

VA Office of Inspector General

OFFICE OF AUDITS & EVALUATIONS



Veterans Benefits Administration

*Audit of the
Fiduciary Program's
Effectiveness
in Addressing Potential Misuse
of Beneficiary Funds*

March 31, 2010
09-01999-120

ACRONYMS AND ABBREVIATIONS

ABR	Annual Benefits Report
C&P	Compensation and Pension
CFR	Code of Federal Regulations
FBS	Fiduciary-Beneficiary System
F&FE	Fiduciary and Field Examination Activity
LIE	Legal Instruments Examiner
OI	Office of Investigations
OIG	Office of Inspector General
OP&PM	Office of Policy and Program Management
ORC	Office of Regional Counsel
PGF	Principal Guardianship Folder
SAO	Systematic Analysis of Operations
STAR	Systematic Technical Accuracy Review
U.S.C.	United States Code
VARO	Veterans Affairs Regional Office
VBA	Veterans Benefits Administration
VETSNET	Veterans Services Network

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Report Highlights: Audit of the Fiduciary Program's Effectiveness in Addressing Potential Misuse of Beneficiary Funds

Why We Did This Audit

This audit determined if the Veterans Benefits Administration (VBA) has reasonable assurance that VA-derived income and estates of incompetent beneficiaries are used solely for their care, support, welfare, and needs. The Fiduciary Program oversees VA benefits paid to beneficiaries who are incapable of managing their funds. Under VBA supervision, payment of VA benefits are made to an individual or entity recognized as responsible for managing the beneficiary's affairs—the "fiduciary." Prior audit reports and investigations by the Office of Inspector General (OIG) provided indications of the vulnerability of incompetent beneficiary estates to fraud.

What We Found

VBA's Fiduciary Program is not effectively protecting the VA-derived income and estates of incompetent beneficiaries. Specifically, the Program does not consistently pursue delinquent fiduciary accountings and follow up on potential misuse of beneficiary funds. VBA lacks elements of an effective management infrastructure to monitor program performance, effectively utilize staff, and oversee fiduciary activities. In particular, VBA's case management system (the Fiduciary-Beneficiary System) does not possess data that would allow the agency to provide effective management oversight of the program or to better target some of its efforts towards those beneficiary estates that are most vulnerable to misuse. As a result,

VA Regional Offices are not consistently taking timely or effective actions to ensure VA-derived income and estates of incompetent beneficiaries are protected.

What We Recommend

VBA needs to improve the management infrastructure to direct the Fiduciary Program nationwide more effectively. In addition, VBA needs to develop and disseminate policies and procedures to improve the effectiveness of analyzing annual accountings filed by fiduciaries and investigating and reporting allegations of misuse of beneficiary funds.

Agency Comments

The Acting Under Secretary for Benefits agreed with our findings and provided target dates to complete planned actions that address our recommendations. We consider their planned actions acceptable and will follow up on their implementation. Appendix E includes the full text of the Acting Under Secretary for Benefits' comments.

(original signed by:)
BELINDA J. FINN
Assistant Inspector General
for Audits and Evaluations

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INTRODUCTION

Objective

The Office of Inspector General (OIG) conducted an audit of the Veterans Benefits Administration's (VBA) Fiduciary Program. The objective of this audit was to determine if VA Regional Offices (VAROs) are consistently taking timely actions to ensure VA-derived funds (such as benefits paid to veterans) and the estates of incompetent beneficiaries are used solely for the care, support, welfare, and needs of those beneficiaries and that they are protected from diversion or misuse.

Program Overview

The VA manages the Fiduciary Program under the authority of Title 38 Code of Federal Regulations (CFR), Sections 13.100 to 13.111. The Fiduciary Program oversees benefits paid to beneficiaries who are incapable of handling their funds either because they are minors or because of injury, disease, or the infirmity of age. The program is administered by VAROs and their respective Offices of Regional Counsel (ORC) that deal directly with VA beneficiaries and State courts in guardianship and commitment matters. Their efforts help protect and represent some of VA's most vulnerable beneficiaries. In the fiscal year (FY) 2010 Annual Budget Submission¹, VA reported approximately \$696 million in benefits payments to more than 102,000 beneficiaries with a cumulative estate value of \$3.1 billion.

Previous OIG Studies and Investigations

Historically, incompetent beneficiary estates have been at risk of misuse by fiduciaries. Prior VA OIG audit and investigation reports indicate the need to strengthen program management and oversight of incompetent beneficiary accounts.

The 2006 VA OIG report, *Audit of Veterans Benefits Administration Fiduciary Program Operations*,² made seven recommendations to improve program performance in the areas of staffing, training, and general program operations. VBA concurred with all recommendations and provided corrective action plans including updates to policy and procedure, examining staffing levels with possible program reorganization, and the development of a training curriculum for new Legal Instruments Examiners (LIEs). However, our review of the recommendations and corrective actions within the scope of our audit identified several program areas with recurring deficiencies or where corrective actions were not taken. Appendix D details our review.

¹Most current available published data

²Report No. 05-01931-158, dated June 27, 2006

RESULTS AND RECOMMENDATIONS

Finding **VAROs Inconsistently Protecting VA-Derived Income and Estates of Incompetent Beneficiaries**

VAROs were inconsistent in taking timely actions to ensure VA-derived funds and estates of incompetent beneficiaries were used solely for the care, support, welfare, and needs of those beneficiaries or adequately protected from diversion or misuse. Specifically, VAROs were not consistently:

- Taking effective action to obtain seriously delinquent accountings
- Verifying questionable expenses reported by fiduciaries
- Replacing fiduciaries when appropriate
- Following up and reporting on allegations of misuse of beneficiary funds and estates adequately

This occurred because of inconsistent management oversight and inadequate policies and procedures related to managing the review of fiduciary accountings and processing of misuse allegations. In addition, VBA did not have the elements of an effective management infrastructure in place to adequately direct the Fiduciary Program and monitor the performance of fiduciaries and the Fiduciary and Field Examination (F&FE) staff. Without an effective Fiduciary Program in place to ensure the appropriate and consistent monitoring of fiduciaries and beneficiary funds and estates, VBA takes significant risk in entrusting the stewardship of beneficiaries' financial affairs to fiduciaries without effective oversight.

Securing of Delinquent Accountings Untimely

Legal Instruments Examiners did not consistently pursue receipt of seriously delinquent accountings from fiduciaries. Accountings are considered seriously delinquent when the VARO has not received the accounting within 120 days from the end of the accounting period. Under specified circumstances, VBA policy requires court-appointed and federal fiduciaries, to submit periodic accountings listing beneficiary assets, income, and expenses. An accounting, as defined in the LIE Program Guide, is the fiduciary's written report of his/her management of a beneficiary's income and estate. It must include a beginning balance, itemization of income and expenses, and a statement of funds remaining at the end of the accounting period.

According to VBA policy, LIEs have a responsibility to aggressively pursue the receipt of annual accountings from fiduciaries that are not timely

received. Suspending benefit payments, requesting appointment of a successor fiduciary, or halting direct deposit payments to require the fiduciary to pick up payments at a VARO are just some of the appropriate actions LIEs can initiate to secure delinquent accountings. Further, when no accounting is received within 120 days from the end of the accounting period, the annual accounting is considered seriously delinquent, at which time the LIEs should refer State court-appointed fiduciaries to the ORC and VA-appointed fiduciaries to a Field Examiner or OIG, as appropriate, to secure the delinquent accounting information. Additionally, an LIE can take action to refer overdue accountings to Field Examiners at any time when an accounting becomes delinquent.

