



Office of Inspector General

AUDIT OF APPOINTMENT AND SUPERVISION OF FIDUCIARIES

*VBA should strengthen the
supervision of fiduciaries.*

Report No.: 7R5-B13-074

Date: May 1, 1997

**Office of Inspector General
Washington DC 20420**



**DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington DC 20420**

Memorandum to the Under Secretary for Benefits (20)

Audit of Appointment and Supervision of Fiduciaries

1. The purpose of the audit was to determine if the Veterans Benefits Administration (VBA) protected the incomes and estates of beneficiaries who could not take care of their financial affairs (categorized by VBA as incompetent beneficiaries) from fraud, waste, and abuse. The audit had three major objectives:

- Determine whether VBA appointed appropriate fiduciaries to manage the funds of beneficiaries rated incompetent by VBA.
- Assess the effectiveness of VBA's supervision of fiduciaries.
- Determine how persons convicted of fiduciary fraud victimized Department of Veterans Affairs (VA) beneficiaries.

2. When a probate court or VA rating board determines an adult VA beneficiary is incompetent, VBA personnel must assess the need for a fiduciary, appoint an appropriate person or entity to manage the beneficiary's funds, and monitor the management of those funds. As of September 30, 1996, VBA personnel supervised the management of funds valued at over \$1.4 billion for more than 110,000 incompetent beneficiaries.¹

3. Audit results showed VBA personnel appointed appropriate fiduciaries to manage the funds of incompetent beneficiaries. We concluded that VBA could provide more effective supervision of certain fiduciaries to reduce the risk of theft or misuse of beneficiaries' funds. VBA needed to strengthen monitoring of fiduciaries who were required to submit periodic reports of income, expenses, and assets (accountings) by following up on questionable or inconsistent data, independently verifying beneficiaries' assets, and requiring documentation supporting selected expenses reported by fiduciaries. Also, we concluded that VBA should provide less supervision of the estates of certain beneficiaries whose situations are stable and who are considered less vulnerable to fiduciary fraud. The need to independently verify beneficiaries' assets was discussed in a

¹Fiduciary & Field Examination Activity Estate Administration Summary, Nationwide Section, as of 9/30/96

prior Office of Inspector General (OIG) report (Report No. 9R3-B13-053 dated March 31, 1989).

4. From our review of OIG investigations, we did not find any trends to help predict or profile persons who may commit fiduciary fraud. However, we noted a series of activities that should signal reviewers to look more in-depth at the activities of the fiduciary. The perpetrators used a variety of methods to steal funds from beneficiaries. These included charging excessive fiduciary fees, charging for unauthorized services, processing withdrawals without proper signatures, stealing property, and using the beneficiary's funds to pay the fiduciary's bills. Certain findings arising from the audit have been referred to the Office of Investigations for review.

5. VBA program officials were aware of the need to enhance supervision of fiduciaries and were developing a program of training to be used by regional office personnel. Centrally-developed training should improve the performance of responsible personnel, but we concluded that additional actions are needed to protect the incomes and estates of incompetent beneficiaries. We made recommendations to strengthen monitoring of fiduciaries who are required to submit periodic accountings while reducing the level of supervision of other beneficiaries' estates. We recommended that VBA staff independently verify balances in selected asset accounts, regularly review documentation supporting expenditures, and reduce the level of supervision of certain fiduciaries who are not required to submit accountings. We also recommended that all regional offices be provided the list of fraud signals identified in this report to assist the managers in identifying cases that may require more in-depth review.

6. The Acting Under Secretary for Benefits agreed with or provided acceptable alternatives to our recommendations and provided acceptable implementation plans. We consider all recommendations resolved and we will follow up on all recommendations until they are implemented.

For the Assistant Inspector General for Auditing

(Original signed by:)

WILLIAM D. MILLER

Director, Kansas City Operations Division

TABLE OF CONTENTS

Page

Memorandum to the Under Secretary for Benefits (20)	i
--	----------

RESULTS AND RECOMMENDATIONS

VBA Should Strengthen Monitoring of the Estates of Certain Incompetent Beneficiaries While Reducing the Level of Supervision of Other Beneficiaries' Estates	1
Conclusion	7
Recommendations	7

APPENDICES

I	OBJECTIVES, SCOPE, AND METHODOLOGY	11
II	BACKGROUND.....	13
III	DETAILS OF AUDIT	15
IV	SAMPLING PLAN AND RESULTS.....	18
V	SUMMARY OF FRAUD PROFILE.....	20
VI	MEMORANDUM FROM THE ACTING UNDER SECRETARY FOR BENEFITS	22
VII	FINAL REPORT DISTRIBUTION	27

RESULTS AND RECOMMENDATIONS

VBA Should Strengthen Monitoring of the Estates of Certain Beneficiaries While Reducing the Level of Supervision of Other Beneficiaries' Estates

Regional Office personnel could provide more effective supervision of fiduciaries who are required to submit periodic accountings. Audit results showed that personnel monitoring fiduciaries did not challenge questionable or inconsistent data, independently verify beneficiaries' assets, or review documentation supporting expenses reported on accountings. This occurred because reviews of available evidence were not thorough and VBA program officials did not believe additional monitoring could be provided with available resources. However, we found that VBA provided more supervision than was needed over the financial affairs of certain beneficiaries whose VA benefits were less vulnerable to fraud. We concluded that some of the resources used to monitor the financial affairs of less vulnerable beneficiaries could be reallocated to permit more thorough supervision of fiduciaries who are required to submit accountings. More effective supervision of fiduciaries would reduce the risk of theft or misuse of beneficiaries' funds valued at over \$1.4 billion.

