

## EXHIBIT A to Shorette Brief

March 5, 2021

Karen R. Shorette  
[REDACTED]  
[REDACTED]

Secretary Denis McDonough  
Department of Veterans Affairs  
810 Vermont Ave., NW  
Washington, DC 20420

RE: Command Chief Master Sergeant (Air Force Retired) Charles R. Shorette, [REDACTED]

Dear Secretary McDonough,

I am appealing to you based on what you said in your February 9 blog that you will be a “fierce, staunch advocate for veterans and their families,” because I can’t find anyone else in the VA who shares your concern.

Please note that I have already tried (for the past 2 ½ years) to resolve this issue at the local and regional levels. I also contacted the White House VA Hotline on March 20, 2020, and again on April 20, 2020 (Case Nos. 02547538 and 2683125). Their original email said they would provide a response within approximately 30 days, but it has been almost a year and they have never contacted me with a resolution (*see Attachment 4, email from WH Hotline*).

My husband has been an inpatient at the Northern Indiana VA Healthcare System, Marion branch, since April 2008. He has Primary Progressive Multiple Sclerosis and dementia, among other issues (100 percent service-connected). I have been my husband’s court-appointed legal guardian since February 2009. I also have been the payee for his VA compensation since December 2008 (until the VA suddenly and *without cause* removed me in April 2018).

The Department of Veterans Affairs allowed a medical staff member, Denise Morino, to take retribution against me because she was mad that my sons and I had disagreed with an action they wanted to take regarding my husband’s daily activities. (In a teleconference my son and I had with the VA staff in 2017, Ms. Morino threatened to go through the VA “channels” to do whatever was necessary to implement the actions she wanted to take.) As retribution, she filed a complaint with the VA stating that I had misused my husband’s funds. However, what she did not know was that in July 2010, the VA had directed me to use those funds for monthly household expenses (*see Attachment 1*). And rather than do a complete investigation, where they would have discovered the documentation for this direction, the VA chose to believe her false accusations.

After two years of trying to prove my innocence to the VA, they (the VA) finally provided their own analysis in a letter dated March 13, 2020, ultimately showing that I had done nothing wrong (*see Attachment 5 and the note in this paragraph*), but they still have not reinstated me as payee or returned to me the 3 years of compensation that they have been withholding (approximately \$123,000 at this point), nor have they responded to my attorney’s last correspondence with them

(see Attachment 6), even though we have verification that they received said correspondence in June 2020 (almost a year ago). [Note: In their final analysis, they did say that I misused \$30,306.17, but that was because they were not taking into consideration the more than \$60,000 of VA funds that were – and still are – in the bank in my husband's VA account (see Attachment 7). I subsequently sent them proof (in June 2020) of the existence of those funds, but they have not responded.]

The facts in a nutshell:

1. A VA medical staff member at the Marion, Indiana, VA facility took retribution against me by filing a formal complaint stating that I had misused my husband's VA compensation.
2. Without a full investigation, the VA removed me as payee for my husband's VA compensation in April 2018 (see Attachment 2).
3. The VA based their decision to remove me as payee solely on the FALSE accusations of the staff member (see Attachment 3).
4. In July 2010, the VA had directed that the majority of the VA funds were to be used for monthly household expenses (see Attachment 1).
5. I have provided the VA with documentation proving there was no misuse of my husband's funds. However, they have not dismissed the case and reinstated me as payee. Nor have they returned to me the approximately \$123,000 that they approved in July 2010 for use as monthly expenses.
6. The new payee has never provided me with a monthly accounting, so I have no way of knowing if he is misusing the funds or not. It's a real concern because I have a letter that he sent to my husband stating that he would allow my husband up to \$1,000 a month for miscellaneous expenditures, even though my husband is in a locked-down dementia unit and the VA had directed that my husband receive only \$100 a month. So the new payee is not abiding by the VA's original direction for the allocation of my husband's VA compensation by providing me with the funds for the monthly household expenses, nor has he ever provided me with a periodic accounting of the funds.
7. My attorney took this case to the Madison County (Indiana) court, where the legal guardianship is held, and the judge ruled that I should be reinstated. No one from the VA even showed up to the proceedings. However, the VA subsequently informed us that the county court has no jurisdiction, and that we needed to take it to the federal court. So we did that, where a judge told us that she had no jurisdiction either. I have proven my case to the VA, but no one will acknowledge that they made a huge mistake in removing me as payee and withholding the funds.

I have documentation for everything I have done over the past 2½ years to try to prove my innocence. The bottom line is that a lowly medical staff member was allowed to take retribution against me.

I need the funds that the VA has been withholding since April 2018. Since I have proven that I did not misuse the VA funds, I'm hoping that you can help me get reinstated as payee and order that those funds be turned over to me in their entirety immediately.

I also believe that Ms. Morino should be fired for her role in this fiasco. The patients' rights handbook specifically states that the patient has the right to make his/her own decisions

regarding their care, without fear of retribution. Ms. Morino has caused untold mental/emotional stress, as I have awakened in the middle of every night for the past 2 ½ years worrying about this.

I can provide any other documentation that you need, although I believe that you should already have access to the majority of it (VA file number [REDACTED]).

Please feel free to call me at any time. Thank you.

Respectfully,

Karen R. Shorette

[REDACTED]  
[REDACTED]  
[REDACTED]

Enc.

Attachment 1, VA letter directing expenditures for funds

Attachment 2, VA letter naming new payee

Attachment 3, VA letter stating false accusations by VA staff member

Attachment 4, White House VA Hotline email

Attachment 5, VA analysis

Attachment 6, Attorney Letter to VA

Attachment 7, Bank Statement

# EXHIBIT B to Shorette Brief

OMB Control No. 2900-0319  
Respondent Burden: 5 Minutes



Department of Veterans Affairs

## FIDUCIARY AGREEMENT

Privacy Act Notice: The VA will not disclose information collected on the form to any source other than what has been authorized under the Privacy Act of 1974 or Title 5, Code of Federal Regulations 1.576 for routine uses (i.e. request from a Congressman on behalf of a beneficiary) as identified in the VA system of records, 37VA27, VA Supervised Fiduciary/Beneficiary and General Investigative Records, and published in the Federal Register. Your obligation to respond is mandatory. Giving your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by a Federal Statute of law in effect prior to January 1, 1975 and still in effect.

Respondent Burden: We need this information to appoint a fiduciary for the beneficiary's VA benefits. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at [www.whitehouse.gov/library/omb/OMBINVC.html#VA](http://www.whitehouse.gov/library/omb/OMBINVC.html#VA). If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

1. ADDRESS OF VA OFFICE (complete mailing address)

VA REGIONAL OFFICE  
PO Box 1437  
St Petersburg AL 33708

2. VA CONTACT/PHONE NUMBER

X 5838  
1-800-827-1000

3. NAME OF VETERAN (First - middle - last)

Charles R. Shorette

4. VA FILE NUMBER

5. SOCIAL SECURITY NUMBER

6. NAME(S) OF B

A.

D.

B.

E.

C.

F.

7. I, THE UNDERSIGNED FIDUCIARY, HEREBY AGREE TO SERVE AS:

☐ LEGAL CUSTODIAN

☐ CUSTODIAN-IN-FACT

☒ SPOUSE PAYEE  
(For veterans only)

☐ INSTITUTIONAL PAYEES  
(For veterans only)

and agree to use all beneficiary funds paid by the Department of Veterans Affairs (VA) for the benefit of the beneficiary(ies) listed above. I agree to invest any surplus funds as shown below in Item 8, or as may later be required by VA.

I AGREE TO SAVE THE FOLLOWING AMOUNTS:

8A. LUMP SUM AMOUNT

\$ 00

8B. MONTHLY AMOUNT

\$ 3,287.00

8C. EFFECTIVE DATE

12/01/08

I agree to release all beneficiary funds, U.S. savings bonds, and other securities under my control as a VA fiduciary upon the termination of my trust as directed by VA. If a beneficiary is a minor, I will turn over to the beneficiary all of his or her remaining VA-derived funds, U.S. savings bonds, or other securities at the time the beneficiary reaches the age of majority.

I understand that I ☐ am ☒ am not required to submit periodic accountings to VA of all the beneficiary's funds I receive and use. If I am required to account, a VA representative has explained to me the frequency, scope and format of the accounting.

I am aware of the information on the back of this agreement and will comply with the requirements stated.

I understand that this agreement may be altered only with VA approval.

I CERTIFY THAT if and while I am authorized to take a commission, I am not receiving and will not receive any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the above named beneficiary(ies).

9A. SIGNATURE OF FIDUCIARY

Karen R. Shorette

9B. SOCIAL SECURITY NUMBER OF FIDUCIARY

9C. DATE SIGNED

12/01/08

9D. NAME OF FIDUCIARY (Type or print)

Karen R. Shorette

9E. TITLE OF FIDUCIARY

Spouse Payee

10A. SIGNATURE OF FIELD EXAMINER

K. Seel

10B. DATE SIGNED

12/01/08

NOTE: This agreement supersedes any existing fiduciary agreement involving the beneficiary(ies).



## INFORMATION FOR FIDUCIARY

(Note: "Beneficiary" means the veteran or other VA beneficiary(ies))

**AUTHORITY.** Under authority given by Congress in 38 U.S.C. §5502(a)(1), VA recognizes you as fiduciary (payee) to receive and manage the VA funds of the beneficiary(ies) named on the front of this agreement. This agreement supersedes any existing VA fiduciary arrangement involving the beneficiary.

**RESTRICTED USE OF VA FUNDS.** The VA-derived funds you receive under this agreement are not for your personal use. You will receive these funds as a federal fiduciary, which means that you use the funds exclusively for the beneficiary and his or her VA-recognized dependents, if any, and as specifically authorized by VA. You may not mix the beneficiary's funds with your own personal funds.

>500. **APPROVAL FOR USE OF VA FUNDS.** VA must approve any use of a beneficiary's VA funds. You agree to use these funds only as specifically authorized by VA. You agree to request VA approval for all spending from these funds, unless VA has previously authorized the expenditures. Any questions regarding authorized expenditures should be addressed to the Fiduciary Activity at the address and phone number on the front of this form.

FDIC **AUTHORIZED INVESTMENTS FOR SURPLUS VA FUNDS.** A legal custodian may only place VA funds not needed by the beneficiary in specific investments. These funds may be placed in U.S. savings bonds or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Excess funds in a checking account should be placed in a higher earning account; for example, a savings account. Legal custodians may also use a beneficiary's surplus VA funds for purchase of a pre-need burial plan or burial insurance on behalf of the beneficiary.

• **REGISTRATION OF ACCOUNTS AND INVESTMENTS.** Fund accounts must be set up to show proper ownership as follows: "(Beneficiary's Name), by (Your Name), Federal fiduciary. Savings bonds must show proper ownership and existence of the fiduciary relationship, as follows: "(Beneficiary's Name), (Social Security No.), under custodianship by designation of the Department of Veterans Affairs." The bonds may not be cashed without VA approval.

