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# The VA Fiduciary Program: An Overview

## Introduction

The purpose of the Department of Veterans Affairs (VA) Fiduciary Program is “to protect Veterans and other beneficiaries who, due to injury, disease, or due to age, are unable to manage their financial affairs.” If VA determines that a beneficiary is unable to manage his or her financial affairs, VA will appoint a fiduciary to manage the beneficiary’s VA benefits. In FY2024, VA fiduciaries managed nearly \$2.8 billion in benefits for 101,155 beneficiaries. This In Focus provides an overview of primary elements and processes in the Fiduciary Program.

## Fiduciary

VA defines a fiduciary as “a person or entity appointed by VA to receive benefits on behalf of a beneficiary. The benefits must be used to support the beneficiary or their dependents.”

## Need for a Fiduciary

VA will assume a beneficiary’s competency unless provided evidence to the contrary. VA regulations at 38 C.F.R. §3.353 define a mentally incompetent person as one who, because of injury or disease, lacks the mental capacity to contract or manage his or her own affairs, including disbursement of funds. The VA regulations provide that rating agencies have the sole authority for official determinations of incompetency for the purpose of disbursement of benefits.

VA may be notified of a beneficiary’s potential incompetency by

- provision of medical evidence or claim of incompetency by the beneficiary or an interested third party, such as a friend or relative;
- provision of medical evidence by a VA medical center; or
- court documentation confirming a legal disability.

## Process

### Notification

Generally, VA will evaluate and develop evidence for a claim of incompetency and determine if an examination is needed. VA must then notify the beneficiary of the proposed rating of incompetency, providing the beneficiary the opportunity to submit evidence to contest the action and the right to a hearing. Upon completion of the notification, the claim is transferred to a *fiduciary hub* (hub).

The due process period starts on the date of the proposed determination notification letter and lasts a minimum of 60

days for the beneficiary to submit additional evidence or request a hearing. Following the due process period and any review of additional evidence or hearing, a final rating notification letter is sent to the beneficiary with the decision, effective date, reasons for the decision, and appeal rights.

### Field Examination

Generally, a hub manager will order a field visit to determine whether benefits should be paid directly to a beneficiary under *supervised direct payment* or to a fiduciary appointed for the beneficiary. An initial appointment field examination is completed to assess the beneficiary’s ability to manage funds and the beneficiary’s dependents’ needs and well-being. The beneficiary’s income and expenditures are documented at the visit, and the examiner ensures that VA funds are properly protected, if required. The examiner may also provide advice and assistance with benefits and needs.

VA policy is to use the least restrictive payment method to meet the beneficiary’s needs and protect his or her VA estate. The field visit is also used to identify and assess the suitability of a proposed fiduciary.

### Supervised Direct Payment (SDP)

Under SDP, the beneficiary manages his or her VA benefits with limited and temporary VA supervision and is generally reassessed within 12 months. SDP lasts no longer than 24 months and concludes with a recommendation for reevaluation or the appointment of a fiduciary. In FY2024, 77 beneficiaries were in SDP.

### Vetting and Appointing a Fiduciary

Generally, family members or friends serve as fiduciaries, but VA will look to appoint a qualified individual or organization to serve as a fiduciary in order of preference in 38 C.F.R. §13.100(e). The field examiner may meet with the proposed fiduciary during field examination visit.

The hub manager will generally conduct an investigation of a proposed fiduciary to include a face-to-face interview (to the extent practicable), proof of identity and relationship to beneficiary, review of credit report, criminal background check, character witness interviews, and determination of need for and ability to obtain a surety bond.

An individual or entity may not serve as a fiduciary for a VA beneficiary if that individual or entity misused or misappropriated VA benefits while serving as a VA beneficiary’s fiduciary. Generally, an individual convicted of a felony offense may not serve as a fiduciary unless conditions under 38 C.F.R. §13.130 are met.

## Appeals

The beneficiary has the right to appeal or request review of VA's finding of incompetency and the right to appeal VA's selection of fiduciary. If the beneficiary disagrees with the VA on either of these matters, the beneficiary may appeal to the Board of Veterans' Appeals, request higher-level review, or submit a supplemental claim to provide additional evidence that may lead VA to change its decision. Requests for appeal or decision review must be submitted within one year of the date of the notification letter.

