STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
"HOW VA CAN BETTER PROTECT VULNERABLE VETERANS
AND THEIR FAMILIES"
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INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss how the Department of Veterans Affairs (VA) can better protect beneficiaries needing the care of a fiduciary and specifically, the recent report from the Office of Inspector General (OIG), *Veterans Benefits Administration – Audit of the Fiduciary Programs' Effectiveness in Addressing Potential Misuse of Beneficiary Funds.* Accompanying me is Mr. Timothy Crowe**,** Director of the OIG's Audit Operations Division in St. Petersburg, Florida.

Our 2010 audit showed that many of the program weaknesses persist since we last audited the program in 2006. In fact, some planned actions provided by the Veterans Benefits Administration (VBA) in response to our 2006 report, *Audit of Veterans Benefits Administration Fiduciary Program Operations,* were not completed or did not fully address our concerns about the protection of the estates of incompetent beneficiaries. We continue to be concerned that VA regional offices (VAROs) are not effectively employing some of the primary strategies and tools to uncover and address potential misuse of these beneficiaries' funds.

BACKGROUND

Federal fiduciaries are appointed by VA under authority contained in Title 38, United States Code, Section 5502(a)(1), Payments to and Supervision of Fiduciaries. The fiduciary may be the spouse of a veteran; a chief officer of a VA or non-VA institution in which a veteran is receiving care; a legal custodian; or another responsible person. These beneficiaries are VA's most vulnerable constituencies. In the fiscal year (FY) 2010 budget submission, VA reported approximately $696 million in benefits payments to more than 102,000 beneficiaries with a cumulative estate value of $3.1 billion.

A State court can appoint a fiduciary whose duties and authority are established by Federal statute. In all cases, VA is responsible for ensuring that the VA-derived income and estates of incompetent beneficiaries are used solely for the care, support, welfare, and needs of those beneficiaries. The VBA administers this program at VAROs and the respective Regional Counsel offices.

VBA Field Examiners and Legal Instruments Examiners (LIEs) are charged with monitoring the needs of Fiduciary Program beneficiaries and the protection of VBA-derived funds. VBA Field Examiners determine and appoint fiduciaries for incompetent and/or legally disabled VA beneficiaries, establish and authorize the use of VA benefits and assets, and provide ongoing case management services through scheduled and unscheduled follow-up visits. During visits to the beneficiaries, Field Examiners assess the competence, adjustment, and personal welfare of the beneficiary; review fund usage, method of payment, and the performance of the fiduciary; develop information affecting entitlement to current or additional benefits; and ensure that the beneficiary's dependents, if any, are adequately provided for with the funds available.

LIEs share the responsibility with supervisors and Field Examiners for making administrative and quasi-legal determinations involving the overall supervision of beneficiary estates and the protection of rights to benefits. LIEs oversee the management of the financial affairs of an incompetent beneficiary through activities such as securing and analyzing annual accountings filed by fiduciaries. Accountings are the fiduciary's written report on the management of a beneficiary's income and estate and must include a beginning balance, itemization of income and expenses, and a statement of funds remaining at the end of the accounting period. The LIEs analysis of accountings is a critical component in monitoring fiduciary performance because it is where questionable expenses can be detected at the earliest stage. In addition, LIEs are to ensure that a required Surety Bond is in place in an amount adequate to protect the existing VA estate as well as anticipated VA income for the ensuing accounting period. Accounting periods are normally 1 year but can be lengthened up to 3 years in certain circumstances.

When the Fiduciary Program does not adequately supervise appointed fiduciaries, incompetent beneficiary estates are subject to misuse. For example, a joint Federal and State investigation in Minnesota disclosed that a fiduciary submitted false accountings in an effort to conceal the embezzlement of nearly $1 million from 33 disabled veterans while acting as their appointed fiduciary. The defendant admitted to taking funds from the veterans' bank accounts to support a gambling habit and to submitting false accountings to VA and agreed to make restitution to VA, the Social Security Administration, and a bonding company that reimbursed the veterans for their losses. Earlier this year, the fiduciary was sentenced to 55 months' incarceration after pleading guilty to making a false statement to VA.

