

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



# Department of Veterans Affairs

*Audit of Fiduciary Program  
Controls Addressing  
Beneficiary Fund Misuse*

August 27, 2015  
13-03922-453

## ACRONYMS

CY	Calendar Year
FY	Fiscal Year
OIG	Office of Inspector General
P&FS	Pension and Fiduciary Service
VARO	Veterans Affairs Regional Office
VBA	Veterans Benefits Administration

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# Report Highlights: Audit of VBA's Fiduciary Program Controls Addressing Beneficiary Fund Misuse

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## Why We Did This Audit

We determined whether the Veterans Benefits Administration (VBA) protects the VA-derived income and estates of beneficiaries who are unable to manage their financial affairs when misuse of beneficiary funds is alleged. VA appoints fiduciaries to receive and disburse VA benefits on behalf of beneficiaries who are unable to manage their benefits. We conducted our audit work from April 2014 through April 2015 and used calendar year (CY) 2013 data, which was the latest data available when our work began.

## What We Found

For the period January 1, 2013, through December 31, 2013, we identified 147 of 304 (48 percent) required misuse actions associated with the management of 122 beneficiaries were not performed timely or according to policy. VBA did not:

- Timely complete 117 of 265 (44 percent) required actions to determine if misuse of funds occurred.
- Complete 30 of 39 (77 percent) required actions after misuse of funds occurred, such as reissuing (restoring) misused funds, performing collection actions, and completing internal negligence determinations.
- Remove two fiduciaries that misused funds and allowed them to continue to manage 48 other beneficiaries.

These conditions occurred due to increases in workload, a lack of policies, and staff not being clear about some policies. Also, VBA did not perform monitoring or quality reviews of all misuse activities.

We project that, during CY 2013, VBA did not timely complete required actions to ensure the protection of 758 beneficiaries. These beneficiaries had combined VA-derived estates of approximately \$45.2 million. VBA also did not take action to restore \$2.1 million of misused funds. Unless VBA ensures actions taken are timely and according to policy, VBA may not adequately protect approximately \$16 million in annual benefits payments or \$80 million during CYs 2014 through 2018.

## What We Recommended

We recommended the Under Secretary for Benefits implement mechanisms to ensure VBA completes misuse actions timely and as required.

## Agency Comments

The Under Secretary for Benefits concurred with three of our four recommendations. The Under Secretary also included a series of technical comments on our report.

A handwritten signature in black ink that reads "Linda A. Halliday".

LINDA A. HALLIDAY  
Deputy Inspector General

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## INTRODUCTION

### **Objective**

We conducted this audit to determine whether the Veterans Benefits Administration (VBA) protects the VA-derived income and estates of beneficiaries who are unable to manage their financial affairs when misuse of beneficiary funds is alleged.

### **Fiduciary Program**

The Fiduciary Program's mission is to protect VA beneficiaries who, due to injury, disease, or age, are unable to manage their VA benefits. Under the program, VA appoints a fiduciary (individual or entity) to receive and disburse VA benefits on behalf of the beneficiary. In March 2012, VBA completed consolidation of its fiduciary activities into six regional hubs and the VA Regional Office (VARO) in Manila, Philippines to improve operational efficiencies. As of July 2014, VBA reported providing Fiduciary services to more than 147,000 beneficiaries in fiscal year (FY) 2013 who received more than \$2.6 billion in VA benefits. Prior Office of Inspector General (OIG) reports have demonstrated the estates of beneficiaries are historically at risk of misuse by fiduciaries.

### **Beneficiary Funds Misuse**

Section 6106(b), Title 38, United States Code defines misuse as any case where a fiduciary receives payment under the laws administered by the VA Secretary, for the use and benefit of a beneficiary and uses any part of the payment for other than for the use and benefit of a beneficiary or the beneficiary's dependents. VBA is made aware of allegations or indications of misuse of funds by fiduciaries through multiple sources, such as the beneficiaries themselves, third parties, or VBA employees while performing duties. Once misuse is alleged or indicators of misuse exist, program policy requires staff take specific actions to review, investigate, and determine misuse within specified timeliness standards.

### **Other Information**

- Appendix A provides background information.
- Appendix B provides details on the audit's scope and methodology.
- Appendix C provides the audit's statistical sampling methodology.