N/A. **ACCOUNTINGS.** You must keep complete and accurate records of income received, expenditures, savings and investments. Information on the front of this agreement shows whether or not you are required by VA to submit periodic accountings. When accountings are required, you should submit them on the form that VA will give you. Although you may not be required now to submit accountings, VA may require accountings later. If so, VA will inform you.

N/A. **CERTIFICATES OF BALANCE ON DEPOSIT AND VERIFICATION.** When accountings are required and there are beneficiary funds on deposit, you must also submit a Certificate of Balance on Deposit with the accountings. VA will give you that form which also includes an authorization for you to allow VA to verify deposits directly with the financial institution, if necessary.

N/A. **BOND AND WITHDRAWAL AGREEMENTS.** VA will tell you if you must purchase a corporate surety bond to protect the beneficiary's funds or sign a withdrawal agreement to provide additional protection of the beneficiary's VA funds.

N/A. **COMMISSIONS/FEES.** You may not take commissions or fees from the beneficiary's VA funds for your fiduciary services unless specifically authorized by VA.

— **TAX EXEMPTION AND CLAIMS OF CREDITORS.** By Federal law, a beneficiary's VA income may not be taxed. As fiduciary, you must protect the beneficiary's funds from the claims of creditors. A creditor may not legally take the beneficiary's funds from you. Any questions regarding these issues should be addressed to the VA office shown on the front of this agreement.

— **NOTIFICATION OF CHANGES.** You must inform VA when the beneficiary leaves your custody or has a change of address. You must also inform VA of any change in the beneficiary's status that may affect entitlement. Examples are hospitalization, employment, imprisonment, marriage, separation, divorce, gain or loss of dependents, and death.

— **PROTECTION OF THE BENEFICIARY.** VA will take any necessary action to protect the interest of the beneficiary including, but not limited to, removing you as payee. VA may take legal action to recover funds from you that have been misused.

**QUESTIONS.** When you have questions about your responsibilities as payee, please contact the VA office shown on the front of this agreement.

KEITH BELL 904- [REDACTED]

## GENERAL DURABLE POWER OF ATTORNEY

## 1

CBS (B) **Tangible personal property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are recognized under the Uniform Commercial Code as adopted at that time under the laws of the State of Florida or any applicable state, or otherwise hypothecate (pledge), and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper.

CBS (C) **Stock and bond transactions.** To buy and sell all types of securities (which term includes, without limitation, stocks, bonds, mutual funds and all other types of investment securities and financial instruments); collect, hold and safe keep all dividends, interest, earnings, proceeds of sale, distributions, shares, certificates and other evidences of ownership paid or distributed with respect to securities; exercise all voting rights with respect to securities in person or by proxy, enter into voting trusts and consent to limitations on the right to vote; and, in general, exercise all powers with respect to securities which the principal could if present and under no disability.

CBS (D) **Commodity and option transactions.** To buy, sell, exchange, assign, convey, settle and exercise commodities futures contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions; establish or continue option accounts for the principal with any securities or futures broker; and, in general, exercise all powers with respect to commodities and options which the principal could if present and under no disability.

CBS (E) **Banking and other financial institution transactions.** To make, receive, sign, endorse, execute, acknowledge, deliver and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loans, credit unions, or other institutions or associations. To pay all sums of money, at any time or times, that may hereafter be owing by me upon any account, bill of exchange, check, draft, purchase, contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered by me or for me in my name, by my Agent. To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments from time to time in whole or in part. To have free access at any time or times to any safe deposit box or vault to which I might have access.

CBS (F) **Business operating transactions.** To organize or continue and conduct any business which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation) in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the principal could if present and under no disability.

CBS (G) **Insurance and annuity transactions.** To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts.

CBS (H) **Estate, trust, and other beneficiary transactions.** To accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control; establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could exercise if present and under no disability; provided, however, that the Agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the Agent unless specific authority to that end is given.

CBS (I) **Claims and litigation.** To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper.

CBS (J) **Personal and family maintenance.** To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper.

CBS (K) **Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or military service.** To prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service, and governmental benefits, including but not limited to Medicare and Medicaid, which the principal could exercise if present and under no disability.

CBS (L) **Retirement plan transactions.** To contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the principal could if present and under no disability.

CBS (M) **Tax matters.** To prepare, to make elections, to execute and to file all tax, social security, unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which I am or may be liable.

CBS (N) **Gifts.** To make gifts to my spouse, children and more remote descendants, and parents, not to exceed in the aggregate \$10,000 to each of such persons in any year.



**SPECIAL INSTRUCTIONS:**

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

No limitations.

THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

THIS POWER OF ATTORNEY SHALL BE CONSTRUED AS A GENERAL DURABLE POWER OF ATTORNEY AND SHALL CONTINUE TO BE EFFECTIVE EVEN IF I BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

(YOUR AGENT WILL HAVE AUTHORITY TO EMPLOY OTHER PERSONS AS NECESSARY TO ENABLE THE AGENT TO PROPERLY EXERCISE THE POWERS GRANTED IN THIS FORM, BUT YOUR AGENT WILL HAVE TO MAKE ALL DISCRETIONARY DECISIONS. IF YOU WANT TO GIVE YOUR AGENT THE RIGHT TO DELEGATE DISCRETIONARY DECISION-MAKING POWERS TO OTHERS, YOU SHOULD KEEP THE NEXT SENTENCE, AND OTHERWISE IT SHOULD BE STRICKEN.)

**Authority to Delegate.** My Agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my Agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

(YOUR AGENT WILL BE ENTITLED TO REIMBURSEMENT FOR ALL REASONABLE EXPENSES INCURRED IN ACTING UNDER THIS POWER OF ATTORNEY. STRIKE OUT THE NEXT SENTENCE IF YOU DO NOT WANT YOUR AGENT TO ALSO BE ENTITLED TO REASONABLE COMPENSATION FOR SERVICES AS AGENT.)

**Right to Compensation.** My Agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

(IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAME(S) AND ADDRESS (ES) OF SUCH SUCCESSOR(S) IN THE FOLLOWING PARAGRAPH.)

**Successor Agent.** If any Agent named by me shall die, become incompetent, resign or refuse to accept the office of Agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such Agent:

Charles R. Shorette II  
Brian E. Shorette  
should act in unison if possible

**Choice of Law.** THIS POWER OF ATTORNEY WILL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD FOR CONFLICTS OF LAWS PRINCIPLES. IT WAS EXECUTED IN THE STATE OF FLORIDA AND IS INTENDED TO BE VALID IN ALL JURISDICTIONS OF THE UNITED STATES OF AMERICA AND ALL FOREIGN NATIONS.

I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my Agent.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this 4 day of August, 2005

  
(Your Signature)

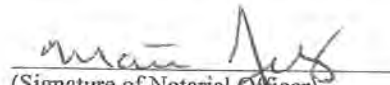
  
(Your Social Security Number)

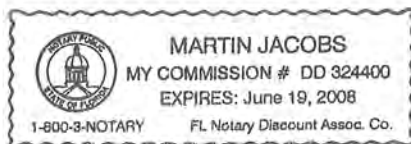
### CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF FLORIDA  
COUNTY OF LEON

This document was acknowledged before me on 8/4/05 [Date] by Charles R. Shorette [name of principal].

[Notary Seal, if any]:

  
(Signature of Notarial Officer)



Notary Public for the State of FLORIDA

My commission expires: 6/19/08

### ACKNOWLEDGMENT OF AGENT

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Charles R. Shorette II  
(Typed or Printed Name of Agent)

  
(Signature of Agent)

## **EXHIBIT D to Shorette Brief**

### **(DISCLOSURE STATEMENT)**

#### **THE MEDICAL POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT.  
BEFORE SIGNING THIS DOCUMENT,  
YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnoses, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider, the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and

institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. An alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS  
IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT  
WITNESSES.**

**THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

1. The person you have designated as your agent;
2. A person related to you by blood or marriage;
3. A person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
4. Your attending physician;
5. An employee of your attending physician;
6. An employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
7. A person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.



## MEDICAL POWER OF ATTORNEY

### DESIGNATION OF HEALTH CARE AGENT:

I, Charles R. Shorette, [REDACTED] Tallahassee, Florida 32317  
(insert your name and address)

appoint:

Name: Karen R. Shorette

Address: [REDACTED] Tallahassee, Florida 32317

Phone: [REDACTED]

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. My agent also has the authority to talk with health care personnel, get information and sign form necessary to carry out those decisions. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

### LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

1. N/A
2. N/A
3. N/A
4. N/A
5. N/A

### DESIGNATION OF ALTERNATE AGENT:

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

#### A. First Alternate Agent

Name: Charles R. Shorette II

Address: [REDACTED] Tallahassee, Florida 32317

Phone: [REDACTED]

B. Second Alternate Agent:

Name: Brian E. Shorette

Address: [REDACTED] Tallahassee, FL 32317

Phone: [REDACTED]

The original of this document is kept at: [REDACTED] Tallahassee, FL 32317

The following individuals or institutions have signed copies:

Name: Dr. Michael Putland, Medical Group of North Florida

Address: [REDACTED] Tallahassee, Florida 32308

Phone: [REDACTED]

Name: Charles R. Shorette II

Address: [REDACTED] Tallahassee, Florida 32317

Phone: [REDACTED]

#### DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: N/A

#### PRIOR DESIGNATIONS REVOKED

I revoke any prior medical power of attorney.

#### ACKNOWLEDGMENT OF DISCLOSURE STATEMENT

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

I sign my name to this medical power of attorney on the 4<sup>th</sup> day

of August 2005 (month/year)

at Tallahassee, Florida (city and state)

Signature: Charles R. Shorette

Printed Name: Charles R. Shorette

**STATEMENT OF WITNESSES:**

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

**SIGNATURE OF FIRST WITNESS:**

Signature: Martin Jacobs  
Printed name: Martin Jacobs Date: 8/4/05  
Address: TALL, FL. 32309

**SIGNATURE OF SECOND WITNESS:**

Signature: George J. Trammell  
Printed name: George J. Trammell Date: 08.04.05  
Address: Tallahassee, FL. 32317

EXHIBIT E to Shorette Brief

Guardianship of Charles R. Shorette  
48D01 1105 GU 279

**LETTERS OF GUARDIANSHIP**

CAUSE NO. 48D01 1105 GU 279

STATE OF INDIANA

SS:

MADISON COUNTY

**TO WHOM THESE PRESENTS SHALL COME, GREETINGS:**

I, Darlene Likens, Clerk of the Circuit and Superior Courts of Madison County, Indiana,  
certify that

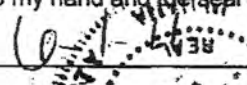

Karen R. Shorette, Brian E. Shorette and Charles R. Shorette II

have been appointed Co-Guardians of the Person and Estate of

Charles R. Shorette

and have qualified as such.