Historically, incompetent beneficiary estates have been at risk of misappropriation by fiduciaries. The OIG reviews program performance through investigations, audits of the program, and inspections of fiduciary program operations and individual VAROs. From October 1998 to March 2010, the OIG's Office of Investigations conducted 315 fiduciary fraud investigations, resulting in 132 arrests and monetary recoveries of $7.4 million in restitution, fines, penalties, and administrative judgments. Our oversight efforts have shown that Fiduciary staff have not always followed VBA policy when processing fiduciary claims or providing oversight of fiduciary activities.

OIG AUDIT RESULTS

In 2006 and 2010, we issued audit reports on the Fiduciary Program. The 2006 report contained seven recommendations to improve Fiduciary Program operations. Suggested improvements included ensuring staff challenge fiduciary accountings and focus on key fraud indicators; determining appropriate case load levels and staffing requirements; developing a training program to enhance skills needed to effectively conduct fiduciary oversight; and ensuring the accuracy of data reported in the Fiduciary-Beneficiary System (FBS), VBA's case management system used by the Program to support an array of functions necessary for day-to-day operations.

Our 2010 audit found that VBA still needs to improve its management infrastructure in the areas of information systems, staffing models, and management oversight to support the Fiduciary Program.

<u>Ineffective Support of Operations</u>

FBS has functional and data limitations that have severely affected management's ability to use the system as a tool to support program operations effectively. VBA has not implemented upgrades to FBS to address system weaknesses identified both internally and by the OIG in previous reports. However, in October 2009, VBA initiated a study to analyze FBS functionality and to determine whether the system should be modified or replaced to meet the Program's needs. VBA needs a system that can:

- Capture data necessary to target funds at risk of misuse by fiduciaries. FBS does not maintain a list of fiduciaries replaced due to misuse and does not record accounting information such as VA and non-VA benefits, fiduciary expenditures on behalf of beneficiaries, financial institutions account balances, and Surety Bond values.
- Contain reliable and accurate data for decision-making and external reporting. For example, FBS currently limits the user to a single entry for the estate value, which according to VA policy, should include both VA and non-VA funds. Since VA and non-VA assets are not recorded separately in FBS, Fiduciary Program management cannot use FBS data to identify VA estates that may require protection. In addition, FBS tracks fiduciaries by name, not a unique identifier, such as Social Security number or tax identification number. This makes it difficult to match a fiduciary to all their beneficiaries since the fiduciary's name is not always entered into the system in a consistent manner.
- Interface with other Compensation and Pension Information Technology systems, such as the Veterans Service Network (VETSNET), an application used to support VBA claims processing. Consequently, FBS cannot automatically notify Fiduciary Program staff of competency determinations or an impending large retroactive payment caused by a change in a beneficiary's service connected status.

- Provide an automated interface for external entities, such as fiduciaries, beneficiaries, or financial institutions. This system shortcoming precludes electronic submission of key data. Therefore, FBS cannot accept or process electronically submitted accounting information from fiduciaries or access financial institutions to secure account balance and transaction information. Instead, fiduciaries must manually prepare and mail accountings to VBA annually and staff must manually review the data provided, check for math errors, and reconcile income, expense, and estate balances to financial institution data.

Lack of Staffing and Workload Models

Our recent report also noted that VBA lacks a staffing and workload model for use by VAROs and Fiduciary Program management. Instead, decisions regarding Fiduciary Program staffing are left to the judgment of individual VARO Directors. As a result, a wide variation exists in the number of beneficiaries managed by individual LIEs, ranging from 188 to 1,576 beneficiaries per LIE. We found that the active involvement of local Fiduciary Program management in supervising the program was a decisive factor of whether the Fiduciary Program staff took timely and appropriate action to secure delinquent accountings. The Fiduciary Program Headquarters component also indicated that it lacks sufficient resources to address some program deficiencies.

We previously identified this issue in our 2006 audit. In response to that report, VBA said it would complete a work measurement study and convene a work group to examine Fiduciary Program staffing at the regional office level and make recommendations regarding caseloads. However, VBA's 2007 Fiduciary and Field Examination Pilot Implementation Team Report indicated that historical guidelines relating fiduciary activity resources to beneficiaries were long ago abandoned and considered obsolete by program staff and field management.

