### Section B. Paying Benefits to the Dependent(s) of an Incarcerated Veteran

#### Overview

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| In This Section  | This section contains the following topics: |

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| Topic | Topic Name |
| 1 | Paying Pension to the Dependent(s) of an Incarcerated Veteran |
| 2 | Apportioning an Incarcerated Veteran’s Compensation to His/Her Dependent(s) |
| 3 | Incarcerated Veterans Entitled to Both Compensation and Pension |

#### 1. Paying Pension to the Dependent(s) of an Incarcerated Veteran

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| Introduction  | This topic contains information on the payment of pension to the dependent(s) of an incarcerated Veteran, including* right of an incarcerated Veteran’s dependent(s) to receive pension
* form claimants must submit to request payment of an incarcerated Veteran’s pension
* determining the entitlement of an incarcerated Veteran’s dependent(s) to pension
* determining the amount of pension the Department of Veterans Affairs (VA) may pay to the dependent(s) of an incarcerated Veteran
* determining the effective date of entitlement and the effective date of payment
* notice of incarceration received after incarceration has ended
* procedure for reducing/eliminating an overpayment resulting from a Veteran’s incarceration
* example of the payment of pension to the dependents of an incarcerated Veteran
* notifying dependents of the temporary nature of their entitlement
* discontinuing the payment of pension to a Veteran’s dependent(s) after incarceration ends, and
* example of adjustments to pension awards after incarceration ends.
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| Change Date | January 26, 2016 |

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| a. Right of an Incarcerated Veteran’s Dependent(s) to Receive Pension | [38 CFR 3.666](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1666&rgn=div8) requires the Department of Veterans Affairs (VA) to discontinue a Veteran’s disability pension effective the 61st day of incarceration following conviction of a felony or misdemeanor. However, this same regulation allows VA to pay pension to the Veteran’s spouse and/or child(ren) while the Veteran is incarcerated.***Exception***: VA may ***not*** pay pension to the dependent(s) of an incarcerated Veteran if* the Veteran is a fugitive felon, as defined in [38 CFR 3.666 (e)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1666&rgn=div8), or
* the dependent is
* a fugitive felon, or
* incarcerated for conviction of a felony or misdemeanor.

***Notes***:* VA is responsible for notifying a Veteran of the right of his/her dependent(s) to receive pension at the same time it provides the Veteran with notice of the proposal to discontinue his/her benefits due to incarceration. VA must concurrently notify the Veteran’s dependent(s) of his/her(their) right to receive pension if
* the evidence of record indicates the existence of (an) eligible dependent(s), and
* VA is able to obtain contact information for the dependent(s).
* Attach *VA Form 21-0788, Information Regarding Apportionment of Beneficiary’s Award*, to the Veteran’s notice and to the notice to the Veteran’s dependent(s).

***Reference***: For more information about adjusting benefits based on a Veteran’s incarceration, see M21-1, Part III, Subpart v, 8.A. |

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| **b. Form Claimants Must Submit to Request Payment of an Incarcerated Veteran’s Pension** | Effective March 24, 2015, a claimant must submit *VA Form 21-0788* to request payment of an incarcerated Veteran’s pension.***Notes***: * VA will accept a completed and signed *VA Form 21-0788* from either the Veteran or his/her dependent(s).
* If a claimant requests payment of an incarcerated Veteran’s pension on anything other than *VA Form 21-0788*,
* treat the correspondence as a request for an application, and
* follow the instructions in M21-1, Part III, Subpart v, 3.A.1.c.

***Reference***: For more information about handling incomplete applications, see M21-1, Part I, 1.B.1.b. |

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| c. Determining the Entitlement of an Incarcerated Veteran’s Dependent(s) to Pension | 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).
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| d. Determining the Amount of Pension VA May Pay to the Dependent(s) of an Incarcerated Veteran  | [38 CFR 3.666(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1666&rgn=div8) limits the amount of pension VA may pay to an incarcerated Veteran’s dependent(s) to the ***lesser*** of the following* the amount of pension to which the Veteran was entitled before VA discontinued his/her pension due to incarceration, or
* the amount of SurvivorsPension to which the dependent(s) would be entitled based on current income.

***Scenario***:* In April 2006, VA discontinued the payment of pension to a Veteran, effective January 10, 2006, due to his incarceration. Prior to this action, VA had been paying the Veteran $1,305.00 per month, based on annual income for VA purposes (IVAP) of $1800.00. This amount included additional benefits for a spouse and two children.
* In May 2006, the Veteran’s spouse requested the payment of pension for herself and the two children during the Veteran’s incarceration.
* The spouse’s and children’s annual IVAP is $900.00.

