

## **Reform the VA Fiduciary Rule, Protect Veterans 2<sup>nd</sup> Amendment Rights**

### **Background**

The VA's Fiduciary Program allows VA rating officials and health care providers, without any judicial oversight, to involuntarily refer a veteran to the fiduciary program. Once referred to the program, the veteran has 60 days to prove to the VA they are, in fact, competent to handle their VA benefits – **the burden of proof falls to the veteran to prove they are competent.**

Once placed in the fiduciary program, the veteran is then reported by VA to the Department of Justice to be placed on the National Instant Criminal Background Check System (NICS) as a “mental defective”, after which **the veteran is informed they are no longer allowed to purchase or possess firearms.**

### **Issue**

**The VA's fiduciary process does not meet the legal standard for adjudicating an individual as a “mental defective” under the Brady Gun Control Act** (from which the requirement to report to the NICS database arises) and the veterans placed in the fiduciary program should never be reported to the NICS database. It's all done outside any court system, with the burden of proof falling on the veteran to prove they are competent to handle their VA benefits, not upon the VA to prove they incompetent. Further, appointment of a fiduciary does not come near the legal standard used by the government elsewhere for adjudicating someone as a “mental defective.” Indeed, as the attached Petition for Rulemaking points out, the VA fiduciary determinations were explicitly designed only for the purpose of managing VA benefits, nothing else.

### **Discussion**

By setting up such disincentives for veterans to seek mental health care from the VA, the VA is driving the very veterans who should be seeking mental health care away from the system. Because of the fear of losing their firearms, which 46% of veterans own, many veterans do not seek the mental health care they need. Over half the post-9/11 combat deployed veterans who need mental health care treatment do not use either VA or non-VA mental health care services.

The National Academies of Science, Engineering, and Medicine stated a significant reason these veterans are not seeking these mental health care services is because they will lose their guns, or other legal or administrative actions will be taken against them for seeking mental health care such as loss of security clearance or loss of child custody. The rate of increase in veteran suicides NOT in the VA health care system is almost 200% higher than for veterans who ARE in the VA health care system.

But the rate of increase in veteran suicides who do NOT use the VA health care system is almost 200% higher than for veterans who ARE in the VA health care system.