



# US DEPARTMENT OF VETERANS AFFAIRS **OFFICE OF INSPECTOR GENERAL**

Office of Audits and Evaluations

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## **VETERANS BENEFITS ADMINISTRATION**

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### **Lapse in Fiduciary Program Oversight Puts Some Vulnerable Beneficiaries at Risk**

Review

24-01219-12

February 11, 2025

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## Executive Summary

The Veterans Benefits Administration’s (VBA) Fiduciary Program protects vulnerable beneficiaries who are unable to manage their VA benefits because of injury, disease, and infirmities of advanced age or because they are less than the age of majority.<sup>1</sup> According to VBA’s *Annual Benefits Report* for fiscal year (FY) 2023, the program served more than 104,000 beneficiaries who together received more than \$2.7 billion in benefits payments.<sup>2</sup> To ensure the well-being and protection of these VA beneficiaries, the program appoints and oversees individuals who manage their benefits, known as fiduciaries.<sup>3</sup> To allow for VBA fiduciary staff to assess beneficiaries’ well-being and protect monetary benefits from misuse, each beneficiary must have a record in the program’s web-based electronic system, the Veterans Benefits Management System–Fiduciary (VBMS-Fid). The VA Office of Inspector General (OIG) conducted this review to determine whether VBA had procedures in place to ensure beneficiaries’ records were created and fiduciary staff conducted oversight of fiduciaries, as required.

The Fiduciary Program protects beneficiaries who are deemed incompetent to manage their own affairs by monitoring their well-being and overseeing their appointed fiduciaries, including safeguarding their federal benefits from fraud, waste, and misuse.<sup>4</sup> The program is administered by VA’s Pension and Fiduciary Service, which establishes policy and procedures, provides training, and assesses claims-processing accuracy. Additionally, there are six fiduciary hubs responsible for beneficiaries in specific states.<sup>5</sup> Fiduciary hub staff are charged with assessing the personal welfare of beneficiaries and reviewing the performance of fiduciaries. There are three primary methods that the fiduciary hubs use to provide oversight of VA’s most vulnerable beneficiaries: field examinations, fiduciary accountings, and misuse investigations.

The program has made significant changes to its processes and technology over the past several years. Notably, in November 2020, VA deployed VBMS-Fid.<sup>6</sup> This system was intended to provide an effective means for VA to meet its mission of overseeing and protecting VA

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<sup>1</sup> 38 C.F.R. § 13.10(a) (2018).

<sup>2</sup> Department of Veterans Affairs, *VBA Annual Benefits Report Fiscal Year 2023*, <https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf>. The *Annual Benefits Report* summarizes the benefits programs administered by VBA and provides insights into the nature of these programs.

<sup>3</sup> 38 C.F.R. § 13.10(a).

<sup>4</sup> 38 C.F.R. § 3.353(a) (2018). VA regulations define “a mentally incompetent person” as “one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.”

<sup>5</sup> The six fiduciary hubs are in Columbia, South Carolina; Indianapolis, Indiana; Lincoln, Nebraska; Louisville, Kentucky; Milwaukee, Wisconsin; and Salt Lake City, Utah.

<sup>6</sup> The program had two legacy systems before the implementation of VBMS-Fid: Beneficiary Fiduciary Field System and Fiduciary-Beneficiary System. These systems are no longer used.

beneficiaries who have been deemed incompetent. There are two ways in which beneficiaries may be deemed incompetent that affect oversight of their benefits. VBA staff can determine whether a beneficiary is competent based on medical evidence such as an examination or medical opinion by responsible medical authorities.<sup>7</sup> Alternatively, a court may find an individual incompetent to manage their financial affairs. These beneficiaries, when determined to be incompetent, are placed in VBMS-Fid through either an automated or manual process. Generally, when a beneficiary's incompetency is finalized through a VBA determination, a VBMS-Fid record is automatically created.<sup>8</sup> But in some cases, VBA staff must manually create the record in VBMS-Fid, such as when the beneficiary has been declared incompetent by a court.

## What the Review Found

The OIG found that VBA did not create VBMS-Fid records for 311 beneficiaries as required. Although these beneficiaries represent less than 1 percent of all program beneficiaries in FY 2023, the risk of harm was significant because the Fiduciary Program was not monitoring the financial, physical, or mental well-being of these beneficiaries. The OIG determined these 311 beneficiaries received about \$24.5 million in VA compensation and pension benefits from the time of their incompetency determination or (if records did not migrate from a prior system) at least from December 2020 through January 2024, with no oversight. To determine total monetary impact, the team calculated the total number of payments made to each of the 311 beneficiaries for the period they were unsupervised by the Fiduciary Program.<sup>9</sup> In general, this lapse occurred because fiduciary records failed to migrate to VBMS-Fid from the legacy systems or because VBA staff did not manually create the VBMS-Fid records when necessary. The Fiduciary Program lacked controls that would have prevented or identified this lapse. Appendix A provides additional details about the OIG's scope of work and the methodology used for this review.

To identify these beneficiaries, the OIG team compared VBA incompetency determination data from VBA's corporate database against VBA program data that showed all beneficiaries with records in VBMS-Fid.<sup>10</sup> The Pension and Fiduciary Service confirmed that none of the beneficiaries identified had a record in VBMS-Fid. Among the 311 beneficiaries, the team

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<sup>7</sup> 38 C.F.R. § 3.353(c) (2018); VA Manual 21-1, "Making a Finding of Incompetency," updated August 15, 2022, topic X.ii.6.A.1.d in *Adjudication Procedures Manual*.

<sup>8</sup> VA Fiduciary Program Manual, "Finalizing Determinations," updated March 10, 2023, sec. I.1.B.2.i.

<sup>9</sup> For beneficiaries who had a fiduciary record that did not migrate from a legacy system to VBMS-Fid, the team calculated VA compensation and pension benefits received from December 2020. The team used this month because the Fiduciary Program began using VBMS-Fid in November 2020. For those beneficiaries whose records were never established, the team calculated benefits from the initial date of the incompetency determination through January 2024, when the OIG notified the Pension and Fiduciary Service about this review.