At 5 of 6 VAROs, 27 (44 percent) of 61 accountings drawn from a random sample became seriously delinquent up to 710 days. At 3 of these 5 VAROs, timely and appropriate actions were not taken to secure 17 (63 percent) of 27 delinquent accountings, as shown in Table 1 below. As a result, the financial risks associated with the aggregate estate value of the 17 beneficiaries totaling over \$1.5 million was not managed effectively nor were appropriate procedures followed to minimize the risks that potentially emerge related to not securing timely accountings. Appendix A contains the information on the methodology used to sample delinquent accountings randomly.

Table 1

Seriously Delinquent Fiduciary Accountings

<i>VAROs</i>	<i>Timely and Appropriate Actions Not Taken</i>	<i>Range of Days Delinquent</i>	<i>Estate Value</i>
1	1	185	\$1,535
2	8	142 - 661	\$1,459,366
3	8	131 - 710	\$75,112
Total	17		\$1,536,013

A decisive factor of whether the fiduciary staff took timely and appropriate action to secure delinquent accountings was based on the active involvement of local Fiduciary Program management in supervising the program. Program management at VAROs that were more effective with securing delinquent annual accountings consistently conducted local quality reviews, reviewed available management reports to help manage inventory and workload, and assisted LIEs with case management.

Questionable Expenses Unverified

We identified qualitative weaknesses in the LIE review of expenditures of beneficiary funds. LIEs consistently failed to take effective action to verify questionable expenses totaling \$166,787 for 33 of the 137 accountings

reviewed. Four of the 6 VAROs accounted for the 33 errors out of 109 cases reviewed. Two of the VAROs had no errors out of 28 cases reviewed. The percentages of cases where questionable expenses were not verified at the four VAROs ranged from 10 to 47 percent, as shown in Table 2.

Table 2

Questionable Fiduciary Expenses Not Verified

VAROs	Cases Reviewed	Cases Where Questionable Expenses Not Verified	Percentage
1	19	9	47%
2	30	13	43%
3	30	8	27%
4	30	3	10%
Total	109	33	30%

For example, at one VARO, a VA-appointed fiduciary's accounting reported a difference of \$1,500 between the amount budgeted and the amount expended by the fiduciary. The additional amount was attributed to a moving expense; however, the LIE did not request supporting documents or receipts for the additional expense. At another VARO, an accounting statement showing house and automobile expenses totaling \$17,364 was approved without supporting documents or receipts. Our projections for 137 accountings from six VAROs indicate LIEs may not have adequately verified approximately \$2.9 million in expenditures for 551 (29 percent) of 1,906 accountings completed during the period April 1, 2009–May 22, 2009. Appendix C contains detailed information on the sampling methods and projections.

The LIE Program Guide requires the LIE to develop a systematic approach for analyzing accountings for questionable expenses to determine if a request for supporting documentation, such as copies of pertinent receipts, invoices, check stubs, bank statements, or other documentation, is needed. Examples of questionable expenses include those that are not supported by appropriate documentation, and any expenditure that seems unusual or inappropriate, such as abrupt changes in amounts or schedules of disbursements.

In June 2009, VBA implemented Fast Letter 09-26, *Revised Fiduciary Accounting Requirements*, which instructs fiduciaries to submit financial institution statements for the entire accounting period. VBA also issued, in October 2009, Fast Letter 09-42, *Increased Threshold for Pre-approval of Single Expenditures by a Fiduciary*, which requires fiduciaries to obtain a pre-approval for any single expenditure exceeding \$1,000 if the expenditure was not addressed in the Fund Usage Agreement.

Although the Fast Letters strengthen fiduciary accounting requirements, VBA lacks an agency-wide policy requiring receipts or other documentation to substantiate unbudgeted and budgeted expenditures that exceed a pre-designated threshold. The lack of a specific dollar threshold and subjectivity allowed by agency policy has resulted in VAROs and individual staff applying different standards when verifying questionable expenses. For example, one VARO established a \$500 threshold for requiring receipts for unbudgeted expenses, while another VARO had not established any threshold. Currently, receipts or other similar supporting documentation are not required unless a dollar threshold was established by the reviewing VARO, or if during an accounting analysis, the LIE finds the expense questionable. Until the accounting review process is standardized to the extent practical and the subjectivity in determining what constitutes a questionable expense is minimized, VBA lacks reasonable assurance that unusual or inappropriate expenditures are identified and verified to ensure funds were expended appropriately.

Fiduciaries Not Replaced When Appropriate

At two VAROs visited, we found a fiduciary at each site managing multiple beneficiary estates and responsible for numerous late accountings who were, however, not replaced when appropriate. For example:

- At one VARO, a fiduciary was responsible for at least four seriously delinquent accountings ranging from 134 to 215 days during the period 2004–2009. In addition, the VARO received multiple complaints regarding the fiduciary's performance during this same period. However, the VARO had not taken any actions to replace this fiduciary. According to the VARO's management, an internal investigation of the fiduciary's management of beneficiary estates would be conducted in accordance with VBA policy with an expected completion by August 2009. However, as of November 2009, the VARO had not initiated the investigation.
- At another VARO, management had received complaints regarding one fiduciary's performance and was aware that the fiduciary had numerous delinquent accountings as early as 2006. However, the VARO did not initiate actions to replace the fiduciary until late 2008.

According to 38 CFR 13.69, a fiduciary should be replaced if the number of assigned beneficiaries exceeds the number of beneficiaries the fiduciary may be reasonably expected to serve properly. In addition, the LIE Program Guide states that a factor to consider when evaluating a fiduciary's ability to manage a beneficiary's estate properly is whether a fiduciary is continuously submitting delinquent accountings.

According to VBA management, reasons for VARO Fiduciary Program management not replacing poor performing fiduciaries were due to

inadequate recruitment of qualified fiduciaries that could be used to replace underperforming fiduciaries, and the impression that identifying misuse and the resulting replacement of a fiduciary might indicate that management of fiduciary performance was ineffective. When VBA fails to take appropriate actions in a timely manner to replace fiduciaries that are responsible for multiple delinquent accountings, beneficiary estates are put at risk, and the potential for misuse or inappropriate diversion of beneficiary funds is increased.

**Misuse
Allegations
Inadequately
Processed**

VAROs are not consistently or timely reviewing and investigating allegations of misuse or properly documenting misuse activities. In addition, VBA had not reported misuse activities to Congress in the Annual Benefits Report (ABR) as required. VARO management said non-compliance by some VAROs was due to the lack of effective oversight and training of fiduciary staff. In addition, processing allegations of misuse is not part of the agency's performance measures or part of staff and management performance standards. Further, it was not included in national quality reviews, which may provide a lack of incentive for VBA staff to thoroughly and timely review and investigate misuse allegations.

The review and potential investigation of misuse allegations by F&FE staff represent an important monitoring strategy to ensure the appropriate use of beneficiary funds. Misuse allegations of beneficiary funds may come, for example, from the beneficiary or their friends and relatives. VBA policy requires staff to review, and if necessary, investigate allegations of misuse of benefits against a fiduciary. VBA policy requires that each allegation of misuse of beneficiary funds must be reviewed for merit within 14 days. If the result of the review warrants a VBA investigation, the investigation report must be completed within 45 days. Within 30 days of the completion of an investigation report, VAROs are required to determine whether actual misuse occurred.

**Misuse Actions Not
Processed Timely**

We found that VAROs did not consistently process the misuse actions timely or appropriately in 22 (96 percent) of 23 cases reviewed as described below:

- Merit Reviews. Merit reviews were not conducted for two cases and not timely for 11 cases, ranging from 1 to 120 days beyond the 14-day requirement. The average time to complete was 44 days.
- Investigations. Of the 20 VBA investigations reviewed, six were not completed timely. These six investigations took from 12 to 154 days beyond the 45-day requirement and averaged 126 days to complete.
- Determinations. Determination decisions were not completed for 5 of the 20 cases reviewed. For the 15 cases where determination decisions were made, six were not completed timely, ranging from 4 to 175 days beyond

the 30-day requirement. For these six determination decisions, the average time to complete was 99 days.

