

STATEMENT OF
KRISTINA KEENAN, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS

WITH RESPECT TO

Pending Legislation

WASHINGTON, D.C.

July 18, 2023

Chairman Bost, Ranking Member Takano, and members of the committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on legislation pending before this committee.

H.R. 705, Veterans 2nd Amendment Protection Act

The VFW supports this proposal to protect veterans' Second Amendment rights and to establish due process for veterans who have been assigned fiduciaries before referring them to the National Instant Criminal Background Check System (NICS).

Background

The Department of Veterans' Affairs (VA) may determine that a veteran is unable to manage their finances when there is medical documentation. This determination could be made by a Compensation and Pension medical examiner, a medical provider, or other VA official who determines that the veteran is incompetent and requires a fiduciary to manage their benefits. This is then confirmed by one of VA's fiduciary hubs and the veteran is informed of the decision.

VA sends the names of all veterans who have fiduciaries to NICS. This is a name check system, managed by the Federal Bureau of Investigation, and is used primarily by licensed sellers to know if a person has been disqualified from purchasing or possessing a firearm.

VA refers veterans with fiduciaries to NICS without additional screening or medical assessments to ascertain if the individual is a danger to themselves or others. Once referred, veterans are then prohibited from purchasing, possessing, receiving, or transporting a firearm. Individuals may appeal the decision, though few actually do, perhaps because they do not know that is an option.

Definitions and Reporting Practices

The *Brady Handgun Violence Prevention Act* (Public Law 103-159) of 1993, which created NICS, established that an individual “adjudicated as a mental defective or committed to a mental institution” may not own a firearm. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) defines that a person is adjudicated as a mental defective “if a court, board, commission, or other lawful authority has made a determination that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease: is a danger to himself or others; lacks the mental capacity to contract or manage his own affairs; is found insane by a court in a criminal case; or is found incompetent to stand trial.”

VA’s broader characterization within regulation (38 C.F.R. 3.353) defines “A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.” As explained in a September 2021 Congressional Research Service (CRS) report titled *Gun Control, Veterans Benefits, and Mental Incompetency Determinations* VA does not make any consideration if the veteran is a threat to themselves or others. One example from this report shows the risk of VA’s regulation: “for example, a veteran who during the determination process for Veterans Disability Compensation (VDC) indicates that because of a traumatic brain injury he is experiencing some short-term memory loss which affects his ability to manage his finances, could be determined to be ‘mentally incompetent’ even if there is no evidence that this veteran’s condition would impair his ability to safely own or handle a firearm or that he is a threat to himself or others.”

Furthermore, the Social Security Administration (SSA) does not report information to NICS. In a 2009 letter to the FBI’s NICS section chief, the legal basis for not reporting individuals to NICS is explained in that the inability to manage one’s finances does not always preclude someone from managing other aspects of their life. “Thus, if SSA were to submit for NICS inclusion the names of all beneficiaries with mental impairments who have been assigned a representative payee, a significant number of those individuals would be wrongfully identified as lacking the mental capacity to manage their own affairs.”

The earlier mentioned CRS report concludes that VA’s procedures could be viewed as an incongruity of the law. It states that one might ask “why VA is the only federal department or agency that has made substantial numbers of NICS referrals to the FBI based on mental incompetency determinations, even though other federal agencies that provide similar disability and income security benefits have not done so.” This incongruity calls into question if VA’s process goes far enough to ensure that veterans’ Second Amendment rights are not infringed.

VFW Observations

A negative consequence of VA’s current practice is that veterans tell the VFW that they refuse to seek mental health care at VA because they fear their firearms will be taken away. This has created a significant stigma surrounding mental health and has created a barrier to care for many. This perception is difficult to change. The VFW continues to encourage veterans to use their earned VA health care, including the world-class, veteran-specific mental health services that

VA provides. The VFW has also been involved in numerous efforts to reduce veteran suicide, including urging that veterans in distress temporarily give their firearms to a trusted friend or consider using trigger locks to lessen the ease of using a firearm to harm themselves. The VFW also believes in looking at the economic factors veterans face that can put them at risk for death by suicide, as we know suicide is not solely a mental health or firearm issue.

Lastly, few veterans that the VFW represents in the VA disability claims process are assigned a fiduciary, and of those it is very rare that our accredited representatives are asked to assist in appealing the decision. Even though we estimate the issue surrounding fiduciaries likely affects a small number of veterans, we argue that every veteran deserves protection of their constitutional rights.

Discussion Draft, Ernest Peltz Accrued Veterans Benefits Act

The VFW supports this proposal which would ensure VA pension benefits are paid out for the entire month when a veteran passes away. By receiving the “month-of-death” full benefit payment, the surviving family members would be able to better manage the financial hardships that come with a veteran’s passing. Rather than suddenly stopping those benefits in the middle of the month, this would provide survivors with assistance and peace of mind during a devastating moment in their lives.

The legislation is named after the World War II veteran Ernest Peltz of Queensbury, New York. He had been approved for his accrued pension and wanted his surviving family to use it for his end-of-life care and funeral expenses. Due to a VA error, the funds were deposited seven days after his death (during the following month) and then were immediately pulled back, leaving his family without these funds to manage impending expenses. This bill would ensure that pension funds reach survivors and would cover the full month of the veteran’s passing.

Chairman Bost, this concludes my testimony. Again, the VFW thanks you and Ranking Member Takano for the opportunity to testify on these important issues before this committee. I am prepared to take any questions you or the committee members may have.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2023, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.