WITNESS my hand and the seal of the Court this

  
\_\_\_\_\_  
/s/ Darlene Likens  
Clerk of Madison County, Indiana  


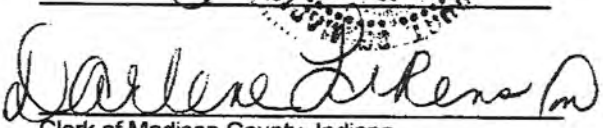
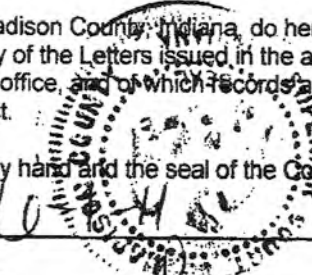
STATE OF INDIANA

SS:

MADISON COUNTY

I, Darlene Likens, Clerk of the Circuit and Superior Courts of Madison County, Indiana, do hereby  
certify that the above and foregoing is a true, correct, and complete copy of the Letters issued in the above  
named Guardianship, as the same appears of records and on file in my office, and of which records and files  
I am the present legal custodian. Such Letters are in full force and effect.

WITNESS my hand and the seal of the Court this

  
\_\_\_\_\_  
Darlene Likens  
Clerk of Madison County, Indiana  




## EXHIBIT F to Shorette Brief

**krshorette@gmail.com**

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**From:** <krshorett[REDACTED]>  
**Date:** Wednesday, March 29, 2017 11:34 PM  
**To:** "Emily Dellinger" <Emily.Dellinger@va.gov>  
**Subject:** Chuck Shorette

Hi Emily,

Sorry it has taken me so long to get back to you. There's just so much to do between trying to pull this house together and taking care of my grandson.

In reference to Chuck being allowed out of the unit:

As we said in the teleconference, we don't have a problem with Chuck being allowed to go other places INSIDE the building but we ARE concerned about what will happen once he goes outside. However, if you are going to do trial runs with him being escorted for a few times, we are ok with that, with the understanding that if at any time he seems confused or unaware of his surroundings, you will take that into consideration when making your decision about whether or not he should be allowed out of the unit on his own.

Our thoughts are still that he is incapable of making any kind of rational decisions regarding his own well-being, but as long as you are willing to take responsibility for whatever might happen, we will not try to prevent it. We want the best quality of life for him that's medically possible, but keep in mind that he generally has no desire to expend any energy to explore his surroundings or talk to any of his peers, and that has not changed for the past 8 years. The MS has changed his personality in that respect. So while it might seem to you that he could be happier, he truly doesn't know the difference.

Also, since your staff threatened to call in your ethics committee to override any decision we might make, I contacted my attorney and he assured me that although our decision may conflict with your medical opinion and/or any ethical issues you might feel need to be brought before your committee, as Chuck's legal guardians we are the ultimate authority regarding his healthcare. That being said, we want to work with you to ensure that Chuck has the best quality of life possible while maintaining his safety.

In reference to giving Chuck more money every week:

I prefer that his weekly allowance remain at \$5.00, but if he would like to order pizza now and then, he could get the money from Janet immediately prior to the pizza being delivered. If that means he can only order pizza during business hours, I'm sure he would be fine with that. The guidelines for the state-run VA facility here in Florida state that their patients get an allowance of \$35 a month, recognizing that dementia patients don't have a need for, nor can they handle, more money than that.

Speaking of VA facilities down here:

We have decided to go with the Lake City facility, so could you possibly find out what we need to do to have him transferred there?

If you have any questions, please feel free to call any time. Thanks.

Karen Shorette

6/4/2019

## EXHIBIT G to Shorette Brief



### DEPARTMENT OF VETERANS AFFAIRS

COLUMBIA FIDUCIARY HUB

PO BOX 9367

COLUMBIA, SOUTH CAROLINA 29209

In reply refer to: 319/23/117

May 16, 2019

SHORETTE, CHARLES R.

**Karen Shorette**

**Previous Fiduciary For Charles R. Shorette**

Dear Ms. Shorette:

We received an allegation from the Columbia Fiduciary Hub involving the misuse of Mr. Charles R. Shorette VA benefit payments. We have investigated the allegation and made a determination.

As the fiduciary, we are required to inform you of this determination. This letter tells you what we decided. It includes a copy of our misuse determination that gives the evidence used and reasons for our decision. We have also included information about whom to contact if you have questions or need assistance.

#### **What We Decided**

We have determined that you did misuse Mr. Charles R. Shorette's VA benefit payments.

#### **How We Made Our Decision**

Please see the attached formal Misuse Determination explaining how we made our decision.

#### **Request For Reconsideration-What You Should Do**

If you do not agree with our determination, you should write and tell us why. Requests for reconsideration must be received by the Fiduciary Hub within 30 days of the date of this notification. Requests received 30 days or more after the date of this notification will not be considered. Please note any request for reconsideration of a misuse determination must contain new and material evidence not previously submitted (i.e. receipts, check images, bank statements). Duplicate information previously submitted will not be considered again.

**If You Have Questions or Need Assistance**

If you have any questions, you may contact us by telephone, e-mail, or letter.

<b>If you</b>	<b>Here is what to do.</b>
Telephone	Call us at 1-888-407-0144. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
Use the Internet	Send electronic inquiries through the Internet at <a href="https://iris.va.gov">https://iris.va.gov</a> .
Write	Put your full name and the beneficiary's VA file number on the letter. Please send all correspondence to the address at the top of this letter.

In all cases, be sure to refer to the beneficiary's VA file number at the top of this letter.

Sincerely yours,

**RO DIRECTOR  
VA REGIONAL OFFICE**

E-mail us at <https://iris.va.gov> Enclosure(s):  
Misuse Determination



Columbia VARO Fiduciary Hub  
Columbia, SC

SHORETTE, CHARLES R.  
C [REDACTED]

### **Misuse Determination**

**Allegation(s):** The Department of Veterans Affairs (VA), Indianapolis Fiduciary Hub (IFH) established an allegation based on a report that the Veteran's spouse is misusing the VA funds for herself.

**Authority:** Title 38 U.S.C. 6106

### **Identifying Information:**

**Veteran's Name:** Charles R. Shorette

**Beneficiary's Name:** Charles R. Shorette

**Fiduciary's Name:** Karen R. Shorette

**Social Security Number/Tax ID:** [REDACTED]

**Type of fiduciary:** Spouse Payee

**Number of beneficiaries served:** 1

### **Evidence:**

Congressional Correspondence (04/29/2019, 03/04/2019, 02/25/2019, 02/12/2019)

VA Form 3537b Report of Field Examination (03/11/2019)

VA Form 27-0820 Report of General Information (Karen Shorette) - (11/16/2018)

Notification Letter (Benefits Resumed) – (11/02/2018)

VA Form 21-555 Certificate of Legal Capacity (Successor) – (11/01/2018)

VA Form 21-4716a Adult Beneficiary Field Examination (Successor) – (11/01/2018)

VA Form 21-4703 Federal Fiduciary Agreement (Successor David Payne) – (10/23/2018)

Award Print (Benefits Suspended) – (03/28/2018)

VA Form 3537a Field Examination Request (02/13/2018)

Misuse Allegation Memorandum (02/13/2018)

Email Correspondence Request To Suspend Benefits – (01/25/2018)

VA Form 27-0820 Report of General Information (Denise Marino)– (10/18/2018, 01/23/2018)

VA 21-555 Certificate of Legal Capacity: (12/17/2008)

VA 21-4703 Federal Fiduciary Agreement (12/17/2008)

VA Form 21-4716a Adult Beneficiary Field Examination – (10/16/2008)

**Facts:** On 10/16/2018 Mrs. Karen R. Shorette, was certified as the beneficiary's Spouse Payee. Ms. Shorette was responsible for managing the beneficiary's VA funds as outlined on the Fiduciary Agreement(s).



This case is classified as a Congressional as an inquiry from Congresswoman Susan Brooks (Indiana) was received and is being monitored by Marguerite Paswater (VBAINDY)

On 01/23/2018, a misuse allegation was created by the Indianapolis Fiduciary Hub (IFH) due to a call received from, Ms. Denese Marino, Psychologist, with the Marion Veterans Administration Medical Center (VAMC). Ms. Marino stated the Veteran currently resides at the (VAMC) Lock Down Dementia Unit in Marino, Indiana. The fiduciary, Mrs. Karen Shorette, Veteran's wife lives in Pace Florida and the Veteran's VA benefit are being directly deposited into her bank account. Ms. Marino reported that the Spouse Payee releases only \$5 a week to the Veteran. She asked Mrs. Shorette to release more than \$5 to the Veteran so he can live comfortably, but Mrs. Shorette adamantly refused. Ms. Marino also stated that there is evidence that Mrs. Shorette has requested to receive special accommodations and equipment by claiming the Veteran lives with her.

On 01/22/2019, 01/18/2019, 01/14/2019, the Field Examiner (FE), Mr. James Wells attempts to contact Mrs. Shorette via telephone were unsuccessful. The FE noted Mrs. Shorette's voice mailbox was full.

On 03/07/2019, the FE attempt to visit Mrs. Shorette's at her residence located at 4854 Timberland Drive, Pace Florida 32571 was unsuccessful. Mr. Wells left his contact information. On 03/07/2019, the FE noted that Ms. Shorette contacted him and stated that she would not be cooperating until she received the results of her appeal and if the VA had any questions to contact her attorney, Mr. David P. Wilson located at 932 Meridian Street, Anderson IN 46016 (765)356-4506.

The FE stated that since Mrs. Karen Shorette has been appointed fiduciary on 12/17/2008, She has received approximately \$377,534.00 of VA benefits on behalf of the Veteran. In addition, she has also received over \$217,000.00 in SSA benefits on behalf of the Veteran. The Veteran has been institutionalized at VAMC in Indianapolis the entire time and there is no evidence she has ever given him any substantial portion of his funds. He also stated Mrs. Shorette did apply for an automobile grant in the Veteran's name on 1/22/2010 while the veteran was institutionalized. The grant was denied.

The FE concluded misuse is warranted. Since her appointment as fiduciary, Mrs. Shorette has received approximately \$377,534.00 of VA benefits. The Veteran has been institutionalized the entire time and there is no evidence she has ever given him any substantial portion of his funds. Although there is evidence of misuse since Mrs. Shorette was certified as the Veteran's spouse payee, the

calculation is based on the 3 years witnessed by Dr Marino as the reporting witness plus the 4 months until benefit was suspended. The Fiduciary received approximately \$13,978.00 from Jan-Apr 2018, \$41,11.88 for 2017, \$40,988.88 and a VA retroactive payment \$29,605.60 for 2016, and \$40,988.88 for 2015 for a total of \$166,673.24. She gave him \$5.00 per week for approximately 40 months for a total of \$865.00.

On 11/01/2018, Mr. David Payne was certified as the Veteran's new VA Appointed Fiduciary.

**Determination:**

It has been determined that Mrs. Karen Shorette did misuse a total of \$166,673.24 of VA benefits received on behalf of Mr. Charles Shorette during the three years witnessed by Dr. Denese Marino. The misuse investigation showed harm to the beneficiary.

