

2.A.1.c Field Examination Process

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| 3 | <p>If it is determined that a fiduciary relationship would best serve the needs of the beneficiary, the FE must determine, select, and appoint the most appropriate type of fiduciary.</p> <p>In some cases, there may be a court-appointed fiduciary already in place. In these cases, the examiner must</p> <ul style="list-style-type: none">• assess the performance of the present fiduciary, and• determine if the present fiduciary is the most suitable type of fiduciary, given the needs and situation of the beneficiary. <p>If the individual or entity that is court appointed is considered the most suitable, the field examiner will appoint the individual or entity as a legal custodian.</p> <p><i>Note:</i> VA policy is to use the least restrictive payment method to meet the beneficiary's needs and protect his/her VA estate.</p> <p><i>Reference:</i> For information on court-appointed fiduciaries and other types of fiduciaries, see M21-1MR, Part XI, 2.E.</p> |
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2.E.28.m. Selecting an Institutional Payee

An Institutional payee should not be recommended if there is a qualified spouse payee ~~or a need for a court-appointed fiduciary~~. An institutional payee may be certified when the following facts are found:

- the veteran is incompetent by VA rating
- the veteran is not expected to be discharged from the institution in the near future
- another type of payee is not needed to protect the veteran's interests
- the veteran is a patient in a VAMC facility, or is in a non-VA facility and the chief officer of the non-VA institution agrees to
 - administer VA funds as authorized by the FE,
 - account as required, and
 - execute [VA Form 21-4703](#), when required and
- a character witness (or witnesses) is not required.

2.E.31 Court-Appointed Fiduciaries

Introduction

This topic contains information on court-appointed fiduciaries. It includes information on

- avoiding the use of court-appointed fiduciaries, unless necessary
- ~~selecting a court-appointed fiduciary~~
- what to do when a qualified candidate is identified, and
- ~~cases in which the VA Regional Counsel is acting as attorney for the fiduciary.~~

Change Date

July 13, 2005

2.E.31.a. Avoiding Use of Court-Appointed Fiduciaries

Every effort should be made to avoid the appointment of a court fiduciary. **If it is determined that the court fiduciary would serve in the best interest of the beneficiary, the field examiner will recommend the appointment of the individual or entity as a legal custodian.** ~~unless payments cannot be made by any other means consistent with the best interests of the beneficiary.~~

~~Before VA will not initiate~~ action to have the same fiduciary appointed by a State court., ~~the FE should ascertain that~~

- ~~the facts concerning the beneficiary's economic, social, and industrial adjustment clearly show his/her lack of present or reasonably foreseeable capacity to handle VA funds, and~~
- ~~there is no other suitable, less restrictive payee, such as a spouse, legal custodian, or institutional award payee, available that would provide adequate protection for VA payments.~~

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2.E.31.b. Selecting a Court-Appointed Fiduciary as a Legal Custodian

~~When the FE determines that a court-appointed fiduciary appointed would be in the best interest of the beneficiary and the Government, every effort should be made to obtain a fiduciary who~~

- ~~is qualified to administer the estate properly~~
- ~~is located in the same community as the beneficiary, and~~
- ~~has the inclination and willingness to take an interest in the beneficiary's personal welfare and that of his/her dependents.~~

~~If a court-appointed fiduciary presently exists and the PGF is under the jurisdiction of another regional office (RO), it is imperative that full consideration be given to all facts in the case before any recommendation is made for a successor court appointment.~~

~~In no case should a new court appointment be undertaken, without complete~~

~~coordination with the fiduciary activity of jurisdiction.~~

~~**Reference:** For more information on jurisdiction, see [M21-1MR, Part XI, 4.B.4.](#)~~

2.E.31.c. When a Qualified Candidate Is Identified

In cases involving the initial appointment of a fiduciary, the FE is expected, when appropriate, to explain the

- duties and responsibilities of a fiduciary, and
- particular State law and procedure pertaining to such appointments.

A character witness (or witnesses) is required in order to corroborate the fiduciary's suitability. (See M21-1MR, Part XI, [2.D.11.i](#) through [2.D.11.k](#))

The field examination report must reflect the fiduciary's qualifications, understanding of duties, and willingness to administer the VA funds subject to the supervision of VA ~~and the court~~. Satisfactory and adequate bond must be obtained.