Misuse Actions Not Properly Documented and Recorded

None of the six VAROs we visited consistently and accurately documented misuse allegations and actions taken in response to the misuse allegations in the Principal Guardianship Folders (PGF) and Fiduciary-Beneficiary System (FBS). Two of the six VAROs inaccurately reported no misuse allegations or activities. We noted the following at four of the six VAROs:

- Missing PGF Documentation. For 18 (78 percent) of 23 misuse cases reviewed, PGFs did not include all necessary documentation. Specifics follow:
 - Thirteen cases did not include the notification letters to the fiscal activity, as required by VBA policy.
 - Two cases did not include both the investigation and determination reports.
 - Two cases did not include determination reports.
 - One case did not include both a determination report and the notification letter to the fiscal activity.
- Inaccurate and Incomplete FBS Information Recorded. FBS codes used for documenting misuse activity were not appropriately recorded in FBS for 17 (74 percent) of 23 misuse cases reviewed. In addition, one VARO disclosed in a March 2009 Systematic Analysis of Operations (SAO) report that nine allegations were investigated during the period December 2008–March 2009. However, we determined that 6 of 9 allegations were not appropriately recorded as required.

Although two VAROs did not report any misuse activity during the period January 2008–March 2009, our audit identified four cases of suspected misuse of funds at one VARO and one case at the other VARO that should have been processed and recorded according to VBA policy. For example, at one VARO, field examination reports completed between October 2008 and March 2009 disclosed a VA-appointed fiduciary may have misused funds of three beneficiaries.

In October 2008, a third party allegation also indicated the same fiduciary may have misused funds of another beneficiary. In these cases, the fiduciary was either not providing timely annual accountings or was allegedly not providing VA-derived funds to the beneficiary. The current Fiduciary Coach agreed these cases should have been further developed for possible misuse of

funds, but could not provide an explanation as to why the prior Fiduciary Coach did not take the appropriate actions as required.

By not following prescribed procedures, these VAROs under-reported actual misuse activity. VBA management advised that Compensation and Pension (C&P) Site Visit Program protocols were revised in October 2009 to include the review of misuse allegations. However, the updated protocols do not fully address our concerns about inadequate oversight of the timeliness and adequacy of processing misuse allegations.

VBA Has Not Reported Misuse Activity to Congress

VBA did not include statistical information pertaining to misuse of funds by fiduciaries in the ABR to Congress as required by United States Code (U.S.C.) 5510, for FYs 2005 through 2008. VBA's Fiduciary Program Chief could not explain why the prior Fiduciary Program management did not report misuse data as required for FYs 2005–2007. He further stated the FY 2008 misuse data was provided to VA's Office of Policy and Program Management (OP&PM), although it was not included in the FY 2008 ABR.

According to OP&PM, the FY 2008 misuse data provided by C&P Service was not included in the ABR because the data did not include all of the required statistical data. Both C&P Service and OP&PM said that they were taking measures to ensure misuse data is included in future ABRs.

Program Lacks Adequate Management Infrastructure

VAROs are placing beneficiary income and estates at risk of potential misuse because VBA lacks the elements of an effective management infrastructure. VBA does not have a robust database to support program operations and a staffing and workload model to guide resource allocation decisions and other elements necessary to monitor the performance of the Fiduciary Program effectively. VBA could provide more guidance to fiduciaries, has not conducted activities to improve the effectiveness and consistency of the program, and has not ensured that VAROs conduct local quality assessments of operations.

FBS Ineffective Support of Operations

FBS is a case management system that supports an array of functions necessary for day-to-day operations of Fiduciary activities such as recording incompetent beneficiary information and scheduled accounting and field exams. However, the functional and data limitations of FBS have severely affected management's ability to use the system as a tool to support program operations effectively. Specifically, FBS does not:

- Capture data necessary to target funds at risk of misuse by fiduciaries.
- Contain reliable and accurate data for decision-making and external reporting.
- Interface with other C&P Information Technology systems.

- Provide an automated interface for external entities, such as fiduciaries, beneficiaries, or financial institutions, which precludes electronic submission of key data.

FBS does not retain historical data, which hampers its effectiveness as a management tool for data mining and trending. For example, FBS does not maintain a list of fiduciaries replaced due to misuse and does not record accounting information such as VA and non-VA benefits, fiduciary expenditures on behalf of beneficiaries, financial institutions account balances, and Surety Bond values. Because of these limitations, FBS lacks the functionality to compare budget to actual and year-to-year expenditures, identify anomalies and spikes in expenditures, or scrutinize fiduciaries based on misuse characteristics such as the number of late or disapproved accountings.

In addition, FBS limitations prevent VBA from identifying trends in the characteristics of past misuse that could be used as indicators to identify future misuse to better target enforcement efforts. Data limitations also make it difficult for VBA to track fiduciaries that have been found to have misused funds in the past to ensure that no new beneficiaries are assigned to them.

FBS does not contain reliable and accurate data necessary for effective decision-making and external reporting. FBS currently limits the user to a single entry for the estate value, which according to VA policy, should include both VA and non-VA funds. Since VA and non-VA assets are not recorded separately in FBS, management, therefore, cannot use FBS data to identify VA estates that may require protection.

As of May 22, 2009, FBS showed no Withdrawal Agreements or Surety Bonds in place for 18,321 (86 percent) of the 21,193 beneficiary estates exceeding \$20,000 (representing a reported value of \$2.7 billion). Based on current FBS limitations, VBA would have to review each PGF to determine whether estates are adequately protected. In addition, we found annual estate values and benefit payment amount in FBS may be understated. Our review of 68 PGFs at three VAROs indicated annual estate values for these beneficiaries were understated by an average of \$2,321. We also identified understated benefit payment amounts by an average of \$4,939 per beneficiary. In the absence of other reliable data, we applied these averages to all 104,000 beneficiaries and we estimated:

- Estate values totaling \$3.1 billion, as reported in the FY 2010 Annual Budget Submission, may be understated by as much as \$241 million.

- Annual benefit payments of \$696 million, as reported in the FY 2010 Annual Budget Submission, may be understated by as much as \$514 million.

FBS does not perform basic edit checks such as testing for math accuracy and data omissions. For example, FBS lacks the functionality to match the estate value to accounting data or to highlight data entry errors such as transpositions or data omissions.

FBS does not interface with other C&P systems, such as the Veterans Service Network (VETSNET). Consequently, FBS cannot automatically notify an F&FE activity of competency determinations or an impending large retroactive payment caused by a change in a beneficiary's service connected status.

Instead, the F&FE staff relies on manual notification from elsewhere in C&P of these events, which places benefit payments at risk. For example, personnel at two VAROs we visited released five large retroactive payments to fiduciaries totaling \$571,256 prior to ensuring that adequate controls intended to safeguard the beneficiaries' assets such as requiring an annual accounting, executing a Withdrawal Agreement, or securing a Surety Bond of sufficient value were in place. As a result, VBA does not have reasonable assurance that benefit payments were protected from misuse.

FBS lacks an external interface for fiduciaries, beneficiaries or other external entities. FBS cannot accept or process electronically submitted accounting information from fiduciaries, or access financial institutions to secure account balance and transaction information. Instead, fiduciaries must manually prepare and mail the accountings to VBA annually, and LIEs must manually review the data provided, manually check for math errors, and reconcile income, expense, and estate balances to financial institution data. Upgrading or replacing the system to provide an electronic interface for external entities that includes inputting and processing of income and expense transactions could improve the Fiduciary Program's efficiency.