Misuse Found.

ERIC P.  
JOHANSSON  
664523

Digitally signed by ERIC  
P. JOHANSSON 664523  
Date: 2019.05.14  
21:18:07 -0400'

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Fiduciary Hub Coach

EDWARD W.  
MARTIN 265612

Digitally signed by EDWARD  
W. MARTIN 265612  
Date: 2019.05.15 15:26:39  
-04'00'

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Fiduciary Hub Manager or Designee



EXHIBIT H to Shorette Brief  
DEPARTMENT OF VETERANS AFFAIRS  
FIDUCIARY INTAKE CENTER  
PO BOX 5211  
JANESVILLE WI 53547-5211

March 13, 2020

In Reply Refer To: Fid Hub/319/23/117  
File [REDACTED]

Karen Shorette  
Previous Fiduciary For Charles R. Shorette  
[REDACTED]

Dear Ms.Shorette:

We received an allegation from the Columbia Fiduciary Hub, involving the misuse of **Charles R. Shorette's** VA benefits payments. We have investigated the allegation and made a determination.

As the fiduciary, we are required to inform you of this determination. This letter tells you what we decided. It includes a copy of our misuse determination that gives the evidence used and reasons for our decision. We have also included information about whom to contact if you have questions or need assistance.

### What We Made Our Decided

We have determined that you did misuse **Mr. Charles R. Shorette** VA benefit payments.

### How We Made Our Decision

Please see the attached formal Misuse Determination explaining how we made our decision.

### Request For Reconsideration-What You Should Do

If you do not agree with our determination, you should write and tell us why. Requests for reconsideration must be received by the Fiduciary Hub within 30 days of the date of this notification. Requests received 30 days or more after the date of this notification will not be considered. Please note any request for reconsideration of a misuse determination must contain new and material evidence not previously submitted (i.e. receipts, check images, bank statements). Duplicate information previously submitted will not be considered again.

### If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-888-407-0144. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
Use the Internet	Send electronic inquiries through the Internet at <a href="https://iris.va.gov">https://iris.va.gov</a> .
Write	Put your full name and the beneficiary's VA file number on the letter. Please send all correspondence to the address at the top of this letter.

In all cases, be sure to refer to the beneficiary's VA file number at the top of this letter.

Sincerely yours,

**RO DIRECTOR**

**VA REGIONAL OFFICE**

E-mail us at <https://iris.va.gov> Enclosure(s):

Misuse Determination

**RO DIRECTOR**

**VA REGIONAL OFFICE**





standard of living as any other beneficiary with the same or similar financial resources, and that the fiduciary program is not primarily for the purpose of preserving funds for the beneficiary's heirs or disbursing funds according to the fiduciary's own beliefs, values, preferences, and interests.

**Identifying Information: (38 CFR 13.400 (b))**

**Veteran's Name:** Charles R. Shorette

**Beneficiary's Name:** Charles R. Shorette

**Fiduciary's Name:** Karen R. Shorette

**Type of fiduciary:** Spouse Payee

**Number of Beneficiaries Served:** 1

**Evidence: (38 CFR 3.103(f), 13.20 and 13.600(a)5)**

**\*Have you uploaded all the relevant documentation? Yes [X] No [ ]**

**\*If no, please upload to the E-File**

Table of Evidence: Must be included as formatted below

Evidence Reference	*Date – Signed - Received or N/A	Document – ID	Details - Comments
		<b>*Beneficiary First Notice of Death (FNOD)?</b>	Deceased? Yes [ ] No [X]
		<b>*Misusing Fiduciary FNOD?</b>	Deceased? Yes [ ] No [X]
		<b>*Beneficiary Incarcerated During Misuse Period?</b>	Yes [ ] No [X] If Yes, Review for Fraud: Fiduciary Program Manual (FPM), 5. A.1.d
	12/17/2018	<b>*Veterans Affairs (VA) Form 21-4703, Signed Fiduciary Agreement, Misusing Fiduciary</b>	
		<b>*VA Form 21-0792, Fiduciary Statement in Support of Appointment Misusing Fiduciary</b>	Form Only July 1, 2005 – January 31, 2012
		<b>*Credit Report</b>	Required July 1, 2005
		<b>*Criminal Background Inquiry (CBI)</b>	Required on or after February 1, 2012
	12/17/2018	<b>*VA Form 21-555, Certificate of Legal Capacity to Receive and Disburse Benefits, Misusing Fiduciary</b>	Fiduciary Commencement Date
		<b>*Fiduciary Fee Authorized?</b>	Yes [ ] No [X] Allowed: % \$
		<b>*Court Appointment?</b>	Yes [ ] No [X] N/A [ ] Date:
			Fiduciary Program Manual (FPM), 5. A.1.d
	12/17/2018	<b>*Veterans Affairs (VA) Form 21-4703, Signed Fiduciary</b>	

	Date Completed:	*VA Form 21-4716a, <i>Report of Field Examination</i> Initial Appointment (IA) or Successor Initial Appointment (SIA)	Initial Appointment Misusing Fiduciary
Evidence Reference	*Date – Signed - Received or N/A	Document – ID	Details - Comments
		*Budget Letter – Misusing Fiduciary	Approved expenses
		*Accounting Period End Date?	From 555
Date Scheduled	Date Completed	*VA Form 21-4716a, <i>Report of Field Examination</i> (Fid-Ben) Date Scheduled	
		*Bond Required?	Amount:
		*Accounting Notification Letter sent and not returned?	Y or N
		*Accounting received?	Date Scheduled for Review (date received)
		*Accounting rejected? Accounting - rejected/disapproved	1 <sup>st</sup> Rejection Date (Work Item Date)
	01/23/2018	*Misuse Allegation date	
	01/23/2018	Either *Allegation Memorandum Decision to not Investigate? OR *VA Form 21-3537a, <i>Request for Field Examination</i> , if Investigated	Memo Yes [ ] No [ ] VA Form 21-3537a Yes [ ] No [ ]
	03/11/2019	*VA Form 21-3537b, <i>Report of Field Examination</i> (Misuse Investigation)	Face-To-Face? Yes [ ] No [ ] NR [ ]
Date scheduled	Date completed	*VA Form 21-4716a, <i>Report of Field Examination</i> (SIA) Completed?	Successor Appointed
	11/01/2018		
	11/01/2018	*VA Form 21-555, <i>Certificate of Legal Capacity to Receive and Disburse Benefits</i> SIA – Successor Fiduciary	
		*Benefits Suspended?	
	11/01/2018	*Change of Fiduciary (CFID) Complete?	If Yes - SHARE Screen Print Verification
		*Last Benefit Paid – Misusing Fiduciary	Benefit Amount:

		Felux Beneficiary Fiduciary Field System (BFFS)	Proof of identity provided (individual ID or copy of individual ID) Yes <input type="checkbox"/> No <input type="checkbox"/>
		Insert additional rows as the case requires	

**Facts: (38 CFR 13.400 (b) includes the misuse calculation section)**

On 10/16/2018 Mrs. Karen R. Shorette, was certified as the beneficiary's Spouse Payee. Ms. Shorette was responsible for managing the beneficiary's VA funds as outlined on the Fiduciary Agreement(s).

This case is classified as a Congressional as an inquiry from Congresswoman Susan Brooks (Indiana) was received and is being monitored by Marguerite Paswater (VBAINDY)

On 01/23/2018, a misuse allegation was created by the Indianapolis Fiduciary Hub (IFH) due to a call received from, Ms. Denese Marino, Psychologist, with the Marion Veterans Administration Medical Center (VAMC). Ms. Marino stated the Veteran currently resides at the (VAMC) Lock Down Dementia Unit in Marino, Indiana. The fiduciary, Mrs. Karen Shorette, Veteran's wife lives in Pace Florida and the Veteran's VA benefit are being directly deposited into her bank account.

Ms. Marino reported that the Spouse Payee releases \$5 a week to the Veteran. She asked Mrs. Shorette to release more than \$5 to the Veteran so he can live comfortably, but Mrs. Shorette adamantly refused. Ms. Marino also stated that there is evidence that Mrs. Shorette has requested to receive special accommodations and equipment by claiming the Veteran lives with her.

On 01/22/2019, 01/18/2019, 01/14/2019, the Field Examiner (FE), Mr. James Wells attempts to contact Mrs. Shorette via telephone were unsuccessful. The FE noted Mrs. Shorette's voice mailbox was full.

On 03/07/2019, the FE attempt to visit Mrs. Shorette's at her residence located at 4854 Timberland Drive, Pace Florida 32571 was unsuccessful. Mr. Wells left his contact information. On 03/07/2019, the FE noted that Ms. Shorette contacted him and stated that she would not be cooperating until she received the results of her appeal and if the VA had any questions to contact her attorney, Mr. David P. Wilson located at 932 Meridian Street, Anderson IN 46016 (765)356-4506.

The FE stated that since Mrs. Karen Shorette has been appointed fiduciary on 12/17/2008, She has received approximately \$377,534.00 of VA benefits on behalf of the Veteran. The Veteran has been institutionalized at a VAMC in Indianapolis the entire time. There is no evidence the Veteran has received any substantial portion of his funds. He also stated Mrs. Shorette did apply for an automobile grant in the Veteran's



Based on the evidence received, misuse has been calculated as follows:

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			Total Income (Other)	\$0.00	
			Total VA + Other	\$106,673.20	
			% VA Income to Total Income	100.00%	
Expenses Paid	From - Day 01 (i.e. 01/01/2018)	To - Up To Day 31 (i.e., 01/31/2018)	Expense Amount	Amount	Clear Expense Entries
Personal Needs	01/01/2015	12/31/2015	\$20.00	\$240.00	
Personal Needs	01/01/2016	12/31/2016	\$20.00	\$240.00	
Personal Needs	01/01/2017	12/31/2017	\$20.00	\$240.00	
Personal Needs	01/01/2018	01/31/2018	\$145.00	\$145.00	
Clothing	01/01/2015	03/31/2018	\$791.00	\$30,849.00	
Dental Insurance	01/01/2015	03/31/2018	\$25.00	\$975.00	
Dining	01/01/2015	03/31/2018	\$50.00	\$1,950.00	
Entertainment	01/01/2015	03/31/2018	\$185.00	\$7,215.00	
Groceries	01/01/2015	03/31/2018	\$545.00	\$21,255.00	
Health Insurance	01/01/2015	03/31/2018	\$25.00	\$975.00	
Homeowners Insurance	01/01/2015	03/31/2018	\$42.00	\$1,638.00	
Mortgage	01/01/2015	03/31/2018	\$811.99	\$31,667.61	
Utilities	01/01/2015	03/31/2018	\$700.00	\$27,300.00	
Vehicle/Gas	01/01/2015	03/31/2018	\$225.00	\$8,775.00	
Vehicle Insurance	01/01/2015	03/31/2018	\$75.00	\$2,902.50	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	

The final misuse calculation must consider: USE and BENEFIT, were expenses allocated for the use and benefit of the beneficiary or dependents? Did the expense improve the standard of living? The fiduciary program is not intended for the purpose of preserving funds, rather the beneficiary's entitlement to the same standard of living as any other beneficiary with similar financial resources! Please Review. Previous & current VA funds under management (FUM), Historical FUM - VA Form 21-4707, Estate Summary, eFolder Accounting audits prior to or after the misuse allegation, Commingled accounts (funds from other individuals), Evidence of unpaid bills, past due balances on Field Exams Expenses not for the benefit of the beneficiary. Legal fees and court costs are typically considered for the use & benefit of the beneficiary. Review of Field Examinations prior to, during and following removal of the misusing fiduciary, expenses verified by exam or Examiner Review of the beneficiary record and eFolder(s), Repayments/Transfers made by the fiduciary Fees or legal expenses associated with a court appointment, funds accounted for under supervision by a State court of jurisdiction, and Fiduciary fees taken during a period of misuse - must be included in the misuse amount.