<sup>10</sup> The team only included records for beneficiaries who were determined to be incompetent and were missing fiduciary records that the Pension and Fiduciary Service did not independently identify before January 31, 2024, the date the OIG notified VBA of the review.

determined VBA had rated 79 beneficiaries as incompetent and previously had an assigned fiduciary, an indication that the beneficiaries had a fiduciary record and were under the program's supervision before the VBMS-Fid migration. For those 79 beneficiaries, there was no oversight from the time VBMS-Fid was implemented in November 2020. The remaining 232 beneficiaries had no assigned VA fiduciary, and the OIG did not find any evidence that these beneficiaries ever had a fiduciary record in either VBMS-Fid or the legacy systems, which means they never had any program supervision. If a beneficiary's well-being declined and they faced either physical or mental abuse or their funds were misused, VBA would be unaware.

For example, during a review of VBMS-Fid records that were added after the OIG made the Pension and Fiduciary Service aware of the missing records, the OIG team identified a vulnerable beneficiary VBA had found incompetent. This beneficiary's record was one of the 79 records that failed to migrate to VBMS-Fid. The team reviewed VBA data that included documentation of payments and field examinations and determined that VBA had appointed a fiduciary. However, because the beneficiary's record failed to migrate to VBMS-Fid, after November 2020, the program was no longer supervising the fiduciary. The OIG's review revealed the lapse in oversight to the Pension and Fiduciary Service. Hub staff then searched for the beneficiary and the fiduciary but could not find either one. Eventually, VBA staff found the fiduciary (the beneficiary's mother), but she refused to meet and provide documentation about how she was using the beneficiary's funds. The field examiner was also unable to locate the beneficiary to assess the beneficiary's health and well-being and whether their basic needs were being met.<sup>11</sup>

Overall, the program failed to conduct oversight activities for 311 beneficiaries because it lacked controls to identify when beneficiaries found to be incompetent did not have an electronic fiduciary record. Fiduciary staff use VBMS-Fid to establish field examinations, review accountings, and collect the documentation needed to conduct misuse investigations. Without a VBMS-Fid record, fiduciary hub staff are unable to effectively protect beneficiaries who cannot manage their VA benefits. Beneficiaries with fiduciaries whose records did not migrate to the VBMS-Fid system were being supervised by fiduciaries who were acting without program oversight for more than three years. Those beneficiaries who *never* had a fiduciary record established received no oversight, some for potentially as long as 15 years. If a monitoring system had been in place, the program could have identified the 311 vulnerable beneficiaries and placed them under the program's protection.

As a result of this review, the deputy director of the Pension and Fiduciary Service said staff are developing electronic reporting functionality to identify the cases of beneficiaries without VBMS-Fid records, with target implementation in FY 2025.

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<sup>11</sup> The team provided information related to this beneficiary to the OIG's Office of Investigations, which investigates potential criminal matters, for further action.

## What the OIG Recommended

To address identified weaknesses, the OIG made three recommendations to the under secretary for benefits. VBA should establish records for the 311 beneficiaries who did not have any in VBMS-Fid. VBA should resume oversight activities to assess the well-being of the identified beneficiaries and protect VA funds. Finally, going forward, VBA should implement controls to flag beneficiaries found to be incompetent who do not have electronic fiduciary records and then ensure those records are established.

## VA Management Comments and OIG Response

The under secretary for benefits concurred with all three recommendations and provided responsive action plans, which included reviewing and establishing records for the identified beneficiaries who did not have records, resuming oversight activities for those beneficiaries, and creating an internal report as an oversight control that identifies when beneficiaries who have been determined to be incompetent do not have a record in VBMS-Fid. In addition, VBA provided guidance on the use of the internal report to fiduciary hub staff. After reviewing the evidence provided by VBA, the OIG concurred with VBA's request to close all recommendations. The full text of the under secretary's comments is included in appendix B.



LARRY M. REINKEMEYER  
Assistant Inspector General  
for Audits and Evaluations

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## Abbreviations

FY	fiscal year
OIG	Office of Inspector General
VBA	Veterans Benefit Administration
VBMS-Fid	Veterans Benefits Management System–Fiduciary



## Introduction

The Fiduciary Program of the Veterans Benefits Administration (VBA) protects individuals who cannot manage their VA benefits because of “injury, disease, or infirmities of advanced age, or by reason of being less than the age of majority.”<sup>12</sup> The program ensures their well-being by appointing and overseeing fiduciaries to manage their benefits.<sup>13</sup> According to VBA’s *Annual Benefits Report* for fiscal year (FY) 2023, the program served more than 104,000 beneficiaries who received, in aggregate, over \$2.7 billion in benefits payments.<sup>14</sup>

Staff monitor beneficiaries’ well-being and oversee fiduciaries to safeguard benefit funds from fraud, waste, and misuse.<sup>15</sup> For staff to track and manage these activities, beneficiaries must have a record established in the program’s web-based electronic case management platform, Veterans Benefits Management System–Fiduciary (VBMS-Fid). The VA Office of Inspector General (OIG) conducted this review to determine whether VBA had procedures in place to ensure program records were created and fiduciary staff conducted oversight of fiduciaries, as required.

## Determining Incompetency

VA will consider whether beneficiaries are mentally incompetent when evidence is received that raises uncertainty about whether they have the ability to manage their benefits.<sup>16</sup> VA regulations define a “mentally incompetent person” as “one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.”<sup>17</sup> VBA staff determine whether a beneficiary is competent based on medical evidence, such as an examination or medical opinion by responsible medical authorities.<sup>18</sup> In the absence of clear and convincing evidence to the contrary, claims processors are required to presume that a person is competent.<sup>19</sup>

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<sup>12</sup> 38 C.F.R. § 13.10(a) (2018).

<sup>13</sup> 38 C.F.R. § 13.10(a).

<sup>14</sup> Department of Veterans Affairs, *VBA Annual Benefits Report Fiscal Year 2023*, <https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf>. *The Annual Benefits Report* summarizes the benefit programs administered by VBA and provides insights into the nature of these programs.

