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on deposit in Personal Funds of Patients will be transferred to the General Post Fund. Any claims against the estate of the deceased veteran will be adjudicated and paid, if valid.

[33 FR 1073, Jan. 27, 1968]

§ 12.23 Recognition of valid claim against the General Post Fund.

Effective December 26, 1941, the assets of the estate of a veteran theretofore or thereafter deposited to the General Post Fund are subject to the valid claims of creditors presented to the Department of Veterans Affairs within 1 year from the date of death or otherwise as provided by any applicable law. Any heir, next of kin, legatee, or other person found to be legally entitled to the personal property of the veteran may claim same within 5 years from the date of the veteran's death. If claimant is under any legal disability (as a minor, incompetent, etc.) at the date of the veteran's death, the 5-year period begins upon the termination of removal of legal disability. Such claims are for settlement by the field facility which had originally made the deposit. In the event of doubt as to entitlement or the necessity of legal proceedings to obtain assets for the benefit of the General Post Fund, the case will be referred to the Chief Attorney of jurisdiction for advice and/or appropriate action. Any necessary court costs or expenses will be paid from the appropriation, General Operating Expenses, Department of Veterans Affairs.

[33 FR 1073, Jan. 27, 1968]

OPERATION OF LOST AND FOUND SERVICE

§ 12.24 Operation of lost and found service.

Unless maintained by the Public Buildings Service, the lost and found service will be maintained by an employee designated by the Manager to be known as the lost and found custodian. VA Form 3771, Record of Lost or Found Article, will be used for recording articles of any personal property lost or found. Every effort will be made to determine rightful ownership of found articles and to recover items which have been reported lost. Currency, including readily negotiable instruments, found

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and delivered to the lost and found custodian will not be retained beyond the official closing hour. The currency or negotiable instruments will be delivered to the agent cashier before the close of business. Individuals claiming found articles will furnish complete identification and satisfy the facility authority of rightful ownership. Where more than one individual claims ownership the matter will be referred to the Manager for decision. All articles of personal property remaining unclaimed for 90 days or more will be disposed of in accordance with § 12.8.

[21 FR 3875, June 6, 1956]

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

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AUTHORITY: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 13 appear at 61 FR 7216, Feb. 27, 1996.

§ 13.1 Authority.

The regulations in this part are issued pursuant to 38 U.S.C. 501 to reflect action under 38 U.S.C. 512 and to implement 38 U.S.C. 5301, 5502, 5503, 5711 and 8520. The duties, the delegations of authority, and all actions required of the Veterans Services Officer set forth in §§ 13.1 through 13.111 inclusive, are to be performed under the direction of, and authority vested in, the Director of the field facility.

[40 FR 54247, Nov. 21, 1975]

§ 13.2 Field examinations.

(a) *Authority to conduct; generally.* Field personnel in the Office of the Veterans Services Division and other employees who are qualified and designated by the field facility Director are authorized, when assigned, to conduct investigations (field examinations) and examine witnesses upon any matter within the jurisdiction of the Department of Veterans Affairs, to take affidavits, to administer oaths and affirmations, to certify copies of public or private documents and to aid claimants in the preparation of claims.

(b) *Scope of field examinations; fiduciary activities.* Field examinations include but are not limited to the following:

(1) Matters involving the administration of estates and the welfare of beneficiaries of the Department of Veterans Affairs who are under legal disability or in need of supervision by the Veterans Services Officer.

(2) Matters involving the welfare and needs of dependents of incompetent beneficiaries.

(3) Recovery of amounts due the Government or General Post Fund under laws administered by the Department of Veterans Affairs.

[40 FR 54247, Nov. 21, 1975]

§ 13.3 State legislation.

Field facility Directors are authorized to cooperate with the affiliated organizations, legislative committees, and through the General Counsel with local and State bar associations, to the end that deficiencies of the State laws relating to Department of Veterans Affairs operations may be removed. No action to commit the Department of Veterans Affairs regarding any proposed legislation relating to fiduciary matters will be taken without the approval of the Under Secretary for Benefits or designee.

[40 FR 54247, Nov. 21, 1975]

§ 13.55 Veterans Services Officer to select and appoint or recommend for appointment the person or legal entity to receive Department of Veterans Affairs benefits in a fiduciary capacity.