***Result***: [38 CFR 3.666(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1666&rgn=div8) limits the monthly amount of pension VA may pay to the spouse and children to $849.00. This represents the monthly amount of Survivors Pension to which the spouse would be entitled, which is also less than the monthly amount of pension to which the Veteran was entitled prior to incarceration.***Reference***: To view current Survivors Pension rates, see the current [Survivors Pension Rate Tables](http://www.benefits.va.gov/PENSION/current_rates_survivor_pen.asp). |

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| e. Determining the Effective Date of Entitlement and the Effective Date of Payment | If VA receives a completed and signed *VA Form 21-0788* within one year of the date VA notified the Veteran of the rights of his/her dependent(s) to receive pension during his/her incarceration, the effective date of entitlement, if entitlement exists, is the 61st day of incarceration. Otherwise, the effective date can be no earlier than the date VA receives the form.***Important***:* It is possible for some amount of time to pass between the 61st day of incarceration and the date VA discontinues an incarcerated Veteran’s pension. This delay may result in an overpayment of benefits to the Veteran. Although VA may find 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 first of the month following the month for which VA last paid the Veteran pension, and
* follow the instructions in M21-1, Part III, Subpart v, 8.1.g 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 first of the month following the month for which VA last paid the Veteran pension.
* Before applying benefits due the Veteran’s dependent(s) to the Veteran’s overpayment, ensure VA has not already recouped or waived the overpayment.
* Process the payment of pension to an incarcerated Veteran’s dependent(s) under end product (EP) 130.

***Note***: The actual payment of VA benefits is always one month in arrears. For example, benefits due a beneficiary for the month of October are deposited in the beneficiary’s account at the end of October or the beginning of November. Using this example, “the first of the month following the month for which VA last paid the Veteran” would be November 1.***Reference***: For an example of how the policies described in this block are applied, see M21-1, Part III, Subpart v, 8.B.1.h. |

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| f. Notice of Incarceration Received After Incarceration Has Ended | 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).***Important***: VA may still award pension 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. The Veteran’s dependent(s) will not receive any actual payments. |

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| g. Procedure for Reducing/Eliminating an Overpayment Resulting From a Veteran’s Incarceration | Follow the instructions in the table below to reduce or eliminate an existing overpayment in a Veteran’s account when * the overpayment is the result of retroactive discontinuance of the Veteran’s pension because he/she was incarcerated, and
* the Veteran has a dependent or dependents that are entitled to the Veteran’s pension during his/her period of incarceration.

***Important***: * The instructions presented in the table below are for application when a decision has been made to
* award an incarcerated Veteran’s *pension* to his/her dependent(s), ***or***
* apportion an incarcerated Veteran’s *compensation* to his/her dependent(s).
* Although the payment of pension to a Veteran’s dependent(s) under [38 CFR 3.666](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1666&rgn=div8) is ***not*** an apportionment, it is treated as such in the procedure described in the table below.
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| Step | Action |
| 1 | Follow the instructions in the [*Veterans Service Network (VETSNET) Awards User Guide*](http://vbaw.vba.va.gov/VetsNet/Awards_Docs/Awards%20User%20Guide.pdf) or the [*Veterans Benefits Management System (VBMS)-Awards User Guide*](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp) (whichever applies) to reflect the decision to apportion benefits to the Veteran’s dependent(s).***Important***: To determine the effective date of payment of the apportionment, follow the instructions for* pension in M21-1, Part III, Subpart v, 8.1.e, or
* compensation in M21-1, Part III, Subpart v, 8.2.c.
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| 2 | Generate the award to the apportionee(s) by clicking on the GENERATE AWARD button on the RECORD DECISIONS screen. |
| 3 | When the ADDRESS DISPLAY screen appears, * confirm or, if necessary, change the address of the apportionee(s), and
* click on the CONTINUE GENERATION button.
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| 4 | When the CURRENT AND PROPOSED AWARD/AUTHORIZATION screen appears,* manually calculate the amount due the apportionee(s) from the effective date of payment to the first day of the current month, and
* confirm that the net effect of the proposed award (as displayed in the title of the PROPOSED AWARD tab) matches the result of the manual calculation.

***Important***: If award action is taken at the *end* of the current month, the net effect of the proposed award will likely include benefits payable for the current month. |
| 5 | Click on the GENERATE AWARD OVERRIDE (GAO) button. |
| 6 | When the GENERATE AWARD OVERRIDE screen appears, select the first award line that falls within the period during which the overpayment resulting from the Veteran’s incarceration was created. |
| 7 | Click on the EDIT button. |
| 8 | When the OVERRIDE WORKSHEET screen appears, subtract from the amount shown in the INST ADJ field the monthly amount of the apportionment in effect as of the date of the award line that appears at the top of the screen. |
| 9 | Update the amount in the AMOUNT field (in the lower, right-hand corner of the OVERRIDE WORKSHEET screen) so that it matches the amount in the AWARD NET column in the award line that appears at the top of the same screen. |
| 10 | Follow the instructions in the [*FAS User’s Guide*](http://vbaw.vba.va.gov/VetsNet/Finance_Docs/FAS%20User%20Guide.pdf) for accessing the screen in the Finance and Accounting System (FAS) that displays as a table the “receivables” (overpayments) in the Veteran’s account. |
| 11 | View the details of each row in the table in FAS (by highlighting the row and clicking on the VIEW DETAILS button) to identify the row with a *Begin Date* that matches the effective date of the award line at the top of the OVERRIDE WORKSHEET screen in VBMS or VETSNET. |
| 12 | Confirm that the *Receivable Reason* (on the DETAILS screen in FAS for the row identified in Step 11) matches the reason displayed in the SELECTED REASONS field in the bottom, left-hand side of the OVERRIDE WORKSHEET screen in VBMS or VETSNET. If the reasons do ***not*** match, * remove the current reason in the SELECTED REASON field, and
* select from the reasons displayed in the AVAILABLE REASONS field the reason that matches the *Receivable Reason* shown in FAS.