As of May 22, 2009, approximately \$161 million in estate value was at risk of misuse because of the volume of seriously delinquent accountings. We found 1,722 (6 percent) of the 28,182 required annual accountings were considered seriously delinquent and that 380 (22 percent) of these ranged from one to almost eight years past due, representing a total estate value of \$27 million. Allowing fiduciaries to submit accounting information electronically, and in real-time, could permit the Fiduciary Program to more quickly identify and focus compliance efforts on fiduciaries who most likely not to comply with filing requirements.

VBA could be more effective at reviewing expenditures reported in annual accountings by upgrading FBS to link the electronic recording of budgetary and actual accounting information with the ability to perform accuracy and compliance checks. This could significantly reduce the amount of time LIEs spend manually reviewing annual accountings, estimated to consume about 40 percent of their time, thereby allowing for a more in-depth review of accountings data.

Further, VBA has not implemented upgrades to FBS to address previously identified system weaknesses. For example, in 1997, the OIG reported serious flaws regarding the accuracy of beneficiary information in FBS that VBA has not corrected. In addition, the Fiduciary and Field Examination Pilot Implementation Team Report issued in November 2007 made the following observations:

- FBS should be replaced with a more robust, user-friendly workload management tool that is cross-functional at all levels of the organization and more in line with other operational management information systems.
- FBS queries are not easily or quickly obtainable and require extreme micro knowledge of fiduciary operations that do not lend themselves to oversight and management at all required levels.

VBA has yet to complete an operational analysis of FBS, even though program management acknowledges that FBS has severe limitations and needs to be upgraded or replaced. VA Directive 6061, *VA Earned Value Management System*, requires the use of post implementation reviews and operational analysis on operations and maintenance efforts for sustainment (system operation/steady state) investments to promote more effective management oversight.

By failing to complete an operational analysis of FBS, Fiduciary Program management cannot determine whether FBS supports VA's strategic goals, or assess the systems maintainability, reliability, and quality. We were advised that in October 2009, VBA initiated a project team to analyze FBS functionality and to make a determination as to whether the system should be modified or replaced to meet the Program's needs.

*Program Lacks
Staffing and
Workload Model*

VBA failed to issue a staffing and workload model for use by VAROs and Fiduciary Program management although this issue was previously identified by the OIG in our 2006 audit.³ An internal VBA report, in 2007, indicated

³*Audit of Veterans Benefits Administration Fiduciary Program Operations* (Report No. 05-01931-158), dated June 27, 2006

that guidelines relating F&FE resources to beneficiaries were in place, but the guidance was considered obsolete by program staff and field management and abandoned. Instead, Fiduciary Program staffing has been left to the judgment of individual VAROs. As a result, a wide variation exists in the number of beneficiaries managed by individual LIEs, ranging from 188 to 1,576 beneficiaries per LIE.

Further, additional responsibilities required of the Fiduciary Program should be considered when allocating resources to F&FE activities in the field. For example, the Veterans Benefits Improvement Act of 2004 placed additional oversight requirements on the Fiduciary Program, and new workload items associated with analyzing monthly bank statements from fiduciaries could add to the time it takes LIEs to examine annual accountings.

VA policy requires workforce and succession planning. However, VBA's plan omits the Fiduciary Program. Fiduciary Program management incorrectly concluded that the policy does not apply to the Fiduciary Program because individually each VARO's F&FE staff is less than 100 employees. Accordingly, some VAROs may be insufficiently staffed to provide proper oversight of fiduciaries, putting beneficiary income and estates at risk. Fiduciary Program management stated the lack of adequate resources significantly impedes individual fiduciary units from meeting performance targets and believe not all units have adequate resources to carry out program requirements.

*Sufficient Guidance
Not Provided to
Fiduciaries*

VBA could provide additional guidance and training to assist new Federal fiduciaries in performing required duties and responsibilities. Training and guidance provided to newly appointed Federal fiduciaries consists of a VA form and pamphlet, locally developed guidance at some VAROs, and conducting an initial interview with a Field Examiner to explain fiduciary duties and responsibilities. VBA does not provide on-line information related to fiduciary matters such as guides for best practices, frequently asked questions, training, or other tools to assist fiduciaries. Some coaches and LIEs believe the majority of VARO follow-up for additional information and clarification is due to new fiduciaries not being fully knowledgeable of their duties, responsibilities, and program requirements. The availability of on-line resources to assist fiduciaries could potentially reduce requests to VBA for assistance and increase compliance with Fiduciary Program requirements.

*Additional
Management
Measures Could
Improve Program*

VBA has not consistently conducted activities that could potentially increase the effectiveness of the Fiduciary Program. For example, the Fiduciary Program has not always conducted National Fiduciary Program teleconferences as a mechanism to disseminate important program information such as new legislative requirements, program updates, and current issues within the program. These calls also serve as an opportunity

for Fiduciary management to field questions and address issues of concern from VAROs and provide real-time feedback.

During the period January 2006–September 2008, VBA conducted five (45 percent) of 11 National Fiduciary Program teleconferences. However, since October 2008, VBA has consistently conducted these teleconferences. In addition, the Fiduciary Program does not conduct quarterly reviews of accounting work products, which VBA indicated it would implement in response to OIG's 2006 audit of the Fiduciary Program.

Additionally, the Fiduciary Program does not analyze or trend Systematic Technical Accuracy Review (STAR) errors and Site Visit Program findings,⁴ nor identify and disseminate best practices employed in the field. Centralized training for Fiduciary Program managers has only occurred three times since 1987 and not at all since 2004, and has only occurred twice for LIEs since 1991. VBA has not developed a standardized curriculum for new LIEs as indicated in their response to the 2006 OIG audit. Program management indicated that during FY 2010, VBA will implement standardized training for LIEs, conduct the first of recurring managers training conferences, and deploy training teams to provide 40 hours of standardized training to Field Examiners, LIEs, and managers at each VARO.

The lack of consistency in performing management oversight and coordination activities has occurred because the program's Headquarters component lacks the necessary resources. According to the Fiduciary Program Chief, 85 percent of the efforts of Headquarters staff are devoted to performing STAR and Site Visit Program quality reviews. This leaves insufficient resources to address any other known program deficiencies, as well as prevents VBA Headquarters from performing more aggressive oversight of VARO fiduciary program operations.

*VAROs
Inconsistently
Conducting
Program Quality
Assessments*

The effectiveness of annual accounting reviews and handling of misuse actions varied significantly between the VAROs visited, which indicated the critical role that local management and staff play in how well the program functions from VARO to VARO. Five of the six VAROs did not conduct the required number of local quality reviews (known as "local STAR reviews") in accordance with VBA policy. For example, one VARO completed only 1 of 300 required reviews of LIE work products and another VARO completed only 9 of 300 required reviews of LIE work products.

⁴ VBA's STAR and Site Visit programs are formal control mechanisms to ensure fiduciary staff comply with VBA policies and procedures in areas such as timeliness, payee designation, fund usage, and FBS accuracy.

By not conducting quality reviews of employee work products, management lacks assurance staff are performing comprehensive analyses of accountings submitted by fiduciaries. During the course of our audit, VBA Headquarters began testing new C&P Site Visit Program protocols to ensure the required quantity of quality reviews are performed.

In addition, VAROs are not consistently conducting or addressing all required elements of the established Systematic Analysis of Operations (SAO). An SAO is used to determine if VARO staff properly performed a formal analysis of their operations through completion of established procedures and processes outlined in the SAOs. The use of SAOs provides a formal analysis of an organizational element or an operational function of the Veterans Service Center (VSC). It provides an organized means for reviewing operations to identify existing or potential problems and proposing corrective actions. This self-audit technique, when applied conscientiously, is a positive guide for operational improvement.