Total Expenses	\$136,367.11	
Total Remaining FUM	\$30,306.17	
VA Applied to Expenses	\$136,367.11	\$0.00
Remaining VA FUM	\$30,306.17	\$0.00
Total Funds Accounted For or Transferred		Enter Total Funds Accounted For At End Of Accounting Period or Transferred.
% VA Accounted or Transferred	\$0.00	
% Other Accounted or Transferred	\$0.00	
VA Misuse Amount	\$30,306.17	
Other Misuse Amount	\$0.00	
Total Misuse Amount	\$30,306.17	

**Determination: (38 CFR 13.400 (b))**

It has been determined that Mrs. Karen Shorette did misuse a total of \$30,306.17 of VA benefits received on behalf of Mr. Charles Shorette from January 1, 2015 to March 30, 2018 which was during the time witnessed by Dr. Denese Marino. The misuse investigation showed harm to the beneficiary.

\_\_\_\_\_  
Edward W. Martin  
Assistant Fiduciary Hub Manager  
Columbia Regional Office

\_\_\_\_\_  
Date

\_\_\_\_\_  
Marcia Hempy  
Fiduciary Hub Manager or Designee  
Columbia Regional Office

\_\_\_\_\_  
Date

**References: (38 CFR 3.103(f), 13.20 and 13.600(a)5)**

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern fiduciary activities. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, [www.va.gov](http://www.va.gov).

## APPENDIX

### Acronyms used in this document:

Acronym	Full Form
BFFS	Beneficiary Fiduciary Field System
CBI	Criminal Background Inquiry
CFID	Change of Fiduciary
CFR	Code of Federal Regulations
Felux	
Fid-Ben	Fiduciary Beneficiary
FNOD	First Notice of Death
FPM	Fiduciary Program Manual
FUM	Funds Under Management
IA	Initial Appointment
N/A	Not Applicable
SDA	Seriously Delinquent Accounting
SIA	Successor Initial Appointment
VA	Veterans Affairs

### Applicable VA Forms

Form	Title
VA Form 21-0792	Fiduciary Statement in Support of Appointment (Misusing Fiduciary)
VA Form 21-3537a	Request for Field Examination
VA Form 21-3537b	Report of Field Examination (Misuse Investigation)
VA Form 21-4703	Signed Fiduciary Agreement (Misusing Fiduciary)
VA Form 21-4716a	Certificate of Legal Capacity to Receive and Disburse Benefits (IA or SIA)
	Certificate of Legal Capacity to Receive and Disburse Benefits (Fid-Ben)
	Report of Field Examination (SIA)



VA Form 21-555

Certificate of Legal Capacity to Receive and Disburse Benefits  
(Misusing Fiduciary)

Certificate of Legal Capacity to Receive and Disburse Benefits  
(SIA - Successor Fiduciary)



Department of Veterans Affairs

## REPORT OF GENERAL INFORMATION

NOTE - This form must be filled out in ink or on a typewriter or computer, as it becomes a permanent record in the veteran's folder.		1. VA OFFICE IFH/326	2. IDENTIFICATION NUMBERS (C, XC, SS, XSS, V, K, etc.) CSS [REDACTED]
3. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print) Shorette, Charles		4. DATE OF CONTACT (Month, day, year) 03/24/2020	
5. ADDRESS OF VETERAN (Include number and street or rural route, city or P.O., State and ZIP Code) VAMC Marion IN		6A. TELEPHONE NUMBER OF VETERAN (Include Area Code) DAY [REDACTED] EVENING [REDACTED]	
		6B. E-MAIL ADDRESS (If applicable) [REDACTED]	
7. NAME OF PERSON CONTACTED David Payne (VA Fiduciary)		8. TYPE OF CONTACT <input type="checkbox"/> PERSONAL <input checked="" type="checkbox"/> TELEPHONE	
[REDACTED] CONTACTED Marion, IN 46952		10. TELEPHONE NUMBER OF PERSON CONTACTED (Include Area Code) [REDACTED]	
<input checked="" type="checkbox"/> I certify that I properly identified my caller using the ID Protocol			
11. BRIEF STATEMENT OF INFORMATION REQUESTED AND GIVEN: VBAOCR WHH SF 2547538 DATE RECEIVED: March 19, 2020 DATE DUE: March 27, 2020			
ISSUE: Former Spouse Payee, Karen Shorette, questions the amount of personal funds released to Veteran monthly. Ms. Shorette resides in Florida; Veteran resides in Marion VAMC (IN).			
RESOLUTION: Karen Shorette was removed as Spouse Payee in November, 2018. Concerns were received from VAMC physician & staff that Ms. Shorette continually denied release of funds to Veteran (per his request) for clothing & other purchases. A misuse investigation conducted by Columbia Fiduciary Hub determined Ms. Shorette has misused Veteran's funds. The case is currently pending in Debt Collection status. Current fiduciary, David Payne, was appointed payee on Nov. 1, 2018, & appropriately manages Mr. Shorette's VA funds. Congressional Liaison contacted both Mr. Payne & the Field Examiner (FE) familiar with Veteran on March 24th. Mr. Payne advised that for a short time, \$1K per month was released to Veteran's patient account, due to his need for clothes, etc. (Ms. Shorette previously released only \$5 each week.) The fiduciary currently releases \$240 each month to Mr. Shorette, conserving the remainder. Veteran enjoys nice clothes & receives an additional \$600 each Spring & Fall for clothing expense. VAMC staff assists in purchasing clothes per his request. VAMC contacts Mr. Payne on behalf of the Veteran when he needs additional funds for outings, furniture, food, etc. FE confirmed information provided by Mr. Payne is correct, advising the Veteran has stated he is thankful he now has a better quality of life. An unsuccessful attempt was made to contact Ms. Shorette regarding the inquiry. A message was left with no return call at this time. COMPLETED: March 24, 2020			
Notification of Action <input checked="" type="checkbox"/> I read the following statement to the caller: "I am a VA employee who is authorized to receive or request evidentiary information or statements that may result in a change in your VA benefits. The primary purpose for gathering this information or statement is to make an eligibility determination. It is subject to verification through computer matching programs with other agencies."			
cc: POA (If applicable):			
DIVISION OR SECTION Indianapolis Fiduciary Hub		EXECUTED BY (Signature and title) Marquerite C. Paswater 314309 <small>Digitally signed by Marquerite C. Paswater 314309 Date: 2020.12.08 20:57:52 -05'00'</small> March 24, 2020	
PRIVACY ACT NOTICE: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 5, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA/21/22/28 Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.			
RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to respond to the questions on this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. Valid OMB control numbers can be located on the OMB Internet Page at <a href="http://www.reginfo.gov/public/do/PRAMain">http://www.reginfo.gov/public/do/PRAMain</a> . If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.			

## EXHIBIT I to Shorette Brief

**ARDETH WILSON**  
**DAVID P. WILSON**  
*Attorneys-at-Law*  
[david@davidpwilsonlaw.com](mailto:david@davidpwilsonlaw.com)

932 MERIDIAN STREET  
ANDERSON, IN 46016

PHONE (765) 356-4506  
FAX (765) 356-4507

May 25, 2020

Department of Veterans Affairs  
Fiduciary Intake Center  
PO Box 5211  
Janesville WI 53547-5211

Re: 319/23/117

Shorette, Charles R.

Gentlepersons:

In response to your determination letter of March 13, 2020 (copy enclosed), which was not received by my client until May 8, 2020, my client, Karen Shorette, issues the following rebuttals:

The determination of misuse of funds does not take into consideration the fact that a savings account in the name of Charles R. Shorette (the veteran) contains more than the amount of \$30,306.17, which you allege she has misused. Bank statements verifying this are enclosed: one which shows the balance at the time the VA began withholding funds, and another to show the current balance as of May 15, 2020. Because the funds which you allege were misused are still available for the use of Charles R. Shorette, your accusation must be dismissed.

Furthermore, to address other accusations made by Ms. Denese Marino:

I enclose my letter of June 7, 2019, and request that you review the documentation provided there, which shows that at all times Mr. Shorette had more than \$5.00 available for his use and care, which contradicts the principal accusation in this matter.

At all times, the ward clerk provided Mr. Shorette with \$5.00 cash on a weekly basis for purely the psychological matter of giving him a feeling of self-worth that he was earning money. But because of an ongoing issue of theft of Mr. Shorette's cash and personal belongings, the ward clerk suggested limiting the actual cash Mr. Shorette kept on his person. She kept coupon books in Mr. Shorette's account that he could use at any time to purchase food and other items at the on-site "canteen." Also, when the recreation aide was planning a trip off-site to a restaurant or athletic event, she simply called my client and asked if it was ok if she took the needed

amount out of Mr. Shorette's account, and the request was never denied (a fact that the aide can verify).

Denese Marino also made an accusation that the veteran's funds were being deposited into a bank in the name of the veteran's wife. The bank statements enclosed clearly show that the bank account is in the name of the veteran, with the wife as representative payee.

Denese Marino also made an accusation that my client claimed the veteran lived with her in order to receive special accommodations and equipment. No proof has been provided by the VA or Ms. Marino to substantiate this accusation. And other than a request for a handicapped vehicle (addressed in detail below), no special accommodations or equipment were ever requested by or received by my client.

Denese Marino made a further accusation that my client applied for an automobile grant in the veteran's name on January 22, 2010, while the veteran was institutionalized. This falls outside the scope of your investigation, which was stated to be between 2015 and 2018. However we will clarify this accusation. My client did, in fact, apply for additional funds to purchase a handicapped van by which to take her husband out to eat periodically, something he enjoyed doing and the staff at the Marion VA facility agreed would improve his quality of life. The grant, however, was denied. My client did purchase a handicapped van with non-VA funds subsequent to that denial.

I again enclose the original Spouse Payee determination of December 10, 2008, which states that accountings are not required. I also enclose the January 30, 2010 authorization which shows that the family of Charles R. Shorette was entitled to payments totaling \$3,212.83 per month. Those payments have not been made since April, 2018, so there is currently \$81,040.75 due to Ms. Shorette.