VBA Personnel Needed to Provide Better Supervision of Fiduciaries Who Were Required to Submit Periodic Accountings

Supervision over the incomes and estates of incompetent VA beneficiaries could be improved. We reviewed the records of a sample of 30 beneficiaries whose fiduciaries were required to submit periodic accountings to VBA. We determined that regional office personnel did not question inadequate or inconsistent data in accountings or other documents. Also, they did not independently verify assets and expenses reported on annual accountings. Regional office personnel did not follow up on questionable or inconsistent data because they overlooked pertinent evidence when reviewing accountings and other documents. Fees charged by court-appointed fiduciaries were not questioned because VBA officials thought they would not get support from VA attorneys, who would represent VA in the judicial system, or from the courts. In addition, program officials were concerned that independent verification of assets, more thorough reviews of reported expenses, or other forms of supervision could not be provided with available resources.

Questionable or Inconsistent Data -- VBA personnel did not follow up on questionable or inconsistent data in the records of 10 of 30 beneficiaries reviewed. We found instances where regional office personnel did not:

- Question reported expenses which appeared to be improper.
- Account for real estate and bank accounts owned by beneficiaries.
- Take action when a fiduciary's integrity was questioned.
- Follow up when required bank certifications were not submitted or were inconsistent with other evidence.

In each case, material information in the principal guardianship folder was overlooked or was not considered by regional office personnel when assessing the beneficiaries' financial affairs.

Regional office personnel did not challenge questionable fees charged by court-appointed fiduciaries for 9 of the 30 beneficiaries in our sample. These fees could be grouped into three general categories. However, some cases fell into more than one category.

- Fiduciaries for eight beneficiaries charged fees we considered excessive or unjustified. These fiduciaries charged fees ranging from 6 to 20 percent of the beneficiaries' total incomes without providing evidence of unusual circumstances, such as real estate transactions, which might warrant extra fees.
- Four fiduciaries charged extra fees for services that VBA criteria consider normal fiduciary duties, such as preparing accountings.
- Two beneficiaries paid substantial fees to guardians of persons and guardians of estates at the same time. The available evidence did not explain why either beneficiary needed a guardian of person.

We concluded from discussions with staff at eight VA regional counsels' offices that there were no consistent guidelines for determining when a court-appointed fiduciary's fee is considered reasonable. Also, VBA program officials told us that regional counsels rarely challenge fiduciaries' fees in court.

Independent Verification of Assets -- An OIG audit report issued in 1989 identified numerous problems with the certification of assets on deposit. Some accountings did not include certification of assets on deposit for each account maintained for beneficiaries. Other accountings had altered certifications, certifications with "as of"

dates which did not agree with the accounting periods, and certifications that did not show the interest earned. The report also cited over 122 instances of fiduciary fraud confirmed by OIG investigations during the preceding 5 years. The report recommended that VBA:

- Establish policies and procedures to independently verify beneficiaries' assets.
- Emphasize the need for regional office officials to comply with existing VA policy designed to protect beneficiaries' assets.

The Under Secretary for Benefits concurred with the audit recommendations, and procedures for independently verifying assets were drafted. However, those procedures were not implemented, and VBA policy still does not require regional office personnel to independently verify beneficiaries' assets reported by fiduciaries. Instead, fiduciaries are instructed to obtain certifications from the appropriate financial institutions and then send the certifications to VA. This procedure presents a fraud vulnerability because the fiduciary sends and receives the certification prior to mailing to VBA. Our review of 12 investigations closed by the OIG during the period October 1, 1990, through September 30, 1996, revealed 3 instances where fiduciary fraud could have been prevented or detected earlier had certifications of assets been submitted directly to VA by the financial institutions. This report contains a recommendation to obtain independent verification of assets which repeats a prior audit report's recommendation.

Documentation of Claimed Expenses -- Our audit revealed that regional office personnel generally did not question expenses reported by fiduciaries on their periodic accountings or request supporting documentation. VBA policy requires regional office personnel to review all expenditures on the accountings and, when necessary, verify the expenditures by obtaining copies of receipts or canceled checks from the fiduciary.

To verify data provided on accountings, we asked fiduciaries for 26 beneficiaries to submit documentation supporting selected expenditures. We identified three potential problems. One fiduciary provided inadequate documentation of three expenditures totaling \$1,700. The fiduciary's daughter stated that the beneficiary had thrown away the receipts. Another fiduciary provided copies of three checks payable to cash and one check payable to a third party, all of them endorsed by the fiduciary. A third fiduciary did not provide requested documentation despite two letters and three telephone contacts over a 12-week period.

Our review of 12 completed OIG fiduciary fraud investigations showed that routinely requesting canceled checks to support expenditures could have disclosed 3 instances of fraud. Fraud cases involved checks payable to the beneficiary or to cash which were processed without endorsement and checks written on the beneficiary's account to third

parties to pay the fiduciary's bills. Had the canceled checks been available for inspection, the inappropriate use of the beneficiaries' funds could have been detected.

Canceled checks or other documentation of expenditures should be regularly requested from fiduciaries on a sample basis. This would allow regional office staff to match actual disbursements to the periodic accountings and provide greater assurance that beneficiaries' funds were spent appropriately. Also, if fiduciaries are aware that VA will request canceled checks, they will be less likely to write fraudulent checks on beneficiaries' accounts.