## RESULTS AND RECOMMENDATIONS

### Finding

#### **VBA Needs To Ensure Its Program Work Requirements Are Performed To Improve the Processing of Misuse Actions To Ensure the Protection of Beneficiaries' Estates**

VBA did not process 147 of 304 (48 percent<sup>1</sup>) required actions associated with 122 beneficiaries timely or according to policy in response to allegations or indications of misuse of beneficiary funds during calendar year (CY) 2013. VBA also did not replace two fiduciaries who misused beneficiary funds. This represented the most current data when we began the audit.<sup>2</sup> Specifically, VBA did not:

- Timely complete 117 of 265 (44 percent) required actions to determine if misuse of funds occurred in response to allegations and indications of beneficiary fund misuse.
- Complete 30 of 39 (77 percent) required actions after VBA concluded misuse of funds occurred, such as reissuing (restoring) misused funds, performing effective collection actions, and completing internal negligence determinations.
- Replace two fiduciaries that misused beneficiary funds and allowed both to continue managing 48 other beneficiaries.

Fiduciary Hub management generally attributed untimely misuse actions to increases in Fiduciary Hub workload. Required actions after VBA concluded misuse of funds occurred were not completed due to a lack of policies and VBA staff not being clear about some policies. Also, VBA did not monitor or perform quality reviews of all misuse activities, which contributed to untimely and uncompleted misuse actions.

If VBA does not timely complete misuse actions, beneficiary funds are at increased risk of misuse. We project, during CY 2013, VBA did not timely complete required misuse actions to ensure the protection of 758 beneficiaries' VA-derived estates valued at about \$45.2 million. VBA also did not restore approximately \$2.1 million of misused beneficiary funds. Additionally, unless VBA improves the timeliness of actions in response to allegations and indications of misuse, we project VBA may not adequately

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<sup>1</sup> Some percentages presented have been rounded for reporting purposes.

<sup>2</sup> CY 2013 is from January 1, 2013, through December 31, 2013.

protect annual benefit payments to beneficiaries valued at approximately \$16 million, or \$80 million during CYs 2014 through 2018.<sup>3</sup>

**Misuse of Funds  
Processing  
Procedures and  
Criteria**

Fiduciary Hub procedures performed in response to misuse allegations and indications of misuse help ensure VBA provides effective oversight of beneficiary funds. VBA guidance prescribes specific actions and establishes timeliness standards for these actions when misuse is alleged or VBA personnel identify potential misuse of funds. When misuse of funds is alleged, VBA is required to take the following steps:

- **Reviews for Merit:** Staffs are required to review an allegation of misuse of funds within 14 days of receipt.
- **Misuse Investigations:** Staffs must complete a misuse investigation within 45 days of assignment.
- **Misuse Determinations:** Staffs must prepare a formal misuse determination within 30 days of receipt of the completed investigation.
- **Misuse Reconsideration:** Staffs are required to notify the fiduciary of the misuse determination and provide 30 days from the date of determination for the fiduciary to respond with new, material evidence for VBA to consider and request reconsideration. Staffs have an additional 30 days from receipt of a fiduciary's reconsideration request to review and make a decision based on any new material evidence.

If VBA determines a fiduciary misused beneficiary funds, VBA performs the following procedures.

- Refer cases where the misuse determination or redetermination (if applicable) confirms misuse to the OIG within 30 days.
- Remove a fiduciary from the beneficiary within 60 days of the receipt of an initial misuse allegation.
- Restore misused benefits within 14 days of the misuse determination in certain circumstances such as when a fiduciary served 10 or more beneficiaries during the month misuse occurred.
- Take aggressive collection action on a timely basis, with effective follow-up. As of November 2013, Fiduciary Hub managers are required to perform collection actions for any misused funds. Prior, only misused funds restored by VA were considered a fiduciary's liability to the government. VBA did not have a timeliness standard for performing collection actions.

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<sup>3</sup> CYs 2014 through 2018 is from January 1, 2014, through December 31, 2018.

- Perform negligence determinations when a fiduciary served fewer than 10 beneficiaries during the period of misuse, and restore misused benefits within 14 days of the negligence determination. VBA did not have a timeliness standard for negligence determination completion.

**Untimely  
Response to  
Allegations of  
Misuse of  
Funds**

VBA did not timely complete 117 of 265 (44 percent) required actions associated with 120 beneficiaries within our sample results to determine if misuse of funds occurred in response to allegations and indications of beneficiary fund misuse. Table 1 summarizes our results by the types of misuse actions.

