



# Department of Veterans Affairs Office of Inspector General

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## Audit of Veterans Benefits Administration Fiduciary Program Operations

*Enhanced fiduciary program oversight is  
needed to better protect the benefit  
payments and estates of incompetent  
beneficiaries.*

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

**TO:** Under Secretary for Benefits (20A11)

**SUBJECT:** Audit of Veterans Benefits Administration Fiduciary Program Operations (Report No. 05-01931-158)

1. The VA Office of Inspector General (OIG) performed an audit of Veterans Benefits Administration (VBA) fiduciary program operations. The purpose of the audit was to assess the adequacy of program management controls and oversight to protect from misuse or theft the benefit payments and estates of beneficiaries who have been determined to be incompetent to care for their own financial affairs. The audit also addressed areas of concern suggested by the VA Deputy Secretary.<sup>1</sup>
2. VBA needs to provide more effective program oversight to reduce the risk of misuse or theft of beneficiary funds. VA Regional Office (VARO) fiduciary program staff need to complete required field examinations to assess each beneficiary's living environment and use of the beneficiary's funds. VBA needs to better monitor fiduciaries that are required to submit periodic accountings of income, expenses, and assets and to follow up on questionable data, independently verify beneficiary assets, and require documentation of selected expenses reported by fiduciaries.
3. Beneficiary funds were not always adequately protected because there were no surety bonds or bond values were inadequate and because fiduciaries and attorneys charged excessive fees. These were areas of concern raised by the VA Deputy Secretary. VARO fiduciary program staff kept beneficiaries under Supervised Direct Pay (SDP) without proper supervision of beneficiary income and expenditures.<sup>2</sup>
4. The identified oversight deficiencies placed the benefit payments and estates of significant numbers of incompetent beneficiaries at risk for misuse or theft.

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<sup>1</sup>A September 30, 2004, memorandum from the VA Deputy Secretary requested the Inspector General review the following fiduciary program areas: (1) adequacy of VA fund protection by means of surety bonds or restricted accounts, (2) fiduciaries' ability to adequately serve multiple beneficiaries, and (3) reasonableness of fiduciary and attorney fees.

<sup>2</sup>An 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.

We estimate that payments and estates valued at \$435 million for 8,918 incompetent beneficiaries were not adequately protected and are at risk for misuse. We also estimate that payments and estates valued at \$80.2 million for 2,126 incompetent beneficiaries could be subject to fraud.

5. The Fiduciary Beneficiary System (FBS) contained inaccurate beneficiary estate values.<sup>3</sup> Of the 73 FBS estate values reported as valued at \$1 million or more, 35 (47.9 percent) were inaccurate. The value of these estates was overstated by about \$76.3 million. Our review of a random sample of active FBS estate cases found that an estimated 3,898 (12.9 percent) of the 30,215 active cases could be inaccurate. The values for these cases could be understated by as much as \$125.6 million. Accurate estate value accounting in FBS will help ensure that reliable financial information is available to effectively monitor these cases and reduce the risk of misuse or theft of these funds.

6. The need for VBA to strengthen monitoring of beneficiary estates is an issue previously identified in OIG audits dating to the late 1980s. A 1987 audit discussed instances of fiduciaries who had been convicted of embezzling funds from beneficiary estates.<sup>4</sup> A 1989 audit identified the need to independently verify beneficiary assets.<sup>5</sup> A 1997 audit identified the need to provide better supervision of fiduciaries required to submit periodic accountings.<sup>6</sup> Additionally, OIG Combined Assessment Program (CAP) reviews of VAROs continue to identify the need for improved fiduciary accountings and protection of beneficiary estates.<sup>7</sup>

7. In our opinion, the continuing program oversight problems identified by our audit are related to the fact that very few VARO fiduciary program staff are responsible for beneficiary case load levels that can average in the hundreds. Needed oversight of beneficiary payments and estates has not been effective, resulting in the possible misuse or theft of funds from those least able to protect themselves. Effective fiduciary program oversight is now even more important because the Veterans Benefits Improvement Act of 2004, Public Law (P.L.) 108-454 (the Act), requires additional oversight actions and because VA may have to reissue benefit payments if misuse or theft is determined to have resulted from VA negligence. This variable places an estimated \$435 million for 8,918 incompetent beneficiaries at risk.

8. A key oversight requirement of the Act is periodic onsite reviews of fiduciaries serving multiple beneficiaries. In our opinion, such reviews could help reduce the risk of estate misuse or theft by these fiduciaries. At the time of the audit, VBA had issued policy guidance but had not begun conducting the reviews. Our audit identified instances of suspected fraud involving fiduciaries serving multiple beneficiaries. This was an area

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<sup>3</sup>The FBS is an automated system used by fiduciary program personnel to help monitor the financial affairs of incompetent beneficiaries.

<sup>4</sup>*Audit of Estates Maintained for Incompetent Veterans*, Report No. 7R3-B01-065, May 28, 1987.

<sup>5</sup>*Audit of Fiduciary Program*, Report No. 9R3-B13-053, March 31, 1989.

<sup>6</sup>*Audit of Appointment and Supervision of Fiduciaries*, Report No. 7R5-B13-074, May 1, 1997.