Improved Supervision of Fiduciaries Would Reduce the Risk of Theft or Misuse of Beneficiaries' Funds

Better supervision of fiduciaries who are required to submit periodic accountings would help ensure that VA benefits are used for the beneficiaries' well-being. Following up on questionable or inconsistent data, independently verifying assets, and reviewing documentation of reported expenses would provide a stronger deterrent to fiduciary fraud and increase the likelihood of detecting any fraud that did occur.

Program Officials Were Aware of the Need to Strengthen Supervision of Fiduciaries and Initiated Corrective Action

Program officials were aware of the issues we identified because they had found similar instances when reviewing the quality of work performed by regional office personnel. These officials began a program to train staff and supervisors. As of January 22, 1997, three training videos had been issued for use in training and scripts had been prepared for three more.

Additional Corrective Actions Are Needed

Centrally-developed training of regional office personnel should result in improved performance, but we concluded additional actions will be needed. Developing guidelines for assessing reasonableness of fees charged by court-appointed fiduciaries would help regional office personnel make better and more consistent decisions concerning the reasonableness of fees charged. Such guidelines could also save time by reducing the number of questions raised. Additionally, requiring fiduciaries to submit release forms authorizing VA to verify beneficiaries' assets would put the fiduciaries on notice that the information they provided could be verified. This requirement, combined with independent verification of selected account balances and mandatory reviews of documentation supporting selected expenditures, would provide a stronger deterrent to fiduciary fraud. These actions would also improve the chances of detecting any fraud that did occur.

Another change that should result in more efficient use of personnel and more effective supervision of fiduciaries is automation of the analysis of fiduciary accountings. Computer software could check the fiduciaries' math, compare current data with prior years' data, and identify substantial changes or other deviations from prior reported information for further review by regional office personnel. For example, computer software could alert regional office personnel if an accounting did not mention real estate that had been listed as an asset on prior accountings. Our audit did not include an assessment of the feasibility of automation and we did not attempt to estimate the costs involved; however, we believe VBA officials should consider this alternative to the current manual procedure.

Available Resources Can Be Reallocated to Allow More Effective Supervision of Fiduciaries Who Are Required to Submit Accountings

VBA policy requires regional office personnel to complete field examinations for each adult beneficiary at specified intervals. Each field examination should include personal contact with the beneficiary to assess the beneficiary's environment and usage of the beneficiary's funds. Depending upon the beneficiary's circumstances, maximum intervals for field examinations range from 12 to 48 months.

Unnecessary Supervision of Certain Fiduciaries -- We reviewed the records of 50 beneficiaries whose fiduciaries were not required to submit periodic accountings and concluded that 19 received more frequent field examinations than necessary. Of these:

- All 19 beneficiaries lived in stable environments. Fourteen resided in institutions, while five lived with spouses or other family members. The cost of care for each of the institutionalized beneficiaries exceeded the amount of his or her VA benefits.
- Twelve beneficiaries received monthly VA benefits of less than \$200 each. Two received VA benefits ranging from \$200 to \$500 monthly, and five received more than \$500 per month.
- VA benefits for 10 beneficiaries were paid to the institutions where they resided. Benefits for eight beneficiaries were paid to spouses or other family members. Payments for one beneficiary went to a county conservator.

Reducing the frequency of field examinations for some beneficiaries or developing alternative methods to obtain necessary information would save staff time and travel costs. The resources saved could be reallocated for other uses, such as independently

verifying beneficiaries' assets or reviewing documentation supporting expenditures reported by fiduciaries.

Extended Use of Supervised Direct Pay -- A supervised direct pay (SDP) beneficiary is an adult rated financially incompetent by VBA to whom benefits are paid directly when the facts indicate he or she is capable of handling his or her own financial affairs under continuing VA supervision. VBA policy states that beneficiaries may receive supervised direct payments for a trial period not to exceed 1 year. At the end of the trial period, an assessment must be made to determine whether benefits should be paid to the beneficiary, with or without VA supervision, or to a fiduciary.

Based on audit results, we concluded that use of SDP should be more tightly restricted. Our sample of 50 records not requiring periodic accountings included 7 SDP beneficiaries. At the time of our review, these beneficiaries had been receiving supervised direct payments for periods ranging from 18 months to 18 years. Two of these beneficiaries were allowed to retain their SDP status for extended periods even though the available evidence did not show they managed their own funds prudently.

Since regional office personnel must visit SDP beneficiaries at least once every 12 months, supervision of these beneficiaries is resource-intensive. Reducing the number of beneficiaries receiving supervised direct payments would save staff time and enable VBA to provide more effective supervision of fiduciaries. When a beneficiary does not demonstrate the ability to manage funds during the 1-year trial period, SDP generally should be discontinued and a fiduciary should be appointed. Conversely, a beneficiary who demonstrates the ability to manage his or her financial affairs should be referred to a VA rating board for a reassessment of his or her competency. SDP should be continued beyond the trial period only in unusual situations.

VA Personnel Who Review Fiduciary Files Can Be More Alert to Signals For More In-Depth Review

In our review of the 12 closed fiduciary fraud investigations, we did not note a general pattern or trend that would readily identify a potential perpetrator of fraud. We did note, however, that there are indicators available in the evidence submitted, or lack of evidence submitted, that would lead a reviewer to ask more questions. These indicators include late accountings, numerous checks payable to fiduciaries, and complaints that beneficiaries' bills were not paid. A detailed list of questionable activities is included in Appendix V. These activities are fraud indicators and should be examined when evaluating fiduciaries' performance. We are recommending that this list be forwarded to regional office personnel responsible for supervising fiduciaries and that it be included in general training sessions.