(a) *Authority.* The Veterans Services Officer is authorized to select and appoint (or in the case of a court-appointed fiduciary, to recommend for appointment) the person or legal entity best suited to receive Department of Veterans Affairs benefits in a fiduciary capacity for a beneficiary who is mentally ill (incompetent) or under legal disability by reason of minority or court action, and beneficiary's dependents.

(b) *Payees.* Authorized payees include:

- (1) The beneficiary (§ 13.56(c));
- (2) The beneficiary under supervision (supervised direct payment) (§ 13.56 (a) and (b));
- (3) The wife or husband of an incompetent veteran (§ 13.57);
- (4) The legal custodian of a beneficiary's Department of Veterans Affairs benefits (§ 13.58);
- (5) A court-appointed fiduciary of a beneficiary (§ 13.59);

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(6) The chief officer of the institution in which the veteran is receiving care and treatment (§13.61);

(7) The bonded officer of an Indian reservation (§13.62);

(8) A custodian-in-fact of the beneficiary (§13.63);

(9) Dependents of the veteran by an apportioned award (§13.70).

(c) *Certification.* The Veterans Services Officer's certification is authority to make payments to the designated payee.

[40 FR 54247, Nov. 21, 1975]

§ 13.56 Direct payment.

(a) *Veterans.* Department of Veterans Affairs benefits payable to a veteran rated incompetent may be paid directly to the veteran in such amount as the Veterans Services Officer determines the veteran is able to manage with continuing supervision by the Veterans Services Officer, provided a fiduciary is not otherwise required. If it is determined that an amount less than the full entitlement is to be paid, such payment shall be for a limited period of time, generally 6 months, but in no event to exceed 1 year, after which full payment will be made and any funds withheld as a result of this section will be released to the veteran, if not otherwise payable to a fiduciary.

(b) *Other adults.* Department of Veterans Affairs benefits payable to an adult beneficiary who has been rated or judicially declared incompetent may be paid directly to the beneficiary in such amounts as the Veterans Services Officer determines the beneficiary is able to manage with continuing supervision by the Veterans Services Officer, provided a fiduciary is not otherwise required. If it is determined that an amount less than the full entitlement is to be paid, such payment shall be for a limited period of time, generally 6 months, but in no event to exceed 1 year, after which full payment will be made and any funds withheld as a result of this section will be released to the beneficiary, if not otherwise payable to a fiduciary.

(c) *Minors.* Department of Veterans Affairs benefits payable to a minor:

(1) May be paid direct when:

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(i) Arising in connection with a program of education or training under 38 U.S.C. ch. 35.

(ii) The Veterans Services Officer determines it would be in the minor's best interests.

(2) Will be paid direct when:

(i) The beneficiary's only legal disability is minority and he or she is in active military, naval, or air service, or the widow or widower of a veteran.

(ii) The minor is deemed otherwise emancipated under State law.

[40 FR 54247, Nov. 21, 1975, as amended at 42 FR 34282, July 5, 1977]

§ 13.57 Payment to the wife or husband of incompetent veteran.

Compensation, pension or emergency officers' retirement pay of a veteran rated or judicially declared incompetent, may be paid to the veteran's spouse, provided the spouse is qualified to administer the funds payable and agrees to use the amounts paid for the veteran and the veteran's dependents, if any.

[40 FR 54247, Nov. 21, 1975]

§ 13.58 Legal custodian.

(a) *Authority.* The Veterans Services Officer is authorized to make determinations as to the person or legal entity to be appointed legal custodian to receive Department of Veterans Affairs payments on behalf of a beneficiary who is incompetent or under legal disability by reason of minority or court action. In the absence of special circumstances, the person or legal entity to be appointed legal custodian will be the person or legal entity caring for and/or having custody of the beneficiary or the beneficiary's estate.

(b) *Payment to.* Department of Veterans Affairs benefits may be paid to a legal custodian subject to the following conditions:

(1) The Veterans Services Officer has determined that it would be in the best interests of the beneficiary to appoint a legal custodian.

(2) The proposed legal custodian is qualified to administer the benefits payable and will agree to:

(i) Apply the benefits paid for the best interests of the beneficiary,

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(ii) Invest surplus funds as provided by Department of Veterans Affairs regulations,

(iii) Furnish, upon request, evidence of compliance with agreement as to usage and investment of Department of Veterans Affairs benefits, and

(iv) Inform the Veterans Services Officer of any change in the beneficiary's estate or any other circumstances that might affect entitlement or the manner in which payments are to be made.