**Table 1. Timeliness for Misuse Actions Initiated From January 1, 2013, Through December 31, 2013<sup>4</sup>**

Misuse Action	Sample Size	Number Not Timely	Percent Not Timely	Average Days for Untimely Actions	Range of Days for Untimely Actions
Merit Reviews	87	41	47%	75	16–441
Investigations	67	18	27%	159	46–394
Determinations	48	36	75%	150	33–581
Reconsiderations	26	16	62%	56	33–171
OIG Referrals	37	6	16%	132	36–239
<b>Total</b>	<b>265</b>	<b>117</b>	<b>44%</b>	—	—

Source: OIG review of electronic records for sampled misuse actions

Note: Some numbers have been rounded for reporting purposes.

**Merit Reviews**

Of the 87 allegations VBA staff reviewed for merit, 41 (47 percent) were not completed within 14 days of receipt, as required by VBA timeliness standards. The average time for these untimely actions was 75 days with a range of 16 to 441 days after receiving the allegation. Table 2 summarizes the results of our sample review by hub visited.

<sup>4</sup> CY 2013 is comprised of the last three quarters of FY 2013 and the first quarter of FY 2014.

**Table 2. Merit Review Timeliness for Actions Initiated From January 1, 2013, Through December 31, 2013**

Hub Location	Sample Size	Number Not Timely	Percent Not Timely	Average Days for Untimely Actions	Range of Days for Untimely Actions
Columbia	34	10	29%	45	23–145
Lincoln	16	6	38%	75	18–118
Louisville	19	19	100%	108	24–441
Salt Lake City	18	6	33%	23	16–38
<b>Total</b>	<b>87</b>	<b>41</b>	<b>47%</b>	<b>75*</b>	<b>16–441</b>

Source: *OIG review of electronic records for sampled misuse actions*

Note: Some numbers have been rounded for reporting purposes.

\*Represents the overall average for the 41 untimely actions.

*Misuse Investigations*

Of the 67 misuse allegations VBA staff investigated, 18 (27 percent) were not completed within the required 45 days of the completed merit reviews, including 1 not completed as of May 23, 2014. The average for these untimely actions was 159 days, ranging from 46 to 394 days after completing merit reviews. Table 3 summarizes the results of our sample review by hub visited.

**Table 3. Misuse Investigation Timeliness for Actions Initiated From January 1, 2013, Through December 31, 2013**

Hub Location	Sample Size	Number Not Timely	Percent Not Timely	Average Days for Untimely Actions	Range of Days for Untimely Actions
Columbia	29	0	0%	—	—
Lincoln	17	8	47%	215	48–394
Louisville	12	7	58%	116	46–252
Salt Lake City	9	3	33%	108	83–123
<b>Total</b>	<b>67</b>	<b>18</b>	<b>27%</b>	<b>159*</b>	<b>46–394</b>

Source: *OIG review of electronic records for sampled misuse actions*

Note: Some numbers have been rounded for reporting purposes.

\*Represents the overall average for the 18 untimely actions.

*Misuse Determinations*

Of the 48 misuse determinations sampled where misuse was found, 36 (75 percent) were not completed within 30 days of the completed misuse investigations, including 3 not completed as of May 23, 2014. The average for these untimely actions was 150 days, ranging from 33 to 581 days after completed misuse investigations. Table 4 summarizes the results of our sample review by hub visited.

**Table 4. Misuse Determination Timeliness for Actions Initiated From January 1, 2013, Through December 31, 2013**

Hub Location	Sample Size	Number Not Timely	Percent Not Timely	Average Days for Untimely Actions	Range of Days for Untimely Actions
Columbia	22	13	59%	98	33–426
Lincoln	8	7	88%	204	55–417
Louisville	11	11	100%	214	103–581
Salt Lake City	7	5	71%	69	34–133
<b>Total</b>	<b>48</b>	<b>36</b>	<b>75%</b>	<b>150*</b>	<b>33–581</b>

Source: *OIG review of electronic records for sampled misuse actions*

Note: Some numbers have been rounded for reporting purposes.

\*Represents the overall average for the 36 untimely actions.

*Misuse Reconsiderations*

Of the 26 reconsiderations sampled, 16 (62 percent) were not completed within 30 days of the receipt of the fiduciary’s request for reconsideration or completed misuse determination. The average time for these untimely actions was 56 days, ranging from 33 to 171 days after request for reconsideration or misuse determination. Table 5 summarizes the results of our sample review by hub visited.