<sup>7</sup>Between October 1, 2004, and September 30, 2005, CAP reviews of 8 (61.5 percent) of 13 VAROs identified fiduciary program operating issues.

of concern raised by the VA Deputy Secretary. The report recommends that the Under Secretary for Benefits take various actions to strengthen fiduciary program oversight, enhance monitoring of the financial affairs of incompetent beneficiaries, and reduce the risk of misuse or theft of their funds.

9. The Under Secretary for Benefits agreed with the report findings and recommendations and provided acceptable implementation actions. (See Appendix D, pages 17–19, for the full text of the Under Secretary’s comments.) The Under Secretary indicated that corrective actions have already been initiated to address a number of the recommendation areas. The Under Secretary disagreed with the reported \$435 million in estimated monetary benefits associated with incompetent beneficiary funds not adequately protected and at risk for misuse. The Under Secretary did not address the \$80.2 million in monetary benefits reported involving incompetent beneficiary funds at risk for fraud. We continue to believe that the monetary benefits reported pose a serious risk for VA should they be required to make veterans’ accounts whole in the event of misuse or fraud. The estimated monetary benefits were determined using statistical sampling techniques to project the amount of payments and estates of incompetent beneficiaries that were not adequately protected and are at risk for misuse and fraud. We will follow up on planned actions until they are completed.

*(original signed by  
Ken Sardegna, Deputy Assistant  
Inspector General for Auditing for:)*

MICHAEL L. STALEY  
Assistant Inspector General  
for Auditing

## **Introduction and Scope of Work**

### **Introduction**

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 May 2004, the fiduciary program was responsible for supervising the benefits of 100,075 VA beneficiaries (64,978 disabled veterans rated 100 percent or less, 32,217 widows or adult disabled children, and 2,880 minors). The benefits paid to these beneficiaries total over \$1 billion annually. The reported value of supervised estates comprised of both VA and non-VA income is over \$2.8 billion.

### **Scope of Work**

We reviewed a statistical sample of records pertaining to 246 of the 52,245 incompetent veterans rated 100 percent disabled or surviving incompetent spouses listed in VBA's Compensation and Pension (C&P) master file as of June 30, 2004. (See Appendix A, pages 12–13, for details of the statistical sample results.) For each sample case, we reviewed selected records in Principal Guardianship Folders (PGFs) maintained by VAROs. We performed this review to assess the adequacy of protection of beneficiary incomes and estates. To evaluate the accuracy of estate values shown in the FBS, we also reviewed a statistical sample of 350 of the 30,215 active cases in FBS for incompetent veterans with no dependents receiving compensation payments as of September 30, 2004. (See Appendix B, pages 14–15, for details of the statistical sample results.)

We used automated data from VA's C&P master file to identify the audit universe and for sample selection. An assessment of the reliability of this automated data was made by comparison of selected data elements to documentation in case files. We concluded, based on our comparison tests, that the data we used to accomplish the project objectives of identification of the audit universe and sample selection was sufficiently reliable.

We used automated data from the FBS to assess adequacy of management controls and oversight of fiduciary program operations. Our review of system controls and the results of data tests showed an error rate that casts doubt on the estate value data validity (a detailed discussion of the inaccurate estate values begins on page 6 of this report). However, when these data are viewed in context with other available evidence, we believe the opinions, conclusions, and recommendations in this report are valid. Additionally, none of this data was relied upon for estimated impact or projections.

In addition to reviewing selected documents pertaining to the cases in our national samples, we completed site visits to VAROs Baltimore, MD; Washington, DC; St. Petersburg, FL; Los Angeles, CA; and Philadelphia, PA. At these VAROs, we

evaluated the adequacy of management controls and oversight of the incomes and estates of selected beneficiaries. We reviewed PGFs for 27 cases included in the national samples. We also reviewed the PGFs for 657 additional cases selected because they had significant changes in estate values, past due accountings, or fiduciaries that were responsible for multiple beneficiaries. We discussed our findings with responsible VBA officials at the VAROs visited and in VA Central Office (VACO). To assess the extent of fiduciary program fraud and to determine the types of fraud committed, we also reviewed fiduciary fraud case work involving the OIG Office of Investigations covering the period October 1998 to September 2005.

The audit was conducted in accordance with Generally Accepted Government Auditing Standards.



## **Results and Recommendation**

### **Incompetent Beneficiary Benefits and Estates Are at Risk for Misuse and Fraud**

Enhanced fiduciary program oversight is needed to better protect the benefit payments and estates of incompetent beneficiaries.

#### **Incompetent Beneficiary Benefits and Estates Need To Be Better Protected**

Our national case sample results showed that VARO fiduciary program staff did not take necessary actions to adequately protect beneficiary income and estates to reduce the risk of misuse or theft. We reviewed records pertaining to a random sample of 246 of the 52,245 incompetent veterans and surviving incompetent spouses who had benefits payments listed in the C&P master file as of June 30, 2004.

For 42 (17.1 percent) of the 246 cases, fiduciary program staff did not take adequate action to protect beneficiary benefits and estates valued at about \$2.1 million. Based on the sample results, we estimate that \$435 million in benefits payments and estates for 8,918 beneficiaries were at risk for misuse because of inadequate oversight. The deficiencies identified are discussed below.