Insufficient Guidance to Fiduciaries

VBA does not provide online information related to fiduciary matters such as guides for best practices, frequently asked questions, training, or other tools to assist fiduciaries. Some coaches and LIEs believe the majority of VARO follow-up for additional information and clarification is due to new fiduciaries not being fully knowledgeable of their duties, responsibilities, and program requirements. The availability of online resources to assist fiduciaries could potentially reduce requests to VBA for assistance and increase compliance with Fiduciary Program requirements.

Inconsistent Quality Assessment

VBA is not consistently conducting activities that could potentially increase the effectiveness of the Fiduciary Program. VBA's Systematic Technical Accuracy Review (STAR) and Site Visit programs both review fiduciary program activities to ensure fiduciary staff comply with VBA policies and procedures in areas such as timeliness, payee designation, fund usage, and FBS accuracy. The Fiduciary Program does not analyze or trend STAR errors and Site Visit Program findings nor identify and disseminate best practices employed in the field. For example, some VAROs provide newly appointed fiduciaries with locally developed guidance. The literature discusses topics ranging from fund usage to reporting requirements and includes local VARO contact for the fiduciary activity.

Lack of Staff Training
Finally, training staff in this complex program is a continuing problem. Centralized training for Fiduciary Program managers has only occurred three times since 1987 and not at all since 2004. Centralized training for LIEs has only occurred twice for LIEs since 1991. According to VBA, Field Examiners and LIEs must complete a total of 80 hours of training each year. Of the 80 hours, 60 should be related to VBA-suggested topics while the remaining 20 are at the discretion of the VAROs. In response to our 2006 audit, VBA said it was developing a new training curriculum for LIEs, but has yet to develop a standardized curriculum for new LIEs. During the recent audit, program management indicated that, during FY 2010, VBA would implement standardized training for LIEs, conduct the first of recurring managers training conferences, and deploy training teams to provide 40 hours of standardized training to Field Examiners, LIEs, and managers at each VARO.

In 2006, we reported that suspected misuse of incompetent beneficiary estates went undetected because VARO staff did not follow up on questionable or incomplete data in fiduciary annual accounting statements and did not require documentation to support claimed expenses. The following examples from our 2010 audit show that many of the program weaknesses persist today.

VBA was not taking effective action to obtain seriously delinquent accountings**.** Seriously delinquent accountings refers to those which are at least 120 days past due. Under specified circumstances, VBA policy requires fiduciaries to submit periodic accountings listing beneficiary assets, income, and expenses. We found that LIEs did not consistently pursue receipt of seriously delinquent accountings from fiduciaries. At 5 of 6 VAROs visited, 44 percent of the accountings drawn from a random sample became delinquent up to 710 days. Further, at 3 of these 5 VAROs, timely and appropriate actions were not taken to secure 63 percent of the sampled delinquent accountings. As a result, we concluded that VBA was not managing the financial risks associated with the aggregate estate value of 17 beneficiaries totaling over $1.5 million nor were appropriate procedures followed to minimize the potential risks related to untimely accountings.

VBA was not consistently verifying questionable expenses reported by fiduciaries. We identified qualitative weaknesses in the LIE review of expenditures of beneficiary funds by fiduciaries. LIEs consistently failed to take effective action to verify questionable expenses totaling $166,787 for 33 of the 137 accountings reviewed. For example, an LIE approved an accounting statement related to one beneficiary's estate that showed house and automobile expenses totaling $17,364 without supporting documents or receipts, and did not challenge the expense. Based on our statistical sample of accountings reviewed, we projected that LIEs may not have adequately verified approximately $2.9 million in expenditures for 551 (29 percent) of

1,906 accountings completed between April 1, 2009, and May 22, 2009. Recent policy changes implemented by VBA have strengthened fiduciary accounting requirements. However, VBA lacks an agency-wide policy requiring receipts or other documentation to substantiate unbudgeted and budgeted expenditures that exceed a pre-designated threshold. This has resulted in VAROs and individual staff applying different standards when verifying questionable expenses submitted by fiduciaries. Until VBA standardizes the accounting review process to the extent practical and minimizes the subjectivity in determining what constitutes a questionable expense, it lacks reasonable assurance that unusual or inappropriate expenditures are identified and verified to ensure funds were expended appropriately.

