

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"EXPLORING VBA'S FIDUCIARY PROGRAMS"**

JUNE 11, 2015

Chairman Abraham, Ranking Member Titus, and distinguished members of the subcommittee, on behalf of National Commander, Michael Helm, and the more than 2 million members of The American Legion, we thank you for the opportunity to testify regarding The American Legion's positions on the Department of Veterans Affairs Fiduciary programs.

An unfortunate aspect of military service is that some service members and veterans develop mental health illnesses, and in some cases physical injuries that can diminish their capacity to manage financial affairs on a day to day basis. Whether a veteran suffers from posttraumatic stress disorder (PTSD) or develops depression secondarily to a previously service connected conditions, the nature of these disorders can impact multiple areas of their, and their family's daily life.

With severe conditions such as TBI or PTSD, veterans can struggle, either temporarily or over a long term, to perform certain tasks associated with their personal finances, and sometimes suffer diminished mental health capacity as well. Due to this diminished capacity, veterans may be deemed incompetent in accordance with the Code Federal Regulations (C.F.R.), which defines mental incompetency as one who because of injury or disease lacks the mental capacity to contract or to manage their own affairs to include disbursement of funds without limitation.¹ If a veteran is deemed incompetent to handle his/her financial affairs, the Department of Veterans Affairs (VA) appoints a fiduciary. A fiduciary is an individual or entity that has been appointed to receive funds on behalf of a beneficiary for the use and benefit of the beneficiary and their dependents. The appointed fiduciary is allowed to charge a fee up to four percent of the VA benefits that are paid to the beneficiary. If the beneficiary is married the spouse may receive payments on behalf of the veteran. A selection of a fiduciary involves an analysis of current credit reports, disclosure of criminal background, and consideration of the opinion of character witnesses.²

VA's fiduciary program is designed to benefit the veteran and their family. The American Legion recognizes that veterans who are suffering from mentally debilitating injuries may need the assistance of fiduciaries to manage their VA benefits as well as their personal finances.

¹ CFR Title 38, Chapter 1, Part 3, Subpart A, Section 3.353

² The American Legion Testimony: "VA Fiduciary Program": February 9, 2012

Unfortunately, the program can lead to appointed fiduciaries who may take advantage of veterans and their benefits.

In recent years, allegations of fraud within the fiduciary program have been reported. After conducting an investigation in June 2012, the Hearst News Service discovered the program had “gambling addicts, psychiatric cases, and convicted criminals who were among the thieves who have been handed control of disabled veterans’ finances”³. Reports of these allegations do little to breed confidence in a program designed to protect some of our nation’s most vulnerable veterans.

Beginning in May 2014, VA switched from the Fiduciary-Beneficiary System (FBS) to the new Beneficiary and Fiduciary Field System (BFFS) which is a new computer-based processing system that enables fiduciary employees to work more effectively and efficiently. The new system maintains larger quantities of data, tracks fiduciary information, retains information on previous fiduciaries and is a substantially more robust and powerful tracking system.

Recommendations for Improvement:

A chief concern of The American Legion is the location of the fiduciary branches. These locations are often separate from the VA regional office (VARO). For instance, the fiduciary location for the Muskogee, Oklahoma VARO is located in Lincoln, Nebraska. For the Denver VARO, its fiduciary hub is in Salt Lake City, Utah. Similar to other VA administrative processes, there is a backlog in adjudicating competency. This backlog proves frustrating to veterans as they complete their portion of the process, submit the medical evidence to rebut the incompetency claims, and then it languishes awaiting adjudication.

The centralization of these processes is not unique to the fiduciary program, and The American Legion has expressed concerns about the impact of centralization of Veterans Benefits Administration (VBA) programs dating back to 2003 with opposition to the consolidation of pension operations into Regional Pension Maintenance Centers⁴. While VBA has continued to justify the centralized locations as a way to reduce the backlog of benefits processes, backlogs in adjudication continue even at the central locations, and communication between service officer advocates and VBA employees that could resolve common sense problems and expedite service is severely hampered. The centralization of programs has not provided the benefit intended, and therefore The American Legion believes more programs should be brought back into VAROs where direct communication can help facilitate an environment where obstacles are more rapidly overcome.

The American Legion has over 2,500 accredited representatives located throughout the country who represented more than 716,000 veterans in 2014 alone, and continues to advise and advocate for

³ <http://www.usmedicine.com/agencies/department-of-veterans-affairs/senator-pushes-for-expedited-reform-of-controversial-va-fiduciary-program/>

⁴ [Resolution No. 120: Discontinue Department of Veterans Affairs Regional Pension Maintenance Centers](#) – AUG 2003

veterans across the United States. While providing advocacy to veterans, The American Legion is able to gather feedback regarding the implementation and effectiveness of VA programs.