#### Field Examinations

In seven of the sample case deficiencies identified, fiduciary program staff had not conducted field examinations or had not resolved significant examination-identified issues concerning beneficiary environment or usage of funds. VBA policy<sup>8</sup> requires that fiduciary program staff complete examinations for each adult beneficiary at specified intervals ranging from 12 to 48 months. Examinations should include personal contact with beneficiaries to assess their environment and usage of funds. As an example, in one case the VARO had not completed a required field examination for 2 years after the beneficiary had been rated incompetent. The examination was finally scheduled as a result of our request for the beneficiary's claims file. Because there had been no examination, the beneficiary's \$9,880 in annual pension payments was at risk for misuse.

#### Fiduciary Accountings

VBA policy<sup>9</sup> requires fiduciaries to submit periodic accountings listing beneficiary assets, income, and expenses. VBA policy<sup>10</sup> also requires fiduciary program staff to follow up to ensure that appropriate information is received. For 92 (37.4 percent) of the

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<sup>8</sup>VBA Policy Manual M21-1MR, Part XI, 2.E.34.b.

<sup>9</sup>VBA Policy Manual M21-1MR, Part XI, 3.C.7.a.

<sup>10</sup>VBA Policy Manual M21-1MR, Part XI, 3.C.12.b.

246 national sample cases, accountings would be required by VBA policy.<sup>11</sup> In 17 (18.5 percent) of the 92 cases, fiduciary accountings were either not received or were accepted with unanswered questions. For example, a VARO had accepted an accounting even though it included \$9,930 in various fiduciary fees that appeared excessive. These fees totaled 13.6 percent of the beneficiary's \$73,142 income reported in the accounting. According to VBA policy, the fiduciary would be entitled to only 4 percent of the reported income, or about \$2,926.

### Surety Bonds

VBA policy requires that surety bonds be considered for fiduciaries if the beneficiary's estate totals more than \$20,000. If fiduciary staff decide that a bond is not needed, the basis for the decision must be documented in the PGF. According to VBA policy, bonds should have been considered for 53 (21.5 percent) of the 246 national sample cases.<sup>12</sup> In 14 (26.4 percent) of the 53 cases, there was either no documentation why bonds were not obtained or the bond amounts were inadequate. For example, fiduciary program staff did not consider requiring a fiduciary to obtain a bond to cover the assets of a beneficiary who had an estate valued at \$23,000 and who received annual compensation payments of \$26,686. According to VBA policy, the fiduciary should have considered obtaining a \$49,868 surety bond to cover the beneficiary's annual compensation benefits and estate value.

### Supervised Direct Pay

VBA policy<sup>13</sup> requires that at the end of a 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. When a beneficiary does not demonstrate the ability to manage funds during the trial period, SDP generally should be discontinued and a fiduciary appointed. In 10 (4.1 percent) of the 246 national sample cases, the beneficiaries received benefit payments by SDP. In 4 (40 percent) of the 10 cases, the beneficiaries had received payments for several years without determinations of their ability to manage their own funds. To illustrate, a beneficiary receiving \$2,239 in monthly compensation benefits had been under SDP since 1992. A designation of payee form completed in 1992 indicated that the beneficiary had contested the incompetency rating. However, there was no evidence that VARO fiduciary program staff took any action to assist the beneficiary in getting a reevaluation of competency during the 13 years he had been under SDP.

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<sup>11</sup>38 CFR 13.100 (A) (1) and VBA Policy Manual M21-1MR, Part XI, 3.C.7.b.

<sup>12</sup>VBA Policy Manual M21-1MR, Part XI, 2.E.29.h.

<sup>13</sup>VBA Policy Manual M21-1MR, Part XI, 2.E.28.d.

## **Incompetent Beneficiary Estates Are at Risk for Fraud**

Historically, incompetent beneficiary estates have been subject to misappropriation by fiduciaries. Our 1987 audit reported instances of fiduciaries who had been convicted of embezzling funds from beneficiary accounts, and since then the OIG has continued to investigate instances of this crime. During the period October 1998 to September 2005, the OIG Office of Investigations completed fiduciary fraud investigations that resulted in 96 cases with 74 arrests and monetary recoveries of more than \$2.5 million in restitution, fines, penalties, and civil judgments.

Fiduciary fraud targets VA's most vulnerable beneficiaries—those incapable of handling their own affairs. Our case sample results show that fiduciary program fraud continues to be a nationwide problem requiring better protection of beneficiary estates. In 10 (4.1 percent) of the 246 national sample cases, we identified suspected fraud with a dollar impact of \$377,442. We referred these 10 cases to the OIG Office of Investigations for review. Based on the case sample results, we estimate that 2,126 incompetent beneficiary estates nationwide could be subject to fraud with an estimated impact of about \$80.2 million.

The suspected fraudulent misuse of beneficiary estates went undetected because VARO staff did not follow up on questionable or incomplete data in fiduciary accountings and did not require documentation to support claimed expenses. The suspected fraud coincided with the occurrence of significant changes in estate values and/or with past due accountings. We believe that the effectiveness of VARO staff identification of fraud could be enhanced with focus on these fraud indicators.

We also believe that the 2004 legislative change requiring periodic onsite reviews of fiduciaries responsible for multiple beneficiaries will also help better protect beneficiary estates and identify fraud.<sup>14</sup> VA has fiduciaries that are responsible for large numbers of beneficiaries with substantial estate values that could be at risk of misuse. Our review identified instances of suspected fraud involving fiduciaries with multiple beneficiaries.