<sup>15</sup> 38 C.F.R. § 13.10(a).

<sup>16</sup> VA Manual 21-1, “Considering Competency While Evaluating Evidence,” updated December 15, 2021, topic X.ii.6.A.2 in *Adjudication Procedures Manual*.

<sup>17</sup> 38 C.F.R. § 3.353(a) (2018).

<sup>18</sup> 38 C.F.R. § 3.353(c) (2018); VA Manual 21-1, “Making a Finding of Incompetency,” updated August 15, 2022, topic X.ii.6.A.1.d in *Adjudication Procedures Manual*.

<sup>19</sup> 38 C.F.R. § 3.353(d) (2018); VA Manual 21-1, “Presuming Competency,” updated August 15, 2022, topic X.ii.6.A.1.c in *Adjudication Procedures Manual*.

Policy guidance outlines how to proceed after VA receives clear and convincing medical evidence that a beneficiary is incompetent and incapable of managing VA benefits payments.<sup>20</sup> A proposal of incompetency is prepared, and VBA staff send a letter to the beneficiary with the proposed decision, informing the beneficiary that VA received evidence that the beneficiary is unable to manage their own benefits. Starting from the date of the letter, there is a 60-day due process period during which the beneficiary may submit additional evidence or request a hearing.<sup>21</sup> After 65 days, VBA reviews any evidence submitted by the beneficiary and finalizes the decision on competency.<sup>22</sup> There is a different approach when the beneficiary has been declared incompetent by a court or has a guardian appointed. Under those circumstances, there is no 60-day due process period.<sup>23</sup>

## Appointing Fiduciaries

If VBA determines a beneficiary cannot manage their benefits, VBA staff appoint a fiduciary, a person or legal entity charged with managing the benefits. Fiduciaries manage the VA funds that beneficiaries receive; are responsible for monitoring the beneficiaries' well-being; are authorized to receive direct payment of beneficiaries' VA benefits; and distribute funds on behalf of the beneficiaries for their care, support, and welfare.<sup>24</sup> When appointing a fiduciary, VA makes every effort to appoint the person, agency, organization, or institution that will best serve the interest of the beneficiary.<sup>25</sup>

## VBA Fiduciary Program

The VBA Fiduciary Program is administered by VA's Pension and Fiduciary Service whose staff establish policy and procedures, provide training, and assess claims-processing accuracy. Additionally, six fiduciary hubs are responsible for overseeing beneficiaries within specific states.<sup>26</sup> Each fiduciary hub conducts program activities for an assigned geographic region.

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<sup>20</sup> VA Manual 21-1, "Making Initial Competency Determinations Based on Medical Evidence," updated March 10, 2023, topic X.ii.6.A.3.a in *Adjudication Procedures Manual*.

<sup>21</sup> The minimum due process period is 60 days, unless waived by the beneficiary. When a waiver is not received, the final decision occurs after the 65th day to allow time for evidence to reach VA. VA Manual 21-1, "Due Process Requirements for Incompetency Determinations," updated March 10, 2023, topic X.ii.6.D.3 in *Adjudication Procedures Manual*.

<sup>22</sup> VA Manual 21-1, "Proposals on Which a Beneficiary Takes No Action," updated March 10, 2023, topic X.ii.6.D.3.i in *Adjudication Procedures Manual*.

<sup>23</sup> 38 C.F.R. § 3.353(e) (2018).

<sup>24</sup> 38 C.F.R. § 13.140 (2018).

<sup>25</sup> 38 C.F.R. § 13.100(d) (2018).

<sup>26</sup> The six fiduciary hub locations are Columbia, South Carolina; Indianapolis, Indiana; Lincoln, Nebraska; Louisville, Kentucky; Milwaukee, Wisconsin; and Salt Lake City, Utah.

Fiduciary hub staff are responsible for assessing the personal welfare of beneficiaries and determining whether the assigned fiduciaries meet the requirements of their role, in accordance with the program's manual.<sup>27</sup>

## **Fiduciary Program Systems of Record**

Whenever VBA staff determine that a beneficiary does not have the competency to manage their VA funds, an electronic fiduciary record must be created to enable the program to protect those beneficiaries. The VBA Fiduciary Program's electronic records systems have undergone significant changes over the past several years. Notably, in November 2020, VBA deployed VBMS-Fid, a new web-based electronic case management platform. Before November 2020, the program had two legacy recordkeeping systems: (1) the Beneficiary Fiduciary Field System used from May 2014 to November 2020; and (2) the Fiduciary-Beneficiary System used before May 2014. Any beneficiaries who were declared incompetent should have had a fiduciary record created in one of the legacy recordkeeping systems.

VBA upgraded to the VBMS-Fid application to enable program staff to expedite fiduciaries' qualifications assessments, appoint fiduciaries, and release VA funds. The application was designed to increase the timeliness of fiduciary appointments, reduce accounting disapproval rates, and enhance the ability to manage workload, oversight, and reporting. According to VA documents, these system changes provide the Pension and Fiduciary Service with a more effective way for VA to oversee fiduciaries and protect vulnerable beneficiaries. While most records migrated automatically from the legacy system to VBMS-Fid, the service informed the OIG team during this review that 33,099 records were not imported from the legacy system. VA completed the migration of these records from the legacy system to VBMS-Fid in October 2021.

## **Beneficiaries Under the Fiduciary Program's Supervision**

Beneficiaries are placed under the oversight of the fiduciary hubs either through an automated or manual process. When claims from a beneficiary who is unable to manage their VA benefits are finalized and the beneficiary is deemed incompetent, a VBMS-Fid record is created. This record is what allows hub staff to set up field examinations, request and track accountings, and conduct misuse investigations. Usually, the record is created automatically; however, in some instances, VBA staff must manually create the VBMS-Fid record to initiate the fiduciary appointment.<sup>28</sup>

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<sup>27</sup> VA Fiduciary Program Manual, "Introduction," updated November 8, 2022.