Beneficiaries may also ask for a reevaluation of their ability to manage their VA benefits at any time by sending VA a written request and any medical evidence that supports it.

## Fiduciary Responsibilities

The fiduciary is responsible for managing the beneficiary's VA income and ensuring the best use of the funds to meet the needs and well-being of the beneficiary and any dependents. Fiduciaries who knowingly violate or refuse to follow VA regulations are barred from serving.

With some exceptions, the fiduciary is prohibited from commingling the VA beneficiary's funds and must establish a separate bank account in the beneficiary's name with the fiduciary appropriately designated. Fiduciaries must keep accurate, complete records and receipts and conserve excess funds in insured interest-bearing accounts or U.S. savings bonds.

The fiduciary is required to report changes in the beneficiary's circumstances to VA, including address or phone number, income, dependents, incarceration, hospitalization, death, or any event that affects the beneficiary's amount of or entitlement to benefits. The fiduciary must also promptly return any payment the beneficiary is not due.

Fiduciaries may also be required to submit annual accountings to VA or complete periodic fund usage review for VA. VA policy is to conduct follow-up visits after the initial fiduciary appointment to monitor the beneficiary's well-being and the fiduciary's performance. If there are unmet needs or issues, VA may appoint a new fiduciary.

## Fees

The hub manager may authorize a fee if one is necessary to obtain the services of a fiduciary. A fee is necessary only if no other person or entity is qualified and willing to serve without a fee and the beneficiary's interests would be served by the appointment of a qualified paid fiduciary. The hub manager will not authorize a fee for spouses, dependents, and relatives of the beneficiary or fiduciaries otherwise being paid for fiduciary duties. Generally, fees are limited to 4% of the monthly VA benefit.

## Misuse and Removal

VA considers misuse to be a fiduciary's use of a beneficiary's funds for something other than any expense reasonably intended for the care, support, or maintenance of the beneficiary or the beneficiary's dependents. Hub staff may identify misuse, or indications of misuse may come from beneficiaries and third parties. Hub staff decide if an investigation is warranted. If an investigation is conducted,

a misuse determination is completed and the fiduciary is notified of the decision. If misuse is found or hub staff determine that the fiduciary is not suitable, staff may remove the fiduciary and assign a new one. Hub staff reimburse beneficiaries for misused funds if VA is negligent and in other specified circumstances.

VA fiduciary staff conducted 941 misuse investigations and removed and replaced 540 fiduciaries during FY2024. VA's inspector general prosecutorial outcomes during FY2024 included

- nearly \$1.6 million in restitution ordered for cases arising from the misuse of benefits by a fiduciary,
- \$101,770 recovered by the government in misuse cases, and
- almost \$2.0 million in benefits reissued to beneficiaries.

## Bond

With some exceptions, VA requires a fiduciary managing more than \$25,000 in VA funds for the beneficiary to purchase and maintain a corporate surety bond to replace the beneficiary's funds if the fiduciary commits fraud or wastes or misuses the beneficiary's funds. The hub manager may also require a fiduciary to obtain a bond if special circumstances indicate that doing so would be in the beneficiary's interest.

## Brady Act

Federal law at 18 U.S.C. §922(g) lists nine classes of people who cannot ship, transport, possess, or receive firearms and ammunition. The fourth class, persons "adjudicated as a mental defective," does not require an order or finding from a judge, magistrate, or other judicial authority of competent jurisdiction for this information to be added to the National Instant Criminal Background Check System (NICS), which is a national namecheck system administrated by the Federal Bureau of Investigation to confirm that a person is not prohibited from legally buying, selling, or possessing a firearm. Until recently, the VA has added the names of any veterans who have their disability benefits managed by fiduciaries to NICS. Recently, a provision in the Consolidated Appropriations Act, 2024 (P.L. 118-42), has prohibited the VA from expending any appropriated funds in FY2024 to report any person to NICS based on mental incompetency without "an order or finding from a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to themselves or others."

## Additional Resources

VA, *A Guide for VA Fiduciaries*

VA, *Fiduciary Program Manual*

VA Form 21P-4703, *Fiduciary Agreement*

CRS Report R47626, *Gun Control, Veterans' Benefits, and Mental Incompetency Determinations*

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