[40 FR 54247, Nov. 21, 1975]

§ 13.59 Court-appointed fiduciary.

(a) *Payment to.* Any Department of Veterans Affairs benefit may be paid to the fiduciary appointed by a State court for a beneficiary who is a minor, or incompetent or under other legal disability adjudged by a court of competent jurisdiction. Formal or informal accountings may be required from such fiduciaries, with or without judicial proceedings.

(b) *Veterans Services Officer's responsibility.* The Veterans Services Officer shall: (1) Determine and recommend to the Regional Counsel the person or legal entity best fitted for appointment as State court fiduciary for the particular beneficiary. Necessary legal action will be taken by the Regional Counsel.

(2) Upon advice from the Regional Counsel that the fiduciary has been appointed, issue appropriate certification thereof so that payment of benefits can be made to such fiduciary.

[40 FR 54247, Nov. 21, 1975]

§ 13.61 Payment to the chief officer of institution.

The Veterans Services Officer may authorize the payment of all or part of the pension, compensation or emergency officers' retirement pay payable in behalf of a veteran rated incompetent by the Department of Veterans Affairs to the chief officer of the institution wherein the veteran is being furnished hospital treatment or institutional, nursing or domiciliary care, for the veteran's use and benefit, when the Veterans Services Officer has determined such payment (called an institutional award) will adequately provide for the needs of the veteran and obvi-

ate need for appointment of another type of fiduciary.

[40 FR 54248, Nov. 21, 1975]

§ 13.62 Payment to bonded officer of Indian reservation.

Any benefits due an incompetent adult or minor Indian, who is a recognized ward of the Government, may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 U.S.C. 14.

[40 FR 54248, Nov. 21, 1975]

§ 13.63 Payment to custodian-in-fact.

All or any part of a benefit due a minor or incompetent adult, payment of which is suspended or withheld because payment may not be properly made to an existing fiduciary, may be paid temporarily to the person having custody and control of the beneficiary.

[36 FR 19023, Sept. 25, 1971]

§ 13.64 Fiduciary commissions.

Generally, a VA appointed fiduciary is to be encouraged to serve without fee.

(a) *Authority.* The Veterans Services Officer is authorized to determine when a commission is necessary in order to obtain the services of a fiduciary, except that the Veterans Services Officer may not authorize a commission to a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary. Necessity is established only if the beneficiary's best interest would be served by the appointment of a qualified professional, or, if a qualified professional is not available, the proposed fiduciary is the only qualified person available and is not willing to serve without a fee.

(b) *Amount; notice to beneficiary.* The Veterans Services Officer shall authorize a fiduciary to whom a commission is payable under paragraph (a) of this section to deduct from the beneficiary's estate a reasonable commission for fiduciary services rendered. The commission for any year may not exceed 4 percent of the monetary benefits paid by VA on behalf of the beneficiary to the fiduciary during that year; a year being the normal 12 month

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period following the anniversary date of appointment. The Veterans Services Officer shall furnish appropriate notice to the beneficiary, either directly or through the fiduciary, that a commission is payable.

(c) *Persons who may be excluded.* Commissions may not be authorized to dependents of the beneficiary or other close relatives acting in a fiduciary capacity on behalf of the beneficiary, except under extraordinary circumstances.

(Authority: 38 U.S.C. 5502; Pub. L. 98-223)

[51 FR 26157, July 21, 1986]

§ 13.69 Limitation of beneficiaries to individual fiduciary.

For purposes of payment of Department of Veterans Affairs benefits, the number of beneficiaries for whom an individual fiduciary may act will be limited to the number the fiduciary may be reasonably expected to properly serve. When, in the judgment of the Veterans Services Officer, a fiduciary has been appointed or is seeking appointment in a case in excess of that number, the Veterans Services Officer will initiate action to obtain a suitable substitute fiduciary.

[40 FR 54248, Nov. 21, 1975]

§ 13.70 Apportionment of benefits to dependents.

(a) *Incompetent veterans being furnished hospital treatment, institutional or domiciliary care by United States or political subdivision thereof.* (1) When compensation, pension or emergency officers' retirement pay is payable in behalf of a veteran who is incompetent or under other legal disability by court action, the Veterans Services Officer may recommend such apportionment to or in behalf of the veteran's spouse, child or dependent parent as may be necessary to provide for their needs.

