

Chapter 2. Field Examinations

Section E. Determining Payees and Follow-Up Actions for Adult Beneficiaries

28. VA-appointed Federal Fiduciaries

Introduction This topic contains information on VA-appointed Federal fiduciaries. It includes the definition of the term *VA-appointed Federal fiduciary* information on determining whether a fiduciary should be required to submit an accounting policy information regarding the purchase of real estate, and information on the various types of VA-appointed Federal fiduciaries, such as a

- spouse ~~payee~~ fiduciary
- legal custodian
- institutional award payee
- officer of an Indian reservation
- custodian-in-fact, and
- temporary.

Change Date ~~July 13, 2005~~ August 1, 2015

a. Definition: VA-appointed Federal Fiduciary A *VA-appointed Federal fiduciary* is a person or legal entity authorized by VA to serve as ~~payee~~ fiduciary for the VA benefits of ~~an incompetent~~ a beneficiary who is unable to manage his or her VA benefits.

Reference: For more information regarding the definition of a Federal fiduciary, see M21-1MR, Part XI, 1.A.4.i.

b. Requiring an Accounting by VA-appointed Federal Fiduciaries In situations other than those specified in M21-1MR, Part XI, 3.C, it is the responsibility of fiduciary hub personnel, usually the FE, to decide whether a VA-appointed Federal fiduciary should be required to submit an accounting ~~and if so, how often~~.

When a VA-appointed Federal fiduciary is required to submit an accounting, the FE will:

- ~~should enter~~ annotate the accounting due date in the Accounting Due Date field within FElux, ~~on VA Form 21-555a or VA Form 21-4716a, Adult Beneficiary Field Examination Request and Report~~ and
 - ~~must~~ instruct the fiduciary concerning accounting responsibilities and procedures.
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c. Policy
Regarding the
Purchase of Real
Estate by
Beneficiaries
with VA-
appointed
Federal
Fiduciaries

VA-appointed Federal fiduciaries, other than spouse ~~payees~~ fiduciaries, may not purchase real estate with VA funds. These fiduciary arrangements do not afford adequate protection. ~~A court appointed fiduciary is necessary.~~ However, the beneficiary may purchase real estate in his or her own name provided the beneficiary was not adjudicated incompetent by a court with jurisdiction.

If the spouse or veteran wishes to purchase real estate using a VA-guaranteed home loan, the VA Loan Guaranty office of jurisdiction will contact the fiduciary hub manager requesting his or her concurrence on the purchase. The fiduciary hub manager must evaluate the evidence of record and make a determination as to whether the beneficiary's situation supports the purchase. If sufficient evidence does not exist to support a decision, the hub manager will obtain the information necessary through contact with the beneficiary and/or fiduciary.

Upon making the determination, the hub manager must provide a brief communication to fiduciary program staff which details the veteran's or beneficiary's income and funds under management, how maintenance of the home will be addressed, who will reside in the home and any other information deemed necessary to support the decision reached. The communication will be sent to VAVBAWAS/CO/F&FE for concurrence.

Fiduciary program staff will provide its position regarding the purchase. If the hub manager's decision is concurred upon, the hub manager will advise Loan Guaranty staff regarding the decision. However, if the fiduciary program staff does not support the decision made by the hub manager, the facts will be forwarded to the assistant director, fiduciary program, for a final decision.

For program purposes, *real estate* is defined as a piece of land, including the air above it and the ground below it, and any buildings or structures on it. A mobile home would generally *not* be considered real estate unless the purchase included land to which the mobile home would be permanently affixed. ~~Accordingly, while a court appointed fiduciary would not be necessary for this type purchase, prior approval would be required.~~

d. Policy
Regarding
Deposit of
~~Surplus~~-Funds
by a VA-
appointed
Federal
Fiduciary

VA-appointed Federal fiduciaries must deposit any VA benefits ~~surplus to the beneficiaries~~ ~~needs~~ in a properly registered checking or savings account.

Reference: For more information on investment policies for Federal fiduciaries, see M21-1MR, Part XI, 3.B.5.a. Also see 38 CFR 13.103.

e. Selecting a Spouse Payee Fiduciary

This method of payment is available only for ~~incompetent~~ veterans who are determined by VA to be unable to manage their VA benefits or those with a judicial rating of incompetency, and whose spouse is recognized as a dependent by VA. ~~The determination of incompetency may be by VA rating or judicial declaration per 38 CFR 13.57.~~

The decision of the FE to approve payment of VA funds to the spouse is based on the findings listed below.

- The veteran is incapable of handling the VA funds payable, with or without supervision.
- The spouse, from the standpoint of his or her ability to handle funds, is qualified to receive and administer the VA funds payable.
- ~~To be suitable, a~~ The spouse ~~must~~ consents to act as a fiduciary and is willing to perform the duties of a fiduciary.
- The spouse agrees to use the funds solely for the veteran and the veteran's dependents, and executes VA Form 21-4703, *Fiduciary Agreement*.
- The ~~decision to recognize a~~ spouse payee agrees to or to continue recognition must be based on a face-to-face interview with the FE prior to appointment as fiduciary spouse
- A character witness (or witnesses) is ~~required~~ obtained in order to corroborate the ~~legal custodian~~ spouse's suitability to perform as fiduciary. (See M21-1MR, Part XI, 2.D.11.i through 2.D.11.k)

VA-appointed spouse fiduciaries will generally be exempt from accounting and surety bond requirements. Should the FE determine that VA funds under management require oversight not required of a spouse fiduciary, a fiduciary type other than a spouse fiduciary will be appointed.