According to our research:

- The program has had problems that have needed to be addressed from its onset, our Service Officers reported an experience where a veteran was labeled incompetent because he indicated that he does not pay his bills; however, after further review, it was determined that in the division of household responsibilities, the veteran's spouse held that responsibility.
- Another incident included a veteran who indicated that he wanted his wife to serve as his fiduciary, and VA denied the request stating that she was unable to properly take care of the veteran. To find a veteran incompetent, VA needs a medical examination to support the finding; in the case of this veteran's wife, no medical examination was afforded, and a VA field examiner awarded the fiduciary to an individual unknown to the veteran or his wife which cost the veteran up to four percent of his benefits annually.
- Once an individual is determined to be incompetent a letter is sent to the vet proposing incompetency. This letter allows 60 days for due process which delays the awarding of the back pay amounts due the veteran. Unfortunately, because of the immediate financial needs of these vulnerable veterans, some representatives are waiving the due process to get the fiduciary appointment moving but these letters of waiver are frequently ignored, and the 60 day window remains. This delays approving the appointed representative and consequently, the back pay.
- In a number of cases, this money is needed to pay owed amounts to nursing homes and private caregivers. Delaying this decision to award the back pay is placing undue hardship on facilities and families and, if continued, will lead to situations where nursing facilities or care facilities do not want to take on veteran patients if they require fiduciaries because of the VA filing delays. There often can be a delay of up to six months to get awarded amounts.
- In a conversation with the Salt Lake City fiduciary hub last week, one representative heard that the assigning of the fiduciary is almost four months in duration. If we add four months to the claim adjudication, which can take four to six months at a minimum, we are now looking at least 10 months to get needed money to families. Nursing homes are attempting to have families pay for the care of their loved ones up front and this can cause a co-mingling of funds and can leave the family responsible for any owed money. The American Legion does not recommend that a family pay anything for the care up front, as this can become a potential legal issue for the family.
- The service officers of The American Legion have also seen a number of claims that are not being expedited as they should be, based on the age of the veteran. When a veteran is above a certain age or has qualifying severe medical conditions, or is suffering unique and imminent financial hardships, the veteran is eligible to have their claim processed under an expedited procedure. However, American Legion service officers routinely remind VA that the client is entitled to this expedited treatment because it doesn't happen automatically. With VA's advanced digital and electronic capabilities and the electronic claims process almost fully implemented, the age factor should be identified by an automated process, but in addition, there should be better procedures built into the process to identify these factors and help the veteran.

Many of these concerns could be overcome with more direct contact between advocates such as service officers and the VBA employees who process the claims, the centralization process inhibits this communication and leads to a disjointed process that ultimately does not serve the veterans or their families.

Beyond the implementation of the program throughout the nation, The American Legion has concerns regarding how being determined incompetent affects the veteran. According to VA's definition, veterans are defined as incompetent "due to injury, disease, or due to age, are unable to manage their financial affairs"⁵. Unfortunately, being deemed incompetent to manage financial affairs can have further consequences, as veterans deemed unable to manage finances are required to relinquish their weapons and are prohibited from purchasing weapons⁶. Utilizing this logic, any American that files bankruptcy due to financial mismanagement should be subjected to the same recourse from the federal government. The fact that veterans are the only group in the United States subject to this scrutiny and can have their constitutional rights infringed without a more detailed and considered due process, is unfair and unjust.

The American Legion is a strong supporter of the Second Amendment; by resolution adopted at our National Convention in August 2014, we urge "our nation's lawmakers to recognize, as part of their oaths of office, that the Second Amendment guarantees law-abiding citizens the right to keep and bear the arms of their choice, as do the millions of American veterans who have fought, and continue to fight, to preserve those rights, hereby advise the Congress of the United States and the Executive Department to cease and desist any and all efforts to restrict these rights by any legislation or order."⁷

If veterans are made to fear that by asking for needed help they may see their rights taken away, it may prevent those who need help from seeking it, and place the veteran in a bad position. Reform of this policy that automatically places veterans requiring a fiduciary on a list to remove their Second Amendment rights is critical to ensuring veterans who have need of the fiduciary program need not fear seeking the help they require to properly manage their financial and family affairs.

Conclusion

The American Legion recognizes the importance of a successful fiduciary program. With an aging veteran population and veterans returning after serving years in combat where the signature wounds of TBI and PTSD can impact cognitive functioning, it is necessary to have a robust and effective fiduciary program. The American Legion believes, based on our research gathered from the experiences of thousands of service officers in the field, that the system can be improved by returning the fiduciary programs to direct contact in the VAROs, and by reforming the automatic reporting mechanism that can needlessly strip veterans of their constitutional right to bear arms for seeking help with financial matters.

⁵ <http://www.benefits.va.gov/fiduciary/>

⁶ <http://www.benefits.va.gov/fiduciary/beneficiary.asp>

⁷ [Resolution No. 92: Second Amendment](#) - AUG 2014

As always, The American Legion thanks this subcommittee for the opportunity to explain the position of the over 2 million veteran members of our organization. For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861-2700 or wgoldstein@legion.org.