(2) When payment of compensation, pension or emergency officers' retirement pay, in behalf of a veteran rated incompetent by the Department of Veterans Affairs by reason of mental illness has no spouse or child and is being furnished hospital treatment, institutional or domiciliary care by the United States or a political subdivision thereof, has been stopped because his

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or her estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, the Veterans Services Officer may recommend the payment of so much of the benefit otherwise payable as is necessary to provide for the needs of dependent parent or parents. (See §§ 13.74(b) and 13.108(b).)

(b) *Dependent parents.* When the compensation of a veteran paid to his or her fiduciary includes an additional amount for a dependent parent or parents and the fiduciary neglects or refuses to make an equivalent contribution for their support, the Veterans Services Officer may recommend the apportionment to the parent or parents of the additional amount.

(c) *Payments withheld because of fiduciary's failure to properly administer veteran's estate.* When payments of compensation, pension or emergency officers' retirement pay in behalf of a veteran have been stopped because of the fiduciary's failure or inability to properly account or otherwise administer the estate, the Veterans Services Officer may recommend the apportionment to the veteran's spouse, child or dependent parent of any benefit not paid under an institutional award or to a custodian-in-fact.

[40 FR 54248, Nov. 21, 1975, as amended at 51 FR 26158, July 21, 1986; 66FR 48561, Sept. 21, 2001]

§ 13.71 Payment of cost of veteran's maintenance in institution.

(a) *By institutional award.* (1) The payment of part of compensation, pension or emergency officers' retirement pay for the cost of a veteran's hospital treatment, institutional or domiciliary care in an institution operated by a political subdivision of the United States may be authorized as provided in paragraph (a)(2) of this section when:

(i) The veteran is rated incompetent by the Department of Veterans Affairs.

(ii) It has been determined the veteran is legally liable for the cost of his or her maintenance, and

(iii) The institution's representative has asserted or probably will assert a claim for full maintenance costs.

(2) Subject to these conditions and the further condition that the responsible official of the institution or political subdivision will agree not to assert

against Department of Veterans Affairs benefits any further claim for maintenance during the veteran's lifetime, the Veterans Services Officer may agree with such official to the payment of the veteran's benefits through an institutional award to be applied to:

(i) A monthly amount determined by the Veterans Services Officer to be needed for the veteran's personal use,

(ii) An amount to be agreed upon to be accumulated to provide for the veteran's rehabilitation upon release from the institution, and

(iii) So much of the amount of the benefit as remains not exceeding the amount the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation, to the cost of the veteran's maintenance.

(3) Upon execution of an agreement as provided in paragraph (a)(2) of this section, the Veterans Services Officer may certify to the Adjudication Division the total amount to be released to the chief officer of the institution.

(b) *By care and maintenance award.* When payment of compensation, pension or emergency officers' retirement pay in behalf of a veteran rated incompetent by VA, who has no spouse or child and is being furnished hospital treatment, institutional or domiciliary care by a political subdivision of the United States, has been stopped because his or her estate has reached the amount specified in §3.557(b)(4) of this chapter, the Veterans Services Officer may certify to the Adjudication Division the amount to be released to the responsible official to pay for the cost of the veteran's current care and maintenance. The amounts paid in such cases shall not exceed the amount of the benefit otherwise payable less any amounts apportioned to dependent parents and in no event exceed the amount which the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation. (See §§13.74(b) and 13.108(b).)

(Authority: 38 U.S.C. 501)

[40 FR 54248, Nov. 21, 1975, as amended at 51 FR 26158, July 21, 1986; 66 FR 48561, Sept. 21, 2001]

§ 13.72 Release of funds from Personal Funds of Patients.

Veterans Services Officers may authorize release of funds from Personal Funds of Patients for the needs of veterans and their dependents, including amounts fixed by statute or administrative regulations as the cost of current maintenance of veterans in institutions of the United States or a political subdivision thereof other than Department of Veterans Affairs institutions.

[40 FR 54248, Nov. 21, 1975]

§ 13.73 Transfer of funds from funds due incompetent beneficiaries.

Veterans Services Officers may, when required for the benefit of the veteran and/or the veteran's dependents, authorize the transfer of amounts credited to veterans in Funds Due Incompetent Beneficiaries to Department of Veterans Affairs Personal Funds of Patients accounts or to chief officers of non-Department of Veterans Affairs institutions for the accounts of institutionalized veterans.

[40 FR 54248, Nov. 21, 1975]

§ 13.74 Recommendation for payment.