The above information rebuts all accusations, and therefore your declaration of misuse of funds has no legal basis. Therefore, I request that Karen Shorette be reinstated as Representative Payee, and all past funds due to her as Representative Payee be restored to her, less any documented expenses on behalf of the Veteran since the change which took place in April, 2018. Both the rights of the Veteran, Charles R. Shorette, and that of Ms. Shorette, have been seriously violated by the actions of VA employees and representatives, and it is in the best interests of the Department to resolve this matter amicably.

Sincerely,

David P. Wilson  
Attorney at Law





**EXHIBIT J to Shorette Brief**  
**DEPARTMENT OF VETERANS AFFAIRS**  
VA FIDUCIARY INTAKE  
PO BOX 95211  
LAKELAND, FL 33804-5211

March 03, 2021

Charles Shorette  
[REDACTED]

In Reply Refer To: 319  
[REDACTED]

Shorette, Charles

Dear Charles Shorette,

We reviewed the misuse determination dated 03/11/2020 from the Fiduciary Hub, involving the misuse of your VA benefit payments by Karen Shorette A Justification for Revision to Amount of Misuse Debt was completed.

As the beneficiary, we are required to inform you of this Justification for Revision to Amount of Misuse Debt. This letter tells you what we decided. It includes a copy of our Justification for Revision to Amount of Misuse Debt that gives the evidence used and reasons for our decision. We have also included information about your appeals rights and whom to contact if you have questions or need assistance.

**What We Decided**

Under A Justification for Revision to Amount of Misuse Debt we have determined that Karen Shorette did not misuse your VA benefit payments.

**How We Made Our Decision**

Please see the attached Justification for Revision to Amount of Misuse Debt explaining how we made our decision.

**What You Should Do If You Disagree With Our Decision**

If you should disagree with our decision, you should write and tell us why.

If you disagree with our decision, you have three options:

- Supplemental Review
- Higher-Level Review
- Appeal to the Board

C [REDACTED]

Shorette, Charles

### **Where You Must Send The Information**

Department of Veterans Affairs

VA Fiduciary Intake

P.O. Box 95211

Lakeland, FL 33804-5211

### **Do You Have Questions Or Need Assistance**

If you have any questions regarding fiduciary matters, please call us at 1-888-407-0144. If you use the Telecommunications Device for the Deaf (TDD), the Federal number is 711.

In all cases, be sure to refer to your VA file number C [REDACTED]

If you or someone you know is the victim of financial exploitation or fraud, visit <https://www.justice.gov/elderjustice/roadmap> for assistance in reporting the incident to the appropriate federal authorities.

If you or someone you know is the victim of abuse and/or neglect, visit <https://www.justice.gov/elderjustice> for assistance in reporting the issue and resources to help the victim.

Sincerely yours,

**Regional Office Director**

Enclosures: VA Form 20-0998  
Justification for Revision to Amount of Misuse Debt

## REQUEST FOR REVISION OF MISUSE DEBT AMOUNT

DATE: 03/03/2021	
FROM: Columbia Fiduciary Hub	TO: Columbia Regional Office Finance
VETERAN/BENEFICIARY FULL NAME: Charles Shorette	CLAIM NUMBER: [REDACTED]
FORMER FIDUCIARY NAME: Karen Shorette	SOCIAL SECURITY NUMBER: [REDACTED]
<p><b>INSTRUCTIONS:</b> Please revise the misuse debt on the above fiduciary based on the justification for revision of misuse debt amount of above beneficiary. Supporting documentation is attached. Send evidence of revision of misuse debt amount in response to the fiduciary hub within 14 days of receipt of request.</p>	
<b>Justification for Revision of Misuse Debt Amount</b>	
Original debt amount:	30,306.17
Current amount owed:	30,306.17
BD number:	3190KCF0091
Revised debt amount:	0.00
Documents included for review:	
<input checked="" type="checkbox"/>	Justification for Revision of Misuse Debt Amount
<input checked="" type="checkbox"/>	Notification letter to fiduciary
Payment plan instructions, if requested by fiduciary:	
BD: 3190KCF0091	
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div> <b>LAURA W. SHEALY</b>              323290           </div> <div style="font-size: small;">             Digitally signed by LAURA W. SHEALY 323290              Date: 2021.03.05 07:01:46 -05'00'           </div> </div>	
Fiduciary Hub Manager, Assistant Hub Manager or Misuse Coach	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <input checked="" type="radio"/> </div> <div>Concur</div> <div style="text-align: center;"> <input type="radio"/> </div> <div>Non-concur</div> </div>

## **EXHIBIT K to Shorette Brief**

### **Veteran Justice Group, LLC, Detailed Comments on the Notice of Proposed Rulemaking Regarding VA Fiduciary Activities at 79 Fed. Reg. 430 (Jan. 3, 2014)**

#### *General Comment*

VLG does not agree that Congress intended to pre-empt state law when it narrowly authorized the Secretary to appoint a third party to handle the finances of a veteran when he or she cannot do so themselves. To the contrary, VJG submits that Congress intended VA to fully utilize the extensive and well-developed state law in this area to aid in the appointment, regulation, and oversight of its fiduciaries. In our view, VA and VA beneficiaries would greatly benefit from such a change in position.

Indeed, it has been VJG's experience that the vast majority of VA fiduciary "problems" it has encountered were violations of the law of the state of residence, such as failure to provide information to the beneficiary, violations of the duties of candor and loyalty, and failure to act in the best interest of the beneficiary. As VJG reads the proposed rules, each of these types of problems would be violations under the new program's "culture" change. Yet, historically, VA has defended the fiduciary's failure(s) to comply with these duties under the federal pre-emption rubric. At the very minimum, therefore, VA should specifically identify how or whether it intends to require the same fundamental duties (e.g., loyalty, candor, etc.) that are not addressed in its regulations, but are fundamental to the "fiduciary" concept.

In any event, VJG submits that there is no reasonable basis for the Secretary's interpretation of 38 U.S.C. section 5502(a)(1) finding that "Congress intended to preempt State law" in authorizing a VA fiduciary program. 79 Fed. Reg. at 430. Indeed, the single cited basis for this position – the phrase "regardless of legal disability" – is facially unrelated to the issue. To the contrary, in the proper context, the Secretary's reliance on this phrase is even more curious.



Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary.

38 U.S.C. § 5502(a)(1) (emphasis added).

A plain reading of the “legal disability” language shows that the phrase refers to a beneficiary’s “legal disability,” e.g., legal incompetency, and has nothing to do with pre-emption. In addition, a state’s laws imposing requirements on a fiduciary, e.g., duties of candor and loyalty, are reasonably construed as a “disability” and, even if they could be so construed, would be disabilities of the fiduciary, not the beneficiary, and so not consistent with the plain language of the statute. There is, therefore, no reasonable stretch of this language that supports pre-emption of a traditional and well-developed area of state jurisdiction.

Further, this issue was resolved by the U. S. Supreme Court over 75 years ago. *Hines v. Stein*, 298 U.S. 94 (1936), addressed the question and rejected the Secretary’s supremacy theory.

During many years, *Congress* has *recognized* the propriety, if not the *necessity*, of [e]ntrusting the custody and management of funds belonging to incompetent pensioners to *fiduciaries appointed by state courts*, without seeking to limit judicial power in respect of them. To the contrary, it has directed that whenever any guardian, curator, or conservator fails properly to execute his trust, etc., the [Secretary] may appear in the court which has appointed and make proper presentation of such matters. *Authority of the state courts over guardians for incompetents is thus definitely recognized.*

. . .

*Nothing* brought to our attention would justify the view that *Congress intended* to *deprive state courts* of their usual authority over fiduciaries, or to *sanction the promulgation of rules* to that end by executive officers or bureaus.

*Hines*, 298 U.S. at 98 (emphasis added) (internal citations and quotations omitted). Since 1936 then, the Secretary has been obligated to respect state fiduciary authority. See, e.g., *In re Sykes*, 9 Kan.App.2d 315, 317 (1984) (state court “not limited or subject to direction by VA”); *In re Vaughn’s Guardianship*, 73 P.2d 411, 413 (Ok. 1937) (VA may “not substitute its judgment” for that of county court); but see *In re Guardianship & Conservatorship of Blunt*, 358 F. Supp. 2d 882 (finding federal law controlled based on *Willis v. Brown*, 6 Vet. App. 433 (1994), overruled by *Freeman v. Shinseki*, 24 Vet. App. 404 (2011)).

Thus, Congress did *not* authorize the Secretary to ignore state law or authorize actions or inactions contrary to any state law.

Further, there are well-established legal tests for pre-emption, which the Secretary did not address. Under those tests, even ignoring *Hines*, the Secretary’s position is legally defective.

An analysis of whether pre-emption exists starts with “a presumption that the state statute is valid, and asks whether [the pre-emption proponent] has shouldered the burden of overcoming that presumption.” *Pharm. Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 661-62 (2003); see also *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944). “Preemption fundamentally is a question of congressional intent.” *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990). Thus, within Constitutional limits, Congress may pre-empt state authority by so stating in express terms. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 203-04 (1983) (citing *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)). VA’s reliance on the “legal disability” language does not overcome this burden.

*Congress Did Not Expressly Pre-empt State Law*

As discussed above, there is no statutory language that can be construed as an expressed pre-emption of any state trust, estate, or fiduciary law. To the contrary, other fiduciary program statutes *direct the Secretary to state court* should he take issue with a fiduciary's activities or accounting. *See, e.g.*, 38 U.S.C. §§ 5502(b), 5507(d). In light of these explicit statutes, the Secretary's unexplained interpretation of "regardless of legal disability" as pre-empting state law must fail.

In the absence of explicit statutory language, Congressional intent may be implied only from a pervasive "scheme of federal regulation," *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), where compliance with both federal and state laws is physically impossible, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). A mere "modest impediment" to the federal activity, however, is not "a sufficient basis for pre-emption." *Walsh*, 538 U.S. at 677; *see also Florida Lime*, 373 U.S. at 142-143 (conflict arises when "compliance with both federal and state regulations is a *physical impossibility*" (emphasis supplied)).

The VA fiduciary program is not a robust "scheme" created by Congress; it is a minor program of a single department applicable only under specific and narrow circumstances. *See generally* 38 U.S.C. § 5502(a). Rather than a robust "scheme," Congress provided only the barest outlines of the duties and responsibilities of a VA-appointed "fiduciary." Indeed, the relevant statutes specify only duties and responsibilities of the fiduciary *to the agency*. *See, e.g.*, 38 U.S.C. § 5502(b) ("render an account *to the Secretary*"); § 5509 (fiduciary to receive payments at regional office when failing to provide accountings). Congress notably omitted any guidance on the "duties of the trust" or how "to administer the estate according to law." Indeed, there are no directions at all regarding a fiduciary's duties *to the*

*beneficiary* – a seemingly key area for a “scheme” intended to protect beneficiaries from abuse by appointed fiduciaries.