One VARO had not conducted an SAO since August 2007. Another VARO did not address the required review element related to quality for the 2008 and 2009 SAOs. SAOs are formal analyses of an organizational unit to identify existing or potential problems and propose corrective actions. According to VBA policy, SAOs should be performed at least annually and, with regards to the Fiduciary Program, address timeliness of work and workload control, quality, and FBS records management.

Without effectively conducting SAOs on a recurring basis, management lacks assurance that program weaknesses are identified and corrected. Due to their recent appointment at the time of our fieldwork, senior officials at one VARO could not provide information on why an SAO had not been conducted since 2007. At one VARO, the Fiduciary Coach claimed to be unfamiliar with the required review elements related to SAOs, despite being in his position for 1½ years at the time our site visit.

CONCLUSION

VBA's Fiduciary Program is not adequately protecting VA-derived income and estates of incompetent beneficiaries by ensuring fiduciaries were timely completing and filing annual accountings, following up on allegations of misuse, and providing effective management oversight. Without an effective Fiduciary Program in place to ensure the aggressive and consistent monitoring of fiduciaries and beneficiary funds and estates, VBA takes significant risk in entrusting the stewardship of beneficiaries' financial affairs to fiduciaries without effective oversight.

Fiduciary Program management indicated that this has occurred because the program is considered a low priority within C&P Service and VBA Headquarters has not had sufficient resources to address all known program deficiencies. Fiduciary Program management at VBA Headquarters made

positive changes to the program during the course of our audit, such as requiring fiduciaries to submit monthly bank statements with annual accountings and recognizes the substantial challenges still to be addressed in the program. However, additional improvements need to be made. The Fiduciary Program would benefit from modernization of some of its tools and processes to monitor the performance of fiduciaries and of the VAROs who manage the program.

Recommendations

1. We recommend the Under Secretary for Benefits develop and disseminate appropriate policies and procedures to require LIEs to obtain receipts or other supporting documents for expenditures submitted by fiduciaries that are unbudgeted or budgeted and exceed a pre-designated threshold.
2. We recommend that the Under Secretary for Benefits provides information to Congress in its Annual Benefits Report pertaining to misuse of funds by fiduciaries as required by U.S.C. 5510.
3. We recommend that the Under Secretary for Benefits modify C&P Service oversight to include evaluating the extent to which VAROs are following required procedures for processing allegations of misuse of beneficiary funds.
4. We recommend the Under Secretary for Benefits require Fiduciary Program management to perform an Operational Analysis of FBS and determine whether the system should be upgraded or replaced to meet program requirements.
5. We recommend the Under Secretary for Benefits develop a staffing and workload model for the Fiduciary Program as a guide for resource allocation decisions at VAROs.
6. We recommend the Under Secretary for Benefits develop and deploy a web-based information portal to provide resources to assist fiduciaries in their duties.

**Management
Comments and
OIG Response**

The Acting Under Secretary for Benefits agreed with our findings and provided target dates to complete planned actions that address our recommendations. The Under Secretary for Benefits stated that C&P Service will develop and disseminate appropriate procedures to require LIEs to obtain receipts and other supporting documents for unbudgeted expenditures and those that exceed a pre-designated threshold. In addition, C&P Service has developed several measures to improve oversight of allegations related to the misuse of beneficiary funds that will include review of the processing of misuse allegations as part of its Site Visit program and conducting an annual

SAO of the misuse process. C&P Service will also develop a web-based tool for use by fiduciaries.

In addition, the Under Secretary for Benefits stated that the Fiduciary Program will conduct an operational analysis of FBS to determine whether the system should be upgraded or replaced, and develop a staffing model guide for local fiduciary activities. We consider the planned actions acceptable and will follow up on their implementation.

In addition, the Acting Under Secretary for Benefits provided a series of technical comments pertaining to the body of the report. Changes to the final report, where appropriate, were made to add additional information and clarify our audit methodology. See Appendix E for the full text of the Acting Under Secretary for Benefits' comments.

Appendix A Background

Authority and Background

The VA operates and manages the Fiduciary Program under authority provided by 38 C.F.R. Sections 13.100 to 13.111. Under this program, VA oversees benefits paid to beneficiaries who are incapable of handling their funds either because they are minors or because of injury, disease or the infirmity of age. The beneficiaries represent some of the VA's most vulnerable constituents. In the fiscal year (FY) 2010 Annual Budget Submission, VA reported approximately \$696 million in benefits payments to more than 102,000 beneficiaries with a cumulative estate value of \$3.1 billion.

As of May 22, 2009, FBS indicated there were over 77,000 fiduciaries managing approximately 104,000 incompetent beneficiaries. The Government Accountability Office also reported that the number of people requiring a guardian is expected to increase considerably in the years ahead as the population ages. Due to the aging of the veteran population, it is likely to result in the continued need for the VBA Fiduciary Program.

Fiduciaries

When VA monetary benefits are payable to a minor or an adult who is incapable of managing his or her own financial affairs, payment is made to another individual or entity recognized as responsible for managing the beneficiary's financial affairs, known as a "fiduciary." Federal fiduciaries, which are appointed by the VA under authority contained in 38 U.S.C Section 5502(a)(1), may be: the spouse of a veteran; the chief officer of a VA or non-VA institution, in which a veteran is receiving care; a legal custodian, who is the person or entity caring for the beneficiary, his or her estate; or another responsible person.

Payments may also be made to a State court-appointed fiduciary, to a fiduciary whose duties and authority are established by Federal statute, or by means of supervised direct payment to an incompetent adult beneficiary. A court-appointed fiduciary is a person or legal entity appointed by a State or foreign court to supervise an incompetent beneficiary and/or that person's estate. Courts may appoint financial institutions, state agencies, corporations, fiduciary services, or individuals to serve. Federal fiduciaries (Federally authorized) are used in all other cases.

According to VA policy, accountings from court-appointed fiduciaries are obtained periodically to coincide with State law. However, even in these cases, VA requires an accounting from the fiduciary no less than every three years. In both cases, VA maintains oversight responsibility to ensure that the VA-derived income and estates of incompetent beneficiaries are used solely for the care, support, welfare, and needs of those beneficiaries.

Federal fiduciaries may receive a commission in exchange for their services of up to 4 percent of VA-derived income annually, while court-appointed fiduciaries may generally receive commissions and allowances up to the amount customarily acceptable within the courts' jurisdiction. VBA policy requires that Surety Bonds amounts be commensurate with value of the personal estate derived from VA benefits plus the anticipated net income from VA benefits received during the ensuing accounting period.

VBA policy requires, where possible under State laws and rules of the court, that every individual court appointed fiduciary furnish a Surety Bond in an amount adequate to protect the existing VA estate as well as anticipated VA income for the ensuing accounting period, provided the estate is sufficient to justify the expense of annual bond premiums. According to 38 CFR Section 13.69, no limit exists as to the number of beneficiaries for whom a single fiduciary may act. The regulation merely states that a fiduciary "will be limited to the number the fiduciary may be reasonably expected to properly serve." FBS data identifies 293 fiduciaries representing 20 or more beneficiaries, the highest being a fiduciary who administers VA-derived income and estates for 506 beneficiaries.

Program Administration

The program is administered at the VAROs and their respective Regional Counsel offices that deal directly with VA beneficiaries and State courts in guardianship and commitment matters. As of March 31, 2009, VBA had 265 Field Examiners and 142 Legal Instrument Examiners. The Fiduciary and Field Examination activity consists of field examinations, accountings and estate supervision, misuse investigations and determinations, and onsite reviews of fiduciaries who supervise 20 or more beneficiaries.

