs the claim per local procedures for your station • Ask for clarification on how the effective date and adjusted amount were determined, if needed. 	<p>DISPLAY slide 19. “Claim 1 Activity—Apply Due Process Provisions Debrief”</p> <p>SELECT two to three trainees to explain how they determined:</p> <ul style="list-style-type: none"> • Whether to apply due process • The effective date • Adjusted benefit amount • Type of notification letter: due process or contemporaneous notice <p>DEBRIEF the exercise by going through the Claim 1 and providing:</p> <ul style="list-style-type: none"> • Reason for due process • Effective date • Adjusted benefit amount • Specific information to include in PCGL • Specific instructions for CESTing per local station procedures <p style="text-align: center;"></p> <p>ASK if they have any questions about the actions to take when applying due process.</p> <p>DISCUSS answers to the trainees’ questions.</p>
<p>Review Evidence Received During Due Process Period</p> <p>If new evidence is received during the due process period, review the evidence to determine whether the proposed decision should be changed.</p>	<p>DISPLAY slide 20. “Review Evidence Received During Due Process Period”</p> <p>EXPLAIN if new evidence is received during the due process period, they must review the evidence to determine whether the proposed decision should be changed.</p>

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<p>Apply/Issue Due Process Provisions Review</p> <ul style="list-style-type: none"> • Due process is necessary when proposing to reduce or terminate benefits • Review the Due Process job aid for most common reasons for due process • Determine new effective date and proposed changes to benefits • Consider if contemporaneous notice would be appropriate • What to do if a hearing is requested • Prepare a due process letter/contemporaneous notice • CEST an EP 607 • Review evidence received during due process period 	<p>DISPLAY slide 21. "Apply/Issue Due Process Provisions Review"</p>  <p>REFER to the job aids listed on slide 7.</p> <p>REVIEW the most common reasons for applying due process provisions listed in the Due Process job aid. These are also listed on slides 9 and 10.</p>  <p>EMPHASIZE that the effective date and proposed benefit amount will depend on the reason for due process. See the Due Process job aid.</p> <p>REMINd trainees that the job aids contain the information needed to determine:</p> <ul style="list-style-type: none"> • The correct effective date • The steps for processing the adjustment • The most common reasons for due process • When to send a contemporaneous notice instead of a due process letter
<p>Questions?</p> 	<p>DISPLAY slide 22. "Questions?"</p>  <p>ASK if there are any concepts that are unclear or that may need further review.</p>
<p>What's Next?</p> <ul style="list-style-type: none"> • Phase 5, Part 5, Lesson 6: Introduction to 	<p>DISPLAY slide 23. "What's Next?"</p> <p>DISCUSS the upcoming lesson with trainees.</p>

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<p>Overpayments and Waiver Withholdings</p> <ul style="list-style-type: none">• Review all references and job aids provided in this lesson	<p> EMPHASIZE that they should review all job aids and references associated with this lesson.</p>