Conclusion

VBA should provide more effective supervision of fiduciaries. Regional office personnel should strengthen the supervision of fiduciaries who are required to submit periodic accountings while providing less supervision of the financial affairs of those whose VA benefits are less vulnerable to misuse. Improved supervision of the estates of the most vulnerable beneficiaries would provide a stronger deterrent to misuse of the beneficiaries' funds and increase the chances of detecting any misuse that did occur.

For More Information

Appendix III, page 15, provides examples of inadequate supervision of fiduciaries who are required to submit accountings and unnecessary supervision of other fiduciaries.

Recommendations

We recommend that the Under Secretary for Benefits:

- a. Coordinate with the Office of General Counsel to develop guidelines for regional office personnel to use in assessing reasonableness of fees charged and expenses claimed by court-appointed fiduciaries.
- b. Require fiduciaries to submit financial information release forms authorizing VA to independently verify reported account balances when they submit periodic accountings.
- c. Independently verify the balances in selected asset accounts reported by fiduciaries on periodic accountings.
- d. Require regional office personnel to routinely review canceled checks or other documentation of selected expenditures reported by fiduciaries.
- e. Assess the feasibility and cost-effectiveness of automating the analysis of accountings submitted by fiduciaries.
- f. Reduce the level of VBA supervision of fiduciaries who are not required to submit periodic accountings and who manage the financial affairs of beneficiaries whose situations are considered stable.
- g. Establish a dollar threshold and reduce the level of supervision of fiduciaries for those beneficiaries whose monthly VA benefit payments are below the threshold unless there are indications of problems.

- h. Enforce the standard time period for beneficiaries to receive supervised direct payments and require written justification and supervisory approval whenever that standard time period is to be extended.
- i. Provide the list of fraud indicators included in this report to regional office personnel who are responsible for supervising fiduciaries and include it in general training sessions.

Under Secretary for Benefits Comments

Recommendation a. We agree with this recommendation in principle. We shared the draft report with the Office of General Counsel and received the following comment: “In our view, development of national guidelines would be a difficult task. We recommend the need for such guidelines be assessed at the local level between regional office fiduciary personnel and the regional counsels and that any guidelines be developed at that level as deemed necessary.” We agree with the General Counsel that useful national guidelines would be most difficult, if not impossible, to develop. However, we acknowledge the need for guidelines and we will instruct VBA field stations to solicit local guidelines from their Regional Counsels to use in assessing the reasonableness of fees and expenses charged by court appointed fiduciaries. We will request VBA field station action within 45 days of the final report of audit.

Recommendation b. We concur with this recommendation. VBA program personnel will develop release forms to facilitate independent verification of assets and develop procedures to verify accounts balances. We anticipate necessary action may be completed within 36 months.

Recommendation c. We concur with this recommendation. We agree that independent asset account verification provides greatest protection; however, in many instances there will be expenses incurred to be paid by the beneficiary or, if possible, by the VA. Our experience is that financial institutions will not routinely retrieve prior balance information without charging fees for the research service, even when the trust department of the same bank is acting as fiduciary. Consideration will be given to financial hardship to the beneficiary, additional VBA budget allocations for this purpose (if possible to pay from VA funds), and the increased reporting burden to the public. We will develop guidelines for independent verification of selected accountings, but may need to limit collection to those facilities that waive fees for the services or charge minimal fees. Implementation will occur on receipt of OMB clearance of the form developed for collection of data as mentioned in recommendation/action b above.

Recommendation d. We concur with this recommendation. VBA program staff will develop procedures for field station personnel to routinely review fiduciary documentation of selected expenditures reported on chosen fiduciary accountings. We anticipate necessary action may be completed within 12 months.

Recommendation e. We concur with the recommendation. We will study the feasibility and, if determined to be feasible, the cost effectiveness of automation will become part of the normal planning and budget process. We anticipate feasibility will be completed within 18 months. If automation is feasible, cost benefits analysis and eventual automation will become part of the normal planning and budget process.

Recommendation f. We concur with this recommendation. VBA program staff will develop procedures to reduce the level of face-to-face supervision of stable cases when accountings are not required. We anticipate necessary action may be completed within 18 months.

Recommendation g. We concur with this recommendation. Current policy has such provision as that recommended in recommendations f and g. However, as discussed during the audit, plans to expand the use of thresholds were put on hold awaiting the IG audit findings and recommendations. We will now proceed with our review of beneficiary data to develop additional monetary thresholds where less supervision may be allowed. We anticipate necessary action will be completed within 18 months.

Recommendation h. We will review and report directives relative to Supervised Direct Payment (SDP) in order to reinforce its limited use. Coordination between fiduciary program personnel and those working on Business Process Reengineering (BPR) and rating procedures will be required to accomplish changes regarding SDP. Actions necessary to study the situation and develop additional guidelines will be accomplished within 30 months.

Recommendation i. We concur with this recommendation. We will disseminate information contained within this report regarding fraud indicators. We will instruct field stations to include the information in their training programs. We anticipate necessary action will be completed within 30 days. Action to include these guidelines in the directives will take 18 - 24 months.