~~f. If Estate Protection Is Needed, Do Not Select a Spouse Payee~~

~~When it is found that some form of estate protection other than accounting is required to ensure proper use of the veteran's funds, some type of fiduciary other than a spouse payee should be recognized or appointed.~~

~~An accounting should not be required of a spouse payee unless there are unusual circumstances. If an accounting is required, the basis must be fully documented.~~

f.g. Designating a VA-appointed Fiduciary as Legal Custodian

When appropriate, an individual or a legal entity caring for or having custody of the ~~incompetent~~ beneficiary determined unable to manage his or her benefits or his/her ~~estate funds under management~~ may be designated as VA-appointed legal custodian. The decision to appoint a legal custodian should be based on the findings listed below.

- The beneficiary is incapable of handling his/her VA funds with or without supervision.

~~No court fiduciary is needed.~~

- The beneficiary is a veteran and there is no suitable spouse payee fiduciary.
~~, and an institutional award is not appropriate.~~

The decision to recognize a legal custodian must be based on:

- a face-to-face interview with the proposed legal custodian
- a credit report dated within one year of the appointment (if applicable)
- a criminal background inquiry, and
- a corroboration of the legal custodian's suitability

The legal custodian ~~is~~ must:

- be suitable
- consent to act as a fiduciary
- ~~• agree to abide by agreements authorized by the FE regarding fund usage, and~~
- execute VA Form 21-4703, *Fiduciary Agreement*, and
- provide character witnesses and other information required by VA Form 21-0792, *Fiduciary Statement in Support of Appointment*

A character witness (or witnesses) is required in order to corroborate the legal custodian's suitability. (See M21-IMR, Part XI, 2.D.11.i through 2.D.11.k)

If it would be in the beneficiary's best interest to recognize a legal custodian, consideration should be given to the

- amount of VA benefits payable
- size of the accumulated estate, if any
- other resources and income of the beneficiary, and
- special needs and environmental surroundings.

h. Considering a Court Appointment Rather Than a Legal Custodian

~~When the beneficiary's VA-derived estate is sizable, or all VA benefits payable will not be used monthly and a VA-derived estate is expected to build, court appointment should be considered.~~

~~On the death of an individual, distribution of the estate in the hands of a fiduciary is governed by State statute. VA is not in the position of authorizing distribution or requiring estate funds to be turned over to an administrator. Sizable estates should be under court jurisdiction in most instances.~~

~~If the purchase of real property is an issue, and there is no suitable spouse payee, a court-appointed fiduciary must be obtained. A legal custodian or institutional payee fiduciary arrangement does not provide adequate protection for real estate purchases.~~

g.i. Requiring a Surety Bond From a VA-appointed Legal Custodian

Under 38 CFR 13.105, the ~~VSCM~~ fiduciary hub manager is authorized to require a corporate surety bond from a VA-appointed legal custodian, if considered necessary to protect the beneficiary's VA estate funds under management. When ~~a~~ VA estate funds under management exceed ~~\$20,000~~ \$25,000, a corporate surety bond ~~or other method of protection~~ must be considered. The report must document why the protection is not necessary if ~~the estate~~ VA funds under management exceed that amount and protection is not required.

Upon determination that a corporate surety bond is required, fiduciary personnel must

- ~~to ensure that~~ the bond is received within a maximum of 60 days of certification of the VA-appointed fiduciary and before disbursement of retroactive VA benefits of \$25,000, or
- receive adequate and obtained bond for accumulation of VA funds under management totaling \$25,000 or more within a maximum of 60 days of the date the funds under management are determined in need of a bond.

~~in a timely manner as payee certification cannot take place until such bond is received.~~

~~If required for premium payment of the bond, when documented and verified the fiduciary has qualified for the bond, a partial release of the retroactive benefit may be considered with approval by the hub manager or designee~~

Notify the fiduciary of the requirement to secure a bond and allow the fiduciary 30 days to provide the fiduciary hub with the requested estate protection. If, after 30 days of the original notice, the fiduciary does not provide proof of a surety bond, the fiduciary hub will make a second request for the bond. A successor fiduciary will be appointed after 60 days if the fiduciary, who was notified twice, fails to secure the required estate protection.

After the fiduciary is notified twice and 60 days has elapsed since the original notification, a successor fiduciary must be appointed.

The fiduciary ~~should~~ must be advised that

- VA benefits payments may be used to pay the cost of bond premiums, and
- an accounting is required whenever a corporate surety bond is required. ~~not be made until any required protection is in place, reimbursement of bond premiums may be made from the beneficiary's VA benefits, and~~

~~When proof of required bond is not obtained at the time of contact, the fiduciary will not be certified until the bond is received. Appropriate in-office procedures must be established for follow-up for timely receipt~~

Reference: For more information on requiring a surety bond, see M21-1MR, Part XI, 3.E.22, and M21-1MR, Part XI, 3.E.23.