<sup>28</sup> VA Fiduciary Program Manual, "Request for Appointment of a Fiduciary, Custodian, or Guardian," updated March 10, 2023, sec. I.1.B.2; VA Fiduciary Program Manual, "General Information on Establishing a Beneficiary Profile," updated October 31, 2022, sec. II.1.D.1.a.

### *The Automated Process*

When VBA makes a proposed determination of a beneficiary's inability to manage VA benefits, they notify the beneficiary and provide the opportunity to submit additional evidence to contest the action. Then VBA establishes a designated specific electronic control (a code), called an "end product," that tracks cases involving proposals of incompetency.<sup>29</sup> This end product applies to all due process periods for proposed incompetency determinations that are made by the hub. Once the incompetency decision is finalized, the system automatically establishes a beneficiary profile and sets up another end product for staff to initiate an appointment for a field examination to assign a fiduciary.<sup>30</sup>

### *The Manual Process*

Certain cases are excluded from automation due to their distinct processing requirements, and in these situations, hub staff must create the profile manually. For example, manual processing is required when a court has determined the beneficiary is incompetent to manage their affairs. For beneficiaries with court-appointed fiduciaries, there is no proposal of incompetency, automatic transfer to the fiduciary hub, or automatic creation of a beneficiary record in VBMS-Fid. Instead, VBA staff must complete a form to request the appointment of a fiduciary, upload the form, and establish the appropriate end product (that is, assign the correct numeric code). The determination of incompetency and related form are routed to the appropriate hub of jurisdiction for action.<sup>31</sup>

## **Protecting Beneficiaries and Overseeing Fiduciaries**

In addition to ensuring the well-being of beneficiaries who are found to be incapable of managing their benefits, the program is responsible for preventing fraud, waste, and misuse of these federal funds.<sup>32</sup> The program does so by protecting the beneficiaries and overseeing their appointed fiduciaries. Oversight actions within the program are controlled primarily by three routine activities performed by hub staff: field examinations, fiduciary accountings, and misuse investigations.

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<sup>29</sup> VA Manual 21-4, "Correct EP Use and Work Measurement," updated October 11, 2023, app. B.1.a; VA Manual 21-4, "EPs - Compensation, Pension, and Fiduciary Operations," updated August 2, 2023, app. B.2. The fiduciary hubs use the end-product system as their primary workload monitoring and management tool.

<sup>30</sup> VA Fiduciary Program Manual, "Finalizing Determinations," updated March 10, 2023, sec. I.1.B.2.i.

<sup>31</sup> VA Manual 21-1, "Preparing VA Form 21-592 to Request the Appointment of a Fiduciary," updated January 14, 2021, sec. X.ii.6.C.1.c.

<sup>32</sup> VA Fiduciary Program Manual, "Protecting Federal Funds and Determining Misuse," updated May 6, 2022, sec. I.1.B.3.i.

## *Field Examinations*

Fiduciary hub staff conduct field examinations for several reasons, including appointing and supervising fiduciaries as well as checking on the well-being of beneficiaries. An initial field examination should be conducted for every new beneficiary placed under the supervision of the program.<sup>33</sup> In addition to the initial field examination, fiduciary hub staff may conduct follow-up examinations.<sup>34</sup> These may be used to reassess the needs of the beneficiary and dependents, evaluate the fiduciary relationship, to uncover any irregularities, and to provide advice and assistance regarding benefits based on the beneficiary's needs.<sup>35</sup>

Conducting field examinations allows the Fiduciary Program to check on beneficiaries (and their dependents) to assess their welfare, physical and mental well-being, environmental and social conditions, and overall financial situation. Assessments are based on observations made during visits to the beneficiary's current residence and a face-to-face interview with the beneficiary and their dependents, when practical, and could also include the collection and review of financial documentation, such as income and expenditure information. For the most vulnerable beneficiaries, such as those who are socially isolated or are not able to orient to person, place, events, and time, these assessments generally occur once every two years.<sup>36</sup>

## *Fiduciary Accountings*

Fiduciaries are required to provide an accounting, a written report that outlines the management of a beneficiary's VA benefits payments and expenses for a specified time frame. VA-appointed fiduciaries must submit annual accounting reports when certain criteria are met, such as when the fiduciary manages over \$10,000 in VA funds.<sup>37</sup> Generally, accountings are approved by hub staff, unless they contain unresolved discrepancies, questionable expenses, or indications of misused benefits.<sup>38</sup> When the fiduciary's accounting report has inconsistencies or deficiencies that cannot be resolved with a phone call from hub staff, disapproval of the accounting is warranted.<sup>39</sup> If fiduciaries provide a statement that they will not submit an accounting or

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<sup>33</sup> VA Fiduciary Program Manual, "IA Field Examinations," updated December 13, 2023, sec. I.2.A.2.a; VA Fiduciary Program Manual, "Types of IA Field Examinations," updated December 13, 2023, sec. I.2.A.2.b.

<sup>34</sup> VA Fiduciary Program Manual, "Follow-up Field Examinations," updated December 13, 2023, sec. I.2.A.2.d.

<sup>35</sup> VA Fiduciary Program Manual, "Follow-up Field Examinations."

<sup>36</sup> "Orientation is a fundamental mental function that processes the relations between the behaving self to space (places), time (events), and person (people)." Michael Peer, Roy Salomon, Ilan Goldberg, Olaf Blanke, and Shahar Arzy, "Brain system for mental orientation in space, time, and person," *Proceedings of the National Academy of Sciences of the United States of America (PNAS)* 112, no. 35 (September 1, 2015): 11072–11077, <https://www.pnas.org/doi/full/10.1073/pnas.1504242112>.

<sup>37</sup> 38 C.F.R. § 13.280(a). There are exceptions to this accounting requirement, such as when the fiduciary is the beneficiary's spouse. 38 C.F.R. § 13.280(d).

<sup>38</sup> VA Fiduciary Program Manual, "Approval Requirements," updated November 10, 2022, sec. I.3.D.1.a.