Office of Inspector General Comments

The Acting Under Secretary for Benefits' comments meet the intent of our recommendations. We consider the recommendations resolved and will follow up on the implementation plans until they are completed.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The purpose of the audit was to determine if VBA effectively protected the incomes and estates of beneficiaries who could not take care of their financial affairs (incompetent) from fraud, waste, and abuse. The audit's three major objectives were to:

- Determine whether VBA appointed appropriate fiduciaries to manage the funds of incompetent beneficiaries.
- Assess the effectiveness of VBA's supervision of fiduciaries.
- Determine how persons convicted of fiduciary fraud victimized VA beneficiaries.

Scope and Methodology

During Fiscal Year 1996, the OIG completed a survey of veterans assistance services provided by VBA. The purpose of the survey was to determine if Veterans Services Division personnel effectively provided assistance pertaining to veterans benefits and conducted reviews, examinations, and surveys related to the granting, receipt, and use of VA benefits. The survey included reviews of prior audit findings, pertinent VA criteria, and program oversight by VA Central Office officials. The survey also assessed fiduciary program activities at VA regional offices in Boston, MA, and San Diego, CA. We initiated this audit based on weaknesses in certain aspects of the fiduciary program identified during the survey.

To achieve our audit objectives, we randomly selected three national statistical samples from the 142,577 beneficiaries in the Fiduciary Beneficiary System (FBS) as of March 31, 1996. We then selected and reviewed pilot samples which included the records of 130 beneficiaries in the following categories:

- Thirty beneficiaries whose fiduciaries were required to submit periodic accountings to VA.
- Fifty beneficiaries whose fiduciaries were not required to submit accountings to VA.
- Fifty beneficiaries whose fiduciaries were appointed in the 12-month period ended March 31, 1996.

After reviewing preliminary audit results, VBA and OIG officials agreed that reviews of full statistical samples were not warranted.

To determine how those convicted of fiduciary fraud victimized VA beneficiaries, we reviewed the records of 12 investigations closed by the OIG during the period October 1, 1990, through September 30, 1996. This included reviews of the available records of 44 VA beneficiaries whose funds were mishandled by the subjects of the investigations.

Audit work included reviews of applicable laws and VA policies and interviews of appropriate VBA program management officials. We reviewed VA claims folders, principal guardianship folders, and data in the FBS. We evaluated documentation supporting selected expenditures and independently verified assets reported by certain fiduciaries. In addition, we interviewed representatives of VA regional counsels, state probate courts, the Social Security Administration, the Office of Personnel Management, and the Department of Defense.

The audit was performed between April and December 1996, and it was conducted in accordance with generally accepted government auditing standards.

BACKGROUND

The primary mission of the VA fiduciary program is to ensure that incompetent beneficiaries and their estates are protected from fraud, waste, and abuse. Title 38, U.S. Code, Section 5502, authorizes VA to make benefit payments to a fiduciary when a beneficiary is unable to manage his or her own financial affairs. When a probate court or VA rating board determines a beneficiary is financially incompetent, VA officials must assess the need for a fiduciary, appoint an appropriate person or entity to manage the beneficiary's funds, and monitor the management of those funds.

VBA Manual M27-1, Part III, Chapter 5, authorizes regional office personnel to appoint fiduciaries who, in their opinion, are best suited to manage the beneficiaries' funds. Selection of fiduciaries is subjective and is largely based on interviews of the beneficiaries and potential fiduciaries.

Regional office personnel have two primary means of supervising fiduciaries — analyzing accountings submitted by the fiduciaries and conducting field examinations. VBA Manual M27-1, Part III, Chapter 9, states that all court-appointed fiduciaries must report beneficiaries' incomes and expenses to VBA. Other fiduciaries must submit periodic accountings if the beneficiaries have incomes exceeding the amount paid to a single veteran receiving compensation at the 100 percent rate or if the beneficiaries have VA estates exceeding \$10,000. In addition, VBA personnel may require periodic accountings in other circumstances if they believe accountings are needed to ensure proper use of the beneficiaries' funds. Each accounting must show:

- A beginning balance for the accounting period.
- All income received.
- All expenditures made during the accounting period.
- The ending balance for the accounting period.

Regional office personnel must analyze each accounting submitted by a fiduciary. The analysis should include:

- A comparison with pertinent documents in the beneficiary's principal guardianship folder.
- A comparison of the current account beginning balance and the final balance on the preceding accounting.
- Independent computation of all figures to verify the balances shown.
- Review of all expenditures and, when necessary, verification of the expenditures through copies of receipts or canceled checks.
- Review of the fiduciary's fees, if any.

APPENDIX II

VBA Manual M27-1, Part III, Chapter 6, requires periodic field examinations regardless of the amounts of the beneficiaries' incomes or the sizes of their estates. The frequency of the examinations varies according to the following schedule:

Initial follow-up	12 months
Supervised Direct Pay	12 months
Routine follow-up	
Good/stable situations	13-24 months
Excellent situations	25-36 months
Institutionalized beneficiaries	48 months
Benefit less than \$200/month	48 months

Each field examination should include personal contact with the beneficiary to evaluate such factors as:

- Physical and mental conditions.
- Capacity to manage funds.
- Fund usage and needs.
- Social and industrial adjustment.
- Environment.

Current guidelines permit supervision of certain adult helpless children (veteran's children who are 18 or older and permanently incapable of self support) by telephone or letter at 2-year intervals in lieu of field examinations.