In some cases, the suspected fraud went undetected for several years because of inadequate VARO oversight. Implementing the periodic onsite review requirement will improve oversight and help reduce the risk of fund misuse by fiduciaries responsible for multiple beneficiaries. At the time of the audit, VBA had issued policy guidance but had not begun conducting this review requirement. This was an area of concern raised by the VA Deputy Secretary.

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<sup>14</sup>In accordance with the Veterans Benefits Improvement Act of 2004, VA is now required to complete an onsite review of any fiduciary serving more than 20 beneficiaries where the total annual amount of benefits exceeds \$50,000. In response to this legislation, VBA will complete these reviews triennially.

## **VARO Fiduciary Staff Case Load Levels Vary Significantly**

The reported number of fiduciary staff case load levels at VAROs ranged from a low of 132 to a high of 592 cases per employee. VBA does not have any fiduciary case management staffing guidelines, and we found that case management effectiveness suffered when staff case loads were on the higher end of the range.

Our reviews at the five VAROs raised concerns about fiduciary staff case loads and the need for more effective fiduciary oversight and management of beneficiary estates. We reviewed 684 PGFs, including 27 national sample cases, and identified 160 (23.4 percent) cases with case management deficiencies requiring VARO corrective actions. The fiduciary staff case load levels at these VAROs ranged from 390 to 571 cases per employee.

By VARO, the number of case management deficiencies identified ranged from 23 to 50, with the most deficiencies experienced by the VARO with the highest number of staff case load levels. These deficiencies involved such key issues as past due accountings, questionable expenditures, excessive fees that resulted in misuse of beneficiaries' estates, and possible fraud that went unchallenged.

At one VARO, the Director had recently taken action to improve fiduciary program oversight by adding additional staff (increase from 4 to 6 staff). This helped to increase case work that identified fraud through proactive onsite reviews of fiduciaries. However, we still identified a number of case management deficiencies that needed to be addressed at this VARO. The VARO's fiduciary staff case load level was 450 cases per employee. In view of our findings, VBA needs to determine appropriate VARO fiduciary staff case load levels and staff requirements need to be addressed.

Fiduciary case management also suffered because VARO Legal Instruments Examiners (LIEs) were not adequately trained. LIEs perform a key fiduciary oversight function by reviewing legal and accounting documents pertaining to beneficiary estates. LIEs did not always recognize legal and technical issues that required follow-up actions involving court petitions as well as challenging inappropriate financial related actions taken by fiduciaries concerning beneficiary estates. For example, an LIE at a VARO did not take any action concerning multiple court petitions by a fiduciary that resulted in misuse of a beneficiary's estate that could have been prevented.

VARO fiduciary program supervisory staff identified a need for formal training of LIEs. According to the supervisors, the only training LIEs receive is on-the-job training. The need for formal training is now even greater with the implementation of the 2004 legislative changes requiring expanded management and oversight of fiduciaries. VBA needs to develop a training program for LIEs to enhance the skill levels needed to effectively conduct their fiduciary oversight responsibilities.

## **Veterans Benefits Improvement Act Requires Additional Fiduciary Oversight Actions**

On December 10, 2004, the Veterans Benefits Improvement Act of 2004 was signed into law. The requirements of the Act to improve fiduciary program oversight and protection of incompetent beneficiary incomes and estates became effective on July 1, 2005. Under the Act, VBA has additional requirements to determine the fitness of a person to serve as a fiduciary and to monitor fiduciary management of incompetent beneficiary estates. The legislation also makes VA responsible for reissuing benefits payments to the beneficiary or the successor fiduciary if VA is found to be negligent in investigating or monitoring a fiduciary. The legislation also provides that a defendant convicted of an offense arising from the misuse of benefits can be ordered to pay restitution.

In response to this legislation, in May<sup>15</sup> and June<sup>16</sup> 2005, VBA issued implementing instructions to all VAROs. The instructions provide comprehensive guidance on complying with the legislation. However, we are concerned that the legislation's objective, to improve the protection of incompetent beneficiary estates, may not be fully realized. VBA has not assessed either the potential impact of this legislation or the ability of VAROs to effectively accomplish the additional oversight with existing staff resources.

As previously discussed, we believe that the continuing fiduciary oversight problems are related to staff case load levels that can average in the hundreds per employee. The fiduciary oversight required in the legislation adds additional work involving onsite reviews of fiduciaries to ensure they are performing their duties and to protect beneficiaries from misuse of their benefits. To help ensure that the legislation is effectively implemented, VBA needs to determine the impact on staff case load work and staffing requirements need to be addressed.

### **FBS Contains Inaccurate Estate Values**

VARO fiduciary program staff did not ensure that accurate beneficiary estate values were reflected in FBS. Accurate FBS accounting of estate values is important to help ensure that reliable financial information is available to effectively monitor these cases and reduce the risk of misuse or theft of beneficiary funds.

There were four reasons for inaccurate estate values posted in FBS: (1) not updating estate values when new information was received, (2) mathematical errors, (3) not

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<sup>15</sup>VBA Letter 20-05-26, Procedures for Implementation of Fiduciary Program Provisions of P.L. 108-454, The Veterans Benefits Improvement Act of 2004, Section 502, May 5, 2005.