<sup>39</sup> VA Fiduciary Program Manual, "When to Disapprove an Accounting," updated November 10, 2022, sec. I.3.D.2.a.

otherwise refuse to provide an accounting, VBA will consider these actions willful neglect and evidence of misuse.<sup>40</sup>

### *Misuse Investigations*

A misuse investigation is a detailed inquiry into an allegation received by hub staff about whether beneficiary funds have been improperly used.<sup>41</sup> These investigations must be conducted as promptly as possible to ensure that beneficiaries' funds and interests are protected. Failure to act within 60 days on an allegation of misuse constitutes VA negligence.<sup>42</sup> Field examinations may be conducted as part of an investigation into allegations that a beneficiary's fiduciary has engaged in misconduct or has misused VA benefits.<sup>43</sup>

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<sup>40</sup> VA Fiduciary Program Manual, "When the Fiduciary Does Not Intend to Submit Accounting," updated September 14, 2022, sec. I.3.E.1.a.

<sup>41</sup> "Misuse of benefits occurs in any case in which the fiduciary receives payment of Department of Veterans Affairs (VA) benefits on behalf of a beneficiary and uses any part of such payment for a purpose that is not for the use and benefit of the beneficiary or the beneficiary's dependents." VA Fiduciary Program Manual, "General Information on the Misuse Protocol," updated August 25, 2023, sec. II.3.A.1.a.

<sup>42</sup> VA Fiduciary Program Manual, "Timeliness of Actions During an Investigation," updated August 25, 2023, sec. II.3.A.3.c.

<sup>43</sup> 38 C.F.R. § 13.120(b) (2018).

## Results and Recommendations

### **Finding: Despite Creating Records for Nearly All Beneficiaries, VBA Lacked Sufficient Controls to Ensure Required Oversight for Some Beneficiaries Deemed Incompetent to Manage Their Benefits**

The OIG recognizes that VBA was serving about 104,000 beneficiaries in FY 2023, with nearly all having the records needed for oversight in the required system. However, 311 beneficiaries deemed incompetent to manage their payments did not have a record established in the VBMS-Fid system. Although these beneficiaries represent less than 1 percent of all program participants, the risk of harm is significant because without records, the program staff would be unable to follow up with beneficiaries to ensure their needs were being met or oversee any appointed fiduciaries. VBA lacked a mechanism in VBMS-Fid to identify when records should have been created for beneficiaries who were declared incompetent but were not. The OIG also determined that about \$24.5 million in VA compensation and pension benefits received by these 311 beneficiaries through January 2024 were at risk of being wasted, misused, or used fraudulently.

The finding is based on the following two determinations:

- VBA did not create VBMS-Fid records for 311 beneficiaries who were incompetent to manage their benefits.
- The Fiduciary Program lacked controls that would have prevented or identified this lapse.

### **What the OIG Did**

The OIG team reviewed applicable laws, regulations, policies, and procedures related to the creation of VBMS-Fid records. Using VBA's electronic systems, the team identified 311 beneficiaries deemed to be incompetent from June 10, 2003, to June 30, 2023, who did not have a record within VBMS-Fid.<sup>44</sup> To identify these beneficiaries, the team compared VBA incompetency determination data from VBA's corporate database against VBA program data that showed all beneficiaries with records in VBMS-Fid.<sup>45</sup>

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<sup>44</sup> The OIG team used VBMS-Core and Share to evaluate whether the beneficiary was declared incompetent or had a fiduciary appointed. VBMS-Core and Share are two separate electronic systems. VBMS-Core is a web-based application designed to support end-to-end claims processing through a consolidated portal, and Share is a Microsoft Windows-based application that provides a single computing system with data sources on different databases in multiple locations.

<sup>45</sup> The team only included records for beneficiaries who were determined to be incompetent and were missing fiduciary records that Pension and Fiduciary Service did not independently identify before January 31, 2024, the date the OIG notified VBA of the review.

From these 311, the team initially reviewed a judgmental sample of 32 to determine whether VBA had procedures in place to ensure program records were created and fiduciary hub staff conducted required oversight for incompetent beneficiaries.<sup>46</sup> This initial review was expanded to include the remaining 279 beneficiary records to determine which were assigned fiduciaries and under the supervision of the Fiduciary Program at some time before the implementation of VBMS-Fid. All 311 missing beneficiary records were used to determine the amount of VA compensation and pension benefits the beneficiaries received while not under the program's supervision. The OIG team provided the results to VBA's Pension and Fiduciary Service. Service staff confirmed that VBA had not created VBMS-Fid records for any of these 311 beneficiaries before January 31, 2024.

To determine monetary impact, the team calculated the total number of payments made to each of the 311 beneficiaries. Transactions were categorized based on whether the beneficiary ever had a VA-appointed fiduciary. For beneficiaries with a VA-appointed fiduciary, payments were calculated from December 1, 2020, as this was the first date the team could confirm the fiduciaries were unsupervised. For beneficiaries without a VA-appointed fiduciary, payments were calculated from the first payment date after the beneficiaries were deemed incompetent by VA. For both categories, the final payment date was January 31, 2024, the date the OIG notified VBA of the review.

Appendix A provides additional details about the scope of work and the methodology used.

## **VBA Did Not Create VBMS-Fid Records for 311 Beneficiaries Who Were Incompetent to Manage Their Benefits**

The Code of Federal Regulations outlines the purpose of VBA's Fiduciary Program, which is to protect vulnerable beneficiaries by overseeing their well-being and the fiduciaries who manage their benefits.<sup>47</sup> Beneficiaries having a record in VBMS-Fid—and therefore being under the supervision of the Fiduciary Program—is critical when they cannot manage their own affairs. As stated earlier, fiduciary hub staff must evaluate the beneficiary's physical and mental well-being and their environmental and social condition. When a beneficiary falls under the program's supervision, their VA-appointed fiduciary is monitored for compliance with program responsibilities to ensure that VA benefits are being used to meet the needs, security, and comfort of the beneficiaries and their dependents. If an electronic record is not in VBMS-Fid or one of the legacy systems because one was never created, a VA fiduciary will not be appointed.

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<sup>46</sup> The OIG team initially selected a judgmental sample of 33 beneficiary records, which is 10 percent of the 330 records initially identified. Ultimately, 32 records were reviewed because the team identified one record as out of scope and removed it from consideration.