In FY 1996, VBA personnel were responsible for overseeing payments to more than 110,000 incompetent beneficiaries.² About 18,000 had court-appointed fiduciaries, and 86,000 had other types of fiduciaries. Another 6,000 incompetent beneficiaries received payments directly but under VA supervision. Program officials estimated total beneficiary estate values at \$1.4 billion. VBA assigned 348 personnel at VA regional offices to appoint and supervise fiduciaries.³ During FY 1996, regional office personnel completed slightly more than 68,000 field examinations.⁴

²Fiduciary & Field Examination Activity Estate Administration Summary, Nationwide Section, as of 9/30/96

³VBA Employment Summary by Organization in Pay Status as of 9/30/96

⁴Veterans Services Division Workload Trend Total, Nationwide Section, as of 9/30/96

DETAILS OF AUDIT

Insufficient Supervision of Fiduciaries Who Were Required to Submit Accountings

We reviewed the records of a sample of 30 beneficiaries whose fiduciaries were required to submit periodic accountings. We found that VBA personnel did not follow up on questionable or inconsistent data in the records of 10 of the 30 beneficiaries. For example:

- One fiduciary submitted an accounting listing \$17,785 in aid and attendance expenses during a period from December 1994 to November 1995, when VA records showed the veteran was hospitalized at VA expense. Regional office personnel did not question the reported expenses. After we questioned the reported expenses, a VBA official contacted hospital personnel, who stated that an attendant saw the veteran only two or three times shortly after he was admitted in August 1992.
- Another fiduciary listed a residence as an asset on the first three accountings he submitted for a veteran who resided in a nursing home. On his fourth accounting, the fiduciary did not mention the residence. He also failed to report any income or expenses related to a sale of property. Regional office personnel reviewed and filed the accounting without asking about the residence. A month later, the fiduciary's secretary informed VBA personnel that the property had been sold.
- On June 30, 1995, an attorney came into a VA regional office with a veteran to inform VBA personnel that the veteran's fiduciary was in court on possible grand theft charges. The complainant was the law partner of the fiduciary and was interviewed as a character reference when VA appointed the fiduciary. VBA personnel filled out a Report of Contact but apparently took no action.

In our opinion, regional office personnel should have questioned fees charged by fiduciaries for 9 of the 30 beneficiaries in our sample. For instance:

- One court-appointed fiduciary, an attorney, charged a veteran \$17,182 during a 3-year period. During this period, the veteran received VA benefits of \$67,191 and other income of \$18,509. At the end of the period, the veteran's estate was \$27,000. We found nothing in the available records to justify fiduciary fees totaling 20 percent of the veteran's income.
- Another court-appointed fiduciary billed a beneficiary's account for 5 hours of legal services at \$150 per hour to prepare an accounting. Regional office

personnel should have questioned this fee because preparation of accountings is part of a fiduciary's normal duties and does not require legal expertise.

- One veteran had a bank as court-appointed guardian of estate and a nephew as court-appointed guardian of person. The latest accounting showed the bank's fees totaled \$6,799, which was 7 percent of the veteran's income, and the nephew received \$3,937, which was 4 percent of the veteran's income. In our opinion, regional office personnel should have questioned the amount of the bank's fees which included \$1,113 for research and selection of U.S. Government Securities. Also, responsible officials should have questioned fees paid to the nephew since the veteran did not live with the nephew and the evidence did not show any special circumstances requiring a guardian of person.

Unnecessary Supervision of Certain Fiduciaries

We reviewed the records of 50 beneficiaries whose fiduciaries were not required to submit periodic accountings and concluded that 19 received more frequent field examinations than needed. Three examples are described below:

- A helpless child of a deceased veteran was rated incompetent in 1965 because of mental retardation. The 50-year-old beneficiary lives in a state institution, and the administrator of the facility serves as fiduciary. The beneficiary's monthly death pension payment of \$87 is used to offset the cost of his care. VA field examinations in 1991 and 1994 showed the beneficiary was receiving excellent care. Another field examination was scheduled in 1996. Since the beneficiary is in the custody of a state institution and receives a small amount of VA benefits, we concluded less VA supervision could be needed.
- A disabled veteran with organic brain syndrome was rated incompetent in 1990. The single, 70-year-old veteran has lived in a state-licensed hospital since 1989, and the hospital administrator serves as fiduciary. Monthly pension payments of \$90 are applied to the cost of the veteran's care. Field examinations in 1991 and 1994 showed the beneficiary's needs were met and his situation was stable. Another field examination is scheduled in 1997. Because the veteran is in a stable environment and the cost of care exceeds the amount of his VA payments, we concluded the level of VA supervision could be reduced.
- A death pension recipient with Alzheimer's disease was rated incompetent in 1990. The 68-year-old widow lives with her daughter, a licensed practical nurse, who serves as fiduciary. All of the widow's VA benefits of \$125 per month are used to offset the cost of her care. Regional office personnel completed supervisory field examinations in 1992 and 1994 and scheduled another in 1998. The field

examination reports showed the beneficiary was receiving very good care in a stable environment. Based on the widow's stable environment and the small amount of VA benefits involved, we concluded the beneficiary was a good candidate for a lower level of VA supervision.

SAMPLING PLAN AND RESULTS

Audit Universe

To evaluate the appointment and supervision of fiduciaries, we reviewed three separate samples of selected beneficiaries with records in the FBS as of March 31, 1996. At that time, the FBS included 142,577 records. Data in the FBS showed fiduciaries for 25,511 beneficiaries were required to submit periodic accountings while payees for 117,066 beneficiaries were not required to submit accountings. The FBS showed fiduciaries were appointed for 12,527 beneficiaries in the 12-month period ended March 31, 1996.