After a first personal visit, VBA Field Examiners make periodic visits to the veteran to verify that the fiduciary selected is properly managing the veteran's benefits and assets. For fiduciaries required to submit an accounting of the management of a beneficiary's income and estate, VBA policy requires a periodic submission that includes a beginning balance, an itemization of income and expenses, and assets remaining at the end of the accounting period. The policy also requires LIEs to perform a timely and comprehensive analysis of the fiduciary's accounting.

VBA Headquarters' C&P Service provides central oversight. Additional oversight is provided through the national and local STAR reviews, the C&P Site Visit Program, and SAO evaluations conducted at the VAROs.

Program History

Prior to 1924, the traditional approach employed by the Federal government, when benefits were paid to an incompetent veterans or orphan, was to arrange for the appointment of a guardian by a State court. The World War Veterans Act of 1924 established the Guardianship Service in the Veterans

Bureau to verify qualifications of prospective guardians and to assure proper fund usage and compliance with estate administration requirements. After new legislation was enacted in 1935, the then Veterans Administration instituted a comprehensive program of fiduciary estate administration that include an annual on-site investigation and as well as a verified accounting of funds received and dispersed. In 1974, the Guardianship Service was absorbed by the Veterans Assistance Service, and the function itself was renamed the "Fiduciary and Field Examination Function." In 1997, responsibility for the Fiduciary Program was transferred to C&P Service, where it currently resides.

Fiduciary-Beneficiary System

The Fiduciary-Beneficiary System is an automated case management system used by Fiduciary Program personnel as an on-line method of input and retrieval of data, which is intended to control and maintain incompetent beneficiaries' cases. The system primarily provides information about incompetent beneficiaries, scheduled field examinations and other required actions, and pending workload. The system also generates letters and reports, and selects records for quality assurance reviews.

Western Area Consolidation

One of the most significant initiatives currently being undertaken by the Fiduciary Program is the consolidation of fiduciary activities into a centralized environment. The Western Area Fiduciary Hub is a consolidation of all Western Area fiduciary activities, except for the Manila VARO, to determine if a realignment of fiduciary processing and increased management oversight can lead to improved efficiency and effectiveness. The hub concept was proposed as a solution to the recommended restructuring of oversight and management by the Claims Processing Improvement Task Team and VBA Realignment Team, VA OIG reports of June and September 2006, and the Veterans Benefits Improvement Act of 2004. The hub was operational as of August 2008 with the primary objective of improved asset and resource utilization, oversight, and performance.

Previous OIG Work

Historically, incompetent beneficiary estates have been at risk of misappropriation by fiduciaries. OIG audit reports in 1987, 1997 and 2006, and OIG Office of Investigations (OI) reports provide indications of the vulnerability of incompetent beneficiary accounts to fraud. In 2006, the OIG reported that suspected fraudulent misuse of beneficiary estates went undetected because VARO staff did not follow up on questionable or incomplete data in fiduciary annual accounting statements and did not require documentation to support claimed expenses. The audit confirmed the need for regular program reviews and the potential effects of a weak fiduciary program. The audit also identified instances of suspected fraud involving fiduciaries serving multiple beneficiaries.

From October 1998 to March 2010, the OIG OI conducted 315 fiduciary fraud investigations, resulting in 132 arrests and monetary recoveries of \$7.4 million in restitution, fines, penalties, and administrative judgments.

VA OIG Combined Assessment Program reviews from June 2000 through August 2006 identified systemic deficiencies with the F&FE program activities regarding inadequate follow-up on late fiduciary accountings and failure to obtain Surety Bonds when appropriate.

Appendix B Scope and Methodology

Our audit of the Fiduciary Program utilized data from the period January 2008–May 2009. Fieldwork was conducted from June 2009–September 2009 for Fiduciary Program operations at five VAROs (Atlanta, GA; New York, NY; Milwaukee, WI; Montgomery, AL; and Muskogee, OK) and at the Western Area Fiduciary Hub in Salt Lake City, UT.

We selected the VAROs in Atlanta, GA; New York, NY; Milwaukee, WI; Montgomery, AL; and Muskogee, OK using a statistical sampling method based on the number of fiduciaries managing the estates of 10 or more beneficiaries. We selected the Western Area Fiduciary Hub for review because the Hub is a consolidation of 14 VAROs' program activities, and, therefore, oversee a large number of fiduciaries and beneficiaries.

We tested a statistical sample of 137 annual accountings to determine whether VAROs were validating the underlying support of the information provided by the fiduciaries. We tested whether the VAROs were assessing the quality of evidence supporting the accounting data and adequacy of coverage from misuse afforded by Surety Bonds. For 68 of the statistically sampled 137 annual accountings, we tested whether the VAROs were accurately recording estate value and benefit payment amounts in FBS to assess the reliability of information available to management. We also tested a random sample of 27 annual accountings that were more than 120 days past due to determine whether LIEs were taking aggressive action to obtain the late accountings.

We used FBS data for the time period April 1–May 22, 2009 to draw a sample of all (up to 12) annual accountings within each VARO that were past due. At VAROs with more than 12 total records, we used simple random sampling without replacement. Subsequent to selecting a total sample of 61 past due annual accountings, we eliminated 34 annual accountings due to inaccurate data entered in FBS and those that were not seriously delinquent at the time of our review.

To test VBA's effectiveness in processing and addressing allegations of misuse of funds, we tested a sample of 23 reported misuse allegations to determine whether fiduciary staff took timely and appropriate action and documented the PGFs, and accurately recorded the status in FBS. The audit team experienced challenges in identifying misuse cases for review because some VAROs failed to consistently and adequately document misuse actions.

Reliability of Computer- Processed Data

We planned to use computer-generated data from the FBS for the period of January 2008–March 2009 to support the scope of our audit. However, during the course of our audit survey, we discovered that FBS only retains two months of production data—one month each of current and completed

information such as field exams, on-site reviews, and annual accountings. As a result, we were limited to utilizing FBS data for the time period April 1–May 22, 2009. To test the reliability of this data, we compared relevant electronic data with source documentation in VARO PGFs. The computer-generated data was sufficiently reliable to meet the audit objectives and support our recommendations.

***Compliance with
Government
Auditing
Standards***

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C Statistical Sampling Methodology

To achieve our objective of determining the quality of LIE accounting reviews, we selected a sample of annual accountings reviewed by LIEs.

Population

The population consisted of 1,906 annual accountings submitted by fiduciaries with 10 or more beneficiaries, reviewed by LIEs during the time period April 1, 2009–May 22, 2009.

Sampling Design

We used a 2-stage clustered sample. In the first stage of the sample, we selected five VAROs using probability proportional to size sampling with the number of fiduciaries with 10 or more beneficiaries being the measure of size. We used this methodology, which gives VAROs with more fiduciaries a higher chance of being selected, to improve the precision of our projections of accounting with questionable expenditures. We also selected the Salt Lake City VARO, which contains the Western Area Fiduciary Hub, as a certainty site because it is a consolidation of Fiduciary Program activities in the Western Area.

In the second stage of the sample, we sampled annual accountings within each VARO selected in the first stage. At VAROs with more than 30 total records, we used simple random sampling without replacement.

Weights

We calculated sampling weights as a product of the inverse of the probability of selection at each stage of sampling. We post-stratified the weights in the analysis to ensure that sample totals equaled the known population total of 1,906 beneficiaries.

The margins of error on our projections are driven by the sample size and complexity. The two-stage design and variation in the sampling weights caused our margins of error on the projections of the percentages to be 25% larger than they would have been under simple random sampling. The impact on the precision of the monetary amount projection was to make the margin of error twice as large as it would have been under simple random sampling. Also, as described in the audit findings earlier in this report, limitations of the FBS data only allowed us to sample from two months worth of fiduciary records, which restricted our ability to review a larger population over time.

