## Section B. Processing Awards to Incompetent Beneficiaries

#### Overview

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| In This Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 (old 4) | General Authorization Issues in Incompetency Cases |
| 2 (old 5) | Processing Incompetency Determinations and Processing Awards |
| 3 (old 6) | Due Process Requirements for Incompetency Determinations |
| 4 (old 7) | Information About the Brady Act |
| 5 (old 8) | Processing Awards for Supervised Direct Payment (SDP) |

#### 1. General Authorization Issues in Incompetency Cases

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| Introduction | This topic contains information on general authorization issues in incompetency cases, including * indicating incompetency when scheduling a physical examination
* processing an incompetent Veteran’s failure to report for an examination
* cases in which an incompetent Veteran is admitted to an institution, and
* claims from beneficiaries determined to be incompetent.
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| Change Date | May 6, 2013 |

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| a. Indicating Incompetency When Scheduling a Physical Examination | When scheduling an incompetent Veteran for a physical examination, indicate the fact of incompetency on the examination request by including * *incompetent* after the name of the Veteran, and
* *fiduciary* in the address space, followed by the
* name, and
* address of the fiduciary.

***Note***: Because a computer-generated *VA Form 21-2507, Request for Physical Examination,* shows the name and address of the fiduciary with the descriptive legend and the name of the Veteran, no additional indication is required when the request for examination is made on this form.***Reference***: For information on inputting examination requests, see M21-1, Part III, Subpart iv, 3.A.12. |

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| b. Processing an Incompetent Veteran’s Failure to Report for an Examination | If an incompetent Veteran fails to report for an examination,* send a notice of proposed adverse action to the Veteran before the account is reduced or suspended
* send a letter to the fiduciary explaining
* the necessity of the examination, and
* that failure to report could result in discontinuance or reduction of benefits, and
* e-mail a request for assistance in having the Veteran report for the examination to the mailbox of the fiduciary hub of jurisdiction.

***References***: For more information on processing a Veteran’s failure to report for examination, see M21-1, Part III, Subpart iv, 8.E.1. |

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| c. Cases in Which an Incompetent Veteran Is Admitted to an Institution | For information on handling cases in which an incompetent Veteran is admitted to a Department of Veteran Affairs (VA) or non-VA institution, see M21-1, Part III, Subpart v, 6.E. |

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| d. Claims From Beneficiaries Determined to be Incompetent | A claim received from a beneficiary who has been determined incompetent for VA purposes may be accepted, even if a fiduciary has been appointed for the claimant. A VA determination of incompetency under [38 CFR 3.353](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.3_1353&rgn=div8) determines the claimant’s ability to manage his/her own affairs, including disbursement of funds. It does not preclude the claimant from prosecuting a claim for benefits.***Reference***: For more information on the process for determining whether a beneficiary is competent, see M21-1, Part III. Subpart iv, 8.A.3.a. |

#### 2. Processing Incompetency Determinations and Processing Awards

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| Introduction | This topic contains information on processing incompetency determinations and authorizing awards, including* competency and incompetency determinations
* processing evidence of incompetency that does not involve a judicial determination
* claimants who become entitled to benefits before the rating activity makes a final determination regarding competency
* authorization actions upon receipt of a recommendation for payment from a fiduciary hub
* processing a
* court appointment of a fiduciary without a judicial determination of incompetency
* court decree of incompetency or court appointment of a fiduciary by reason of incompetency
* judicial determination of incompetency for a Veteran
* judicial determination of incompetency for a parent, surviving spouse, or child incapable of self-support
* child beneficiary’s permanent incapacity for self-support, and
* authorizing an award for a beneficiary found competent by court decree.
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| Change Date | July 11, 2015 |

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| a. Competency and Incompetency Determinations | Competency and incompetency determinations may be made by* VA rating decision
* court decree, or
* both a VA rating decision and court decree.

Determinations of competency and/or incompetency by a court decree require different actions than a VA decision, as VA is ***not*** required to recognize a court-appointed fiduciary for purposes of payment of VA benefits, per [38 CFR 3.850(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.3_1850&rgn=div8).***Reference***: For more information on incompetency determinations, see * M21-1, Part III, Subpart iv, 8.A, and
* [38 CFR 3.353](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.3_1353&rgn=div8).
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| b. Processing Evidence of Incompetency That Does Not Involve a Judicial Determination | Use the table below to process evidence that* indicates a beneficiary may be incompetent, per [38 CFR 3.353](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.3_1353&rgn=div8), but
* does ***not*** involve a judicial determination of incompetency.
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| Stage | Description |
| 1 | When evidence is received indicating a beneficiary may be incompetent, establish an appropriate rating end product (EP) if one is not currently pending. |
| 2 | Refer the evidence to the rating activity for a determination as to the beneficiary’s competency.***Note***: If the medical evidence is not adequate for rating purposes, develop for additional evidence before referring the case to the rating activity. ***Reference***: For more information on processing evidence of a child’s permanent incapacity for self-support, see M21-1, Part III, Subpart iii, 7.1 and 2. |
| 3 | If, after reviewing the evidence, the rating activity determines the beneficiary is* still *competent*,
* annotate the evidence to show it was reviewed but warranted no formal action
* clear the EP (unless other rating-related issues are still pending), and
* proceed no further in this process, or
* *incompetent*, go to step 4.

***Note***: If the claims folder is an electronic claims folder (eFolder), add the annotation in the Veterans Benefits Management System (VBMS) in the SUBJECT field under DOCUMENT PROPERTIES of the evidence.  |
| 4 | The rating activity completes a decision of proposed incompetency which ***must**** be based on medical evidence in accordance with M21-1, Part III, Subpart iv, 8, and
* include all the facts used in the incompetency determination in the *Narrative* of the proposed incompetency decision.

***Notes***: * A court decree of incompetency, or a court appointment of a fiduciary by reason of incompetency, ***must*** be sent to the fiduciary hub using
* *VA Form 21-592, Request for Appointment of a Fiduciary, Custodian or Guardian* (if not previously furnished), or
* by memorandum or letter (if *VA Form 21-592* was previously furnished).
* Include with the *VA Form 21-592*, memorandum, or letter to the fiduciary hub, a copy of the
* decree of incompetency, or
* court appointment of a fiduciary.
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| 5 | Complete the proposed incompetency letter in accordance with M21-1, Part III, Subpart v, 9.B.3.a-f. |
| 6 | If applicable, notify the beneficiary’s Power of Attorney (POA) in accordance with M21-1, Part I, 3.B.4. |
| 7 | When the rating activity has completed the decision of proposed incompetency and addressed all associated issues, then the authorization activity will * authorize the award
* clear the EP, and
* release the payment of benefits to the beneficiary, as authorized in the award.