Sample Size

We selected and reviewed the records of 130 VA beneficiaries in the following categories:

- Thirty beneficiaries whose payees were required to submit periodic accountings to VA.
- Fifty beneficiaries whose payees were not required to submit accountings to VA.
- Fifty beneficiaries whose fiduciaries were appointed in the 12-month period ended March 31, 1996.

Sample Design

With the assistance of the OIG Technical Support Group and statistical sampling software, we randomly selected three attribute samples. We then selected and reviewed pilot samples, each of which included records from seven to nine regional offices. After reviewing the three pilot samples, VBA and OIG officials agreed that reviews of additional records were not warranted.

Attributes

Our three samples were designed to test the following attributes:

- Were fiduciaries who were required to submit annual accountings adequately supervised?
- Were excessive resources expended supervising fiduciaries who were not required to submit annual accountings?
- Were recent fiduciary appointments appropriate?

Sample Results

We did not identify any inappropriate appointments in our sample of recently appointed fiduciaries. The detailed results of our pilot samples of beneficiaries whose fiduciaries were or were not required to submit annual accountings are discussed in the Results and Recommendations section. Since full statistical samples were not completed, no attempt has been made to project audit results to the universe.

SUMMARY OF FRAUD PROFILE

One of the three major objectives of the audit was to determine how those penalized for fiduciary fraud victimized VA beneficiaries. To achieve this objective, we reviewed the records of 12 investigations closed by the OIG during the period October 1, 1990, through September 30, 1996. These investigations resulted in criminal penalties for 11 VA-appointed fiduciaries and the spouse of another fiduciary. Also, we reviewed the available records of 44 VA beneficiaries whose funds were mishandled by the subjects of the investigations.

The methods used to steal beneficiaries' funds are briefly described below:

- Charging fiduciary fees when no fees were authorized by VA.
- Charging higher fiduciary fees than authorized.
- Charging for unauthorized services, such as counseling or representation in a disability claim.
- Writing checks on the beneficiary's account to third parties to pay the fiduciary's bills.
- Convincing bank officials to process withdrawals of funds without the signature of the person named on the account.
- Writing checks payable to the beneficiary or to cash and processing them without a signature.
- Removing funds from the beneficiary's burial trust.
- Opening Certificates of Deposit in the name of a dead veteran, transferring funds of living beneficiaries into them, and gradually transferring funds to the fiduciary as the Certificates mature.
- Taking property from the estate of a deceased beneficiary, selling it to a living beneficiary, and pocketing the money.
- Failing to notify VA of the beneficiary's death and continuing to receive benefits.

We found the following indicators of potential fraud in the beneficiaries' claims folders and principal guardianship folders:

- Late accountings.
- Complaints that bills weren't paid.
- Numerous checks written to the fiduciary or the fiduciary's spouse.
- Bank certification forms submitted with no seals or stamps.
- Bank certification forms with signs of alteration.
- Reported expenses rising much faster than normal inflation when the beneficiary's circumstances hadn't changed.
- Accountings showing frequent cash payments to the beneficiary in addition to routine periodic payments with no explanations provided.

- Reported payments of substantial amounts of spending money to the beneficiary while the beneficiary was in a VA hospital.
- Establishment of burial trusts with different funeral homes for the same beneficiary.

Our review disclosed no clear patterns among the persons who were penalized for fiduciary fraud. We considered fiduciaries' ages, occupational backgrounds, education levels, relationships with the beneficiaries, and other characteristics. However, our analysis of the available data did not indicate that persons with any particular characteristic were more or less likely to commit fraud.

Victims of fiduciary fraud tended to be poorly educated, single veterans suffering from schizophrenia. Generally, they held low ranks while in the military. Most victims had known assets of less than \$5,000 when the fiduciaries who committed fraud were appointed to manage their estates.

**MEMORANDUM FROM THE ACTING UNDER SECRETARY
FOR BENEFITS**

Department of
Veterans Affairs

Memorandum

Date: March 31, 1997

From: Acting Under Secretary for Benefits (20)

Subj: Draft Report, Audit of Appointment and Supervision of Fiduciaries
(Project No. 6R5-190)

To: Assistant Inspector General for Auditing (52)

1. We have received and reviewed your draft report entitled "Audit of Appointment and Supervision of Fiduciaries". We are pleased to respond to the recommendations which accompanied your report.
2. Specific comments to each recommendation are contained in Attachment 1.
3. Thank you for providing a copy of your findings concerning the fiduciary program.

(Original signed by DAVID A. BRIGHAM for:)
Stephen L. Lemons

Attachment

**MEMORANDUM FROM THE ACTING UNDER SECRETARY
FOR BENEFITS**

**Draft IG Audit Report
Audit of Appointment and Supervision of Fiduciaries
Project No. 6R5-190**

Recommendation:

- a. Coordinate with the Office of General Counsel to develop guidelines for regional office personnel to use in assessing reasonableness of fees charged and expenses claimed by court-appointed fiduciaries.

Action:

- a. We agree with this recommendation in principle. We shared the draft report with the Office of General Counsel and received the following comment: "In our view, development of national guidelines would be a difficult task. We recommend the need for such guidelines be assessed at the local level between regional office fiduciary personnel and the regional counsels and that any guidelines be developed at that level as deemed necessary." We agree with the General Counsel that useful national guidelines would be most difficult, if not impossible, to develop. However, we acknowledge the need for guidelines and we will instruct VBA field stations to solicit local guidelines from their Regional Counsels to use in assessing the reasonableness of fees and expenses charged by court appointed fiduciaries. We will request VBA field station action within 45 days of the final report of audit.

