



# bulletin

National Veterans Affairs and Rehabilitation Commission

1608 K Street, N.W. • Washington, D.C. 20006

Michael D. Helm, Chairman - Nebraska

Verna L. Jones, Director - North Carolina

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**04-11**

**May 18, 2011**

## ***Processing Claims Releasing Retroactive Benefits to Beneficiaries under Fiduciary Supervision***

### ***Purpose***

This fast letter clarifies policies and procedures concerning the processing of claims resulting in retroactive benefits paid to beneficiaries under fiduciary supervision. There has been no change in current regulations or policies for the processing of claims releasing retroactive benefits to beneficiaries under fiduciary supervision. Additionally, the provisions of Fast Letter 09-41 remain in effect. However, it is imperative that regional offices (ROs) are aware of and follow the established guidelines when adjudicating these claims. This letter specifically addresses the processing of claims releasing retroactive benefits of less than \$25,000, as well as benefits of \$25,000 or greater, to beneficiaries under fiduciary supervision. This information is provided to promote RO awareness and consistency in the processing of these claims.

### ***Background***

The purpose of the Department of Veterans Affairs (VA) Fiduciary Program is to protect the benefits paid to Veterans and beneficiaries who are unable to manage their financial affairs.

To ensure proper oversight, M21-1MR, III.v.9.C.9.f requires that a copy of all correspondence or authorization actions related to the processing of awards for beneficiaries under fiduciary supervision be provided to the Fiduciary and Field Examination (F&FE) Activity for review.

Additionally, VA regulations also provide that the supervisor of the F&FE Activity perform a review prior to the authorization of fiduciary awards for retroactive benefits of \$25,000 or greater to beneficiaries under fiduciary supervision. This practice is consistent with M21-1MR, XI.4.C.12.d. Lastly, M21-1, V.9.01.b requires three signatures on all awards where the retroactive payment of benefits exceeds \$25,000.

### ***Accounting Requirements***

Accountings are required when benefits are paid to a federal fiduciary and *any* of the conditions listed below apply:

- The beneficiary has a VA estate of \$10,000 or more.
- The beneficiary has anticipated annual VA benefits equal to or in excess of the amount paid a single, 100 percent service-connected Veteran.
- A corporate surety bond is required.
- It cannot be reasonably ascertained by personal contact or other means that VA benefits are properly administered.
- The fiduciary relationship is or appears to be violated.
- Escheat or General Post Fund is a factor.
- Commissions have been authorized for a federal fiduciary.
- A temporary fiduciary has been appointed.

If an accounting would have been required by any of the above criteria, a federal fiduciary who is appointed as a temporary measure pending court appointment must file an accounting of their management of the beneficiary's funds during this temporary period.

Accountings are required as listed above *unless* the situation meets one of the following itemized exceptions as defined by M21-1MR, XI.3.C.7.d:

- If the situation involves fiduciaries for institutionalized beneficiaries, an accounting may not be required from a federal fiduciary receiving benefits for a beneficiary institutionalized at a non-VA facility when the costs of care, maintenance, and personal use funds equal or exceed the VA award, provided there is no VA estate in excess of \$10,000. Please note, temporary fiduciaries are always required to account.
- If the situation involves a spouse payee, an accounting is not required unless there are unusual circumstances or there appears to be a possibility of misappropriation of VA benefits.
- If the situation involves a chief officer of a federal institution, an accounting is not required if the officer is receiving VA benefits in a fiduciary capacity.
- If the situation involves foreign fiduciaries, an accounting is not required in cases in which the fiduciary and beneficiary permanently reside in a jurisdiction other than a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Republic of the Philippines.

## ***Estate Protection***

Additionally, 38 CFR 13.105 authorizes the Veterans Service Center Manager (VSCM) to require a bond or other means of protection from a fiduciary. M21-1MR, Part XI, 2.E.28.i indicates that a bond or other means of estate protection is required when the VA-derived estate exceeds \$20,000.

At a minimum, a bond must:

- be obtained from a bonding authority recognized in the state of jurisdiction, and
- include the following:
  - the amount of the bond,
  - the names of the fiduciary and beneficiary,
  - the name of the bonding company, and
  - affirmation by the bonding company that they will pay.

Questions concerning the legality of a bond must be referred to the Regional Counsel.

The principal guardianship folder (PGF) must contain documentation to show evidence of an adequate bond or other means of estate protection. Acceptable documentation for a bond consists of a certified or original file-stamped copy of the bond signed by the fiduciary and authorized agent of the surety. Additionally, to be considered adequate, the amount of the bond must cover the VA assets remaining in the estate of the beneficiary plus the anticipated annual income from the VA.

If the retroactive payment results in the VA-derived estate totaling \$20,000 or greater, the Fiduciary Activity must ensure a bond or other estate protection is in place within 30 days of authorizing the release of retroactive payments. If, after attempted corrective action including a field examination visit, the fiduciary fails to provide sufficient estate protection, the matter should be referred to the Regional Counsel for appropriate action.

### ***Procedures for Releasing Retroactive Benefits Less than \$25,000***

Per M21-1MR, III.v.9.C.9.f, all correspondence or award actions involving cases under fiduciary supervision must be provided to the F&FE Activity for review. Veterans Service Representatives (VSRs) and Senior Veterans Service Representatives (SVSRs) on the Post-Determination Team are ultimately responsible for identifying award actions involving cases under fiduciary supervision. If the award results in retroactive benefits less than \$25,000, the award may be routinely promulgated and authorized; however, a copy of the award action and notification letter must be forwarded to the F&FE Activity within five days for review.