<sup>47</sup> 38 C.F.R. § 13.10(a) (2018).

The OIG team's review of 311 beneficiaries found that electronic records for beneficiaries with incompetency decisions were missing both before and after VBA started using VBMS-Fid. Among those missing records, there were 79 beneficiaries who had an assigned VA fiduciary, indicating that they had a fiduciary record and were under the supervision of the program at some point in time, but that supervision ended after the VBMS-Fid migration. The remaining 232 beneficiaries had no assigned fiduciary.

The records for the 311 beneficiaries were missing because

- fiduciary records did not migrate to the VBMS-Fid system, or
- some beneficiaries never had a Fiduciary Program record.

### **Established Fiduciary Records Did Not Migrate to the VBMS-Fid System**

Of the 311 missing records cases reviewed, 79 beneficiaries had VA fiduciaries at some point before the implementation of VBMS-Fid, but these records failed to migrate from the legacy systems. According to the deputy director of the Pension and Fiduciary Service, these records may not have transferred because the legacy system had data integrity weaknesses. For example, not all beneficiaries had records established under the correct file numbers.

Example 1 is an instance of a record that did not automatically migrate from the legacy system to VBMS-Fid.

#### ***Example 1***

*A rating decision dated June 13, 2019, deemed a veteran's surviving spouse to be incompetent. The OIG team reviewed VBMS-Core, VBA's claims-processing system, and found that a field examination was completed on August 14, 2020. VBA transitioned to VBMS-Fid on November 8, 2020.<sup>48</sup> However, a VBMS-Fid record was not created for this beneficiary. Because the record was missing, there was nothing in the system to alert staff that oversight was needed. Although the spouse received over \$50,000 in VA death pension benefits from December 1, 2020, through January 31, 2024, there was no oversight to ensure her welfare or safeguard her funds.*

Although these 79 beneficiaries did have a VA fiduciary, they lacked a record in VBMS-Fid. As a result, fiduciary hub staff were unable to provide oversight, request accountings, conduct potential misuse investigations, or appoint a new fiduciary if necessary, between

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<sup>48</sup> Before the deployment of VBMS-Fid in November 2020, the program used the Beneficiary Fiduciary Field System. Because the field examination was conducted in August 2020, it is likely that staff were tracking the examination using this legacy system.

November 8, 2020, and January 31, 2024, a period of almost three years and three months. Lack of fiduciary oversight and beneficiary supervision risks not only VA benefits but also the well-being of the beneficiary. VBA would be unaware if a beneficiary faces physical or mental abuse or if their funds are misused, as shown in example 2.

### **Example 2**

*A rating decision dated June 2, 2010, deemed a dependent-beneficiary incompetent. The beneficiary's mother was appointed as fiduciary on July 23, 2010, and was subject to program oversight. The beneficiary was overseen by the program from June 2010 through the date of the VBMS-Fid migration in November 2020. The last oversight action was a field examination conducted on April 24, 2018. Because the record failed to migrate, VBA staff were unaware they had lost oversight of this beneficiary and fiduciary until the OIG identified the problem and informed the Pension and Fiduciary Service that no fiduciary record existed. Subsequently, staff attempted to reestablish supervision over the beneficiary but were unable to locate him or the fiduciary. On April 2, 2024, fiduciary hub staff ran a criminal background check in an attempt to locate the fiduciary and revealed multiple pending felony charges for fraud and larceny, which are a bar from serving as a fiduciary.<sup>49</sup> After locating the fiduciary, she refused to meet the examiner in person, stated she did not know where the beneficiary was, and refused to provide documentation of how the benefits were being used. Although the fiduciary was replaced, the whereabouts and well-being of the beneficiary remained unknown. The fiduciary received over \$23,000 in VA benefits while unsupervised.*

## **Some Vulnerable Beneficiaries Never Had a Fiduciary Program Record**

For the remaining 232 of the 311 cases reviewed, the OIG team found no evidence that beneficiaries' records existed in the previous systems or were established in VBMS-Fid after the migration. Review of other VBA data systems showed benefits were paid directly to these beneficiaries despite VA's determination that they were unable to manage their VA funds. These beneficiaries have remained unsupervised since VA determined they were unable to manage their VA benefits.

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<sup>49</sup> 38 C.F.R. § 13.130(b)(5) (2018).

The following case is an example of a beneficiary whose incompetency predated VBMS-Fid.

### **Example 3**

*A veteran was deemed incompetent based on a rating decision dated October 30, 2018. There was no evidence to show VBA had requested or appointed a VA fiduciary before the service transitioned to VBMS-Fid on November 8, 2020. Additionally, a program record for the veteran had not been created in the legacy fiduciary system, so there was no record to migrate. This beneficiary received more than \$204,000 in VA disability compensation benefits from December 1, 2020, through January 31, 2024.*

Example 4 describes a circumstance in which a beneficiary's record was not manually created after the VBMS-Fid migration, as required.

### **Example 4**

*On May 3, 2023, VA deemed that the veteran was unable to manage VA benefits based on an earlier court order appointing the beneficiary a new guardian. Because this decision was based on a court order, a VBMS-Fid record was not created automatically, and hub staff were required to manually create one. However, staff did not create a record or appoint a VA fiduciary and program oversight activities were not conducted. As of January 2024, this veteran was receiving \$2,300 in VA disability compensation benefits per month without VBA supervision.*

There was no VBA mechanism in place to ensure that staff manually created a record in VBMS-Fid when needed. Overall, there were 232 beneficiaries who had not been supervised from the time VA determined they were unable to manage their VA benefits through at least January 2024.

Since receiving the names of the identified beneficiaries without VBMS-Fid records from the OIG in February 2024, VBA staff have taken steps to create those records.