***Important***: If the *Receivable Reason* and the reason in the SELECTED REASON field do ***not*** match, the actions described in this table will ***not*** have the desired effect of reducing or eliminating the overpayment in the Veteran’s account. |
| 13 | Click on the ACCEPT button. |
| 14 | Are there additional award lines on the GENERATE AWARD OVERRIDE screen that fall within the period during which the overpayment resulting from the Veteran’s incarceration was created?* If *yes*,
* select the next award line on the GENERATE AWARD OVERRIDE screen, and
* return to Step 7.
* If *no*, proceed to the next step.
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| 15 | In the REMARKS field on the GENERATE AWARD OVERRIDE screen, add the following text: *Performed award override to offset the overpayment in the Veteran’s account that was created as a result of the Veteran’s incarceration*. |
| 16 | Click on the GENERATE button. |

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| ***Note***: The offset of the Veteran’s debt will be reflected in FAS after authorization of the award action described in the table above. |

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| h. Example: Payment of Pension to the Dependents of an Incarcerated Veteran | ***Scenario***:* On September 1, 2015, VA receives notification of a Veteran’s incarceration for conviction of a felony. The 61st day of the Veteran’s incarceration was June 10, 2015.
* VA has been paying the Veteran pension, to include additional benefits for his spouse and child.
* On September 8, 2015, VA
* sends notice of proposed adverse action to the Veteran, and
* informs the Veteran of his dependents’ rights to receive pension while he is incarcerated.
* On November 3, 2015, VA receives a *VA Form 21-0788* from the Veteran’s spouse for the payment of pension for herself and her child.
* On November 17, 2015, VA discontinues the Veteran’s pension effective June 10, 2015. VA concurrently
* finds the Veteran’s spouse entitled to the payment of pension while the Veteran is incarcerated
* applies the benefits to which the Veteran’s spouse is entitled for the period June 10, 2015, to November 1, 2015, to the overpayment resulting from the retroactive adjustment to the Veteran’s award, and
* begins paying pension to the spouse effective November 1, 2015.

***Note***: VA does not always discontinue a Veteran’s pension due to incarceration and process the payment of pension to his/her dependent(s) at the same time (as described in the example above). Often, VA does not receive a request for the payment of pension to the dependent(s) of an incarcerated Veteran until *after* it has discontinued the Veteran’s benefits. If this were the case in the example above, the effective date of payment of pension to the Veteran’s spouse (November 1, 2015) would remain the same, as long as VA received the request before September 8, 2016. |

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| i. Notifying Dependents of the Temporary Nature of Their Entitlement | When notifying a Veteran’s dependent of VA’s decision to pay him/her pension during the Veteran’s period of incarceration, advise the dependent that * entitlement to the benefit is temporary
* payments are subject to immediate discontinuance when incarceration ends, and
* the dependent may submit a claim for an apportionment of the Veteran’s pension if the dependent and Veteran do not reside together after incarceration ends.
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| j. Discontinuing the Payment of Pension to a Veteran’s Dependent(s) After Incarceration Ends | If VA receives notice that a Veteran’s incarceration has ended, and VA has been paying pension to the Veteran’s dependent(s) during his/her incarceration,* discontinue the payment of pension to the Veteran’s dependent(s) effective the first of the month following the month for which VA last paid it
* for the period between the date incarceration ended and the first of the month following the month for which VA last paid pension to the Veteran’s dependent(s), pay the Veteran the difference between
* the full amount of pension to which he/she is entitled, and
* the amount of pension VA paid to his/her dependents during the same period of time
* resume payment of the full amount of pension to which the Veteran is entitled effective the first of the month following the month for which VA last paid pension to the Veteran’s dependent(s), and
* notify both the Veteran and his/her dependent(s) of the adjustments made to their individual awards, according to the instructions in M21-1, Part III, Subpart v, 2.B. Inform the dependent(s) that he/she(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). Include a blank *VA Form 21-0788* with the notification letter to the Veteran’s dependents.