***Important***: If the beneficiary is under fiduciary supervision and has a retroactive award of * less than $25,000, follow the instruction in M21-1, Part III, Subpart v, 9.C.1.g, or
* $25,000 or greater, follow the instructions in M21-1, Part III, Subpart v, 9.C.1.h.
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| 8 | Associate the completed rating decision of proposed incompetency, decision notice, and award with the claims folder. |
| 9 | Establish a 30-day diary using the, “*Local Regional Office – Special Use*” with remarks “*Incomp Due Process*.” |
| 10 | Send e-mail notification of the proposed incompetency rating to the fiduciary hub of jurisdiction. The e-mail notification must include the beneficiary’s * name, and
* claim number.

***Reference***: For more information on fiduciary hubs of jurisdiction, see M21-1, Part III, Subpart v, 9.A.1.e. |

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| ***Important***: Process the payment of the following benefits according to the instructions in M21-1, Part III, Subpart v, 9.B.2.c, if at any point during the process described above, a beneficiary becomes entitled to* an original award of benefits
* a reinstatement of benefits, or
* an increase in benefits.

***Note***: Upon receipt of the notification of the proposed incompetency rating, the fiduciary hub will establish an EP 600, *Competency Issue*, to monitor the 65-day suspense period for the proposed incompetency letter. |

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| c. Claimants Who Become Entitled to Benefits Before the Rating Activity Makes a Final Determination Regarding Competency | If, at any point during the process described in M21-1, Part III, Subpart v, 9.B.2.b, the rating activity determines a beneficiary is entitled to an original award of benefits, a reinstatement of benefits, or increased benefits, payment at the new or increased rate of benefits must begin immediately *from the current month forward* (without waiting for resolution of the competency issue.)***Exception***: Under certain circumstances, which should be rare, it may be in the best interest of the beneficiary ***not*** to take the actions described above. For example, if the evidence of record shows the beneficiary has a history of giving away all of his/her income or spending it on frivolous activities on the same day he/she receives it, it may be best to withhold benefits until* the rating activity determines the beneficiary is competent, or
* the fiduciary hub of jurisdiction assigns the beneficiary a fiduciary.

***Important***: Withhold all ***retroactive*** benefits due the beneficiary until the rating activity makes a final decision regarding the beneficiary’s competency. If the rating activity ultimately decides the beneficiary is * *competent*, immediately release all benefits which were withheld while deciding whether the beneficiary was competent, or
* *incompetent*, withhold the retroactive benefits until the fiduciary hub of jurisdiction assigns the beneficiary a fiduciary.
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| d.  Authorization Actions Upon Receipt of a Recommendation for Payment From a Fiduciary Hub | The authorization activity at the fiduciary hub processes all authorization actions upon receipt of a recommendation for payment from a fiduciary hub, with the exception of certain instances when the fiduciary hub is unable to process the case.Use the table below to determine the appropriate authorization actions to take upon receipt of a recommendation for payment from a fiduciary hub when a case is referred back to the station of origination (SOO) because the fiduciary hub is unable to process it. |

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| If the fiduciary hub … | Then the SOO … |
| * concurs with the rating of incompetency
* determines that a fiduciary is desirable, and
* effects and certifies the appointment of a fiduciary to the SOO by sending *VA Form 21-555,* *Certificate of Legal Capacity to Receive and Disburse Benefits*
 | releases any withheld benefits to the fiduciary* within 15 days of receipt of *VA Form 21-555*, and
* in accordance with
* instructions from the fiduciary hub, and
* the procedures set forth in M21-1, Part III, Subpart v, 9.C.2.b.

If the SOO adjusted the beneficiary’s award, it must also* furnish the certifying fiduciary hub with a copy of the award document, and
* notify the fiduciary of the award action and his/her appellate rights regarding the award adjustment, per M21-1, Part I, 2.C.4.

***Note***: Notice to the fiduciary is not required unlessan adjustment is made to the beneficiary’s award. |
| * concludes the beneficiary is incompetent, but reasonable protection of the interests of the beneficiary can be accomplished with follow-up, personal contact, and
* furnishes the SOO with certification of supervised direct payment (SDP) on *VA Form 21-555*
 | releases any withheld benefits directly to the beneficiary* within 15 days of receipt of *VA Form 21-555*, and
* in accordance with
* instructions from the fiduciary hub, and
* the procedures set forth in M21-1, Part III, Subpart v, 9.B.5.

If the SOO adjusted the beneficiary’s award, it must also* furnish the certifying fiduciary hub with a copy of the award document, and
* notify the beneficiary of the award action and his/her appellate rights regarding the award adjustment, per M21-1, Part I, 2.C.4.
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| * concludes the beneficiary is competent to manage the funds payable, and
* furnishes the SOO with certification of SDP on *VA Form 21-555*
 | refers a statement of the finding of competency by the fiduciary hub, including all evidence upon which the opinion is based, to the rating activity.***Result***: The rating activity reconsiders the issue of competency, per [38 CFR 3.353](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.3_1353&rgn=div8). If the rating activity decides the beneficiary* is *competent*, the SOO
* releases any withheld benefits directly to the beneficiary within 15 days of completion of the rating decision
* furnishes the certifying fiduciary hub with a copy of the award document (if the SOO adjusted the beneficiary’s award), and
* notifies the beneficiary of the final determination and his/her appellate rights, per M21-1, Part III, Subpart v, 2.B., or
* remains *incompetent*, the SOO continues the SDP and notifies the fiduciary hub of the rating decision.

***Reference***: For more information about the evidentiary requirements to determine whether an incompetent beneficiary has regained competency, see M21-1, Part III, Subpart iv, 8.A.4.d. |

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| ***Note***: If the beneficiary’s award * requires adjustment, the SOO makes the adjustment under the pending EP 290, or
* does ***not*** require adjustment, the SOO clears the pending EP 290.
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| e. Processing a Court Appointment of a Fiduciary Without a Judicial Determination of Incompetency | Do *not* consider a court appointment of a fiduciary as evidence of incompetence requiring rating action, ***unless*** it is also accompanied by either* a judicial determination of incompetency, such as a court order or decree, or
* medical evidence.
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| f. Processing a Court Decree of Incompetency or Court Appointment of a Fiduciary by Reason of Incompetency | Upon receipt of a court decree of incompetency or a court appointment of a fiduciary by reason of a beneficiary’s incompetency* notify the fiduciary hub of jurisdiction
* using *VA Form 21-592* (if not previously furnished), or
* by memorandum or letter (if *VA Form 21-592* was previously furnished), and
* include with the notification either
* a copy of the decree of incompetency, or
* the letters of appointment of a fiduciary.