Recommendation:

- b. Require fiduciaries to submit financial information release forms authorizing VA to independently verify reported account balances when they submit periodic accountings.

Action:

- b. We concur with this recommendation. VBA program personnel will develop release forms to facilitate independent verification of assets and develop procedures to verify accounts balances. We anticipate necessary action may be completed within 36 months.

Recommendation:

- c: Independently verify the balances in selected asset accounts reported by fiduciaries on periodic accountings.

**MEMORANDUM FROM THE ACTING UNDER SECRETARY
FOR BENEFITS**

Action:

c. We concur with this recommendation. We agree that independent asset account verification provides greater protection; however, in many instances there will be expenses incurred to be paid by the beneficiary or, if possible, by the VA. Our experience is that financial institutions will not routinely retrieve prior balance information without charging fees for the research service, even when the trust department of the same bank is acting as fiduciary. Consideration will be given to financial hardship to the beneficiary, additional VBA budget allocations for this purpose (if possible to pay from VA funds), and the increased reporting burden to the public.

We will develop guidelines for independent verification of selected accountings, but may need to limit collection to those facilities that waive fees for the services or charge minimal fees. Implementation will occur on receipt of OMB clearance of the form developed for collection of data as mentioned in recommendation/action b above.

Recommendation:

d. Require regional office personnel to routinely review canceled checks or other documentation of selected expenditures reported by fiduciaries.

Action:

d. We concur with this recommendation. VBA program staff will develop procedures for field station personnel to routinely review fiduciary documentation of selected expenditures reported on chosen fiduciary accountings. We anticipate necessary action may be completed within 12 months.

Recommendation:

e. Assess the feasibility and cost-effectiveness of automating the analysis of accountings submitted by fiduciaries.

Action:

e. We concur with this recommendation. We will study the feasibility and, if determined to be feasible, the cost effectiveness of automated account analysis. We anticipate feasibility will be completed within 18 months. If automation is feasible, cost benefits analysis and eventual automation will become part of the normal planning and budget process.

**MEMORANDUM FROM THE ACTING UNDER SECRETARY
FOR BENEFITS**

Recommendation:

f. Reduce the level of VBA supervision of fiduciaries who are not required to submit periodic accountings and who manage the financial affairs of beneficiaries whose situations are considered stable.

Action:

f. We concur with this recommendation. VBA program staff will develop procedures to reduce the level of face-to-face supervision of stable cases when accountings are not required. We anticipate necessary action may be completed within 18 months.

Recommendation:

g. Establish a dollar threshold and reduce the level of supervision of fiduciaries for those beneficiaries whose monthly VA benefit payments are below the threshold unless there are indications of problems.

Action:

g. We concur with this recommendation. Current policy has such provisions as that recommended in recommendations f and g. However, as discussed during the audit, plans to expand the use of thresholds were put on hold awaiting the IG audit findings and recommendations. We will now proceed with our review of beneficiary data to develop additional monetary thresholds where less supervision may be allowed. We anticipate necessary action will be completed within 18 months.

Recommendation:

h. Enforce the standard time period for beneficiaries to receive supervised direct payments and require written justification and supervisory approval whenever that standard time period is to be extended.

Action:

h. We will review and reform directives relative to Supervised Direct Payment (SDP) in order to reinforce its limited use. Coordination between fiduciary program personnel and those working on Business Process Reengineering (BPR) and rating procedures will be required to accomplish changes regarding SDP. Actions necessary to study the situation and develop additional guidelines will be accomplished within 30 months.

**MEMORANDUM FROM THE ACTING UNDER SECRETARY
FOR BENEFITS**

Recommendation:

- i. Provide the list of fraud indicators in this report to regional office personnel who are responsible for supervising fiduciaries and include it in general training sessions.

Action:

- i. We concur with this recommendation. We will disseminate information contained within this report regarding fraud indicators. We will instruct field stations to include the information in their training programs. We anticipate necessary action will be completed within 30 days. Action to include these guidelines in the directives will take 18 - 24 months.

FINAL REPORT DISTRIBUTION

VA Distribution

Secretary of Veterans Affairs (00)
Under Secretary for Benefits (20A1)
Assistant Secretary for Management (004)
General Counsel (02)
Assistant Secretary for Policy and Planning (008)
Assistant Secretary for Congressional Affairs (009)
Assistant Secretary for Public and Intergovernmental Affairs (002)
Deputy Assistant Secretary for Congressional Affairs (60)
Deputy Assistant Secretary for Public Affairs (80)
Director, Office of Management Controls (004B)
Eastern Area Director (201A)
Central Area Director (201B)
Southern Area Director (201C)
Western Area Director (201D)

Non-VA Distribution

Office of Management and Budget
U. S. General Accounting Office
Congressional Committees:
 Chairman, Senate Committee on Governmental Affairs
 Ranking Member, Senate Committee on Governmental Affairs
 Chairman, Senate Committee on Veterans' Affairs
 Ranking Member, Senate Committee on Veterans' Affairs
 Chairman, Subcommittee on VA, HUD, and Independent Agencies, Senate Committee on Appropriations
 Ranking Member, Subcommittee on VA, HUD, and Independent Agencies, Senate Committee on Appropriations
 Chairman, House Committee on Government Reform and Oversight
 Ranking Member, House Committee on Government Reform and Oversight
 Chairman, House Committee on Veterans' Affairs
 Ranking Member, House Committee on Veterans' Affairs