***Notes***:* 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.
* If VA was paying a Veteran either Section 306 or Old Law Pension prior to incarceration, resume payment of the same benefit when incarceration ends if entitlement still exists. Do not switch the Veteran to current-law pension unless he/she specifically elects this benefit.
* Because a Veteran’s dependent(s) has(have) already been placed on notice of the temporary nature of their entitlement (in accordance with the instructions in M21-1, Part III, Subpart v, 8.B.1.i), there is no need to provide notice of proposed adverse action to the dependent(s) before making the adjustments described in this block.

***Reference***: For more information about elections between VA benefits, see M21-1, Part III, Subpart v, 4.A.2. |

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| k. Example: Adjustments to Pension Awards After Incarceration Ends | ***Scenario***:* In May 2001, VA discontinued the payment of pension to a Veteran due to his incarceration for conviction of a felony.
* The Veteran has a spouse and one child. VA has been paying pension to the Veteran’s spouse for herself and the child since shortly after the Veteran’s incarceration.
* On February 3, 2007, VA received notice the Veteran had been released from prison on January 21, 2007. 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 $775.00.
* VA last paid pension to the Veteran’s spouse in the amount of $450.00 for the month of January 2007.

***Actions***:* Discontinue the payment of pension to the Veteran’s spouse effective February 1, 2007.
* Resume the payment of pension to the Veteran in the amounts and from the dates shown below
* $325.00 from January 21, 2007 (This represents the difference between the full rate of pension payable to the Veteran on this date and the amount of pension VA had been paying to the Veteran’s spouse each month.), and
* $775.00 from February 1, 2007.
* Notify the Veteran and his spouse (in separate letters) of the adjustments made to their individual awards.
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#### 2. Apportioning an Incarcerated Veteran’s Compensation to His/Her Dependent(s)

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| Introduction | This topic contains information on apportioning an incarcerated Veteran’s compensation to his/her dependent(s), including* right of an incarcerated Veteran’s dependent(s) to an apportionment
* form claimants must submit to request apportionment of an incarcerated Veteran’s disability compensation
* determining the effective date of entitlement and the effective date of payment
* notice of incarceration received after incarceration has ended
* example of the apportionment of an incarcerated Veteran’s compensation
* notifying dependents of the temporary nature of the apportionment
* determining the amount of compensation to apportion to an incarcerated Veteran’s dependent
* handling apportioned awards when the Veteran is reunited with his/her dependent(s) after incarceration ends
* example of award adjustments when a Veteran is reunited with his/her dependent(s)
* handling apportioned awards when the Veteran is not reunited with his/her dependent(s) after incarceration ends
* deciding whether continuation of the apportionment is appropriate
* handling responses that VA receives after discontinuing an apportionment, and
* example of award adjustments when a Veteran is not reunited with his/her dependents.
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| Change Date | February 12, 2016 |

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| a. Right of an Incarcerated Veteran’s Dependent(s) to an Apportionment | [38 CFR 3.665](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1665&rgn=div8) requires VA to reduce a Veteran’s disability compensation to the amount payable under [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 following conviction of a felony. However, this same regulation also allows VA to apportion all or part of the compensation no longer payable to the Veteran to his/her* spouse
* child(ren), and/or
* dependent parent(s).

***Exception***: VA may ***not*** apportion compensation to* a Veteran’s dependent(s) if the Veteran is a fugitive felon, as defined in [38 CFR 3.665(n)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1665&rgn=div8), or
* any dependent who is
* a fugitive felon, or
* incarcerated for conviction of a felony.

***Notes***:* If an incarcerated Veteran received separation benefits that VA has not yet recouped in their entirety, see the notes in M21-1, Part III, Subpart v, 8.A.4.c.
* VA is responsible for notifying a Veteran of the rights of his/her dependent(s) to an apportionment of the Veteran’s compensation at the same time it provides the Veteran with notice of the proposal to reduce his/her benefits due to incarceration. VA must concurrently notify the Veteran’s dependent(s) of his/her (their) right to an apportionment if
* the evidence of record indicates the existence of (an) eligible dependent(s), and
* VA is able to obtain contact information for the dependent(s).
* Attach *VA Form 21-0788* to the Veteran’s notice and to the notice to the Veteran’s dependent(s).

***Reference***: For more information about adjusting benefits based on a Veteran’s incarceration, see M21-1, Part III, Subpart v, 8.A. |

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| **b. Form Claimants Must Submit to Request Apportionment of an Incarcerated Veteran’s Disability Compensation** | Effective March 24, 2015, claimants must submit *VA Form 21-0788* to request apportionment of a Veteran’s disability compensation.***Notes***:* VA will accept a completed and signed *VA Form 21-0788* from either the Veteran or his/her dependent(s).
* If a claimant requests apportionment of an incarcerated Veteran’s disability compensation on anything other than a *VA Form 21-0788*,
* treat the correspondence as a request for an application, and
* follow the instructions in M21-1, Part III, Subpart v, 3.A.1.c.