<sup>16</sup>VBA Letter 20-05-34, Procedures for Implementation of Select Fiduciary Provisions of P.L. 108-454, The Veterans Benefits Improvement Act of 2004, June 10, 2005. VBA Fast Letter 05-10, Onsite Reviews – Procedures for Implementation of Fiduciary Program Provisions of P.L. 108-454, The Veterans Benefits Improvement Act of 2004, Section 504, June 30, 2005.

rounding values to the nearest dollar (FBS does not allow for cents), and (4) including the beneficiaries' home values in the estate values.

To determine the magnitude of inaccurate reporting in FBS, we reviewed 73 beneficiary estates with reported values of \$1 million or more. We also reviewed a random sample of 350 cases from the 30,215 active cases in FBS to project the estimated value of inaccurate reporting for all beneficiary estates. We found significant overreporting and underreporting of estate values in FBS.

Thirty-five (47.9 percent) of the 73 beneficiary estates, with reported values of \$1 million or more, were inaccurately reported in FBS. The FBS-reported value of these estates was overstated by about \$76.3 million. In 2 (5.7 percent) of the 35 cases, the estate values in FBS were understated by \$135,700 and \$600,853, respectively. In the remaining 33 (94.3 percent) cases, the values were overstated from \$25,291 to \$8,000,972 with an average overstatement of \$2.3 million per case.

Our review of the random sample of 350 active FBS cases found that in 45 (12.9 percent) cases, the estate values in FBS were not accurate and did not reflect the actual values shown in beneficiary PGFs. Based on the sample results, we estimate that the FBS values for 3,898 beneficiary estates are inaccurate.

In 28 (62.2 percent) of the 45 sample cases with inaccurate estate values, the FBS values were understated by as much as \$608,361. Based on the sample results, we estimate that values for 2,417 estates could be understated by \$140 million. In 17 (37.8 percent) of the 45 sample cases with inaccurate estate values, the FBS values were overstated by as much as \$90,742. Based on the sample results, we estimate that values for 1,481 estates could be overstated by \$14.4 million. In total, the values for these estates could be understated by \$125.6 million (\$140 million estimated understated amount less \$14.4 million estimated overstated amount).

The following examples illustrate inaccurately reported beneficiary estates in FBS:

- The beneficiary's FBS-reported estate value was \$8,001,052, the highest value in FBS. According to VARO staff, the reported value was inaccurate because of a typographical error, and the actual value had never been over \$3,000. A January 2004 field examination report showed the value of the estate as only \$80. The veteran was receiving pension benefits of \$90 a month because he was in a Medicaid nursing home bed. As a result of the error, the estate was overstated by \$8,000,972.
- FBS reported that a beneficiary's estate was valued at \$283,035. However, the "Estate Summary" and field examination report in the beneficiary's PGF did not support this amount and showed that the estate was valued at \$510,391. The FBS-reported value was understated by \$227,356 (\$510,391 – \$283,035).

Data displayed in the FBS needs to be accurate in order for VA managers to accurately monitor beneficiary accounts.

## **Conclusion**

Enhanced fiduciary program oversight is needed to better protect the benefit payments and estates of incompetent beneficiaries. The fiduciary program continues to be at significant risk for abuse and fraud.

## **Recommendation**

We recommend that the Under Secretary for Benefits take the following actions to strengthen fiduciary program operations:

- a. Ensure that required field examinations are completed and that questionable data submitted in fiduciary accountings is challenged by fiduciary program staff to reduce the risk of misuse or theft of beneficiary funds.
- b. Ensure that surety bonds are obtained when required and at appropriate values to protect beneficiary estates.
- c. Ensure that at the end of the trial period for SDP, an assessment is made to determine whether benefits should be paid to the beneficiary or to a fiduciary.
- d. Ensure that fiduciary program staff are required to focus on key fraud indicators identified by the audit and to report fraud to the OIG.
- e. Determine appropriate VARO fiduciary staff case load levels and staffing requirements.
- f. Develop an LIE training program to enhance skills needed to effectively conduct fiduciary oversight responsibilities.
- g. Ensure that beneficiary estate values are accurately reported in FBS.

## **Under Secretary for Benefits Comments**

The Under Secretary for Benefits agreed with the report findings and recommendations. The Under Secretary disagreed with the reported \$435 million in estimated monetary benefits associated with incompetent beneficiary funds not being adequately protected and at risk for misuse. The Under Secretary does not believe that it can be concluded that funds in this amount are being inappropriately expended or that there are funds in this amount available that could be put to a different and better use. The Under Secretary's comments did not address the \$80.2 million in monetary benefits reported involving incompetent beneficiary funds at risk for fraud.

## Implementation Plan

The Under Secretary's comments provide details on ongoing and planned implementation actions that meet the intent of the recommendations. Key actions include:

- VBA area offices and the Under Secretary for Benefits will continue to receive a monthly statistical summary showing station timeliness for pending and completed field examinations.
- VBA will continue to closely monitor the issue of adequate surety bonds during the VACO quality reviews.
- VBA will continue to review the appropriateness of SDP through VACO quality reviews and field station site visits.
- The July 2005 edition of the Fiduciary Program Manual contains a section on referrals to the OIG.
- VBA has already begun discussions on current staffing levels and the possibility of fiduciary program reorganization.
- VBA recently completed a total revision, reorganization, and update of the Legal Instruments Program Guide that had been in use since 1981.
- VBA addressed the importance of accurately reporting estate values in FBS during a fiduciary program national teleconference in January 2006.