(a) *General.* When veterans' benefits are discontinued under 38 U.S.C. 5503(b)(1), Veterans Services Officers are delegated authority to recommend apportionments or awards in accordance with paragraphs (b) and (c) of this section.

(b) *Needy dependent parent.* If the veteran's estate is \$4,000 or more, the Veterans Services Officer may authorize payment from Personal Funds of Patients or recommend payment from the veteran's estate for the needs of the dependent parent and for the care and maintenance of the veteran if hospitalized by the United States or a political subdivision thereof other than a Department of Veterans Affairs institution. If the estate is \$2,500 or more but less than \$4,000, the Veterans Services Officer may recommend an apportionment from appropriated funds to the dependent parent or parents, predicated upon need, not to exceed the veteran's discontinued award, and authorize an award to the hospital from Personal Funds of Patients if available,

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otherwise, the hospital must look to the veteran's estate for payment. If the veteran's estate is less than \$2,500, the Veterans Services Officer may recommend an apportionment to the dependent parents, predicated upon need, and an award of so much of the balance, if any, of the veteran's discontinued award as is necessary for the current care and maintenance of the veteran, to the hospital.

(c) *No dependents.* If the veteran is hospitalized by the United States or a political subdivision thereof other than a Department of Veterans Affairs institution and has no dependent parent, and the estate is less than \$2,500, the Veterans Services Officer may recommend an award from appropriated funds, not to exceed the amount of the veteran's discontinued award, to the hospital for current care and maintenance. When the veteran's estate is \$2,500 or more, no award from appropriated funds should be made but the Veterans Services Officer may authorize an award from Personal Funds of Patients if available; otherwise, the hospital must look to the veteran's estate for payment.

(d) *Hardship cases.* Veterans Services Officers are authorized, in exceptional cases, to deviate from the criteria stated to avoid hardship.

[40 FR 54249, Nov. 21, 1975]

§ 13.75 Beneficiaries in penal institutions.

(a) *All beneficiaries; 38 U.S.C. 1505(a).* No Department of Veterans Affairs pension may be paid to or for any individual imprisoned in a penal institution as a result of conviction of a felony or misdemeanor for the period beginning 61 days after imprisonment and ending when imprisonment ends.

(b) *Incompetent veterans; 38 U.S.C. 5503*
(b)(1). In addition to paragraph (a) of this section as to payment in pension cases, the provisions of 38 U.S.C. 5503(b)(1) governing payment of compensation, pension or emergency officers' retirement pay to an incompetent veteran are applicable during his or her confinement in a penal institution

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whether awaiting trial, sentence or after conviction.

[36 FR 19024, Sept. 25, 1971, as amended at 40 FR 54249, Nov. 21, 1975]

§ 13.76 Appeals from Veterans Services Officer's determination under 38 U.S.C. 5503(b)(2).

(a) *Notification.* The Veterans Services Officer will be responsible for notification of action taken and the right to initiate an appeal by filing a Notice of Disagreement and of the time limits within which such notice may be filed (§19.109 of this chapter) when he or she determines that:

(1) The dependent is not in need.

(2) The needs of the dependent parent are to be met from the veteran's estate or from Personal Funds of Patients and no payments or partial payments will be made for the dependent parents' support from appropriated funds.

(3) No award from appropriated funds for care and maintenance for the veteran in a non-Department of Veterans Affairs hospital will be made, and that the veteran's estate will have to defray the cost.

(b) *Appeals.* Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals from determinations of the Veterans Services Officer. Appeals may be initiated by a dependent parent on questions of need and payments for his or her support from appropriated funds, and by a fiduciary for the disallowance of the use of appropriated funds for the veteran's institutional care and maintenance.

(c) *Statement of the case.* When a Notice of Disagreement is filed, the Veterans Services Officer will be responsible for furnishing the claimant and the claimant's representative with a Statement of the Case and such notification regarding the filing of an appeal as is provided for in §§19.114(b) and 19.115 of this chapter.

[40 FR 54249, Nov. 21, 1975]

§ 13.77 Administrative review of the Veterans Services Officer's determination made under 38 U.S.C. 5503(b)(2).

(a) *Veterans Services Officer (revisions).*

(1) The Veterans Services Officer may revise any previous determination

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upon review of the evidence of record, provided a specific finding is made in writing that it was clearly and unmistakably erroneous.

(2) The Veterans Services Officer may revise a previous determination upon receipt of new evidence.