***Reference***: For more information about handling incomplete applications, see M21-1, Part I, 1.B.1.b. |

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| c. Determining the Effective Date of Entitlement and the Effective Date of Payment | If VA receives a *VA Form 21-0788* within one year of the date VA notified the Veteran of the rights of his/her dependent(s) to an apportionment during his/her incarceration, the effective date of ***entitlement*** to the apportionment, if granted, is the 61st day of incarceration. Otherwise, the effective date can be no earlier than the date VA receives the claim.It is possible for some amount of time to pass between the 61st day of incarceration and the date VA actually adjusts the Veteran’s award based on his/her incarceration. In most cases, this retroactive adjustment will result in the creation of an overpayment in the Veteran’s account. The existence of such an overpayment must be considered when determining the proper effective date of ***payment*** of the apportionment, as explained in the table below. ***Note***: The instructions in the table below are based on an assumption that VA received the *VA Form 21-0788* within one year of the date VA notified the Veteran of the rights of his/her dependent(s) to an apportionment. |

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| **If ...** | **Then ...** |
| an overpayment resulting from the Veteran’s incarceration remains in his/her account | to avoid paying the apportionee(s) benefits VA has already overpaid to the Veteran, * ensure the effective date of ***payment*** of the apportionment is no earlier than the first of the month following the month for which VA last paid the Veteran his/her full rate of compensation, and
* follow the instructions in M21-1, Part III, Subpart v, 8.B.1.g to apply to the Veteran’s overpayment, any benefit due the apportionee(s) for the period between the 61st day of incarceration and the first of the month following the month for which VA last paid the Veteran his/her full rate of compensation.

***Note***: The actual payment of VA benefits is always one month in arrears. For example, benefits due a beneficiary for the month of October are deposited in the beneficiary’s account at the end of October or the beginning of November. Using this example, “the first of the month following the month for which VA last paid the Veteran” would be November 1. |
| no overpayment exists | the effective date of ***payment*** of the apportionment is the 61st day of incarceration. |

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| d. Notice of Incarceration Received After Incarceration Has Ended | If VA does not receive notice of a Veteran’s incarceration until *after* incarceration has ended, and reduction of the Veteran’s benefits due to incarceration is otherwise in order, no apportionment of the Veteran’s benefits is ***payable*** to the Veteran’s dependent(s).***Important***: VA may still grant an apportionment of the Veteran’s benefits under these circumstances but only for the purpose of reducing the overpayment resulting from retroactive reduction of the Veteran’s benefits due to incarceration. The Veteran’s dependent(s) will not receive any actual payments.***Exception***: Do ***not*** grant an apportionment under the circumstances described in this block if the justification for doing so is based solely on the policy expressed in the notes in M21-1, Part III, Subpart v, 8.A.4.c. |

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| e. Example: Apportionment of an Incarcerated Veteran’s Compensation | ***Scenario***:* On September 1, 2015, VA receives notification of a Veteran’s incarceration in a federal prison for conviction of a felony. The 61st day of incarceration was June 10, 2015.
* The Veteran has multiple service-connected (SC) disabilities with a combined disability rating of 50 percent. He also has a wife and one child for whom he has been receiving additional compensation.
* On September 8, 2015, VA sends notice of proposed adverse action to the Veteran and informs him of his dependents’ rights to an apportionment of his compensation.
* On November 3, 2015, VA receives a *VA Form 21-0788* from the Veteran’s spouse for an apportionment of the Veteran’s compensation.
* On November 17, 2015, VA reduces the Veteran’s compensation to the rate payable for a disability rated 10-percent disabling, effective June 10, 2015. VA concurrently
* finds the Veteran’s spouse entitled to an apportionment of the remaining amount of compensation to which the Veteran is not entitled due to his incarceration
* applies the apportionment to which the Veteran’s spouse is entitled for the period June 10, 2015, to November 1, 2015, to the overpayment resulting from the retroactive adjustment to the Veteran’s award, and
* processes an award to the Veteran’s spouse with an effective date of payment of November 1, 2015 (the first day of the month following the month for which VA last paid the Veteran his full rate of compensation).

***Note***: VA does not always reduce a Veteran’s compensation due to incarceration and process a corresponding apportionment at the same time (as described in the example above). Oftentimes, VA does not receive a claim for an apportionment until *after* it has reduced or discontinued the Veteran’s benefits. If this were the case in the example above, the effective date of payment of the apportionment (November 1, 2015) would remain the same, as long as VA received the claim before September 8, 2016. |

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| f. Notifying Dependents of the Temporary Nature of the Apportionment | When notifying a dependent of VA’s decision to grant him/her an apportionment of an incarcerated Veteran’s benefits, advise the dependent* the apportionment is temporary and subject to immediate discontinuance when incarceration ends, and
* the dependent may submit a new claim for an apportionment if the dependent and Veteran do not reside together after incarceration ends.
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| g. Determining the Amount of Compensation to Apportion to an Incarcerated Veteran’s Dependent | Determine the amount of compensation, if any, to apportion to an incarcerated Veteran’s dependent based on the dependent’s individual need. * Consider the following when evaluating individual need:
* dependent’s income and living expenses
* the amount of compensation available for apportionment
* needs and expenses of other dependents, and
* special needs of any dependent.
* Follow the instructions in M21-1, Part III, Subpart v, 3.A.3.d for proper documentation and approval of the apportionment decision.