***Important***:* Under the circumstances described in this block, it is *unnecessary* to
* prepare a *proposed* rating of incompetency, or
* provide advance notice of a rating of incompetency.
* Upon receipt of a ***judicial determination*** that a
* Veteran is incompetent, follow the instructions in M21-1, Part III, Subpart v, 9.B.2.g, or
* parent, surviving spouse, or adult child incapable of self-support is incompetent, follow the instructions in M21-1, Part III, Subpart v, 9.B.2.h.

***Reference***: For information about the* responsibilities of the rating activity upon receipt of a court decree of incompetency, see M21-1, Part III, Subpart iv, 8.A.5.a, or
* distribution of court documents, see M21-1, Part III, Subpart v, 9.C.2.a.
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| g. Processing a Judicial Determination of Incompetency for a Veteran | Judicial findings of a court with regard to the competency of a *Veteran* are ***not*** binding on the rating activity. Follow the steps in the table below when a judicial determination of incompetency has been made for a Veteran. |

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| Step | Who Is Responsible | Action |
| 1 | SOO | * Notify the fiduciary hub of jurisdiction
* using *VA Form 21-592* (if not previously furnished), or
* by memorandum or letter (if *VA Form 21-592* was previously furnished).
* Include with the notification
* a copy of the decree of incompetency, or
* the letters of appointment of a fiduciary.
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| 2 | Fiduciary HubAuthorization Activity | Establish EP 290, using the *Fiduciary Adjustment* claim label, to control for receipt of *VA Form 21-555*. |
| 3 | SOO | If the Veteran has been admitted to a hospital for treatment or observation, request medical records from the hospital that would be useful in evaluating the Veteran’s competency. |
| 4 | SOO | Pending certification of a fiduciary or other instructions from the fiduciary hub, continue any existing* apportionments, and
* payments being made to the Veteran.

***Reference***: For more information on how to handle a court’s appointment of more than one fiduciary, see M21-1, Part III, Subpart v, 9.C.1.c. |
| 5 | Fiduciary HubAuthorization Activity | Upon receipt of certification * process the payee certification from *VA Form 21-555*
* refer the case for a formal rating decision if evidence of incompetence is provided with the *VA Form 21-555*, and
* notify the insurance activity of the change in status by following the procedures in M21-1, Part III, Subpart v, 9.A.3.b (if the fiduciary hub did not send the insurance activity a copy of *VA Form 21-555)*.

***Reference***: For more information on the authorization actions to take upon receipt of a recommendation for payment from a fiduciary hub, see M21-1, Part III, Subpart v, 9.B.2.d. |

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| h. Processing a Judicial Determination of Incompetency for a Parent, Surviving Spouse, or Child Incapable of Self-Support | Rating action is ***not*** required when a parent, surviving spouse, or child incapable of self-support is judicially determined to be incompetent. Continue direct payment pending receipt of certification of a fiduciary or other payee from the fiduciary hub. |

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| i. Processing a Child Beneficiary’s Permanent Incapacity for Self-Support  | Upon receipt of evidence indicating a child beneficiary is permanently incapable of self-support, refer the case to the rating activity for a decision as to whether or not* the child was incapacitated prior to age 18
* such condition currently exists, and
* the child is unable to manage his/her own financial affairs.

***Note***: Incapacity for self-support does not equate to the inability to manage financial affairs. A child may be unable to support him/herself and still be considered competent to handle his/her financial affairs.***References***: For more information on * the authorization actions to take upon receipt of a recommendation for payment from a fiduciary hub, see M21-1, Part III, Subpart v, 9.B.2.d
* processing evidence of a child’s permanent incapacity for self-support and incompetency, see M21-1, Part III, Subpart iii, 7.1 and 2, or
* considering the competence of a child incapable of self-support, see M21-1, Part III, Subpart iv, 8.A.2.b.
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| j. Authorizing an Award for a Beneficiary Found Competent by Court Decree | If a beneficiary previously held incompetent* by court decree *only* (***not*** by rating decision) is subsequently found competent by court decree,
* initiate direct payment to the beneficiary as soon as a fiduciary hub certifies the corresponding court proceedings were regular and proper in all respects
* annotate the remarks section of the amended award with the facts as to restoration of competency, and
* e-mail a copy of this award to the fiduciary hub having supervision over the fiduciary as notice of the action taken, or
* by court decree ***and*** by VA rating decision is subsequently found competent by court decree,
* refer the court decree and any evidence that accompanied it to the rating activity, and
* do ***not*** initiate direct payment to the beneficiary without approval from the fiduciary hub.

***Note***: If the beneficiary is a child incapable of self-support by reason of mental defect, the rating activity must make a new determination of the child’s entitlement to continued benefits. Do not defer award action pending this referral to the rating activity.***Reference***: For more information on institutional awards to incompetent Veterans, see M21-1, Part III, Subpart v, 6.E.1. |

#### 3. Due Process Requirements for Incompetency Determinations

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| Introduction | This topic contains information on due process requirements for incompetency determinations, including* elements of a notice of a proposed rating of incompetency
* sample language for a notice of a proposed rating of incompetency
* notifying an adult beneficiary
* notifying a beneficiary who is a minor
* requirement for oral notification of the beneficiary
* documenting compliance with the requirement for oral notification
* handling a beneficiary’s request for a hearing
* processing additional evidence from a beneficiary or a beneficiary’s request for a hearing
* conducting a hearing prior to a final determination
* processing a waiver of due process for proposed incompetency
* proposals on which the beneficiary takes no action, and
* processing a notice of disagreement (NOD) received after a final rating of incompetency.
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| a. Elements of a Notice of a Proposed Rating of Incompetency | Notice of a proposed rating of incompetency must include* a copy of the proposed rating decision or a short summary of the facts and evidence of record that supports the finding of incompetency
* an explanation of the effect that a finding of incompetency has on the payment of VA benefits
* notice that a VA rating of incompetency prevents the beneficiary from purchasing firearms, according to the Brady Handgun Violence Prevention Act (the Brady Act)
* a statement of the beneficiary’s right to
* submit evidence to show why the proposed action should not be taken
* request a personal hearing to present evidence, and
* have representation during the hearing, and
* an indication that the beneficiary has 60 days to respond to the notice.