VBA was not consistently replacing fiduciaries when appropriate. At two VAROs visited, we found a fiduciary with numerous late accountings while managing multiple beneficiary estates. Actions were not in process to replace these fiduciaries, in spite of these performance deficiencies. For example, at one VARO, a fiduciary was seriously delinquent in submitting four accountings ranging from 134 to 215 days late during the period 2004–2009. In addition, the VARO received multiple complaints from veterans regarding the fiduciary's performance during this same period. However, the VARO had not taken any actions to replace this fiduciary. When VBA fails to take appropriate actions in a timely manner to replace fiduciaries that are responsible for multiple delinquent accountings, the potential for misuse or inappropriate diversion of beneficiary funds is increased.

VBA was not adequately following up and reporting on allegations of misuse of beneficiary funds and estates. Misuse allegations of beneficiary funds may come to VBA as complaints from the beneficiary, their friends and relatives, or other interested parties. VBA policy requires staff to review, and if necessary, investigate allegations of misuse of benefits against a fiduciary within specified time frames. We found that 4 of 6 VAROs did not consistently process misuse actions timely or appropriately in 22 (96 percent) of 23 cases reviewed. Two VAROs did not report any misuse activity during the period January 2008–March 2009. However, our audit identified four cases of suspected misuse of funds at one VARO and one case at the other VARO that should have been processed and recorded according to VBA policy. Furthermore, for FYs 2005 through 2008, VBA did not include statistical information pertaining to misuse of funds by fiduciaries in the *Annual Benefits Report to Congress* as required by Title 38, United States Code, Section 5510. The required information includes:

- The number of cases in which the fiduciary was changed because of a finding that benefits had been misused and how such cases of misuse of benefits were addressed by the Secretary.
- The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits reissued to beneficiaries.
- The number of fiduciary cases referred to the Office of Inspector General and their disposition.

- The total amount of money recovered by the Government in cases arising from the misuse of benefits by a fiduciary.

In our 2010 report, we recommended that VBA provide a robust database to support program operations and develop a staffing workload model to guide resource allocation decisions. We also recommended that VBA develop and disseminate policies and procedures to improve the analysis of annual accountings filed by fiduciaries that can result in investigating and reporting allegations of misuse; provide more guidance to fiduciaries; ensure regular periodic accountings of the financial activities administered by fiduciaries; and ensure VAROs conduct local quality assessments of fiduciary operations. The Acting Under Secretary for Benefits agreed with our findings and provided target dates to complete planned actions that address our recommendations. We consider VBA's planned actions responsive to our concerns and will follow up on their implementation.

OIG INSPECTION OF VARO FIDUCIARY PROGRAM OPERATIONS

Our ongoing Benefits Inspection Program is an initiative to ensure our Nation's veterans receive timely and accurate benefits and services. Since April 2009, the OIG's Benefits Inspection Division inspected fiduciary procedures to ensure staff provided proper oversight of incompetent beneficiaries at four VAROs. We found Fiduciary staff did not consistently follow VBA policy when processing fiduciary claims or providing oversight of fiduciary activities. Our analysis of 115 Personal Guardianship Folders found that 42 (37 percent) contained errors that affected or had the potential to affect beneficiaries benefits.

Some examples of steps Fiduciary Program staff did not always perform include:

- Complete credit checks for potential fiduciaries.
- Document the verification of beneficiaries' funds controlled by the fiduciary.
- Complete agreements with Fiduciaries to ensure how beneficiaries' funds are to be spent.
- Verify annual Fiduciary accountings for accuracy. For example, a beneficiary's estate should have been increased by $200,000 as the result of a property sale. Staff noted the beneficiary had assets of $66.82 after the sale of this property and did not question the disposition of funds resulting from the sale of the property. Consequently, VBA staff lacked assurance that these funds were spent appropriately and solely for the welfare of the beneficiary.

We will continue to review and report on VARO performance in managing the fiduciary and field examination activity in future OIG benefit inspections.

CONCLUSION

VBA needs an effective Fiduciary Program in place to ensure consistent and effective monitoring of fiduciaries and beneficiary funds and estates. Effective oversight is necessary to the stewardship of beneficiaries' financial affairs. During the course of our audit, Fiduciary Program management at VBA Headquarters made positive changes to the program such as requiring fiduciaries to submit monthly bank statements with annual accountings. We believe that more improvements are necessary to ensure the integrity of this program and the services it provides to vulnerable veterans and their families.

Mr. Chairman, thank you for the opportunity to discuss these important issues. We would be pleased to answer any questions that you or other members of the Subcommittee may have.