***Notes***: * To determine the amount of compensation VA may apportion to the dependent(s) of an incarcerated Veteran, subtract the rate payable for a disability rating of 10 percent from the rate payable to the Veteran if he/she were *not* incarcerated.
* If the Veteran’s compensation is subject to withholding for the recoupment of separation benefits, see the notes in M21-1, Part III, Subpart v, 8.A.4.c to determine the amount of compensation VA may apportion to the dependent(s) of an incarcerated Veteran.
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| h. Handling Apportioned Awards When the Veteran Is Reunited With His/Her Dependent(s) After Incarceration Ends | When incarceration ends, presume a Veteran is reunited with the dependent(s) to whom VA apportioned his/her compensation during incarceration ***unless*** there is evidence to the contrary. As long as there is no evidence to the contrary, take the actions described in the table below. |

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| **Step** | **Action** |
| 1 | Discontinue the apportionment effective the first of the month following the month for which VA last paid the apportionment. |
| 2 | For the period between the date incarceration ended and the first of the month following the month for which VA last paid the apportionment, pay the Veteran the difference between* the full amount of compensation to which he/she is entitled, and
* the amount of the apportionment.

***Exception***: If the Veteran’s compensation is subject to recoupment based on, for example, his/her receipt of separation benefits, ***withhold*** the difference between* the full amount of compensation to which the Veteran is entitled, and
* the amount of the apportionment.
 |
| 3 | Resume payment of the full amount of compensation to which the Veteran is entitled, minus any required withholdings, effective the first of the month following the month for which VA last paid the apportionment. |
| 4 | Notify both the Veteran and his/her dependent(s) of the adjustments made to their individual awards, according to the instructions in M21-1, Part III, Subpart v, 2.B. |

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| ***Note***: Because a Veteran’s dependent(s) has(have) already been placed on notice of the temporary nature of the apportionment (in accordance with the instructions in M21-1, Part III, Subpart v, 8.B.2.f), there is no need to provide notice of proposed adverse action to the dependent(s) before discontinuing the apportionment when incarceration ends. |

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| i. Example: Award Adjustments When a Veteran is Reunited With His/Her Dependent(s) | ***Scenario***:* VA has been paying disability compensation to an incarcerated Veteran at the rate payable under [38 CFR 3.665(d)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1665&rgn=div8) for several years, based on an SC disability VA rated 50-percent disabling.
* The Veteran has a spouse and one child to whom VA granted an apportionment in the amount of $500.00 per month as a result of the Veteran’s incarceration.
* On February 3, 2007, VA received notice the Veteran had been released from prison on January 21, 2007.
* The Veteran was reunited with his spouse and child, and they reside at the same address.
* VA last paid the apportionment to the Veteran’s spouse for the month of January 2007.

***Actions***:* Discontinue the apportionment effective February 1, 2007.
* Amend the Veteran’s award to pay
* $332.00 from January 21, 2007 (This represents the difference between the rate payable for a 50-percent disabled Veteran with a spouse and one child ($832.00) and the amount of the apportionment.), and
* $832.00 from February 1, 2007.
* Notify the Veteran and his spouse of the adjustments made to their individual awards.
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| j. Handling Apportioned Awards When the Veteran Is Not Reunited With His/Her Dependent(s) After Incarceration Ends | Take the actions described in the table below if* VA apportioned a Veteran’s compensation to his/her dependent(s) as a result of the Veteran’s incarceration, and
* the Veteran is ***not*** reunited with *all* of the same dependents when incarceration ends.
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| **Step** | **Action** |
| 1 | Reduce the apportionment to the dependent(s) with whom the Veteran is ***not*** reunited to the additional amount of compensation payable for the dependent(s), effective the first of the month following the month for which VA last paid the apportionment. |
| 2 | For the period between the date incarceration ended and the first of the month following the month for which VA last paid the apportionment, pay the Veteran the difference between* the full amount of compensation payable for the Veteran and his/her dependent(s), and
* the amount of the apportionment.
 |
| 3 | Pay the Veteran the full amount of compensation to which he/she is entitled, ***minus*** any additional benefits for the dependents with whom he/she is ***not*** reunited, effective the first of the month following the month for which VA last paid the apportionment. |
| 4 | Notify both the Veteran and his/her dependent(s) of the adjustments made to their individual awards, according to the instructions in M21-1, Part III, Subpart v, 2.B. |
| 5 | Follow the instructions in M21-1, Part III, Subpart v, 8.B.2.k. |

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| ***Exceptions***: * Do ***not*** continue an apportionment that VA initially granted based solely on the policy expressed in the notes in M21-1, Part III, Subpart v, 8.A.4.c***.***
* Do ***not*** continue an apportionment to a dependent parent after incarceration ends unless the award was apportioned under the provisions of [38 CFR 3.452(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1452&rgn=div8).