## **The Fiduciary Program Lacked Controls That Would Have Prevented or Identified This Lapse**

According to the *Standards for Internal Control in the Federal Government*, managers should establish and operate activities to monitor their internal control system and evaluate the results. Effective internal control systems help managers adapt to changing risks and new priorities.<sup>50</sup>

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<sup>50</sup> Government Accountability Office (GAO), *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

These activities should remediate identified internal control deficiencies on a timely basis.<sup>51</sup> Managers are responsible for establishing and maintaining internal controls to achieve specific objectives related to operations, reporting, and compliance.<sup>52</sup> For the Fiduciary Program, monitoring should include mechanisms to ensure that all covered beneficiaries are under the program's supervision.

To conduct oversight of incompetent beneficiaries and their fiduciaries, there must be a fiduciary record in VBMS-Fid or another required system. Fiduciary staff use VBMS-Fid to establish field examinations, review accountings, and collect the documentation needed to conduct misuse investigations. At the time of this review, there was no mechanism to identify the beneficiaries who did not have a record in VBMS-Fid but should have. Those beneficiaries who never had a fiduciary record established received VA funds without any monitoring—one beneficiary for as long as 15 years. If a monitoring system had been in place, the program could have identified the 311 vulnerable beneficiaries and placed them under the program's protection.

As a result of this review, the deputy director of the Pension and Fiduciary Service said service staff are developing an electronic reporting functionality using information from the VA corporate database to identify cases in which VBMS-Fid records were not created for beneficiaries deemed incompetent. The Pension and Fiduciary Service expects to generate the report in the first quarter of FY 2025.

## Conclusion

The purpose of the Fiduciary Program is to protect some of the most vulnerable beneficiaries VA serves. The program is required to ensure the well-being of beneficiaries who have been deemed incompetent to handle their benefits and safeguard their VA funds from fraud, waste, and misuse. To carry out this vital mission, each beneficiary must have a record in the VBMS-Fid system. Although the Fiduciary Program created records and is conducting oversight for nearly all the 104,000 beneficiaries under its supervision, the OIG found that 311 beneficiaries deemed incompetent did not have a record in the system. Some of these beneficiaries had VA-appointed fiduciaries, but their records failed to migrate from a legacy system to VBMS-Fid. Most of these 311 beneficiaries never had a record established at all, leaving them without VA supervision from the time they were deemed incompetent. Without this record, fiduciary hub staff were unable to appoint a fiduciary, review accountings, or complete misuse investigations—all oversight activities that are necessary to protect beneficiaries' well-being and benefits.

This lapse in supervision occurred in part because the Fiduciary Service had no mechanism to identify missing records in VBMS-Fid. The OIG determined VBA did not provide program

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<sup>51</sup> Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016; GAO, *Standards for Internal Control in the Federal Government*.

<sup>52</sup> OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*.

oversight of the proper use of about \$24.5 million in compensation and pension benefits that was to be used for the “care and maintenance” of the 311 vulnerable beneficiaries through January 2024 as directed in VA guidance.<sup>53</sup>

Although the numbers are relatively small when compared to the overall number of beneficiaries served by the Fiduciary Program, no veteran should be put at unnecessary risk of loss or harm that can be prevented with more effective processes. The OIG’s recommendations are meant to mitigate that risk through corrective actions and stronger controls.

### **Recommendations 1–3**

The OIG made the following recommendations to the under secretary for benefits:

1. Establish Veterans Benefits Management System–Fiduciary records for the 311 identified beneficiaries within the Veterans Benefits Management System.
2. Start or resume required oversight activities, such as field examinations, to assess the well-being and protection of VA funds for the 311 identified beneficiaries.
3. Implement controls to identify when beneficiaries deemed incompetent do not have electronic fiduciary records and to ensure records are established in the required system(s).

### **VA Management Comments**

The under secretary for benefits concurred with all three recommendations and provided responsive action plans. For recommendation 1, the under secretary reported that VBA reviewed and established beneficiary records within VBMS-Fid when necessary. For recommendation 2, VBA started or resumed oversight activities for identified beneficiaries who did not have records. For recommendation 3, the under secretary explained that VBA created an internal report as an oversight control that identifies beneficiaries who have been determined to be incompetent and who do not have a record in VBMS-Fid. In September and November 2024, VBA communicated the purpose of the report to fiduciary hub management staff and demonstrated how they should use the report. VBA also notified hub staff about addressing outstanding fiduciary appointments or establishing VBMS-Fid records when necessary. The full text of the under secretary’s comments is included in appendix B.

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<sup>53</sup> VA Fiduciary Program Manual, “Protecting VA and Private Source Funds,” updated November 9, 2020, sec. II.2.A.1.c.

## **OIG Response**

The corrective actions are responsive to the intent of the three recommendations, and the under secretary for benefits provided sufficient evidence to support the actions taken. The OIG considers the recommendations closed.

## Appendix A: Scope and Methodology

### Scope

The VA Office of Inspector General (OIG) team conducted its work from February 2024 through November 2024. The team analyzed Veterans Benefits Administration (VBA) data for beneficiaries deemed incompetent and identified 311 who did not have a Veterans Benefits Management System–Fiduciary (VBMS-Fid) record. The incompetency decision dates for these beneficiaries were made from June 10, 2003, to June 30, 2023.

### Methodology

To accomplish the objective, the team completed the following actions:

- Reviewed applicable laws, regulations, policies, procedures, and guidelines for creating VBMS-Fid records.
- Obtained records from VBA’s corporate database for a population of 330 beneficiaries receiving VA benefit payments who were deemed to be incompetent and compared them to the beneficiary records in VBMS-Fid.
- Reviewed an initial judgmental sample of 33 of the 330 beneficiaries with incompetency decisions that were made from June 10, 2003, to June 30, 2023, who did not have a fiduciary record within VBMS-Fid and determined that one was out of scope.<sup>54</sup>
- Provided the remaining 297 beneficiaries to the Pension and Fiduciary Service. The OIG team confirmed with the Pension and Fiduciary Service that 287 beneficiaries did not have a record established in VBMS-Fid. Subsequent review by the OIG team identified an additional eight beneficiaries who were out of scope for the review, leaving 311 total in-scope beneficiaries without a record in VBMS-Fid.
- Analyzed 311 incompetent beneficiaries without records in VBMS-Fid to determine whether they ever had a VA-appointed fiduciary before January 31, 2024, the date that the team notified VBA of the OIG review.
- Determined that 79 of the 311 beneficiaries without a record in VBMS-Fid had a VA fiduciary appointed after being deemed incompetent, and 232 beneficiaries were never supervised by the Fiduciary Program.