2.E.31.d. When an Existing Court Appointed Fiduciary is Certified as a Legal Custodian

If the FE elects to recognize the court appointed fiduciary as [the legal custodian](#) ~~payee~~ for VA benefits, the FE must obtain certified or original court file-stamped copy of Letters of Appointment [for inclusion in the eFolder and to facilitate the inclusion of this information into the BFFs record.](#)

Additionally, photocopies of any existing bond, the conservator's inventory, and any orders pertaining to expenditure of funds must be obtained. ~~When a surety bond has been ordered by the court, certification may not be made until evidence of the bond is received.~~

~~2.E.31.e. Cases in Which the VA Regional Counsel Is Acting as Attorney for the Fiduciary~~

~~When the beneficiary's economic circumstances do not permit employment of private counsel and the appointment of a court fiduciary as legal custodian is necessary, the eFolder PGF should be referred to the Regional Counsel for the signing of *VA Form 2-4012, Certificate of Incompetency* and the appointment of a fiduciary as permitted by state statute.~~

~~Upon completion of court action, the Regional Counsel forwards the eFolder PGF, along with all necessary documents, to the fiduciary activity, including~~

- ~~• letters of guardianship~~
- ~~• bond, and~~
- ~~• allowance orders.~~

~~**Result:** The fiduciary activity issues appropriate certification so that payment of benefits can be made to the fiduciary.~~

2.F.36.b. Private Source Benefits

The table below lists private source benefits and the associated action required.

| Private Source Benefit | Action Required |
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| All assets of any nature | <p>In cases where VA was the attorney for a previously appointed the court-appointed fiduciary, assistance must be given to the fiduciary in marshaling all assets.</p> <p><i>Note:</i> If it appears that an adversary proceeding will be necessary, the fiduciary hub manager VSCM must refer the matter to the Regional Counsel.</p> |
| Real property in estate | <p>Real property in the estate normally precludes VA from acting as attorney for the court-appointed fiduciary unless</p> <ul style="list-style-type: none"> • it appears clear that the best interests of the beneficiary require such action, and • it is unlikely that other legal action involving the property will be required. |
| VA not providing legal services for court-appointed fiduciary | <p>The VSCM is responsible for</p> <ul style="list-style-type: none"> • determining what property or assets belong to the beneficiary • advising the fiduciary to obtain them for the estate, and • advising the fiduciary to protect the beneficiary's interests in cases of real property. <p>If the fiduciary refuses to do so immediately, or if the fiduciary agrees to do so but is found to have failed to marshal or protect all assets, the VSCM should notify the Regional Counsel.</p> |

2.H.47.a. Acceptable Payees/Fiduciaries

After completion of an Initial Appointment (IA) or successor IA field examination, the Field Examiner (FE) may recommend that payment be made to

- a legal custodian, or
- ~~• a custodian in fact~~
- ~~• a court-appointed fiduciary, or~~
- the minor directly.

2.H.47.f. Payment to a Court-Appointed Fiduciary Recognized as a Legal Custodian

~~When a court-appointed fiduciary is needed,~~ The field examination report must document why the recognition of an **existing** court fiduciary as a legal custodian is in the best interests of a minor.

The FE should advise the proposed fiduciary of bonding and accounting requirements, if any. ~~If VA legal services are required, the case is referred to the Regional Counsel.~~

2.I.49.a. Determining Whether a Court-Appointed Fiduciary Is Appropriate

~~When a court fiduciary has been appointed prior to the Initial Appointment (IA) field examination, the Field Examiner (FE) must determine whether this type of fiduciary is needed to administer the Department of Veterans Affairs (VA) benefits.~~

~~If a court-appointed fiduciary is not necessary for VA purposes, The FE should appoint a Federal fiduciary, who may or may not be the court-appointed fiduciary.~~

~~If the court-appointed fiduciary is deemed unsuitable by VA, a Federal fiduciary may be appointed or VA objections may be presented to the court.~~

~~For fund coordination purposes, the existing court-appointed fiduciary must be made aware of VA benefits payable.~~

**2.I.49.a.
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Whether a Court-
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Fiduciary will be
Appointed as a
Legal Custodian Is
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When a court fiduciary ~~has been~~ was appointed prior to the Initial Appointment (IA) field examination, the Field Examiner (FE) must determine whether this fiduciary should be appointed as a legal custodian, or if another individual or entity would serve in the minor's best interest ~~type of fiduciary is needed to~~ when administer the Department of Veterans Affairs (VA) benefits.

~~If a court-appointed fiduciary is not necessary for VA purposes,~~ The FE should appoint a Federal fiduciary, who may or may not be the court-appointed fiduciary ~~based on the determination of the appropriateness of the current court-appointed fiduciary's appropriateness.~~

~~If the court-appointed fiduciary is deemed unsuitable by VA, a Federal fiduciary may be appointed or VA objections may be presented to the court.~~

For fund-coordination purposes, the existing court-appointed fiduciary must be made aware of VA benefits payable.

**2.I.49.b. When the
Fiduciary Is
Determined to Be
Unsatisfactory**

When the FE determines that the existing court-appointed fiduciary is not serving satisfactorily, the FE must

- document in the field examination report a detailed evaluation of the qualifications of a recommended successor ~~legal custodian-court-~~ ~~appointed fiduciary~~ who has consented to accept such appointment., ~~and~~
- ~~refer the report and recommendation to Regional Counsel for initiation of legal action.~~

~~**Note:** If legal action will result in delay of payment and hardship to the beneficiary, the FE may certify the recommended successor court appointed fiduciary as a legal custodian. The payee designation will be changed from legal custodian to court appointed fiduciary when VA receives certified letters of appointment and bond adequate to protect VA benefits.~~