***Note***: Because a Veteran’s dependent(s) has(have) already been placed on notice of the temporary nature of the apportionment (in accordance with the instructions in M21-1, Part III, Subpart v, 8.B.2.f), there is no need to provide notice of proposed adverse action to the dependent(s) before reducing the apportionment when incarceration ends. |

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| k. Deciding Whether Continuation of the Apportionment is Appropriate | After taking the actions described in M21-1, Part III, Subpart v, 8.B.2.j, follow the instructions in* M21-1, Part III, Subpart v, 3.A.2 for undertaking development to determine whether continuation of the apportionment at the present rate is appropriate, and
* M21-1, Part III, Subpart v, 3.A.3 for making and processing an apportionment decision.

In the development letter, remind the apportionee that * the apportionment VA granted based on the Veteran’s incarceration was temporary and subject to discontinuance when incarcerated ended, and
* VA will continue the apportionment only upon receipt of evidence/information showing an apportionment is still warranted.

After releasing the development letter, follow the instructions in the table below. |

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| If ... | Then ... |
| the apportionee fails to respond to the development letter within 60 days | * discontinue the apportionment effective the first day of the month following the month for which VA last paid the apportionment, and
* notify the Veteran and the apportionee(s) of VA’s decision.

***Note***: If the apportionee responds to the development letter ***after*** VA discontinues the apportionment, follow the instructions in M21-1, Part III, Subpart v, 8.B.2.l. |
| VA decides to continue the apportionment at its ***present*** rate | no further action is required, except to notify the Veteran and the apportionee(s) of VA’s decision. |
| VA decides* apportionment of the Veteran’s compensation is no longer warranted, or
* a reduction in the apportionment is warranted
 | * discontinue or reduce the apportionment effective the first day of the month following the month for which VA last paid the apportionment, and
* notify the Veteran and the apportionee(s) of VA’s decision.
 |
| VA decides an increase in the amount of the apportionment is warranted | * pay the increased amount effective the date VA reduced the apportionment to its present level (based on the reduction described in Step 1 of the procedure outlined in M21-1, Part III, Subpart v, 8.B.2.j), and
* notify the Veteran and the apportionee(s) of VA’s decision.
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| l. Handling Responses That VA Receives After Discontinuing an Apportionment | Follow the instructions in the table below if* VA receives a response to the development letter referenced in M21-1, Part III, Subpart v, 8.B.2.k ***after*** it has taken action to discontinue the apportionment, and
* VA decides an apportionment is in order.
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| If VA receives a response … | And VA decides … | Then begin payment of the apportionment effective … |
| within one year of the date it sent the development letter | the apportionee is entitled to an apportionment that is *equal to or less than* the amount VA was paying on the date it last discontinued the apportionment  | the same date VA last discontinued the apportionment. |
| the apportionee is entitled to an apportionment that is *more* than the amount VA was paying on the date it last discontinued the apportionment | the date VA reduced the apportionment to the additional amount of compensation payable for the apportionee. (See Step 1 of the procedure outlined in M21-1, Part III, Subpart v, 8.B.2.j). |
| one year or more ***after*** VA sent the development letter | --- | the date specified in M21-1, Part III, Subpart v, 3.A.3.f.  |

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| m. Example: Award Adjustments When a Veteran is Not Reunited With His/Her Dependent(s) | ***Scenario***:* VA has been paying disability compensation to an incarcerated Veteran at the rate payable under [38 CFR 3.665(d)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1665&rgn=div8) for several years, based on an SC disability VA rated 50-percent disabling.
* The Veteran has a spouse and one child to whom VA granted an apportionment in the amount of $500.00 per month as a result of the Veteran’s incarceration.
* On February 3, 2007, VA received notice the Veteran had been released from prison on January 21, 2007.
* The Veteran did ***not*** reunite with his spouse and child, and they reside at separate addresses.
* VA last paid the apportionment to the Veteran’s spouse for the month of January 2007.