Upon receipt of the award action and related correspondence, the F&FE Activity must review the award to determine any effect the award may have on the beneficiary or the fiduciary arrangement. Additionally, the award must be reviewed to ensure consistency

with the Fiduciary Beneficiary System (FBS) and the PGF. The review must include, but is not limited to:

- Ensuring the payee name is correct. Correct any misspelled or incorrect data.
- Validating the address. If the award action reflects an address different from the FBS records, determine which address is correct and update the payment records and/or FBS as appropriate. Contact the fiduciary if necessary to confirm the address.
- Ensuring the payee title is entered correctly in the payment records. The payee title must match the designation on VA Form 21-555, *Certificate of Legal Capacity to Receive and Disburse Benefits*. If necessary, take corrective action.
- Ensuring the fiduciary file location is correct. A change of fiduciary (CFID) will not update this field. Take action to update this field and follow up for compliance.
- Reviewing to determine if any prior direct deposit was cancelled if the award action is a result of a new fiduciary certification. If not, determine if it should be cancelled or changed and take any appropriate action.
- Assessing continued suitability of the current fiduciary arrangement.
- Reviewing for changes in dependents having an impact on the financial needs.
- Reviewing for entitlement to additional VA benefits, etc.
- Annotating the award indicating that the required review was completed.
- Annotating the PGF indicating that the required review was completed.

Because the release of retroactive benefits in any amount increases a beneficiary's VA derived estate, potentially requiring an accounting, corporate surety bond, or other means of protection, the PGF must be reviewed by the F&FE Activity to determine the necessary means of protection.

### ***Notification Requirements for Releasing Benefits Less than \$25,000***

To ensure that the F&FE Activity receives the finalized award and notification letter for review, submit it through intraoffice mail if the RO or PMC and F&FE Activity are co-located. If the RO or PMC is not co-located with the F&FE Activity, submit the award and notification letter to the appropriate F&FE Activity mailbox as listed in Outlook.

***Please note***, do not submit the award and notification letter through Virtual VA since the F&FE Activity may not be aware of its presence, therefore, unable to review it for the necessary protections.

### ***Procedures for Releasing Retroactive Benefits Greater than \$25,000***

Per M21-1MR, XI.4.C.12.d, fiduciary personnel are required to review the proposed award to ensure all necessary protection and accounting requirements are in place prior to the authorization of awards for retroactive benefits of \$25,000 or greater to beneficiaries under fiduciary supervision. VSRs and SVSRs on the Post-Determination

Team are ultimately responsible for identifying awards that would result in retroactive benefits of \$25,000 or greater. Prior to the authorization of awards involving retroactive benefits of \$25,000 or greater to beneficiaries under fiduciary supervision, the Post-Determination Team must forward the proposed award along with the attached sample memorandum to the supervisor of the F&FE Activity for review and completion.

***Please note:*** *These cases must be handled expeditiously since retroactive benefits must be withheld pending the F&FE Activity action. Therefore, leave the proposed award in GAP'd or generated status to control for the pending F&FE Activity action. Do not authorize the proposed award until the F&FE Activity completes the pre-promulgation review and returns the draft award with a determination that all necessary protection and accounting requirements are in place.*

Upon notification of a proposed retroactive payment of \$25,000 or greater, the F&FE Activity must review the PGF within five days to determine the following:

- if the current payee arrangement remains suitable in light of the lump-sum award, as well as increased monthly benefit, when applicable,
- adequate protection is in place,
- an accounting requirement is in place, when applicable, and
- if a modification to the fund usage agreement is necessary.

If estate protection is necessary or the protection in place needs to be increased, require the fiduciary to obtain the necessary protection. The necessary protection must be in place prior to authorizing the award. ***In instances where estate protection is required, the Post-Determination Team of the Regional Office of Jurisdiction (ROJ) or of the Pension Management Center (PMC) must be notified within five business days to return the award from GAP'd or generated status.*** Allow the fiduciary 30 days to provide the requested estate protection. If the fiduciary does not comply with the protection requirement, appoint a successor fiduciary.

Once the completed memorandum is received from the F&FE Activity indicating that the current payment arrangement is suitable for the release of benefits of \$25,000 or greater, authorization must be completed by the VSCM or supervisory designee not lower than a coach, as outlined in M21-1, V.9.01.b.

### ***Notification Requirements for Releasing Benefits Greater than \$25,000***

If the RO or PMC is co-located with the F&FE Activity, submit the proposed award and attached sample memorandum through intraoffice mail. If the RO or PMC is not co-located with the F&FE Activity, submit the proposed award and attached sample memorandum to the appropriate F&FE Activity mailbox as listed in Outlook. Additionally, when returning the proposed award and memorandum from the F&FE Activity to the RO, Hub, or PMC, return it in the same manner it was submitted (i.e. through intraoffice mail or e-mail).

**Questions**

Questions regarding this letter may be submitted to [VAVBAWAS/CO/F&FE](#).

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VERNA L. JONES, Director  
National Veterans Affairs and  
Rehabilitation Commission

Enclosure: Sample Memorandum

# Memorandum

To: F&FE Activity/Hub

From:

Date:

Re: Administrative Review-Retroactive Release of Benefits of \$25,000 or More

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\_\_\_\_\_  
*Beneficiary's Name*

\_\_\_\_\_  
*C File #*

**At issue in this case is whether the current payment arrangement is suitable for the retroactive release of benefits of \$25,000 or more.**

**We propose to....** (Propose a recommendation for each issue cited in the first paragraph. **Example:** "We propose to release \$25,000 retroactive benefits for the period 07/01/97 to 08/01/07.") Your concurrence is required prior to the release of retroactive benefits of \$25,000 or greater.

\_\_\_\_\_  
Signature

- ( ) CONCUR: Required estate protections are in place.
- ( ) DO NOT CONCUR: See attached.

\_\_\_\_\_  
F&FE Activity/Hub

\_\_\_\_\_  
Date