(See Appendix D, pages 17-19, for the full text of the Under Secretary's comments.)

## Office of Inspector General Comments

The implementation plans are acceptable. We will follow up on the planned actions until they are completed.

Prior to receipt of the Under Secretary's comments to the draft report, we were advised by fiduciary program officials of their disagreement with the reported monetary benefits. At the request of fiduciary program officials, we met and discussed the information presented. Since there was some confusion on the calculation of the monetary benefits, we revised the draft report to provide further details to explain the statistical sampling methodology used and the rationale for the reported monetary benefits.

Based on the Under Secretary's comments, we continue to believe that the monetary benefits reported are appropriate and reflect the risk to the Government should reimbursement of lost funds become necessary. The amount shown is intended to demonstrate the importance of the internal controls that were vulnerable and in need of management attention. The Under Secretary disagreed with the reported monetary benefits but provided no alternative figure. The disagreement was primarily based on his



belief that the \$435 million in beneficiaries' funds should not be reported because of the estimated inaccuracies we identified in VBA's own FBS estate values and that these funds could not be put to a different or better use.

The inaccuracies identified in the FBS estate values had no impact on the calculation of monetary benefits. The monetary benefits reported are accurate because they were based on validated beneficiary payments and estate values that were used in the statistical sampling calculations. Reporting these estimated monetary benefits is also appropriate to reflect the risk for loss of beneficiaries' funds because of inadequate fiduciary program oversight and protection. Inadequate protection of beneficiaries' funds represents a potential financial liability to VA since the Veterans Benefits Improvement Act of 2004 makes VA responsible for reissuing benefits payments to the beneficiary or the successor fiduciary if VA is found to be negligent in investigating or monitoring a fiduciary.

## **Projection of Sample Results – Incompetent Beneficiary Benefits and Estates at Risk for Misuse and Fraud**

### Population of Cases

For the purpose of sample selection, the audit population consisted of all active VBA payments involving incompetent veterans and incompetent surviving spouses. The June 30, 2004, C&P master file listed 52,245 of these beneficiaries (32,370 veterans receiving service-connected compensation, 12,998 veterans receiving nonservice-connected pension, and 6,877 spouses with fiduciaries assigned to them).

### Sample Design

Because of the large number of cases in the audit population and because automated case information was available, we used statistical sampling techniques to randomly select a national sample of 246 cases. We determined the sample size using a confidence level of 95 percent, a desired precision rate of 5 percent, and an expected error (ineffective case oversight) rate of 20 percent. We used attribute sampling techniques to evaluate the effectiveness of VBA's management controls and oversight of beneficiary estates under the control of fiduciaries. In reviewing the sample cases, we tested for five attributes:

- Whether a PGF file was maintained.
- Whether PGF data was accurately reported and maintained in FBS.
- Whether required field examinations were conducted, appropriately reviewed, and addressed beneficiary living conditions, use of funds, and estate values.
- Whether VARO staff appropriately monitored the use of beneficiary funds by reviewing canceled checks, questionable expenditures, and other documentation.
- Whether accountings, when required, were reviewed and verified and appropriate actions were taken when problems or errors were identified.

### Sample Results and Projections to Population

In 42 (17.1 percent) of the 246 national sample cases, case management and oversight did not effectively protect beneficiary benefit payments and estates. Additionally, 10 (4.1 percent) of the 246 cases involved suspected fraud, and we referred these cases to the OIG Office of Investigations. The tables on page 13 show projections of sample results to the population of 52,245 beneficiaries, with estimated benefit payments and estates at risk for misuse or fraud because of inadequate protection. The estimated monetary impact amount is based on annual VA benefits and estate values derived from VA benefits.

## PROJECTION OF RESULTS FROM 246 NATIONAL SAMPLE CASES SELECTED FROM C&P MASTER FILE

### 42 Cases – Enhanced Case Oversight Needed

Calculation of Point Estimate For 42 Cases With Oversight Improvement Needed	
Sample Results as Percent of Sample	17.1%
Audit Population	52,245
Estimated Number of Cases With Oversight Improvements Needed (52,245 x .1707)	8,918
Average Estimated Impact <sup>17</sup>	\$48,778
Point Estimate	\$435,002,204

OIG Projection to 52,245 Audit Population	Occurrences	Lower Limit	Point Estimate	Upper Limit
Sample Results	42	12.4%	17.1%	21.8%
Estimated Number in Population		6,463	8,918	11,374
Estimated Impact		\$315,252,214	\$435,002,204	\$554,800,972

Precision +/- 4.7%

### 10 Cases – Indicators of Fraud Referred to OIG Office of Investigations

Calculation of Point Estimate For 10 Cases Involving Indicators of Fraud	
Fraud as Percent of Sample	4.1%
Audit Population	52,245
Estimated Number of Cases Involving Fraud (52,245 x .0407)	2,126
Average Fraud Amount	\$37,744
Point Estimate	\$80,243,744

OIG Projection to 52,245 Audit Population	Occurrences	Lower Limit	Point Estimate	Upper Limit
Sample Results	10	1.6%	4.1%	6.5%
Estimated Number in Population		836	2,126	3,396
Estimated Fraud Amount		\$31,553,984	\$80,243,744	\$128,178,624

Precision +/- 2.5%

<sup>17</sup>The estimated average impacts consist of annual VA benefits and estate value derived from VA benefits.