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<sup>54</sup> The team captured data through September 30, 2023, by not including any records with a finding of incompetency dated after June 30, 2023, the team allowed three months for Pension and Fiduciary Service to establish records in VBMS-Fid.

- Interviewed Pension and Fiduciary Service staff and leaders, including the deputy director.

To determine monetary impact, the team manually calculated the total number of payments made to each of the 311 beneficiaries. Transactions were categorized based on whether the beneficiary ever had a VA-appointed fiduciary. For beneficiaries with a VA-appointed fiduciary, payments were calculated from December 1, 2020 (which is the first payment date after VBA migrated to VBMS-Fid) or later.<sup>55</sup> For beneficiaries without a VA-appointed fiduciary, payment was calculated from the first payment date after the beneficiaries were deemed incompetent by VBA. For both categories, the final payment date was January 31, 2024, the date the OIG sent the memorandum to VBA to notify them about the review. Table A.1 lists the total amount in payments to beneficiaries.

**Table A.1. Payments Made While Identified Beneficiaries Were Not Under the Fiduciary Program’s Supervision**

VA fiduciary appointed	No VA fiduciary appointed	Total payments
\$4,351,479	\$20,191,824	\$24,543,303

*Source: VA OIG analysis of payments made to beneficiaries without a fiduciary record.*

## Internal Controls

The team assessed the internal controls that were significant to the review objective, including the five components related to control: environment, risk assessment, control activities, information and communication, and monitoring.<sup>56</sup> In addition, the team reviewed the principles of internal controls as associated with the objective and identified the following component and principle as significant to the objective.<sup>57</sup> The team identified internal control weaknesses during this review and proposed recommendations to address the following deficiency:

- Component: Monitoring Activities
  - Principle 16: Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.

<sup>55</sup> This was the earliest payment date for beneficiaries with a VA-appointed fiduciary because data that would have allowed the OIG team to determine whether the beneficiary was unsupervised before this date were not available.

<sup>56</sup> GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

<sup>57</sup> Since the review was limited to the internal control components and underlying principles identified, it may not have disclosed all internal control deficiencies that may have existed at the time of this review.

## **Data Reliability**

The team relied on computer-processed data from VBA's corporate database, which the team validated with documents contained in the electronic claims folder. The comparison did not reveal any discrepancies. Although there were issues with the data contained within the VBMS-Fid system that resulted in missing beneficiary records, the underlying documentation and determinations were available in other systems in VBA's corporate database, such as VBMS-Core and Share. Because the team was able to confirm the documentation and did not identify any discrepancies in the underlying data, the data were found to be sufficiently reliable for the purposes of this review.

## **Government Standards**

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

## Appendix B: VA Management Comments

### Department of Veterans Affairs Memorandum

Date: December 9, 2024

From: Under Secretary for Benefits

Subj: Office of Inspector General (OIG) Draft Report – Lapse in Fiduciary Program Oversight Puts Some Vulnerable Beneficiaries at Risk [Project No. 2024-01219-AE-0049] — [VIEWS 12378208]

To: Assistant Inspector General for Audits and Evaluations (52)

1. Thank you for the opportunity to review and comment on the OIG draft report: Lapse in Fiduciary Program Oversight Puts Some Vulnerable Beneficiaries at Risk. The Veterans Benefits Administration (VBA) provides the attached response to the draft report.

*The OIG removed point of contact information prior to publication.*

(Original signed by)

Joshua Jacobs

Attachment

Attachment

**Veterans Benefits Administration (VBA) Comments on OIG Draft Report Lapse in Fiduciary Program Oversight Puts Some Vulnerable Beneficiaries at Risk**

**VBA concurs with OIG's findings and provides the following in response to the recommendations in the draft report:**

**Recommendation 1:** Establish Veterans Benefits Management System-Fiduciary records for the 311 identified beneficiaries within the Veterans Benefits Management System.

**VBA Response:** Concur. VBA has reviewed and completed the establishment of beneficiary records in the Veterans Benefits Management System-Fiduciary system for the identified beneficiaries, when applicable.

VBA requests closure of this recommendation based on the evidence provided in Attachment A confirming the establishment of beneficiary records, when applicable. Additional context is provided in column AA of Attachment A, when applicable.

**Recommendation 2:** Start or resume required oversight activities, such as field examinations, to assess the well-being and protection of VA funds for the 311 identified beneficiaries.

**VBA Response:** Concur. VBA has started or resumed the required oversight activities for all the identified beneficiaries, as appropriate. VBA requests closure of this recommendation based on the evidence provided in Attachment A confirming the establishment of the required oversight activities for the identified beneficiaries.

**Recommendation 3:** Implement controls to identify when beneficiaries deemed incompetent do not have electronic fiduciary records and to ensure records are established in the required system(s).

**VBA Response:** Concur. VBA has implemented oversight controls of this process. VBA has created an internal report on its Tableau Server that gives Pension and Fiduciary Service (P&F) the ability to identify beneficiaries who have been determined incompetent, and do not have an active beneficiary profile, to ensure records are established in the system. (See Attachment B).

On September 11, 2024, and November 13, 2024, P&F demonstrated and communicated the purpose, the need to address the cases, and how to utilize the report to Fiduciary Hub management staff. On November 15, 2024, VBA notified Fiduciary Hubs, of the necessity to address outstanding fiduciary appointments or to establish beneficiary profiles on relevant Tableau Dashboards (See Attachment C).

VBA requests closure of this recommendation based on the evidence in Attachments B and C.

*For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.*

## OIG Contact and Staff Acknowledgments

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<b>Contact</b>	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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<b>Review Team</b>	Lisa Van Haeren, Director Raymond Byrnes Kelly Crawford Kerri Leggiero-Yglesias Mark Ward
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<b>Other Contributors</b>	Georgina Baumgartner Andrew Eichner
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