This is a particularly significant omission, as a citizen’s “trust” and “estate” are state creations, the associated “duties” and “law” are also creatures of state law. If anything, the general language of the statutory provisions *require* reliance on state laws regarding fiduciary conduct, duties, and responsibilities to properly implement Congress’s direction that an appointed fiduciary act for the “benefit of the beneficiary.” 38 U.S.C. § 5502(a)(1); *see also id.* §§ 5502(b) (“Secretary may appear . . . in the court which appointed such fiduciary”); 5502(d), (e) (escheatment determined by state law). Thus, if anything, it reasonably appears that Congress intended that VA actually incorporate, or at least abide by, state law whenever possible.

Even where Congress has not entirely displaced state regulation in a specific area, state law is pre-empted only to the extent that it *actually conflicts* with federal law. *Pac. Gas & Elec*, 461 U.S. at 204 (emphasis supplied). Such a conflict arises when “compliance with both federal and state regulations is a *physical impossibility*.” *Florida Lime*, 373 U.S. at 142-143 (emphasis supplied). VA has not identified any conflict between any state law and any VA rule, existing or proposed.

The Supreme Court has been even more reluctant to infer pre-emption from the comprehensiveness of regulations than from the comprehensiveness of statutes. To infer pre-emption whenever an agency deals with a problem comprehensively is virtually tantamount to saying that whenever a federal agency decides to step into a field, its regulations will be exclusive. *Hillsborough County, Fla. v. Automated Med. Laboratories, Inc.*, 471 U.S. 707, 717-18 (1985). Such a rule, of course, would be inconsistent with the federal-state balance embodied in Supremacy Clause jurisprudence. *Id.*; *Jones*, 430 U.S. at 525. Even the Secretary’s proposed regulations, which are admittedly more robust than the existing regulations, thus do not provide a basis for pre-emption.



In stark contrast to Congress's general program requirements, state laws establish a detailed and comprehensive legal structure governing the conduct and oversight of fiduciary activities. For example, Maine law explicitly characterizes an agent under a power of attorney as a "fiduciary" who must "act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees as described under Maine's Trust Code." 18-A ME. REV. STAT. ANN. § 5-914(A), *see also* 18-B ME. REV. STAT. ANN. §§802-807 and Ch. 9. Further, Maine law specifically governs an agent's authority with respect to benefits from governmental programs or military service. section. 18-A ME. REV. STAT. ANN. § 5-944. Indeed, the richness of state laws provide numerous requirements and controls that will *benefit* VA beneficiaries.

In sum, the NPRM does not contain an adequate legal basis for the federal pre-emption of state laws regarding fiduciary activities and proposed rules based on such supremacy are also inadequately based. In any event, VJG urges VA to reconsider its position and view applicable state laws as supplementing its fiduciary regulations and providing highly developed standards in aid of the program "culture change" VA seeks.

### *Specific Comments*

#### A. VA should establish clear evidentiary standards upon which to base a decision that a claimant is "unable to handle" his or her finances.

The fundamental decision which triggers application of the fiduciary program requirements is a final "rating" that a claimant is "unable to handle" his or her finances and VA involvement is required. 38 U.S.C. § 5502(a). Yet, nowhere in the proposed regulations are the standards for this initial decision discussed.

VJG submits that such standards are required in the program rules to ensure that claimants are not arbitrarily and capriciously deprived

of the right to control their own property. This is not a speculative concern. VJG has participated in several fiduciary matters where a claimant has been adjudicated as unable to handle his finances based on: (1) an otherwise unexplained check of a “no” box on a medical examination form, (2) a statement that a claimant’s spouse “handled the checkbook,” and (3) a statement that a claimant “did not handle the finances” in his marriage. In each case, the “finding” was made by a single medical examiner and the claimant was fully aware of his financial situation, but his spouse had long been the “keeper” of the checkbook. Further, the veteran was not informed of any concern with his ability to handle his finances until a proposal to rate him as such was received in the mail.

The fundamental right to control one’s own property should not turn on such flimsy, even if well intended, conclusions of a single examiner. Nor should claimants be thrust into fighting to retain those rights without notice of the applicable standards. The proposed regulations, therefore, should establish the applicable evidentiary standards.

B. VA should establish a maximum period after a finding of need within which it must appoint a fiduciary.

VJG is aware of VA action to appoint a fiduciary up to *9 years* after the rating decision finding the claimant unable to manage his finances. Further, these long-delayed appointments were made without any reconsideration of the medical evidence or other basis of the original decision and without regard to “appropriate” financial management by the claimant in the years since the decision. Such long delayed fiduciary appointments are disruptive, intrusive, and, in many cases, replace well functioning caregiving structures with adversarial relationships.

The proposed regulations do not address such situations and risk continuation of unnecessary VA intrusion into claimant’s finances. VA should, therefore, establish reasonable time limits for the effectiveness of rating decisions and the weight of the underlying medical evidence

finding a fiduciary necessary. At the very minimum, VA should establish requirements to review the need for a fiduciary appointment after a certain period, to include consideration of the performance of the claimant in financial matters since the original decision.

C. The proposed regulations regarding beneficiary rights are incomplete.

VA is limited by statute to only exercise its authority to appoint a fiduciary “[w]here it appears to the Secretary that the interest of the beneficiary would be served thereby.” 38 U.S.C. § 5502(a)(1). VJG has found that the issue of how “the interest of the beneficiary” is served by the appointment of a fiduciary is often central to an appeal or other challenge to VA action in this area. Indeed, our experience is that VA has historically been unable to articulate a specific bases for the need of a VA-appointed fiduciary when an attorney-in-fact already exists under state law. This is especially true in cases where VA field examiners decide to appoint a stranger in lieu of a long-married spouse or other family member who has provided long-term care without any problems noted.

To ensure that VA acts to appoint a fiduciary only in the circumstances authorized by Congress, VJG suggests that the proposed rules be revised to require VA to articulate in the proposed and final rating decisions an explicit statement of the reasons and bases for the determination that appointment of a fiduciary (as distinct from the status quo of, e.g., an attorney-in-fact, long-term caregiver, spouse) is in “the interest of the beneficiary” as required by 38 U.S.C. section 5502(a)(1). In other words, VA should be required to state why changing the beneficiary’s current arrangement will result in a *better* situation for the beneficiary *before* invoking its authority to do so. While there are reasons to change existing arrangements (e.g., documented financial mismanagement, physical abuse, etc.), in our experience dedicated family members and long-term care givers have been ousted in favor of strangers without any stated reasons or bases. Moreover, the

result has often been a degradation in the beneficiary's conditions because of delayed or withheld funds, difficulty in communications, or outright abuse by the appointed fiduciary.

Proposed section 13.100 thus should be revised to require written "reasons and bases" to demonstrate that "the interest of the beneficiary" would be served by such appointment. *See* 79 Fed. Reg. at 431. In turn, any appeal of the need for an appointment would turn on the sufficiency (or insufficiency) of these "reasons and bases." As such, the existing standards for resolving appeals applicable to other beneficiaries would be directly applicable to beneficiaries under the fiduciary program as well.

D. The proposed regulations regarding fees for representation of beneficiaries require clarification.

VJG attorneys have represented several beneficiaries and their families within the VA system, at the Court of Appeals for Veterans Claims, state courts, federal district courts, and federal appellate courts. We agree that the unique posture of awarded but unpaid benefits in such cases complicates the questions of fair fees for representation. We do not agree, however, that "any representation provided by an accredited attorney or claims agent would relate only to the fiduciary appointment decisions or decision to pay benefits directly with VA supervision." 79 Fed. Reg. at 432-33. To the contrary, we have represented beneficiaries challenging (1) the initial proposal to find the claimant unable to manage his or her funds (e.g., challenge the sufficiency of the medical evidence); (2) the need for a VA-appointed fiduciary at all (i.e., a Section 5502(a)(1) challenge), (3) VA appointment of a fiduciary to replace a spouse or other long-term caregiver, and (4) the failure of VA-appointed fiduciaries to comply with VA regulations and applicable state laws. And, as described above, these challenges occurred in forums from VA regional offices to the U.S. Circuit Courts for the Eighth Circuit and Federal Circuit.



Since such a wide variety of actions are possible, simply eliminating the use of “past-due benefits” is not an adequate action. VJG has employed a variation of the ubiquitous “contingency fee” arrangement used by almost every veterans advocate in benefits cases in its fee-generating fiduciary cases. In our method, if a successful result is achieved, the fee is a percentage of the benefits withheld by VA or held by a fiduciary that is recovered in the beneficiary’s challenge. The fee is paid either after the beneficiary obtains control over the funds or the funds are placed under the control of a fiduciary acceptable to the client.

In our view, such a fee arrangement has several advantages over hourly, fixed price, or allowable combinations. First, the “reasonableness” of contingent fees is well-established in regulations and case law. *See* 38 C.F.R. § 14.636(e). Next, fees are only paid if a satisfactory result is achieved, as in other benefits cases. Further, obtaining release of awarded but wrongly unpaid benefits is fundamentally similar to an action to obtain an award of benefits wrongly denied. Indeed, both require the same skills and effort to identify the relevant facts and law and advocate for a favorable outcome. Finally, beneficiaries under the fiduciary program are even less likely than other appellants to have adequate funds to support an hourly or fixed price fee agreement. Finally, this fee methodology has been submitted for review to fiduciary program managers and was found to be compliant with regulations.

Proposed section 13.40 thus should be revised to explicitly permit contingency fee arrangements based on the recoupment of unpaid benefits or funds controlled by a challenged VA-appointed fiduciary. Further, the regulations should explicitly recognize a fee agreement entered into by a beneficiary who is legally competent to enter into contracts or a duly authorized attorney-in-fact or other representative recognized under the laws of the state of residence, regardless of the beneficiary’s ability to manage VA funds.

E. Reliance on previous criminal and credit checks is not adequate for re-appointment of a fiduciary.

The VA fiduciary program has long suffered from VA-appointed fiduciary misdeeds. While nothing can prevent a determined miscreant from intentionally mismanaging a beneficiary's funds, VJG believes that routinely performing credit and criminal checks is one of the best means to identify such misdeeds. In particular, *requiring* a review of a fiduciary's credit report upon each appointment is a cost-effective means to identify suspicious financial activity by those individuals. Indeed, VJG supports routine (e.g., annual or bi-annual) review of each fiduciary's *and* each beneficiary's credit report for suspicious activity as a means of identifying suspicious financial activity in either individual's accounts.

Proposed section 13.100 therefore should be revised to require credit and criminal reports upon each appointment and routine credit reviews for fiduciaries and beneficiaries.

F. Face-to-face beneficiary interviews should be limited to situations requiring information that cannot be obtained by other means.

VJG supports face-to-face interviews with potential fiduciaries. Historically, however, VA has required "face-to-face" interviews with *beneficiaries*, not only potential fiduciaries. VJG is not aware of any statutory requirement for such beneficiary interviews. In any event, other than verifying the physical condition of the beneficiary's living conditions, such interviews rarely result in any information that is not already in the record or which could be obtained from caregivers, medical providers, or other third parties.