Table 3

Fiduciary Accounting Projections and Margins of Error					
Finding	Projection	Margin of Error*	Confidence Interval		Sample
			Lower Limit	Upper Limit	
Number of Accountings with Questionable Expenditures					
Reasonable:	1,355	140	1,215	1,496	104
Questionable:	551	140	411	691	33
Total:	1,906				137
Percent of Accountings with Questionable Expenditures					
Reasonable:	71.1%	7.4 %	63.8%	78.5%	104
Questionable:	28.9%	7.3%	21.5%	36.2%	33
Total:	100				137
Questionable Expenditures					
Amount:	\$2,862,749	\$1,271,257	\$1,591,492	\$4,134,007	137
<i>* based on 90% confidence interval</i>					

The sample was selected using probability sampling methods that gave all VAROs and fiduciary records a chance of being selected. The sample is representative of the population from which it was drawn. Our projections correctly account for the probabilities of selection of each sample unit. Our results indicated that LIEs consistently failed to take effective action to verify questionable expenses totaling \$166,787 for 33 of the 137 accountings reviewed. Ninety percent of possible samples of the same size and design would result in a projection between \$1,591,492 and \$4,134,007 in unverified expenses.

Appendix D Recurring Deficiencies from the 2006 OIG Audit

Audit of Veterans Benefits Administration Fiduciary Program Operations (Report No. 05-01931-158), June 27, 2006

Recommendation 1a. *Ensure questionable data submitted in fiduciary accountings is challenged by fiduciary program staff to reduce the risk of misuse or theft of beneficiary funds.*

The Acting Under Secretary for Benefits' response dated April 21, 2006, stated that VBA would continue to emphasize the importance of questionable data on fiduciary accountings during site visits, quarterly national teleconferences, training opportunities, and through Central Office Quality Reviews.

OIG FY 2010 assessment of corrective actions taken. VAROs did not consistently verify questionable expenses.

In response to our 2009 audit draft report, dated June 5, 2009, VBA indicated that FL 09-26, *Revised Fiduciary Accounting Requirements*, replaced the necessity of quarterly reviews by Central Office staff. While requiring additional financial documentation from fiduciaries is a positive step in verifying expenditures of beneficiary funds, we do not believe that this action adequately addresses issues concerning the quality of LIE review of accountings as presented in our 2006 and 2009 audits.

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

The Under Secretary for Benefits' response dated October 23, 2006, stated that VBA would conduct a work measurement study and convene a work group to closely examine Fiduciary Program staffing at the regional office level and to make recommendations regarding case workloads.

OIG FY 2010 assessment of corrective actions taken. VBA failed to issue a staffing and workload model for use by VAROs and Fiduciary Program management.

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

The Under Secretary for Benefits' response dated August 27, 2006, stated that a comprehensive LIE training syllabus was developed, which included 21 video clips that can be used for both introductory and refresher training. In addition, the LIE program guide had been revised and expanded with an issue date of May 1, 2006. In addition, VBA conducted a

3-day LIE training conference that was attended by at least one representative from each VARO.

OIG FY 2010 assessment of corrective actions taken. VBA Centralized training for LIEs has only occurred twice since 1991. In addition, VBA has not developed a standardized curriculum for new LIEs, although senior program management advised that a standardized training program for LIEs would be implemented by the end of FY 2010.

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

In a response dated April 21, 2006, the Acting Under Secretary for Benefits stated the Fiduciary Program's national teleconference in January 2006 addressed the importance of accurately reporting estate values in FBS. Stations were sent a list of their cases where FBS shows estates of \$1 million or more and a list of cases where estate values had not been updated for at least 5 years. Stations were instructed to verify and update the estate value for their listed cases. Similar lists would be issued annually and reviewed for FBS data accuracy during Central Office quality reviews of fiduciary cases and during site visits. In addition, the issue of accuracy of FBS data would also be addressed during the national Legal Instruments Examiner Training Conference.

OIG FY 2010 assessment of corrective actions taken. Since VA and non-VA assets are not recorded separately in FBS, management, therefore, cannot use FBS data to identify VA estates that may require protection. As of May 22, 2009, FBS showed no Withdrawal Agreements or Surety Bonds in place for 18,321 (86 percent) of the 21,193 beneficiary estates exceeding \$20,000 (representing a reported value of \$2.7 billion). Based on current FBS limitations, VBA would have to review each PGF to determine whether estates are adequately protected. In addition, annual estate values were understated by an average of \$2,321 per beneficiary and benefit payment amounts understated by an average of \$4,939 per beneficiary.

Appendix E Agency Comments

Department of Veterans Affairs

MEMORANDUM

Date: March 18, 2010

From: Acting Under Secretary for Benefits (20)

Subj: OIG Draft Report—Veterans Benefits Administration: Audit of the Fiduciary Program's Effectiveness in Addressing Potential Misuse of Beneficiary Funds (2009-01999-R9-0099)—WebCIMS 450480

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

1. Attached are VBA's comments to OIG's Draft Report: Audit of the Fiduciary Program's Effectiveness in Addressing Potential Misuse of Beneficiary Funds.
2. Questions may be referred to Dee Fielding, Program Analyst, at 461-9057.

(original signed by:)

Michael Walcoff

Attachment

VBA COMMENTS TO OIG DRAFT REPORT

**Veterans Benefits Administration: Audit of the Fiduciary Program's Effectiveness
in Addressing Potential Misuse of Beneficiary Funds**

VBA provides the following technical comments:

Page 1, second paragraph, fourth sentence:

"In the fiscal year (FY) 2009 *Annual Budget Report*, VA reported approximately \$1.4 billion in benefits payments to over 100,000 beneficiaries..."

VBA Comment: We recommend the report be modified to read "*Annual Benefits Report*."

Page 2, third paragraph, third sentence:

"VBA policy requires all court-appointed and federal fiduciaries, under specified circumstances, to submit periodic accountings..."

VBA Comment: The sentence, "**all court-appointed and federal fiduciaries, under specified circumstances**", is contradictory and incorrect. We recommend the report be modified to read, "In all instances in which VBA avails itself to state law and recognizes a fiduciary as a court-appointed fiduciary, the fiduciary would be required to submit periodic accountings. Those court-appointed fiduciaries whose appointment is by-passed by VBA for recognition as a federal fiduciary may or may not be required to account. All other fiduciaries may be required to account."

Page 3, first full paragraph, first sentence:

"At 3 of the 6 VAROs reviewed, timely and appropriate actions were not taken to secure 17 (63 percent) of 27 seriously delinquent accountings..."

VBA Comment:

As of May 31, 2009, approximately 1,820 accountings nationwide were considered delinquent of the more than 28,000 called annually. The percentage delinquent is just over six percent of all accountings collected and audited yearly. Of the 1,823 accountings delinquent, only 27 were considered for review. The sample size reflects less than one and a half percent of the accountings in this category. VBA does not believe this is a statistically valid sample.

Page 4, first paragraph, fourth sentence:

“Our projections for 137 accountings from 6 VAROs indicate LIEs may not have adequately verified approximately \$2.9 million in expenditures for 551 (29 percent) of 1,906 accountings completed during the period April 1, 2009–May 22, 2009.

VBA Comment:

The statement regarding a projection of 137 cases does not seem to match the number of cases reportedly reviewed, 109. Further, we do not understand how the figure of \$2.9 million was derived. Based on the extrapolated number of 551 cases, this would equate to approximately \$5,300 in unverified expenses per accounting. No data was provided as to how this number was formulated.