***Note***: If a beneficiary requests a hearing at ***any*** time *before* VA makes a final decision on the beneficiary’s competency, VA will postpone making the final decision until after it holds the hearing.***References***:* For sample language for notice of a proposed rating of incompetency, see M21-1, Part III, Subpart v, 9.B.3.b.
* For more information about the Brady Act, see M21-1, Part III, Subpart v, 9.B.4.
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| b. Sample Language for a Notice of a Proposed Rating of Incompetency | The paragraphs below contain sample language for notice of a proposed rating of incompetency to a beneficiary who is already receiving VA benefits. |

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| *We have received information showing that because of your disabilities you may need help in handling your Department of Veterans Affairs (VA) benefits. We received the information from* [**name of physician, medical institution, etc.**]. *The report, dated* [**date of the report**]*, shows* [**brief description of the diagnosis and/or findings**].*We must decide if you are able to handle your VA benefit payments. We will base our decision on all the evidence we already have and any other evidence you may wish to send us. Before we make a final determination, you have the right to submit any evidence, information, or statement that will present your side of the case.****What We Propose to Do****We propose to rate you incompetent for VA purposes. This means a fiduciary may be appointed to help you manage your VA benefits. Payment of any money due you will be made directly to your fiduciary. This person or institution must use your payments for your benefit and is responsible to VA for their use.**We have enclosed a copy of our Rating Decision for your review. It provides a detailed explanation about our proposal, the reason for it, and the evidence considered.****When and Where To Send the Information or Evidence****Please mail or fax all responses to the appropriate address listed on the attached Where to Send Your Written Correspondence chart within* ***60 days*** *from the date of this letter. Please put your full name and VA file number on the evidence. If we don't receive the information or evidence within that time, we will make our decision based only on the evidence we have received.****How This Decision Could Affect You****A determination of incompetency will prohibit you from purchasing, possessing, receiving, or transporting a firearm or ammunition. If you knowingly violate any prohibition, pursuant to section 924(a)(2) of title 18, United States Code, as implemented by Public Law 103-159 of the Brady Handgun Violence Prevention Act, you may be fined, imprisoned, or both.**If we decide that you are unable to handle your VA funds, you may apply to VA for the relief of prohibitions imposed by the Brady Act with regards to the possession, purchase, receipt, or transportation of a firearm. Submit your request on the enclosed VA Form 21-4138, Statement in Support of Claim. VA will determine whether such relief is warranted.****How to Obtain a Personal Hearing****If you desire a personal hearing to present evidence or argument about your ability to handle your VA benefits, notify this office and we will arrange a time and place for the hearing. If you want, you may bring witnesses and their testimony will be entered in the record. VA will furnish the hearing room and provide hearing officials. VA cannot pay any other expenses of the hearing since a personal hearing is held only on your request.**Please notify us as soon as possible if you would like to request a hearing. If VA receives your hearing request prior to the final competency determination, we will continue to send payments to you until we have held the hearing and reviewed the testimony. If no request for hearing is received prior to the final competency determination, a decision will be made based on the evidence of record.****How to Obtain Representation****An accredited representative of a veterans' organization or other service organization recognized by the Secretary of Veterans Affairs may represent you, without charge. An accredited agent or attorney may also represent you. However, under 38 U.S.C. 5904(c), an accredited agent or attorney may only charge you for services performed after the date you file a notice of disagreement. If you desire representation, let us know and we will send you the necessary forms. If you have already designated a representative, no further action is required on your part.* |

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| ***Important***: If the beneficiary is *not* receiving benefits, based on the *Exception* cited in M21-1, Part III, Subpart v, 9.B.2.c, remove the two paragraphs that discuss the time limit for requesting a hearing. |

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| c.  Notifying an Adult Beneficiary | Use the table below to determine to whom to send the notice of a proposed rating of incompetency if the beneficiary is an adult in the care of a medical center or institution, per [38 CFR 3.852](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.3_1852&rgn=div8).  |

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| If the beneficiary is … | Then … |
| a patient in a medical center | send a copy of the notice to the Chief Officer of the hospital or domiciliary. |
| * institutionalized in a medical center
* in a non-bed-care status on authorized or unauthorized absence, or
* a member of a domiciliary
 | * send a copy of the notice to the Chief Officer of the institution, and
* request that a psychiatric social worker (or other professional staff member designated by the Chief Officer) inform the patient orally about the proposed action and of his/her due process rights.
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| d. Notifying a Beneficiary Who Is a Minor | If VA is making payments on behalf of a minor child, and a decision regarding the child’s competency is needed when the child reaches age 18, send notice of a proposed rating of incompetency to* the current fiduciary that a fiduciary hub has certified to receive payments for the child, or
* a custodian who is recognized as a parent under [38 CFR 3.850(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.3_1850&rgn=div8).
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| e. Requirement for Oral Notification of the Beneficiary | Upon sending the notice of a proposed rating of incompetency to a beneficiary, SOOs must make reasonable efforts to contact him/her by telephone for the purpose of orally informing the beneficiary of the following three provisions* the determination of incompetency will prohibit the purchase, possession, receipt, or transportation of a firearm or ammunition
* violation of the law may result in a fine and/or imprisonment, and
* to apply for relief of any firearm prohibitions resulting from the **determination of incompetency, the beneficiary should** submit a request to the regional office (RO).

“Reasonable efforts” generally consist of an initial telephone contact to the beneficiary’s current telephone number and at least one follow-up attempt, if the initial attempt is unsuccessful.***Notes***: * Exercise discretion when discussing the proposed rating with the beneficiary, as this type of notice may be upsetting to him/her.
* A voice-mail message is ***not*** considered sufficient oral notice.
* If a current, valid telephone number is not available for the beneficiary, use reasonable efforts to secure one, which may include
* searching the telephone directory
* reviewing applicable hospital records, and/or
* contacting the beneficiary’s representative.
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| f. Documenting Compliance With the Requirement for Oral Notification | Document compliance with the requirement to give oral notice of the three provisions in M21-1, Part III, Subpart v, 9.B.3.e on *VA Form 27-0820, Report of General Information*.If initial and follow-up attempts to contact the beneficiary by telephone are *unsuccessful*, document the actions taken in VBMS under CLAIM NOTES.***Notes***:* If telephone contact with the beneficiary is made, but oral delivery of the notice is unsuccessful because, for example, the beneficiary is physically or mentally incapacitated, fully explain the circumstances on *VA Form 27-0820*.
* If the beneficiary later reports never receiving or not understanding the initial oral notice, provide it again and document the action on *VA Form 27-0820.*
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| g. Processing a Beneficiary’s Request for a Hearing  | If the beneficiary requests a personal hearing, advise him/her that * he/she may bring witnesses and that witness testimony will be included in the record
* he/she may be represented by an
* accredited representative of a Veterans organization or other service organization recognized by the VA at no charge, or
* employed attorney
* VA furnishes the hearing room, provides hearing officials, and prepares the transcript or summary of the proceedings, and
* VA cannot pay any other expenses of the hearing.