***Actions***:* Reduce the apportionment to $120.00, effective February 1, 2007. (This amount represents the difference between the rate payable for a 50-percent-disabled Veteran with no dependents ($712.00) and the rate payable for the same Veteran with a spouse and one child ($832.00).)
* Amend the Veteran’s award to pay
* $332.00 from January 21, 2007 (This amount represents the difference between the $500.00 apportionment and the rate payable for a 50-percent-disabled Veteran with a spouse and child.), and
* $712.00 from February 1, 2007.
* Notify the Veteran and his spouse of the adjustments made to their individual awards.
* Take the actions described in M21-1, Part III, Subpart v, 8.B.2.k to determine whether continuation of the apportionment at the present rate is in order.
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#### 3.  Incarcerated Veterans Entitled to Both Compensation and Pension

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| Introduction  | This topic contains information about incarcerated Veterans who are entitled to both compensation and pension, including* paying compensation in lieu of pension during incarceration, and
* resuming the benefits of a Veteran entitled to both compensation and pension when incarceration ends.
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| Change Date | June 29, 2015 |

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| a. Paying Compensation in Lieu of Pension During Incarceration  | [38 CFR 3.666](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1666&rgn=div8) requires VA to ***discontinue*** the payment of ***pension*** to a Veteran incarcerated for more than 60 days following conviction of a felony ***or misdemeanor***, whereas [38 CFR 3.665](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1665&rgn=div8) 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.Follow the instructions in the table below when* discontinuation of a Veteran’s pension due to incarceration is in order, and
* the Veteran is entitled to both compensation and pension.
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| If the Veteran has ... | Then ... |
| neither spouse nor child | 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. (No election is required under these circumstances, according to [38 CFR 3.666(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=3d4e43cda96fe1f7bf2aad941a677861&mc=true&node=se38.1.3_1666&rgn=div8)). |
| a spouse and/or child | * notify the Veteran of
* the right of his/her 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 his/her dependent(s) during the Veteran’s incarceration, and
* notify the Veteran’s dependent(s) of his/her(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.

***Notes***:* The notification referenced above should take place at the same time VA notifies the Veteran of the proposal to discontinue his/her pension due to incarceration.
* Do not begin paying the Veteran compensation unless he/she elects the benefit.
* If the Veteran fails to make an election within the time period allotted for a response, discontinue benefits according to the notice of proposed adverse action.
* If the Veteran elects compensation, award it effective the ***later*** of the following dates
* the date VA received the election, or
* the 61st day of incarceration.

***References***: For more information about* paying pension to a Veteran’s dependent(s) during the Veteran’s incarceration, see M21-1, Part III, Subpart v, 8.B.1, and
* apportioning an incarcerated Veteran’s compensation to his/her dependent(s), see M21-1, Part III, Subpart v, 8.B.2.
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| ***Important***: Do ***not*** reduce a Veteran’s ***compensation*** based on his/her incarceration if the incarceration is for conviction of a ***misdemeanor***. |

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| b. Resuming the Benefits of a Veteran Entitled to Both Compensation and Pension When Incarceration Ends | If a Veteran entitled to both compensation and pension was receiving compensation in lieu of pension during incarceration, follow the instructions in the table below when incarceration ends. |

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| If ... | Then ... |
| compensation continues to be the greater benefit after incarceration ends | adjust the Veteran’s award according to the instructions in * M21-1, Part III, Subpart v, 8.A.5, and
* M21-1, Part III, Subpart v, 8.B.2.h through j, as applicable.
 |
| * pension is the greater benefit after incarceration ends, and
* VA was ***not*** apportioning the Veteran’s compensation to his/her dependent(s) while the Veteran was incarcerated
 | follow the instructions in M21-1, Part III, Subpart v, 8.A.5 for selecting an effective date for resuming the payment of pension. |
| * pension is the greater benefit after incarceration ends, and
* VA was apportioning the Veteran’s compensation to his/her dependent(s) while the Veteran was incarcerated
 | * discontinue the apportionment to the Veteran’s dependent(s) effective the first of the month following the month for which VA last paid the apportionment
* for the period between the date incarceration ended and the first of the month following the month for which VA last paid the apportionment, pay the Veteran the difference between
* the full amount of pension to which he/she is entitled, and
* the amount of the apportionment
* resume payment of the full amount of pension to which the Veteran is entitled effective the first of the month following the month for which VA last paid the apportionment, and
* notify both the Veteran and his/her dependent(s) of the adjustments made to their individual awards, according to the instructions in M21-1, Part III, Subpart v, 2.B. Inform the dependent(s) that he/she(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).

***Note***: Because a Veteran’s dependent(s) has(have) already been placed on notice of the temporary nature of the apportionment (in accordance with the instructions in M21-1, Part III, Subpart v, 8.B.2.f), there is no need to provide notice of proposed adverse action to the dependent(s) before reducing the apportionment when incarceration ends.***Reference***: For more information about elections between VA benefits, see M21-1, Part III, Subpart v, 4.A.2. |

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| ***Notes***: * If VA was paying the Veteran either Section 306 or Old Law Pension prior to incarceration, resume payment of the same benefit when incarceration ends if entitlement still exists. Do not switch the Veteran to current-law pension unless he/she specifically elects this benefit.
* VA does not require the submission of a specific form to
* report that incarceration has ended, or
* request a restoration of benefits to which the Veteran is otherwise entitled after incarceration has ended.
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