Page 9, second paragraph, third sentence:

“As of May 22, 2009, FBS inaccurately showed no Withdrawal Agreements or Surety Bonds in place for 18,321 (86 percent) of the 21,193 beneficiary estates exceeding \$20,000 (representing a reported value of \$2.7 billion). In addition, annual estate values were understated by an average of \$2,321 per beneficiary and benefit payment amounts were understated by an average of \$4,939 per beneficiary.

- Estate values totaling \$3 billion in the FY 2009 Annual Budget Report could be understated by as much as \$241 million.
- Benefit payments of \$1.4 billion in the FY 2009 Annual Budget Report could be understated by as much as \$514 million.”

VBA Comment:

The data to support these claims is not contained in the report. The assertion that FBS inaccurately reported withdrawal agreements and bonds is contested. FBS currently limits the user to a single entry for the estate value. While the figure designated as estate value includes VA and non-VA funds, only VA estates in excess of \$20,000 require some form of protection. It is misleading to assert that 86 percent of estates over \$20,000 lack the necessary protection, since only certain cases with a VA estate over \$20,000 require protection.

Also noted is the use of, “Annual Budget Report.” The correct title of this report is “Annual Benefits Report.”

Page 12, third full paragraph, fourth sentence:

“During the period January 2006–September 2008, VBA conducted 5 (45 percent) of 11 quarterly teleconferences. However, since October 2008, VBA has consistently conducted these teleconferences.”

VBA Comment:

The language used here should be clarified to note National Fiduciary Program teleconferences have been conducted monthly since October 2008, rather than the quarterly conferences as the current language implies.

Page 12, third full paragraph, fifth sentence:

“In addition, the Fiduciary Program does not conduct quarterly reviews of accounting work products, which VBA indicated it would implement in response to OIG’s 2006 audit of the Fiduciary Program.”

VBA Comment:

OIG’s *Audit of VBA Fiduciary Program Operations*, dated June 27, 2006, recommended “...questionable data submitted in fiduciary accountings is challenged by fiduciary program staff to reduce the risk of misuse or theft of beneficiary funds.” VBA answered this recommendation by agreeing to conduct quality reviews of fiduciary cases by Central Office staff. This measure was implemented by Fast Letter (FL) 07-12, *Quarterly Review of Selected Fiduciary Accounting Work Products*, dated April 30, 2007. This practice was reevaluated with implementation of FL 09-26, *Revised Fiduciary Accounting Requirements*, dated June 5, 2009. Because the new requirements direct collection of original financial documentation, this replaced the necessity of quarterly reviews by Central Office staff. FL 07-12 was rescinded in favor of FL 09-26.

The following comments are submitted in response to the recommendations in the OIG draft report:

Recommendation 1: We recommend the Under Secretary for Benefits develop and disseminate appropriate policies and procedures to require LIEs to obtain receipts or other supporting documents for expenditures submitted by fiduciaries that are unbudgeted or budgeted and exceed a pre-designated threshold.

VBA Response: Concur. On October 19, 2009, VBA’s Compensation and Pension (C&P) Service released Fast Letter 09-42, *Increased Threshold for Pre-approval of Single Expenditures by a Fiduciary*, which requires approval of expenditures in excess of \$1,000 for those items not specifically addressed by the Fund Usage Agreement. To protect further beneficiaries from misuse, the C&P Service is preparing a fast letter instructing fiduciary activities to obtain receipts for any unbudgeted item in excess of \$1,000. In addition, fiduciary activities will be required to obtain receipts for any budgeted item that exceeds the Fund Usage Agreement by more than 15 percent if the financial institution documents cannot be used as verification. M21-1MR, Part XI,

3.D.17d, requires an LIE to obtain receipts for any item, regardless of the amount or its inclusion in the Fund Usage Agreement, if documentation is determined necessary.

The C&P Fiduciary Staff is planning a Fiduciary Manager's Training Conference in 2010 to provide in-depth training on workload management, misuse of funds, accounting follow-up, field examinations, surety bonds, and other fiduciary topics.

Target Completion Date: June 30, 2010

Recommendation 2: We recommend that the Under Secretary for Benefits provide information to Congress in its Annual Benefits Report pertaining to misuse of funds by fiduciaries as required by U.S.C. 5510.

VBA Response: Concur. The C&P Service is developing a recurring data extract to be used in future Annual Benefits Reports (ABR). The data extract will identify a portion of the data from FY 2009; however, not all data is available. The ABR for FY 2009 will be updated with all available data, and future ABRs will include the required data.

Target Completion Date: September 30, 2010

Recommendation 3: We recommend that the Under Secretary for Benefits modify C&P Service oversight to include evaluating the extent to which VAROs are following required procedures for processing allegations of misuse of beneficiary funds.

VBA Response: Concur. The C&P Service has deployed several measures to improve oversight of allegations of misuse of beneficiary funds. Effective June 2009, the C&P Service Fiduciary Staff is required to complete an annual Systematic Analysis of Operations of the misuse process. This analysis identifies areas in which regional offices (RO) require improvement. In October 2009, the C&P Service Fiduciary Staff modified the Site Survey Protocol for each RO to include a review of all documentation pertaining to any misuse issues addressed.

The C&P Service is preparing a fast letter requiring fiduciary activities to forward documentation pertaining to all facets of the misuse process to the C&P Service Fiduciary Staff. Previously, ROs were required to forward only the final misuse determination. With the release of the fast letter, ROs will be required to forward to the C&P Service a copy of all misuse allegations, investigations, and determinations.

Target Completion Date: April 30, 2010

Recommendation 4: We recommend the Under Secretary for Benefits require Fiduciary Program management to perform an Operational Analysis of FBS and determine whether the system should be upgraded or replaced to meet program requirements.

VBA Response: Concur. A workgroup has been established to evaluate the current electronic case management system, Fiduciary Beneficiary System (FBS), and to provide recommendations for either enhancements or a replacement electronic case management system. The workgroup will present its findings and recommendations in June 2010.

Target Completion Date: June 30, 2010

Recommendation 5: We recommend the Under Secretary for Benefits develop a staffing and workload model for the Fiduciary Program as a guide for resource allocation decisions at VAROs.

VBA Response: Concur. A staffing and workload model will be developed by the Fiduciary Staff. This model will be designed for use by field activities as a guide for the local fiduciary activity.

Target Completion Date: September 30, 2010

Recommendation 6: We recommend the Under Secretary for Benefits develop and deploy a web-based information portal to provide resources to assist fiduciaries in their duties.

VBA Response: Concur. The C&P Service will develop and deploy a web-based tool for fiduciaries. This tool will provide fiduciaries with information and resources regarding their duties and responsibilities and will provide the necessary forms and references to assist them in performing as a fiduciary.

Target Completion Date: September 30, 2010

Appendix F **OIG Contact and Staff Acknowledgments**

OIG Contact	Timothy J. Crowe, Director, 727-395-2425
Acknowledgments	Craig Ward Charles Chiarenza Johnny McCray Melissa Colyn Kristopher Kasey Victor Milano Alan Brecese Dennis Capps Debra Cato Jessica Blake Thomas McPherson Dawn Creter Brandon Guadalupe Carin Wieters

Appendix G Report Distribution

VA Distribution

Office of the Secretary
Veterans Health Administration
Veterans Benefits Administration
National Cemetery Administration
Assistant Secretaries
Office of General Counsel

Non-VA Distribution

House Committee on Veterans' Affairs
House Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies
House Committee on Oversight and Government Reform
Senate Committee on Veterans' Affairs
Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies
Senate Committee on Homeland Security and Governmental Affairs
National Veterans Service Organizations
Government Accountability Office
Office of Management and Budget

This report will be available in the near future on the OIG's website at <http://www.va.gov/oig/publications/reports-list.asp>. This report will remain on the OIG website for at least 2 fiscal years after it is issued.