***Note***: If the beneficiary expresses a desire for representation but has not yet designated a representative, furnish the necessary forms to help the beneficiary obtain one.***Reference***: For more information on hearings, see M21-1, Part I, 4.1. |

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| **h. Processing Additional Evidence From a Beneficiary or a Beneficiary’s Request for a Hearing** | The table below describes what an SOO or fiduciary hub must do during the 60-day due process period when * additional evidence is received, or
* a request for a hearing is made from a beneficiary.
 |

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| **Stage** | **Description** |
| 1 | The jurisdiction of the EP 600 will be transferred from the fiduciary hub to the Veterans Service Center (VSC) collocated with the fiduciary hub. |
| 2 | The fiduciary hub * closes the tracked item in VBMS, and
* changes the claim status to *Inter-office action required: Additional Competency Evidence to VSC*.
 |
| 3 | The VSC collocated with the fiduciary hub is responsible for * monitoring NEXUS V2.1 reports for claims with the status of *Inter-office action required: Additional Competency Evidence to VSC*, and
* completing the rating decision on these cases.
 |
| 4 | The VSC rating activity collocated with the fiduciary hub, after reviewing the evidence, makes a determination on whether or not a beneficiary is* competent, or
* incompetent.
 |
| 5 | The following table describes the necessary actions based on the competency determination of the VSC rating activity.

|  |  |
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| **If the rating activity determines the beneficiary is ...** | **Then the VSC collocated at the fiduciary hub of jurisdiction...** |
| competent | * completes the final rating decision
* processes the necessary award actions
* sends a decision notice to the beneficiary
* sends an e-mail with a copy of the decision notice to the fiduciary hub, and
* returns the claims folder jurisdiction to the original SOO.
 |
| incompetent | * completes the final rating decision
* processes the necessary award actions
* sends notification to the beneficiary, and
* completes and e-mails VA *Form 21-592* to the fiduciary hub of jurisdiction.
 |

 |
| 6 | If a beneficiary is determined to be incompetent, the fiduciary hub of jurisdiction* establishes an EP 290, and
* releases retroactive benefits upon appointment of a fiduciary, if appropriate.
 |

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| ***Important***: The VSC collocated with a fiduciary hub will, as related to beneficiary submissions in response to a rating of incompetency, have jurisdiction over all* hearing requests
* submissions of additional evidence, and
* notices of disagreement.

***Reference***: For more information on * fiduciary hubs of jurisdiction, see M21-1, Part III, Subpart v, 9.A.1.e, and
* the establishment of the EP 600 by the fiduciary hub, see M21-1, Part III, Subpart v, 9.B.1.b.
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| i. Conducting a Hearing Prior to a Final Determination | The Decision Review Officer (DRO) conducts the hearing in accordance with the provisions in M21-1, Part I, 4.4.Due to the nature of the hearing, the DRO must provide latitude to allow participation on behalf of, and assistance to, the beneficiary by the next of kin or any other person of the beneficiary’s choice. |

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| **j. Processing a Waiver of Due Process for Proposed Incompetency** | If the SOO receives a waiver of due process concerning proposed incompetency from the beneficiary, the SOO will* ensure the waiver is available in the beneficiary’s claims folder
* immediately notify the fiduciary hub of jurisdiction by sending an e-mail with the subject line *“Due Process Waived- Incompetency Proposal*,*”* and
* include the following information in the e-mail to the fiduciary hub of jurisdiction
* claim number
* beneficiary’s name, and
* receipt date of evidence.

***Note***: The fiduciary hub will maintain jurisdiction of the pending EP 600.***Reference***: For more information on fiduciary hubs of jurisdiction, see M21-1, Part III, Subpart v, 9.A.1.e |

|  |  |
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| k. Proposals on Which the Beneficiary Takes No Action | If the beneficiary does not respond to the notice of the proposed rating within 65 days of the date of the notice, the fiduciary hub makes a final decision regarding the beneficiary’s competency based on the evidence of record.***Reference***: For more information about the actions to take after the response period ends, see M21-1MR, Part III, Subpart v, 9.B.2.b, starting with Step 5. |

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| l.  Processing a NOD Received After a Final Rating of Incompetency  | The VSC collocated with the fiduciary hub of jurisdiction will handle all appeals of incompetency determination.If a notice of disagreement (NOD) is received after a final rating of incompetency,* prepare a statement of the case (SOC)
* send the SOC to
* the beneficiary, or fiduciary, if applicable, and
* the beneficiary’s or fiduciary’s representative, and
* enclose VA Form 9, Appeal to Board of Veterans’ Appeals.

***Important***: When preparing the SOC, carefully consider whether the inclusion of certain information could be detrimental to the beneficiary’s state of mind. A decision to exclude information on this basis must be supported by a physician’s opinion and advice concerning the appropriate way to communicate the information directly to the beneficiary.***Note***: Fiduciary hubs will handle all appeals regarding the selection of a fiduciary.***References***: For more information on * sending a SOC, see M21-1, Part I, 5.D.3, and
* releasing information that may be detrimental to the beneficiary’s state of mind, see M21-1, Part I, 5.D.2.d and e.
 |

#### 4. Information About the Brady Act

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| Introduction | This topic contains information about the Brady Act, including* effect of the Brady Act on incompetent beneficiaries
* relief from the Brady Act requirements
* initial steps to take upon receipt of a request for relief
* required paragraphs for National Instant Criminal Background Check System (NICS) relief development letter
* consent form that must accompany the NICS relief development letter
* general information about decisions to grant or deny a request for relief
* evidence Veterans Service Representatives (VSRs) must consider when deciding a request for relief
* circumstances under which VSRs must deny a request for relief
* process for considering a grant of relief, and
* actions to take after making a decision on a request for relief.
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| Change Date | July 11, 2015 |

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| a. Effect of the Brady Act on Incompetent Beneficiaries | The Brady Act of 1993, *Public Law* *(PL)* 103-159, prohibits the sale of firearms to certain individuals, including beneficiaries the VA determines are incompetent. In compliance with this act, VA reports the names of incompetent beneficiaries to the Federal Bureau of Investigations (FBI), which then adds the names to a database called the National Instant Criminal Background Check System (NICS). Gun dealers must check NICS for the name of a potential buyer before selling him/her a firearm. |

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| b. Relief From the Brady Act Requirements | The NICS Improvement Amendments Act of 2007 (NIAA) contains an amendment to the Brady Act that obligates VA to allow incompetent beneficiaries the opportunity to request relief from the reporting requirements the Brady Act imposes. The NIAA places the responsibility for administering the relief program on the agency that provided NICS with the name of the individual who is requesting relief.**Because relief from the reporting requirements of the Brady Act is not a “benefit” under Title 38, principles common to VA’s adjudication process, such as “benefit of the doubt” and “duty to assist” (as demonstrated in ordering examinations or securing private medical records) do *not* apply. The burden of proof for these requests resides with the beneficiary, and failure to meet that burden is sufficient reason for denying the request.*****Note*:** Requests for relief from the Brady Act reporting requirements must be clear and explicit. Do not infer or interpret* a request for relief as a claim for reconsideration of the beneficiary’s competency, or
* a claim of competency as a request for relief.
 |