**Table 5. Misuse Reconsideration Timeliness for Actions Initiated From January 1, 2013, Through December 31, 2013**

Hub Location	Sample Size	Number Not Timely	Percent Not Timely	Average Days for Untimely Actions	Range of Days for Untimely Actions
Columbia	17	12	71%	47	33–51
Lincoln	1	1	100%	171	171
Louisville	2	2	100%	53	52–53
Salt Lake City	6	1	17%	49	49
<b>Total</b>	<b>26</b>	<b>16</b>	<b>62%</b>	<b>56*</b>	<b>33–171</b>

Source: *OIG review of electronic records for sampled misuse actions*

Note: Some numbers have been rounded for reporting purposes.

\*Represents the overall average for the 16 untimely actions.

*OIG Referrals*

Of the 37 OIG referrals sampled, 6 (16 percent) were not referred to the OIG within 30 days of the Fiduciary Hubs finalizing misuse, including 3 not referred as of May 23, 2014. The average for these untimely actions was 132 days, ranging from 36–239 days. Table 6 summarizes the results of our sample review by hub visited.

**Table 6. Referral to OIG Timeliness for Actions Initiated From January 1, 2013, Through December 31, 2013**

Hub Location	Sample Size	Number Not Timely	Percent Not Timely	Average Days for Untimely Actions	Range of Days for Untimely Actions
Columbia	22	0	0%	—	—
Lincoln	5	2	40%	77	68–86
Louisville	3	3	100%	201	177–239
Salt Lake City	7	1	14%	36	36
<b>Total</b>	<b>37</b>	<b>6</b>	<b>16%</b>	<b>132*</b>	<b>36–239</b>

Source: OIG review of electronic records for sampled misuse actions

Note: Some numbers have been rounded for reporting purposes.

\*Represents the overall average for the 6 untimely actions.

*Increases in Workload Considered the Primary Cause of Untimely Misuse Actions*

Fiduciary Hub management generally attributed untimely misuse actions to increases in Fiduciary Hub workload. For example, VBA data showed a hub experienced an increase in seriously delinquent accountings growing from 74 in March 2012, the start of hub consolidation, to 174 in December 2013, representing a 135 percent increase. Seriously delinquent accountings can directly affect the workload of misuse cases because VBA considers seriously delinquent accountings as prima facie evidence of potential fund misuse.<sup>5</sup> Therefore, Fiduciary Hub personnel must treat these cases as potential misuse.

In addition, one hub received a significant increase in the number of beneficiaries needing fiduciaries assigned, which increased the workload for Field Examiners who are also responsible for performing misuse investigations. From April through June 2013, VBA data showed the hub received an average of 952 requests for field examinations for fiduciary appointments compared to an average of 599 for the prior quarter, representing a 59 percent increase. Another hub had a significant increase in the number of misuse allegations received. During April 2013, this hub received 36 misuse allegations, an increase of nearly 230 percent above the monthly average of 11 for CY 2013.<sup>6</sup>

*Effect of Untimely Misuse Actions*

If VBA does not timely complete misuse actions, beneficiary funds are at increased risk of misuse. From January through December 2013, we project

<sup>5</sup> An accounting is the fiduciary’s periodic, written report of his/her management of a beneficiary’s income and estate. Accountings become “seriously delinquent” when they have not been received within 120 days of the due date.

<sup>6</sup> Source: OIG analysis of VBA data. Information included to support management’s contention that spikes in hub workload during 2013 had a direct effect on the timeliness of misuse actions.

VBA did not timely complete required misuse actions to ensure the protection of 758 beneficiaries. Their combined VA-derived estates were valued at about \$45.2 million. Additionally, unless VBA improves the timeliness of actions in response to allegations and indications of misuse, we project VBA may not adequately protect approximately \$16 million of annual benefit payments to beneficiaries or \$80 million during CYs 2014 through 2018.

***Processing  
Improvements  
Needed After  
Misuse Is  
Determined***

VBA did not complete 30 of 39 (77 percent) required actions associated with 37 beneficiaries after VBA concluded that misuse of funds occurred. Specifically, as of May 23, 2014, VBA did not restore misused funds, take effective action to initiate collection activities, and complete internal negligence determinations. In addition, we identified 2 fiduciaries VBA determined misused beneficiary funds who continued to manage the estates of 48 other beneficiaries.

