



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

December 6, 2011

Director (00/21PF)
All VA Regional Offices

In Reply Refer To: 21PF
Fast Letter: 11-37

SUBJ: Procedures and Required Documentation for Fiduciary Selection Decisions, Notices of Disagreement Received Regarding Fiduciary Selection, and Fiduciary Notice of Disagreement Tracking Requirements

Purpose

This fast letter provides correspondence to be used when notifying a Veteran or other beneficiary (beneficiary) of Department of Veterans Affairs' (VA) selection of a fiduciary to manage his or her VA funds. It also includes letters to be used in the event a beneficiary files a Notice of Disagreement (NOD) regarding a fiduciary selection.

Background

The purpose of the VA Fiduciary Program is to protect the benefits paid to beneficiaries who are unable to manage their financial affairs. This protection most often includes the appointment or recognition of a fiduciary to manage the beneficiary's VA estate. On April 26, 2011, the Court of Appeals for Veterans Claims (CAVC) decided *Freeman v. Shinseki*, holding that VA's selection of a fiduciary is subject to appeal by the beneficiary to the Board of Veterans' Appeals and thereafter to the CAVC.

Procedures for Notifying a Beneficiary of Fiduciary Selection

Effective April 26, 2011, beneficiaries and their representatives, if any, must be notified in writing of our selection of a fiduciary to manage the beneficiary's VA benefits. This requirement pertains to all beneficiaries who are rated incompetent, including those paid by Supervised Direct Pay. The Fiduciary Activity making the selection is responsible for providing this notification within five working days of the selection. Notifications must be provided for all initial selections and successor selections made on or after April 26, 2011. All

notification letters for selections made on or after April 26, 2011, but prior to the date of this fast letter must be mailed within 60 days of the date of this fast letter.

To facilitate compliance with the CAVC's decision, the letter attached as *Enclosure A* must be used in every instance of selection of a fiduciary. The letter must be amended to include the information specific to each case as noted in red text. No other alterations may be made.

Every beneficiary and his or her representative, if any, must be sent the fiduciary's contact information and a copy of the fund usage agreement. These are required elements of the letter.

Procedures for Notification Upon Receipt of a Notice of Disagreement

Consistent with current practice, only the beneficiary has standing to appeal our selection of a fiduciary. However, certain persons or entities other than the beneficiary may file a NOD on the beneficiary's behalf. Persons granted legal authority to act on a beneficiary's behalf, such as a court-appointed guardian, conservator, committee, or trustee, may appeal the selection of a fiduciary on the beneficiary's behalf. Also, if a beneficiary chooses to appeal the selection of a fiduciary, an accredited service organization representative, agent, or attorney representing the beneficiary as indicated by VA Form 21-22, *Appointment of Veterans Service Organization as Claimant's Representative*, or VA Form 21-22a, *Appointment of Individual as Claimant's Representative*, may appeal the selection of a fiduciary on the beneficiary's behalf.

Receipt and control of NODs pertaining to the selection of a fiduciary will be the responsibility of the Regional Office of Jurisdiction (ROJ) where the Fiduciary Activity has selected the fiduciary. The Veterans Service Center Manager or Hub Manager at the ROJ will modify and use one of two sample letters (*Enclosure B* or *Enclosure C*) attached to this fast letter to provide notification to the beneficiary of receipt and/or acceptance of the NOD.

The three categories of acceptable NODs submitted by the beneficiary or legal representative that warrant sending one of the enclosed letters are:

1. Selections made prior to April 26, 2011
 - Process as any other NOD if received within one year of the date of selection. (Use *Enclosure B*.)
2. Selections made on or after April 26, 2011
 - Process as any other NOD if received within one year of the date of the notification letter. (Use *Enclosure B*.)
3. Selections for which notification was provided more than one year prior to receipt of NOD
 - Send acknowledgement letter and hold awaiting further guidance. (Use *Enclosure C*.)

For NODs in categories one and two, the attached letter, *Enclosure B*, must be used to notify the beneficiary of our receipt of the NOD. Those NODs received which fall into category three will require sending the letter labeled *Enclosure C*. Guidance regarding preparation of a statement of the case will be provided under separate cover.

NODs received from an individual or entity other than the beneficiary or his or her accredited or court appointed representative will not be accepted. In such cases, the person or entity submitting the correspondence will be provided the letter labeled *Enclosure D*. This letter acknowledges receipt, but states VA is not able to accept the document as an NOD as it was not submitted by the beneficiary or his or her legal representative.

Procedures for Tracking Receipt of a Notice of Disagreement

Stations are required to compile a list of all NODs received regarding fiduciary cases on the enclosed NOD Tracker, *Enclosure E*. There is no current requirement to provide this listing on a recurring basis; however, the information must be made available upon request of Pension and Fiduciary Service and will be reviewed during site surveys.

Manual Changes

Pension and Fiduciary Service will update M21-1MR as needed consistent with this fast letter.

Questions

Questions regarding this letter may be submitted to [REDACTED]

/S/

[REDACTED]
Director
Pension and Fiduciary Service

Enclosures