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| c. Initial Steps to Take Upon Receipt of a Request for Relief | Follow the steps described in the table below upon receipt of a beneficiary’s request for relief from the requirements of the Brady Act. |

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| Step | Action |
| 1 | Has VA already determined by rating decision that the beneficiary is incompetent?* If *yes*, proceed to Step 7.
* If *no*, proceed to the next step.
 |
| 2 | * For *eFolder* processing, add a note in VBMS that indicates a relief request is pending.
* For *paper* claims folder processing, reverse-file the relief request in the center section of the paper claims folder.
 |
| 3 | * Flash the claims folder with an alert that the relief request must be processed as soon as the rating activity determines whether the beneficiary is competent.
* Take no further action until the rating activity makes its determination.
 |
| 4 | Did the rating activity determine the beneficiary is incompetent?* If *yes*, proceed to Step 16.
* If *no*, proceed to the next step.
 |
| 5 | Ensure the corresponding rating decision contains the following statement under *Reasons for Decision**We received your request for relief from the Department of Justice (DoJ) reporting requirements contained in the Brady Handgun Violence Prevention Act.**We have determined you can manage your VA benefits. Therefore, it is not necessary to provide you a decision on your request for relief.* |
| 6 | * Associate copies of all documentation related to the request with the beneficiary’s claims folder.
* If the beneficiary has a paper claims folder, file down the referenced documentation on the *right* flap of the claims folder.
* Disregard the remaining steps in this table.
 |
| 7 | Was the request for relief received along with a request for reconsideration of VA’s decision that the beneficiary is incompetent? * If *yes*, proceed to the next step.
* If *no*, proceed to Step 16.
 |
| 8 | Establish EP 020. |
| 9 | Undertake any development necessary to reconsider the beneficiary’s competency. |
| 10 | * For *eFolder* processing, add a note in VBMS that indicates a relief request is pending.
* For *paper* claims folder processing, reverse-file the relief request in the center section of the paper claims folder.
 |
| 11 | * Flash the claims folder with an alert that the relief request must be processed as soon as the rating activity determines whether the beneficiary is still incompetent.
* Take no further action until the rating activity makes its determination.
 |
| 12 | Did the rating activity determine the beneficiary is still incompetent?* If *yes*, proceed to Step 16.
* If *no*, proceed to the next step.
 |
| 13 | Ensure the corresponding rating decision contains the following statement under *Reasons for Decision**We received your request for relief from the Department of Justice (DoJ) reporting requirements contained in the Brady Handgun Violence Prevention Act.**We have determined you can manage your VA benefits. Therefore, it is not necessary to provide you a decision on your request for relief.**VA will inform DoJ of your changed status, and DoJ will remove your information from the National Instant Criminal Background Check System*. |
| 14 | * Associate copies of all documentation related to the request with the beneficiary’s claims folder.
* If the beneficiary has a paper claims folder, file down the referenced documentation on the *right* flap of the claims folder.
 |
| 15 | * E-mail notice of the rating decision under the subject heading *Competency Restored* to VAVBAWAS/CO/NICS ***within three days***, and
* Include the following information about the beneficiary in the body of the e-mail
* name
* claim number
* Social Security number (if different than the claim number)
* date of birth
* address
* telephone number, and
* date of the rating decision that determined the beneficiary is now competent.
* Disregard the remaining steps in this table.

***Note***: Upon receipt of the e-mail, the staff that monitors the NICS mailbox notifies the FBI that VA has determined the beneficiary is now competent. Within approximately two months of receiving notice, the FBI will remove the beneficiary’s name from NICS. |
| 16 | Establish EP 290, using the *NICS Relief Request* claim label. |
| 17 | * Send the beneficiary a letter containing
* the paragraphs shown in M21-1, Part III, Subpart v, 9.B.4.d, and
* the consent form displayed in M21-1, Part III, Subpart v, 9.B.4.e
* Allow 30 days for a response.
 |
| 18 | Did the beneficiary return the signed consent form?* If *yes*, proceed to Step 21.
* If *no*, proceed to the next step.
 |
| 19 | Deny the beneficiary’s request for relief, using the *NICS Relief Denial* letter in Personal Computer Generated Letters (PCGL). |
| 20 | * Associate copies of all documentation related to the request with the beneficiary’s claims folder.
* If the beneficiary has a paper claims folder, file down the referenced documentation on the *right* flap of the claims folder.
* Disregard the remaining steps in this table.
 |
| 21 | Did the beneficiary provide a statement from his/her primary mental-health physician that assesses the beneficiary’s mental health status over the last five years?* If *yes*, proceed to the next step.
* If *no*, return to Step 19.
 |
| 22 | Did the beneficiary provide evidence of his/her reputation?* If *yes*, proceed to the next step.
* If *no*, return to Step 19.
 |
| 23 | Does the evidence the beneficiary submitted meet the criteria specified in M21-1, Part III, Subpart v, 9.B.4.g?* If *yes*, proceed no further. Follow the instructions in M21-1, Part III, Subpart v, 9.B.4.g for deciding whether to grant the beneficiary’s request for relief.
* If *no*, proceed to the next step.
 |
| 24 | * Undertake development with the beneficiary and/or source(s) of the evidence to obtain any missing details or information.
* Once development is complete (or the time limit for a response has passed), follow the directions in the remaining blocks of this topic for deciding whether to grant the beneficiary’s request for relief.
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| d. Required Paragraphs for NICS Relief Development Letter | If development action is necessary under M21-1, Part III, Subpart v, 9.B.4.c to decide a request for relief from the Brady Act requirements, the paragraphs below must be included in a letter to the beneficiary. |