(b) *Under Secretary for Benefits.* Upon request for further review by the dependent parent, the Under Secretary for Benefits or designee will review and may revise the determination of the Veterans Services Officer as to the amount to be paid from Personal Funds of Patients for the support of the dependent parent, predicated upon need.

(Authority: 38 U.S.C. 501)

[40 FR 54249, Nov. 21, 1975]

§ 13.100 Supervision of fiduciaries.

(a) *Federal fiduciaries.* In Federal fiduciary cases, the Veterans Services Officer may, when he or she deems it necessary for the protection of the beneficiary's interests:

(1) Require an accounting, formal or informal, of Department of Veterans Affairs benefits paid.

(2) Terminate the appointment of a Federal fiduciary and appoint a successor Federal fiduciary.

(Authority: 38 U.S.C. 5502)

(b) *Court-appointed fiduciaries.* In court-appointed fiduciary cases, the Veterans Services Officer will take such informal action as may be necessary to assure that the needs of the beneficiary are provided for and Department of Veterans Affairs benefits are prudently administered and adequately protected.

(Authority: 38 U.S.C. 501)

(c) *Unsatisfactory conditions.* In any case where a fiduciary fails to render a satisfactory account or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are illegal or inequitable or in excess of those allowed by law, or has failed to use Department of Veterans Affairs funds for the benefit of the beneficiary or the beneficiary's dependents, or has otherwise failed or neglected to properly execute the duties of his or her

trust, and informal efforts by the Veterans Services Officer to correct the situation prove unsuccessful, the case will be referred to the Regional Counsel. In such cases the Veterans Services Officer may have all Department of Veterans Affairs benefits suspended.

(Authority: 38 U.S.C. 5502)

(d) *Misappropriation, embezzlement or violation of Federal statutes.* When the evidence indicates a prima facie case of misappropriation, embezzlement or violation of the Federal statutes, the matter will be submitted to the Regional Counsel for review and, if appropriate, the Regional Counsel's referral to the U.S. Attorney.

(Authority: 38 U.S.C. 6101)

[40 FR 54249, Nov. 21, 1975]

§ 13.101 Management and use of estates of minors.

Department of Veterans Affairs benefits payable in behalf of minors should be used for their benefit. Such funds should be expended only to the extent the person or persons responsible for their needs are unable to provide for them, except those derived from payments under 38 U.S.C. ch. 35.

(Authority: 38 U.S.C. 501)

[28 FR 10751, Oct. 5, 1963]

§ 13.102 Accountability of legal custodians.

(a) *Institutionalized veterans without spouse or child.* The legal custodian of VA benefits of an incompetent veteran who has neither spouse nor child and who is being furnished hospital treatment or institutional or domiciliary care by the United States or a political subdivision thereof, will account upon request to VA for funds received from VA for the beneficiary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

(b) *All other beneficiaries.* Compliance with the agreement as to benefit use and any authorized modifications due to changed need, proof of existence of funds surplus to immediate needs and

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proper investment thereof, if appropriate, will be established by personal contact.

(Authority: 38 U.S.C. 501)

[36 FR 19025, Sept. 25, 1971, as amended at 53 FR 20618, June 6, 1988]

§ 13.103 Investments by Federal fiduciaries.

(a) *Type authorized.* VA benefits paid to a Federally appointed fiduciary other than a spouse payee or an institutional award payee may be invested only in United States savings bonds, or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Department of Veterans Affairs benefits that are paid on behalf of an incompetent veteran to an institution via an institutional award payment arrangement may not be invested.

(b) *Registration.* (1) When funds are invested in bonds, the bonds will be registered in this form: (Beneficiary's Name), (Social Security No.), under custodianship by designation of the Department of Veterans Affairs.

(2) When funds are invested in interest or dividend-paying accounts in State or Federally insured institutions, the account will be registered in this form: (Beneficiary's name), by (Fiduciary's Name), Federal fiduciary.

(c) *Pre-need burial arrangements.* Federally appointed fiduciaries, other than institutional award payees, may use a beneficiary's funds derived from VA benefits to make deposits into, or purchase, a pre-need burial plan or burial insurance on behalf of the beneficiary, if to do so is in the beneficiary's interest.

(Authority: 38 U.S.C. 501)

[53 FR 20619, June 6, 1988]

§ 13.104 Accounts of court-appointed fiduciaries.

