



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

March 16, 2012

Director (00/21PF)
All VA Regional Offices and Centers

In Reply Refer To: 21F1
Fast Letter 12-10

ATTN: All Veterans Service Center and Fiduciary Hub Personnel

SUBJ: Limitations on Fiduciary Commissions

Purpose

This fast letter clarifies VA policy regarding commissions paid to VA-appointed fiduciaries. Under VA's interpretation of current law, a fiduciary activity may authorize a fiduciary to deduct a reasonable commission from a beneficiary's recurring monthly VA benefit payments. The commission authorized for any year cannot exceed 4 percent of the recurring monthly benefits paid on behalf of the beneficiary to the fiduciary during the year. Except as authorized by this letter, fiduciary commissions will not be computed based upon retroactive, lump-sum, or other one-time benefit payments.

Background

Under 38 U.S.C. § 5502(a)(2), "[i]n a case in which the Secretary [of Veterans Affairs] determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent." VA implemented this authority in 38 C.F.R. 13.64, which generally tracks section 5502 but does not provide a complete interpretation of the limitation on fiduciary commissions imposed by Congress. Specifically, it does not address whether fiduciaries may collect a commission from retroactive, lump-sum, or other one-time benefit awards.

The Veterans Benefits Administration's Adjudication Procedures Manual (M21-1MR, Part XI, Chapter 2, Section E, 29) cites section 13.64 and correctly states that a commission "may not exceed 4 percent of the monetary benefits paid by VA on behalf of the beneficiary to the fiduciary during a year." However, it also indicates that it is VA's policy to negotiate the smallest possible commission in each case because commissions may be deducted from a large retroactive benefit payment. It goes on to

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state that the calculation of a commission "may be based on lump sum, retroactive adjustment, or other one-time payments, in addition to regular recurring payments." To the extent these manual provisions can be construed as VA's interpretation of section 5502(a)(2), VA no longer adheres to that interpretation.

Congress intended the 4-percent ceiling to permit a modest annual commission to be paid on a periodic basis from an ongoing award and that the commission would bear a relation to the amount of benefits being received by the fiduciary pursuant to the award. A commission computed on the basis of a retroactive award would bear little relation to the "services rendered" by a fiduciary. Accordingly, VA interprets section 5502(a)(2) to mean that fiduciary commissions must be computed based only upon the recurring monthly benefit payments made to a fiduciary on behalf of a beneficiary. The Pension and Fiduciary Service will modify the manual to prohibit computation of commissions based upon retroactive, lump-sum, or other one-time benefit payments.

Policy Regarding Retroactive, Lump-sum, or Other One-Time Benefit Payments

VA fiduciary activities will not authorize payment of commissions based upon retroactive, lump-sum, or other one-time benefit payments disbursed to a fiduciary after the date of this fast letter.

An exception may apply when a fiduciary continues to render necessary fiduciary services to a beneficiary during a period when a running award is temporarily withheld or suspended. In such cases, the fiduciary may receive a commission based upon a retroactive payment of the withheld or suspended amount if periodic benefit payments are resumed. Decisions regarding the authorization of commissions under these circumstances will be made only upon the approval of the Pension and Fiduciary Service. Requests for approval may be submitted in memorandum form to

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Notification to Fiduciaries

Fiduciary activities must provide written notification regarding the limitations on commissions to all fiduciaries appointed after the date of this fast letter. Include the following paragraph in each notification letter sent to individuals appointed to act in a fiduciary capacity and who will be authorized a commission.

Pursuant to 38 U.S.C. § 5502, you may receive a fiduciary commission of X percent for serving Mx. XXXXX in a fiduciary capacity. You may deduct this amount from the recurring monthly VA benefits paid to you on behalf of Mx. XXXXXX. You may not compute your commission based upon any retroactive, lump sum, or other one-time payment made to you by VA on behalf of Mx. XXXXX.

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The Pension and Fiduciary Service will separately develop procedures for automating notification to current fiduciaries regarding this change in policy.

Questions

Submit questions regarding this fast letter to [REDACTED] .

/s/

David R. McLenachen
Director
Pension and Fiduciary Service