Indeed, the purported reason for such beneficiary interviews has been to establish the financial needs of the beneficiary and set the budget for the fiduciary to implement. Yet, interviewing an individual who has been found "unable to handle their finances" regarding his or her financial needs defies common sense and can only produce

inherently unreliable information. Indeed, VJG has documented cases of an “interview” with a *sleeping* beneficiary and a mentally-challenged beneficiary cited as the basis for establishing the beneficiary’s budget. Further, such interactions can be detrimental to a beneficiary’s health under many circumstances.

Proposed section 13.100 therefore should be revised to explicitly separate the verification of living conditions and beneficiary well-being from beneficiary “interviews,” which are generally not to be required unless there is a clear need and reasonable expectation that the beneficiary is the only or at least the best source of the information being sought.

G. The proposed temporary fiduciary rules do not address the inherent conflict with actual appeal durations.

As noted by VA, 38 U.S.C. section 5507(d) limits temporary fiduciary appointments to not exceed 120 days. The statute also states that a temporary fiduciary is to “protect the assets of the beneficiary while a determination of incompetency is being made *or appealed*.” 38 U.S.C. § 5507(d) (emphasis added). VJG experience is that an appeal of a fiduciary program decision, as with any other appeal of a VA benefits decision, takes from many months to many years to resolve. There is, thus, a conflict between the statutory time restriction on temporary fiduciary appointments and the practical duration of an appeal in the normal course.

Proposed section 13.100 does not address this conflict or identify how VA intends to comply with both the statutory direction to “protect the assets of the beneficiary” during an appeal and the limit of temporary fiduciary appointments to 120 days. VJG submits that because Congress explicitly established a 120 day limit for temporary fiduciaries, VA must establish an adjudicatory process that resolves incompetency issues and appeals of fiduciary program decisions *within 120 days*. Without such a requirement, a beneficiary would be left without any protection of his assets during the bulk of the appeal.

VJG recognizes that the imposition of a strict time limit for resolution of fiduciary appeals differs from the general canon that VA “has no time limits” for its adjudication processes. Fiduciary matters, however, are unique in the VA system, in that they involve government management of already awarded benefits (i.e., the *beneficiary’s* money). Thus, fiduciary appeals are properly given priority over other appeals. Indeed, timely resolution of appointment issues is critical to protecting a beneficiary’s assets, which is Congress’s stated purpose for section 5507(d). It is also consistent with the discussion regarding proposed section 13.600. *See* 79 Fed. Reg. at 449 (“We intend that appeals in fiduciary matters would be processed expeditiously”). Thus, a specific fiduciary appellate process is required.

H. Excluding family members and caregivers from appointment as temporary fiduciaries is arbitrary and contrary to stated need to expeditiously appoint qualified individuals.

VJG disagrees with the limitation in proposed section 13.100 to limit temporary fiduciaries to “individuals and entities that already meet the qualification criteria for appointment and are performing satisfactorily as a fiduciary for at least one other VA beneficiary.” This definition necessarily excludes family members, including spouses, and other long-term caregivers from serving as a temporary fiduciary because they will be very unlikely to have served as a fiduciary in any other case. VJG submits that there is no legitimate basis for such a blanket exclusion or deviation from the proposed order of preference of fiduciary appointment.

It has been VJG’s experience that family members and long-term caregivers are the most familiar with a beneficiary’s needs and can most quickly assume the role of temporary fiduciary in most cases. This is especially true where that individual has already managed the beneficiary’s finances either formally or informally without complaint or noted deficiency. In such cases, VA can quickly establish a satisfactory track record and, if appropriate, waive formal investigation. To be clear, VJG recognizes that there will be cases



where family members or long-term caregivers will not be an appropriate choice for temporary fiduciary. VA, however, has not provided a sufficient basis for a blanket deviation from the usual order of preference in temporary fiduciary appointments.

I. Field Examiner Qualifications

VJG strongly supports clarification of the scope of a field examiner's duties as contained in proposed section 13.120(b). The proposed regulations, however, do contain or point to the qualifications and training requirements applicable to field examiners. Indeed, it has been VJG's experience that field examiners are and will continue to be required to make determinations, such as the adequacy of living conditions, "budget" approvals, and fiduciary performance evaluations, for which they have little, if any, formal training and often only on-the-job experience. Further, as in the case of the field examiner's "interview" of an admittedly sleeping beneficiary, the standards of adequate performance can vary widely.

J. Fiduciaries should provide funds as requested unless there is an articulable reason not to disburse.

VJG also strongly supports the "culture change" embodied in proposed section 13.140. We note, however, that the culture change should not be limited to the appointed fiduciaries. A change in the culture of VA fiduciary program personnel, especially field examiners, is as important as – if not more important than – individual fiduciary program changes. Indeed, it is our experience that fiduciaries have historically responded *only* to their supervising field examiners, regardless of other requirements.

In VJG's view, the single most important change to implement the new "culture" is a complete reversal of the existing approach to responding to requests for funds for the benefit of the beneficiary. In our experience, legitimate requests for funds often do not receive a response, are paid only after repeated requests and after excessive

delays, or are substantively reduced without explanation. Indeed, as a practical matter, there appears to be a wide-spread presumption that any request for funds is inherently suspect and is to be paid only if the fiduciary cannot avoid doing so.

Consistent with the proposed culture change, therefore, VJG suggests that section 13.104 explicitly require that requests from beneficiaries (or their authorized representatives) for funds are presumptively reasonable and should be paid unless the fiduciary can articulate a specific reason or reasons for not doing so. Further, payments should be made within a set time limit, for example within 10 days of receipt of the request. Such a presumption will not prevent the fiduciary from requesting a reasonable explanation of the need for the funds, requiring evidence of proper expenditure of the requested funds, or denying requests that are improper or not in the best interest of the beneficiary. It would only require the fiduciary to document a reason for denying the request, which would facilitate review by the supervising field examiner and provide the basis for any challenge of the denial.

K. VA should explicitly pre-empt higher state fees

VJG agrees with the language in proposed section 13.220 that explicitly bars fiduciary fees based upon one-time or lump-sum benefit payments because there is no relationship between the amount of a beneficiary's funds and the fiduciary's effort in managing those funds in the case of one-time or lump-sum transfers.

Proposed section 13.220, however, does not address the payment of more than 4 percent fees when state law allows such payments to fiduciaries in other situations. For example, VJG is informed that fees of up 5 percent of a beneficiary's monthly benefits have been allowed in Florida for that reason. Such payments, whether allowed by state law or not, clearly violate Congress's expressed authorization of a "4-percent ceiling" for fiduciary fees. *See* 79 Fed. Reg. at 440 (citing 38 U.S.C. § 5502(a)(2)). VJG submits that this language explicitly pre-

empts state laws authorizing fees exceeding 4 percent of a beneficiary's monthly VA benefits. *See Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 203-04 (1983) (citing *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)) (Congress may pre-empt state authority by so stating in express terms).

VA, therefore, should explicitly state in its regulations that regardless of state laws, a fiduciary fee cannot exceed 4 percent of a beneficiary's monthly VA benefits payment. Indeed, it is ironic that VA's position is that program regulations pre-empt state law, 79 Fed. Reg. at 430, and has repeatedly invoked federal supremacy over state laws in defense of its conflicting requirements, *see, e.g., Solze v. Shinseki*, CAVC 12-1512, but has failed to do so in this area. As it is clearly in interest of a beneficiary to not pay a higher fee than allowed by federal law, VA has duty to prevent such unauthorized fees whether or not explicitly stated in the regulations. Clarification of the apparent confusion over this issue through regulatory language, however, would be the most direct means of addressing this issue.

L. VA authority over non-VA funds and other beneficiary property

VJG welcomes clarification of the scope of accountings and those individuals and accounts subject to accountings as discussed in proposed section 13.280. VJG also recognizes that because a fiduciary may have access to beneficiary accounts in addition to the account containing VA benefits, it is necessary to include those accounts to ensure proper actions by the fiduciary. Our concern is that neither this section or any other section in the proposed rules identifies the proper scope of VA's control of non-VA funds in those accounts and other beneficiary assets.

It has been our experience in essentially every fiduciary case that VA field examiners require detailed information, including account numbers and other access information, regarding all financial accounts, income, real and personal property, and other assets of a beneficiary *and* family members as a part of the initial field examination. Further,

the budgets subsequently set by the field examiners require expenditure of all non-VA funds before VA benefits are authorized for expenditure. Failure to provide the requested information or to expend funds in the directed manner has resulted in suspension of all VA benefits. VJG, however, is unaware of the legal authority for either of these demands. Thus, the scope of VA's authority in this area should be explicitly stated in the program rules.

Although the "culture change" discussed in the proposed regulations may result in some improvement in the above areas, VJG suggests that VA explicitly define the scope of its authority to (1) inquire of a beneficiary's non-VA assets; (2) require disclosure of financial or other asset information by any family member (whether or not a potential fiduciary); and (3) require information regarding, or asserting control over the expenditure of, non-VA funds. By establishing the scope of VA's authority in these areas, field examiners, beneficiaries, and family members will be fully informed of the information that can be appropriately requested. Such transparency will also go a long way towards minimizing conflicts in this area.

#### M. Appeals

As with many other of the proposed regulations, VJG appreciates and supports VA's efforts to better define the rules regarding appeals of fiduciary matters in proposed section 13.600. We agree with the listed decisions for which appeal is possible. We do, however, believe that the regulation should specifically list the "incompetency" decision as being an appealable decision. We recognize that such decisions are now handled as any other "rating decision," but it is unclear whether VA intends to continue doing so or to apply the new section 13.600 to those decisions. In any event, language should be added to clarify this issue.

More substantively, we do not understand the purpose of, or the legal basis for, the proposed language to "close the record" on appeal. 79 Fed. Reg. at 461. VA did not provide any reason or basis for closing the record at the proposed point in the proceeding. In any event, such

an action is not reasonably viewed as providing any appreciable benefit, as schedule concerns could be addressed by limiting submittals on the record to a reasonable period, e.g., 45 days after VA recognition of the appeal. Further, it has been our experience that because fiduciary appeals often involve mentally challenged or impaired beneficiaries, the record is highly likely to be incomplete or otherwise in need of enhancement to ensure a fair and well-founded decision on appeal. The proposal to prohibit any changes to a fiduciary record after an initial decision is, therefore, an arbitrary and capricious action significantly undermining the rights of an appellant to a fair review on appeal and it should be removed from the final rule.

Further, VJG is unaware of any reason why existing agency appellate procedures would not be appropriate to fiduciary appeals. Indeed, an appellant's rights to fair process and due process, including the right to a complete and accurate record on appeal, are even more important in fiduciary appeals because the funds at issue are already awarded (i.e., the *beneficiary's* property), not pending award (i.e., *government* property). See, e.g., 38 C.F.R. § 3.103; *Cushman v. Shinseki*, 576 F.3d 1290 (2009). The proposed rule, therefore, should state that appeals of fiduciary decisions are governed by the same regulations as other benefits decisions.