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| *We received your request for relief from the Department of Justice reporting requirements contained in 18 U.S.C. 922(d)(4) and (g)(4), The Brady Handgun Violence Prevention Act of 1993 (The Brady Act), Public Law 103-159. VA must report to the National Instant Criminal Background Check System (NICS) individuals whom VA determines to be unable to manage their own financial affairs.**Pursuant to 18 U.S.C. 925(c) and 101(c) (2) (A) of the NICS Improvements Amendment Act of 2007, Public Law 110-180, after receiving your request for relief, VA is obligated to decide whether you are eligible to receive relief from the reporting requirements of the Brady Act. This letter contains information about what we will do with your request and what you can do to help us decide it.****We may grant relief if clear and convincing evidence shows the circumstances regarding your disability and your record and reputation are such that you are not likely to act in a manner dangerous to yourself or others, and the granting of relief is not contrary to public safety and/or the public interest.*** *In order for us to process your request, you must submit the required evidence outlined below within 30 days from the date of this letter. If we do not receive all of the required evidence, your request for relief will be denied.****What Evidence Should You Provide?****To support your claim for relief, you must submit all of the following evidence:** *A statement from your primary mental-health physician assessing your mental health status over the last five years.*
* *Medical information addressing the extent of your mental health symptoms and whether or not you are likely to act in a manner dangerous to yourself or to the public.*
* *Evidence of your reputation, through character witness statements, testimony, or other character evidence. This may include statements from clergy, law enforcement officials, and/or persons that are aware of your reputation in the community and show that the granting of relief would not be contrary to the public interest. (Statements or records from law enforcement officials may be provided by the Federal Bureau of Investigation (FBI); the Bureau of Alcohol, Tobacco, and Firearms (ATF); the Attorney General; or other local law enforcement agencies.)*

*A signed consent form that is attached to this letter that will allow us to procure your criminal history.**You may also submit documentation that a court, board, or commission has found you competent.* |

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| e. Consent Form That Must Accompany the NICS Relief Development Letter | Attach the consent form shown below to the NICS relief development letter referenced in M21-1, Part III, Subpart v, 9.B.7.d. |

|  |
| --- |
| Untitled |

|  |  |
| --- | --- |
| f. General Information About Decisions to or Deny a Request for Relief | This block contains general information about decisions to grant or deny a request for relief from the requirements of the Brady Act.* Veterans Service Representatives (VSRs) are responsible for
* deciding whether to grant a request for relief, and
* following the instructions in M21-1, Part III, Subpart v, 1.A.3 for preparing a corresponding administrative decision titled “NICS Relief Request.”
* When deciding a request for relief, VSRs must consider not only the beneficiary’s desire to own firearms and/or ammunition but also the safety of the beneficiary and his/her family and community.
* SOO directors must approve administrative decisions on requests for relief after concurrence by the Veterans Service Center Manager (VSMC) or his/her designee.
* Decisions that deny relief are ***not*** subject to review by the Board of Veterans’ Appeals. They are, however, subject to review in Federal district court. For this reason, all such decisions must contain a detailed explanation of the basis for denial.
 |

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| g. Evidence VSRs Must Consider When Deciding a Request for Relief | VSRs ***must*** consider the evidence listed in the table below when deciding whether to grant a request for relief from the reporting requirements of the Brady Act.The evidence must meet the criteria shown in the right column of the table. If it does not, the VSR must undertake development with the beneficiary and/or source(s) of the evidence to obtain any missing details or information. |

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| Evidence | Criteria the Evidence Must Meet |
| a current statement from the beneficiary’s primary mental-health physician that assesses the beneficiary’s current and past mental health status | * A physician’s statement is considered “current” if he/she conducted the assessment on which the statement is based within the 90-day period that preceded the beneficiary’s request for relief.
* The assessment must cover the five-year period that immediately preceded the beneficiary’s request for relief.
* The physician must provide sufficient detail in his/her statement for VA to determine
* whether the beneficiary has ever been a danger to him/herself or others, and
* whether the beneficiary would be a danger to himself/herself or others if allowed to purchase and possess a firearm.
 |
| evidence regarding the beneficiary’s reputation | Statements regarding the beneficiary’s reputation from individuals other than the beneficiary must* be prepared by someone who
* has had recent and frequent contact with the beneficiary, and
* can credibly attest to the beneficiary’s reputation
* contain the name, address, and telephone number of the person providing the statement
* describe the person’s relationship with the beneficiary and the frequency of their contact, and
* indicate
* whether the beneficiary has a reputation for violence, and
* whether the beneficiary would be a danger to himself/herself or others if allowed to purchase and possess a firearm.
 |

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| h. Circumstances Under Which VSRs Must Deny a Request for Relief | VSRs ***must deny*** a request for relief from the requirements of the Brady Act if the evidence of record shows the beneficiary would be a danger to himself/herself or others if VA granted the request.The evidentiary standard for denying a request for relief is “clear and convincing.” This standard is met if ***any*** of the following is reflected in the beneficiary’s record* an assessment performed by the beneficiary’s primary mental-health physician that indicates the beneficiary would be a danger to him/herself or others if VA granted the request
* a diagnosis of mental disability with symptoms that include the presence of suicidal or homicidal ideations
* a diagnosis of substance abuse with symptoms that would render the beneficiary a danger to him/herself or others
* a reputation for violence, which a VSR has confirmed by personally contacting the person that cited the reputation
* conviction of a felony ***unless*** the beneficiary presents evidence that, notwithstanding the felony conviction, his/her right to possess a firearm has been restored
* conviction of a misdemeanor in the past five years for committing or attempting to commit a violent offense
* pending felony or misdemeanor charge for committing or attempting to commit a violent offense, or
* a charge for a violent offense that has not been brought to trial because a court, board, or commission has determined the beneficiary lacks the mental capacity to proceed with a trial ***unless***
* competency has been restored, or
* the beneficiary has been rehabilitated through any procedure available under the law.

***Note***: A “violent offense” includes, but is not limited to, menacing, stalking, assault, or battery. |

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| i. Process for Considering a Grant of Relief | If clear and convincing evidence to justify *denying* a request for relief of the requirements of the Brady Act (as discussed in M21-1, Part III, Subpart v, 9.B.4.h) does ***not*** exist, VSRs must consider *granting* the request by following the process described in the table below. ***Important***: The evidentiary standard for granting relief is also “clear and convincing.” To meet this standard, the evidence of record must affirmatively, substantially, and specifically show* the beneficiary is *not* likely to act in a manner dangerous to the public, and
* granting relief will not be contrary to the public interest.
 |

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| Stage | Description |
| 1 | The VSR refers the beneficiary’s case to the rating activity. |
| 2 | The rating activity reviews the ***medical evidence*** of record to determine whether it contains any indication that the beneficiary would be a danger to himself/herself or others if VA granted the request. |
| 3 | The rating activity* summarizes the evidence it reviewed and documents its conclusion on *VA Form 21-0961, Rating Decision/Administrative Decision/Formal Finding/Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC)*, and
* returns the case to the VSR.
 |
| 4 | * If the rating activity determined the beneficiary would be a danger to himself/herself or others if VA granted the request,
* the VSR prepares an administrative decision that denies the beneficiary’s request, and
* the process ends here.
* If the rating activity determines there is nothing in the medical evidence of record indicating the beneficiary would be a danger to himself/herself or others if VA granted the request, the VSR e-mails a request for a copy of the beneficiary’s criminal history report to the NICS point of contact (POC) at the NICS mailbox (VAVBAWAS/CO/NICS).