***Misused Funds Not  
Restored***

Fiduciary hubs did not restore approximately \$347,000 of misused funds to 16 of 16 (100 percent) sampled beneficiaries. As of May 23, 2014, an average of 300 days elapsed from the date VBA determined misuse occurred without VA restoring misused benefits to these 16 beneficiaries. Restoration must occur within 14 days of the date of the misuse determination or, when required, the negligence determination.

Managers at one hub stated they did not restore misused funds because they were waiting for the Pension and Fiduciary Service (P&FS) to complete negligence determinations. VBA policy requires P&FS to conduct negligence determinations prior to restoring misused funds when a fiduciary is an individual who served fewer than 10 beneficiaries during the period when the misuse occurred. For all 16 sampled beneficiaries a negligence determination was not required. Another hub manager stated staff did not restore misused funds because they thought these actions could interfere with potential or concurrent OIG criminal investigations. The OIG's Office of Investigations stated an OIG criminal investigation of a fiduciary should not preclude VBA from performing required internal procedures, such as restoring funds.

As a result, we project VA did not restore approximately \$2.1 million of misused funds to 110 beneficiaries from January 1, 2013, through December 31, 2013.

***Hubs Did Not  
Effectively Perform  
Collection Actions***

Hub staff had not taken effective actions, as of May 23, 2014, to initiate collection of misused funds, such as coordinating with station finance activities to establish debt, for 5 of 6 fiduciaries who misused approximately \$144,000. For the remaining case, it took 24 days from the date negligence was determined for one hub to request its respective finance activity establish fiduciary debt. This was 10 days beyond the 14-day requirement to restore the misused funds.

Fiduciary Hubs are required to provide fiduciaries instructions for repayment of misused funds when misuse is confirmed. Additionally, Section 1.910, Title 38, Code of Federal Regulations requires VA to take aggressive collection action on a timely basis, with effective follow-up, to collect all claims for money arising from its activities.

In November 2013, VA published procedures detailing the requirements for Fiduciary Hub managers to establish a debt to recoup all misused funds. Prior to November 2013, Fiduciary Program policy only required misused funds restored to the beneficiary by VA to be considered a fiduciary's liability to the government.

Hub officials attributed different factors to why staff did not request finance activities establish fiduciary debts. According to one Hub Manager, this occurred because of an oversight stemming from the limited data and tracking mechanisms within FBS to ensure supervisors and managers reviewed and referred all cases requiring debt establishment. Another hub manager stated a VARO finance accountant was initially unclear on the procedures necessary to implement the November 2013 policy. Hub officials and staff in the VARO finance activity corresponded multiple times with P&FS to receive clarification on policy requirements prior to our visit. After our visit, they obtained the clarification they needed to establish the fiduciary debts. Furthermore, according to a P&FS official, additional training related to fiduciary misuse debt processes was conducted in August 2014. Therefore, we are not recommending further action at this time.

If Fiduciary Hub staff does not effectively perform actions to initiate collection of misused funds, these funds may never be recovered. This could result in monetary losses to beneficiaries, taxpayers, and VA.

*Negligence  
Determination  
Process Could Be  
Improved*

Policy requires negligence determinations be performed by P&FS when misuse is identified and the fiduciary is an individual who served fewer than 10 beneficiaries during the period of misuse. However, policy does not provide a timeliness standard from start to completion of a determination. As of December 31, 2013, P&FS had not completed negligence reviews for 17 of the 17 cases sampled in our review that required negligence determinations. A P&FS official related the delays in completion occurred because, in many cases, additional action was required by the hub in order to complete the determination of negligence. Some additional actions resulted in an amendment to the misuse determination, and initiation of a new reconsideration period to allow for the appropriate due process.

P&FS could improve their timeliness of completing negligence determinations by more timely assigning cases to staff to review. As of May 23, 2014, P&FS had not completed 9 of the 17 (53 percent) required negligence determinations. In August 2014, P&FS provided data showing 14 of the 17 cases were completed and took an average of 207 days to assign

the cases to P&FS staff to perform negligence determinations after the hubs' misuse determinations. Once assigned, P&FS staff took an average of 68 days to complete the negligence determinations.

Beneficiaries could face undue financial hardships if P&FS does not improve the timeliness of processing negligence determinations. One beneficiary's approximately \$16,200 in misused funds were not restored by VBA because the beneficiary passed away more than 9 months before P&FS completed their negligence determination. VBA is not required to restore misused funds if the beneficiary is deceased. For this case, it took P&FS nearly 14 months to complete this negligence determination after one hub provided the misuse determination to P&FS.