## **Projection of Sample Results – Accuracy of Estate Values Reported in FBS**

### Population of Cases

Our analysis of the estate values in FBS found that values could be overstated because the estate value field does not accept a decimal (that is, the field does not allow for cents). To illustrate, if a value of \$8,015.80 was entered without rounding to the nearest whole dollar, it would be recorded as \$801,580 in FBS. For the purpose of sample selection, the audit universe consisted of all active VBA records involving incompetent veterans receiving 100 percent compensation with no dependents. This group would be subject to accountings that should provide accurate estate values. The September 30, 2004, C&P and FBS files listed 30,215 of these veterans.

### Sample Design

Because of the large number of cases in the audit population and because automated case information was available, we used statistical sampling techniques to randomly select a national sample of 350 cases. We determined the sample size using a confidence level of 95 percent, a desired precision rate of 3 percent, and an expected error (inaccurate estate value) rate of 9 percent. We used attribute sampling techniques to evaluate the accuracy of FBS estate values by comparing the values documented in the PGFs to the values recorded in FBS.

### Sample Results and Projections to Population

In 45 (12.9 percent) of the 350 cases reviewed, the FBS estate values were not accurate and did not match the actual estate values found in PGFs. In 28 (62.2 percent) of the 45 cases, the FBS values were understated from \$5 to \$608,361 and in 17 (37.8 percent) of the 45 cases the values were overstated from \$2 to \$90,742. The tables on page 15 show projections of sample results to the population of 30,215 veterans, with the estimated dollar impact of estate value inaccuracies in FBS.

# **PROJECTION RESULTS FROM 350 NATIONAL SAMPLE CASES SELECTED FROM FBS**

## **28 Cases – Estate Value Recorded In FBS Understated**

<b>Calculation of Point Estimate for 28 Cases Where FBS is Understated</b>	
Results as Percent of Sample	8%
Audit Population	30,215
Estimated Number of Cases Where FBS Understated (30,215 x .08)	2,417
Average Understated Amount	(\$57,911)
Point Estimate	(\$139,970,887)

<b>OIG Projections to 30,215 Audit Population</b>	<b>Occurrences</b>	<b>Lower Limit</b>	<b>Point Estimate</b>	<b>Upper Limit</b>
Sample Results	28	5.2%	8.0%	10.8%
Estimated Number in Population		1,571	2,417	3,263
Estimated Understated Amount		(\$90,978,181)	(\$139,970,887)	(\$188,963,593)

Precision +/- 2.8%

## **17 Cases – Estate Value Recorded In FBS Overstated**

<b>Calculation of Point Estimate for 17 Cases Where FBS is Overstated</b>	
Results as Percent of Sample	4.9%
Audit Population	30,215
Estimated Number of Cases Where FBS Overstated (30,215 x .049)	1,481
Average Overstated Amount	\$9,698
Point Estimate	\$14,362,738

<b>OIG Projections to Audit Population</b>	<b>Occurrences</b>	<b>Lower Limit</b>	<b>Point Estimate</b>	<b>Upper Limit</b>
Actual Sample Results	17	2.6%	4.9%	7.2%
Estimated Number in Population		786	1,481	2,175
Estimated Overstated Amount		\$7,622,628	\$14,362,738	\$21,093,150

Precision +/- 2.3%

## Monetary Benefits in Accordance with IG Act Amendments

<u>Recommendation</u>	<u>Explanation of Benefit(s)</u>	<u>Better Use of Funds</u> <sup>18</sup>
1(a-c)	Incompetent beneficiary funds not adequately protected and at risk for misuse.	\$435,002,204
1(d)	Incompetent beneficiary funds at risk of fraud.	80,243,744
	Total	\$515,245,948

<sup>18</sup> Based on our statistical sampling results of beneficiary cases reviewed, these beneficiary funds are at risk for loss because of inadequate fiduciary program oversight and protection. The Veterans Benefits Improvement Act of 2004 makes VA responsible for reissuing benefits payments to the beneficiary or the successor fiduciary if VA is found to be negligent in investigating or monitoring a fiduciary.

## Under Secretary for Benefits Comments

### Department of Veterans Affairs

### MEMORANDUM

Date: April 21, 2006

From: Acting Under Secretary for Benefits (20)

Subj: OIG Draft Report—Audit of Veterans Benefits Administration Fiduciary  
Program Operations—EDMS 344477

To: Assistant Inspector General for Auditing (52)

1. This is in response to your request for VBA's review of OIG Draft Report: Audit of Veterans Benefits Administration Fiduciary Program Operations.
2. VBA concurs with OIG's recommendations. Our response to each recommendation is attached.
3. Based on the sample results, the OIG estimated that 17 percent of the estate values in the Fiduciary Beneficiary System (FBS) could be overreported or underreported in amounts totaling \$435,002,204. While we concur with the recommendation to ensure that beneficiary estate values are accurately reported in FBS, we do not agree that \$435,002,204 in beneficiaries' funds should be reported under the "Better Use of Funds" requirements of the OIG Act. Based on the estimated inaccuracies in FBS estate values, we do not believe it can be concluded that funds in this amount are being inappropriately expended or that there are funds in this amount available that somehow could be put to a different and better use.
4. Questions may be referred to Dee Fielding, VBA's OIG Liaison, at 273-7018.