(a) *Requirement to account; notices of filings and hearings.* Accounts may be required from court-appointed fiduciaries as provided by State law, but in no event less frequently than once every 3 years. Arrangements will be made with the courts whereby notices of filing of all petitions, accounts, etc., and of hearings on same, relative to

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court-appointed fiduciary cases wherein the Department of Veterans Affairs is an interested party, will be sent to the Veterans Services Officer for review, distribution and such action as may be appropriate. Matters which require legal action will be referred to the Regional Counsel, and will include any matter in which the Department of Veterans Affairs has any objections to offer.

(b) *Fiduciary and beneficiary in jurisdiction other than a State of the United States.* Accounts will not be required, in the discretion of the Veterans Services Officer, in cases where the fiduciary and beneficiary permanently reside in a jurisdiction other than a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or the Republic of the Philippines, and the fiduciary appointment was made in said jurisdiction.

[40 FR 54250, Nov. 21, 1975]

§ 13.105 Surety bonds.

(a) *Federal fiduciaries.* (1) The Veterans Services Officer may require a legal custodian, custodian-in-fact or chief officer of a private institution recognized to administer Department of Veterans Affairs benefits on behalf of a beneficiary, to furnish a corporate surety bond in an amount determined to be sufficient to protect the interest of the beneficiary. Such bond shall run to the Secretary of Veterans Affairs for the use and benefit of the beneficiary.

(2) The Veterans Services Officer may require a legal custodian to furnish an agreement in lieu of a surety bond or additional surety bond when funds are deposited in an interest or dividend-paying account in a State or federally insured institution. The agreement will provide that the legal custodian and institution agree that all funds received from the Department of Veterans Affairs on behalf of the beneficiary, which have been or will be deposited by the legal custodian in the account, will be withdrawn only with the written consent of the Veterans Services Officer or designee.

(b) *Substitution of surety; claims against defunct companies.* If any surety company is placed in receivership or ceases to do business in the particular State, the Veterans Services Officer

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will take the necessary action to have proper bonds substituted in Federal fiduciary cases and refer the matter to the Regional Counsel for such other action as may be appropriate.

(Authority: 38 U.S.C. 501)

[40 FR 54250, Nov. 21, 1975]

§ 13.106 Investments by court-appointed fiduciaries.

The Veterans Services Officer will review and to the extent possible determine the legality and prudence of investments involving Department of Veterans Affairs income or estate. It is Department of Veterans Affairs policy to invest income or estate derived from Department of Veterans Affairs benefits only in legal investments which have safety, assured income, stability of principal and ready convertibility for the requirements of the beneficiary and his or her dependents. When notice of a contemplated or actual illegal or imprudent investment comes to the attention of the Veterans Services Officer, he or she will take remedial action to protect the beneficiary's estate. Cases in which it becomes necessary to institute court action will be referred to the Regional Counsel.

(Authority: 38 U.S.C. 501)

[40 FR 54250, Nov. 21, 1975]

§ 13.107 Accounts of chief officers of public or private institutions.

(a) *Department of Veterans Affairs benefits.* The chief officer of an institution, other than a Federal institution, shall, when requested, render an account to the Department of Veterans Affairs for funds received from the Department of Veterans Affairs on account of an incompetent veteran.

(b) *All income and assets.* The chief officer of the aforementioned institutions shall, when requested, furnish a statement of all income received in behalf of a Department of Veterans Affairs beneficiary under legal disability and the total assets held for the beneficiary.

(Authority: 38 U.S.C. 5503(b)(3))

[36 FR 19025, Sept. 25, 1971]

§ 13.108 Estate equals or exceeds statutory limit; 38 U.S.C. 5503(b)(1).

(a) *Discontinuance of payments.* When a veteran, rated incompetent by VA, without spouse or child, is receiving hospital treatment or domiciliary or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, the Veterans Services Officer shall, with regard to those estates monitored by the Veterans Services Officer, immediately notify the Adjudication Division so that VA payments, other than insurance, may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the Veterans Services Officer shall, when the estate has been reduced to one-half the amount specified in § 3.557(b)(4) of this chapter, immediately notify the Adjudication Division of that fact.

(b) *Waiver of discontinuance.* The Veterans Services Officer shall assist in those cases under the Veterans Services Officer's supervision in determining when discontinuance should be waived for one or more periods not to exceed 60 days of the veteran's care during any calendar year by making an appropriate recommendation.