***Important***:* The e-mail must include
* an electronic copy of the signed consent form shown in M21-1, Part III, Subpart v, 9.B.4.e
* all evidence considered for the possible award of relief
* the beneficiary’s name and file number, and
* the date of the request for relief.
* The subject line of the e-mail must read *Criminal History Needed*.
* The NICS POC will then review the e-mail and the criminal history, and contact the requesting VSR if further review of evidence used in the decision-making is necessary.
 |
| 5 | Upon receipt of the criminal history report and Central Office concurrence of the award, the VSR returns the case to the rating activity for reevaluation of the medical evidence in light of the beneficiary’s criminal history.***Note***: Questions regarding the content of criminal history reports may be forwarded by e-mail to VAVBAWAS/CO/NICS. |
| 6 | The rating activity* summarizes the evidence it reviewed and documents its conclusion on *VA Form 21-0961*, and
* returns the case to the VSR.
 |
| 7 | The VSR* prepares an administrative decision that
* reflects the determination made by the rating activity
* cites all the evidence the VSR and rating activity considered, and
* follows the instructions in M21-1, Part III, Subpart v, 9.B.4.j.

***Important***: The SOO Director must sign off on any award of relief.  |

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| j. Actions to Take After Making a Decision on a Request for Relief | After making an administrative decision on a request for relief from the requirements of the Brady Act, VSRs must* clear the pending EP 290
* for eFolder processing, associate the decision and all evidence/information gathered in connection with it to the beneficiary’s eFolder
* for paper claims folder processing, file down the referenced documentation on the *right* flap of the claims folder, and
* follow the instructions in the table below.
 |

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| --- | --- |
| If relief is ... | Then the VSR must ... |
| denied  | notify the beneficiary, using the *NICS Relief Denial* letter in PCGL. |
| granted | * notify the beneficiary, using the *NICS Relief Grant* letter in PCGL
* e-mail notice of the grant under the subject heading *NICS Relief Grant* to VAVBAWAS/CO/NICS ***within three days***, and
* include the following information about the beneficiary in the body of the e-mail
* name
* claim number
* Social Security number (if different than the claim number)
* date of birth
* address
* telephone number, and
* date of the grant of relief.

***Note***: Upon receipt of the e-mail, the staff that monitors the NICS mailbox notifies the FBI that VA has granted a relief request. Within approximately two months of receiving notice, the FBI will remove the beneficiary’s name from NICS. |

#### 5. Processing Awards for SDP

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| Introduction | This topic contains information on processing awards of SDP, including* authorization of SDP by a fiduciary hub or the fiduciary activity
* reopened awards and SDP appointment
* processing SDP awards, and
* processing and controlling an SDP award for less than the full amount.
 |

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| Change Date | May 6, 2013 |

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| a. Authorization of SDP by a Fiduciary Hub or the Fiduciary Activity | Under [38 CFR 13.56](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4e9ab7a48091a7b4546eaa38137e4e9&node=se38.1.13_156&rgn=div8), a fiduciary hub may authorize SDP to * Veterans rated incompetent, or
* any other adult beneficiary for whom appointment of a fiduciary has been requested based on a VA rating or judicial determination of incompetency.

If the fiduciary hub concludes that such method of payment is consistent with the beneficiary’s capacity and affords a reasonable protection of the beneficiary’s interests, the fiduciary hub indicates its approval for SDP on *VA Form 21-555*. |

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| b. Reopened Awards and SDP Appointment | If an incompetent Veteran loses entitlement to benefits that VA had been paying directly to him/her based on an SDP certification, and VA later restores entitlement, do *not* resume the payment of benefits directly to the Veteran without concurrence from a fiduciary hub.If necessary, request a current *VA Form 21-555* by* preparing *VA Form 21-592* according to the instructions in M21-1, Part III, Subpart v, 9.A.1.c
* uploading the form into Virtual VA, and
* notifying the fiduciary hub of jurisdiction, through a Virtual VA-generated e-mail, that action is pending on the form.
 |

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| c. Processing SDP Awards | After a fiduciary hub certifies SDP to a Veteran or other adult beneficiary, it is responsible for * annotating the award document with the following notation, *VA Form 21-555 [date] supervised direct payment*, and
* performing the following actions on the 601 CHANGE OF FIDUCIARY screen in Share *if the beneficiary is a Veteran*
* updating the PRINCIPLE GUARDIANSHIP FOLDER LOC screen, and
* selecting the SUPERVISED DIRECT PAY radio button.
 |

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| d.  Processing and Controlling an SDP Award for Less Than the Full Amount | A fiduciary hub may recommend that an award for less than the full amount be released to the beneficiary for a limited period of time. This period of time is generally six months, but in no event should it exceed one year. The table below shows the steps the RO takes when processing an SDP award for less than the full amount.  |

|  |  |
| --- | --- |
| Step | Action |
| 1 | Make payments as certified on the *VA Form 21-555*. If the beneficiary is* a Veteran, surviving spouse, parent, or child, treat the amount not paid as an open-ended withholding, or
* an individual receiving benefits under an apportioned award, treat the amount not paid as a withholding on the *primary beneficiary’s* award.

***Note***: Enter the withholdings on the OTHER ADJUSTMENTS tab on the AWARD ADJUSTMENTS screen.***Reference***: For more information about processing withholdings, see the * [*VETSNET Awards User Guide*](http://vbaw.vba.va.gov/bl/21/Systems/awards.htm)*, or*
* [*VBMS-Awards User Guide*](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp).
 |
| 2 | Establish a diary that will expire six months after the date of the SDP certification. |
| 3 | At the end of the six-month period, request that the fiduciary hub furnish a certification in order to release the withheld amounts to either* the beneficiary, or
* a fiduciary.
 |
| 4 | Did the fiduciary hub certify an extension of the period for payment of less than the full amount not to exceed the one-year limitation?* If yes
* establish a diary that will expire 30 days before the expiration of the extended period, and
* repeat Step 3.
* If *no*,
* release any withheld funds, and
* resume payment of the full rate of benefit to the Veteran.
 |

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| ***Reference***: For more information about establishing diaries, see the* [*VBMS-Awards User Guide*](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp)
* [*VETSNET Awards Handbook*](http://vbaw.vba.va.gov/VetsNet/Awards_Docs/Awards%20User%20Guide.pdf), or
* [*Share User’s Guide*](http://css.vba.va.gov/SHARE/).
 |