*(original signed by:)*  
Daniel L. Cooper

Attachment

**VBA COMMENTS TO OIG DRAFT REPORT**  
**Audit of Veterans Benefits Administration Fiduciary Program Operations**

**Recommendation 1a:** Ensure that required field examinations are completed and that questionable data submitted in fiduciary accountings is challenged by fiduciary program staff to reduce the risk of misuse or theft of beneficiary funds.

**Response:** Concur. Field examination timeliness continues to be included in the performance standards for station directors. VBA area offices and the Under Secretary for Benefits will continue to receive a monthly statistical summary showing station timeliness for pending and completed field examinations. The VACO Fiduciary Program staff also provides stations with listings, at least annually, of cases where it appears that field examinations have not been completed in an appropriate length of time for the station's review and action. We will continue to emphasize the importance of challenging questionable data on fiduciary accountings during site visits, quarterly national fiduciary teleconferences, and training opportunities, such as the May 2006 Legal Instruments Examiner (LIE) Conference, and through the Central Office quality review of fiduciary cases.

**Recommendation 1b:** Ensure that surety bonds are obtained when required and at appropriate value to protect beneficiary estates.

**Response:** Concur. We will continue to closely monitor the issue of adequate surety bonds during the Central Office quality review process. Clarifying language was added to the Fiduciary Program Manual (M21-1MR, Part XI), issued in July 2005, specifying that a court-appointed fiduciary may not be certified until any surety bond required by the court has been received. Issues concerning adequate bonds have also been reinforced in our recently updated Legal Instruments Examiner Program Guide and will be a discussion topic at the May LIE Conference.

**Recommendation 1c:** Ensure that at the end of the trial period for SDP, an assessment is made to determine whether benefits should be paid to the beneficiary or to a fiduciary.

**Response:** Concur. The number of SDP (supervised direct pay) cases has steadily declined since FY 2000. At the end of FY 2000, there were 5,282 SDP cases, representing 5.3 percent of the total number of incompetent beneficiaries. At the end of FY 2005, the number of SDP cases dropped to 3,245, which was 3.2 percent of the total. In July 2005, clarifying language was added to the Fiduciary Program Manual to specify 36 months as the maximum "trial period" for SDP. We continue to review the appropriateness of SDP through Central Office quality reviews and Compensation & Pension Service field station site visits.



Recommendation 1d: Ensure that fiduciary program staffs are required to focus on key fraud indicators identified by the audit and to report fraud to the OIG.

Response: Concur. The July 2005 edition of the Fiduciary Program Manual contains a section on referrals to the Office of Inspector General. The section establishes policies and procedures for referring fiduciary cases involving suspected fraud, embezzlement, misappropriation, or fiduciary misuse of benefits. Additionally, the manual provides a list of “red flag” indicators that describe examples of questionable entries on accountings that require analysis or investigation for possible fiduciary misuse. Analysis of accountings, including looking for fraud indicators, will be a key topic at the May LIE Conference.

Recommendation 1e: Determine appropriate VARO fiduciary staff caseload levels and staffing requirements.

Response: Concur. Staffing levels should be evaluated because of legislative changes in recent years and because of the need to strengthen the supervision of fiduciaries. We will convene a work group from the Compensation & Pension Service and the Office of Field Operations to examine staffing levels and management oversight issues relating to the Fiduciary Program. We have already begun discussions on current staffing levels and the possibility of Fiduciary Program reorganization. These efforts will be ongoing and we will report to the OIG periodically with the results of our efforts. We will provide the first report by November 30, 2006.

Recommendation 1f: Develop an LIE training program to enhance skills needed to effectively conduct fiduciary oversight responsibilities.

Response: Concur. We recently completed a total revision, reorganization, and update of the Legal Instruments Program Guide that had been in use since 1981. A training curriculum for new LIEs is now being developed, with expected release before August 31, 2006. A national Legal Instruments Training Conference, the first since 1991, has been scheduled for May 8-11, 2006. At least one LIE from each station will attend.

Recommendation 1g: Ensure that beneficiary estate values are accurately reported in FBS.

Response: Concur. We addressed the importance of accurately reporting estate values in FBS during a Fiduciary Program national teleconference in January 2006. After the teleconference, we sent the stations a list of their cases where FBS showed estates of \$1,000,000 or more and a list of cases where estate values had not been updated for at least five years. Stations were instructed to verify and update the estate values for their listed cases. We will send similar lists annually and will continue to review the accuracy of FBS data during Central Office quality reviews of fiduciary cases and during site visits. The issue of accuracy of FBS data will also be addressed during the national Legal Instruments Examiner Training Conference.

## OIG Contact and Staff Acknowledgments

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OIG Contact	Stephen Gaskell, Director, Central Office Audit Operations Division (202-565-4098)
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Acknowledgments	James Farmer, Project Manager
	Manuel Mireles
	Tammi VanLandingham
	Henry Hoffman
	Fred Livingstone
	Carla Vines
	William Woods

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