(1) The Veterans Services Officer should not recommend waiver as an administrative expediency but should recommend waiver when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority: 38 U.S.C. 5503(b)(1)(A))

(c) *Apportionment to dependent parent; care and maintenance award.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate the amount specified in § 3.557(b)(4) of this chapter, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based on actual need as determined by the Veterans Services Officer. So much of any

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monthly remainder of the discontinued payments as equals the amount charged to the veterans for his or her current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Veterans Services Officer to be the proper charge as fixed by statute or administrative regulation, may be paid to the institution. The Veterans Services Officer shall recommend to the Adjudication Division the amount of either award.

(Authority: 38 U.S.C. 5503(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

(Authority: 38 U.S.C. 501)

[53 FR 20619, June 6, 1988, as amended at 66 FR 48561, Sept. 21, 2001]

§ 13.109 **Determination of value of estate; 38 U.S.C. 5503(b)(1)(A) and 38 U.S.C. 5505.**

Except as stated in paragraph (d) of this section, all funds, including accumulated social security and amounts on deposit in Funds Due Incompetent Beneficiaries and to the veteran's credit in Personal Funds of Patients at Department of Veterans Affairs regional offices, hospitals, State institutions, hospitals or institutions of any nature whatsoever, as well as other property, both personal and real (which is capable of being liquidated), and interest therein owned by the veteran, will be included in arriving at the value of the veteran's estate.

(a) The value of such property, including any interest therein, will be established at the estimated net price the veteran's equity in the property will bring at a forced sale after payment of all costs incident to liquidation.

(b) U.S. savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value, including accrued interest, will be used.

(c) Bonds and stocks, the current price listed on recognized stock ex-

change or by over-the-counter dealers will be the value to be used. In the absence of either, other reliable evidence of value may be used.

(d) The following will not be included as assets:

(1) Adjusted service certificate.

(2) Insurance policy having cash surrender or loan value.

(3) Dividend credits on National Service Life Insurance and United States Government Life Insurance policies.

(4) Personal property, such as furniture and household equipment, working tools, livestock and jewelry, which are included under State exemption statutes.

(5)(i) *For purposes of determinations under 38 U.S.C. 5503(b)(1)(A).* The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) *For purposes of determinations under 38 U.S.C. 5505.* The value of the veteran's home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran's burial plot will be likewise excluded.

(7) Amounts withheld under § 3.551(b) of this chapter.

(Authority: 38 U.S.C. 5505)

NOTE: Cash in the estate will be considered, notwithstanding it was derived from any of the above excluded items.

[40 FR 54250, Nov. 21, 1975, as amended at 53 FR 20619, June 6, 1988; 56 FR 65853, Dec. 19, 1991]

§ 13.110 **Escheat; post fund.**

(a) *Escheat; 38 U.S.C. 5502(e).* Upon death of a beneficiary for whom payment of Department of Veterans Affairs benefits was made to a court-appointed fiduciary, legal custodian, custodian-in-fact, or by institutional award, the fiduciary (or the deceased beneficiary's personal representative)

shall, upon request, account for and return to the Department of Veterans Affairs any remaining assets derived from Department of Veterans Affairs benefits which would under State law escheat to the State, less legal expenses of any administration necessary to determine that an escheat is in order.

(b) *General Post Fund; 38 U.S.C. 5220(a)*. Upon the death of a veteran intestate while a member or patient in any facility while being furnished care or treatment therein by the Department of Veterans Affairs, who is not survived by a spouse, next of kin, or heirs entitled under the laws of the veteran's domicile, the veteran's fiduciary, if any, or the veteran's personal representative shall account for and turn over to the Department of Veterans Affairs all personal property, including money and choses in action owned by the veteran at the time of his or her death. (See also §14.514(c) of this chapter.)

(c) *Refusal of fiduciary or personal representative to cooperate*. If the fiduciary or personal representative, if any, refuses to voluntarily comply with the provisions of paragraph (a) or (b) of this section, the Veterans Services Officer will submit a complete report to the Regional Counsel.

[36 FR 19025, Sept. 25, 1971, as amended at 40 FR 54250, Nov. 21, 1975]

§ 13.111 Claims of creditors.

Under 38 U.S.C. 5301(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable. If the fiduciary does not do so, the Veterans Services Officer should refer the matter to the Regional Counsel for appropriate action.

[40 FR 54251, Nov. 21, 1975]

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