*Fiduciaries Who  
Misused Funds Not  
Removed*

Generally, VBA timely removed fiduciaries from individual beneficiaries where misuse was determined. However, we identified two fiduciaries in our sample who VBA determined each misused a beneficiary's funds. Yet, VBA allowed both to continue to manage the combined estates of 48 other beneficiaries. The 48 beneficiaries' estate values totaled just under \$947,000. In response to our draft report, in June 2015, VBA provided additional information not previously provided during OIG's field work. For one fiduciary, VBA concluded the fiduciary misused beneficiary funds in September 2014. However, in May 2014, VBA reclassified this case as fraud, since it was determined that third parties (family members) misused funds, not the fiduciary. Nevertheless, during the 8-month period it took VBA to determine the fiduciary did not commit misuse or fraud, the funds of other beneficiaries managed by the fiduciary were potentially at risk. Although we made this technical revision, it does not diminish the significance of the need for VBA to remove fiduciaries that they determine have misused beneficiary's funds. VBA agreed they need to clarify their current practice related to the removal of fiduciaries that misused funds in cases where the fiduciary served more than one beneficiary, and concurred with our recommendation.

VBA is considered negligent if it determines a fiduciary misused beneficiary funds but does not remove the fiduciary from that beneficiary within 60 days of the receipt of the misuse allegation. However, in the case of a fiduciary who manages multiple beneficiaries, VBA policy does not require hubs remove the fiduciary from all assigned beneficiaries.

P&FS officials stated they would expect staff to remove all beneficiaries from a fiduciary for whom staff confirmed misused funds. When VBA allows fiduciaries who have committed misuse to continue to serve beneficiaries, VBA places additional beneficiaries' care and funds at an increased risk of misuse.

***Other Factors Contributed to Misuse Processing Issues***

Other factors also contributed to VBA not processing misuse actions timely or appropriately. For example, VBA did not comprehensively monitor or track misuse data in national performance measures. Further, VBA's quality reviews did not provide a comprehensive assessment of the hubs' processing of misuse actions.

***Misuse Actions Not Comprehensively Tracked or Monitored***

Hub processing of misuse of funds actions, unlike other Fiduciary Program functions such as field examinations and accountings, were not included in the national performance data reported for Directors responsible for Fiduciary Hubs. Furthermore, it was not until July 2013 that P&FS began reporting misuse actions on its Fiduciary Workload Report. As of July 2014, the P&FS Fiduciary Workload Report reflects only timeliness data for misuse investigations. Instead of indicating the timeliness of completing actions other than investigations, the report provides only the number of actions pending and completed. Because of this limitation, VBA could not use the workload report to monitor the timeliness of all misuse actions, such as merit reviews or misuse determinations. However, for FY 2015, misuse action processing timeliness is included on the national performance data reported for Directors responsible for Fiduciary Hubs. Furthermore, we confirmed that as of May 2015, untimely misuse actions are reflected on the P&FS Fiduciary Workload Report. Therefore, we are not recommending further action at this time.

***Quality Reviews of Misuse Action Processing Are Limited***

VBA quality reviews do not provide a comprehensive assessment of the hubs' processing of misuse actions. Specifically, VBA's national Systematic Technical Accuracy Review does not review the processing of misuse actions. Hubs are required to assess misuse timeliness and accuracy in their annual Systematic Analysis of Operations. However, the hubs' Systematic Analysis of Operations review protocol does not require the reviewer to determine whether hub staff appropriately initiated actions to restore funds or establish fiduciary debts.

According to the P&FS Director, a separate staff responsible for all aspects of fiduciary quality, training, and site visits was established in April 2011, when P&FS was formed. However, P&FS postponed all site visits when the hubs consolidated. The site visits resumed in August 2014. A review of a September 2014 Site Visit protocol indicated most of the misuse actions were included as part of the reviews; however, the protocol did not specifically address whether the team would determine if funds were restored to beneficiaries when applicable.

***Conclusion***

The extent to which VBA is successful in identifying potential misuse of beneficiary funds by VA-appointed fiduciaries is curtailed if VBA fails to ensure its program requirements are performed and to take timely and necessary actions to protect beneficiaries' financial interests. Fiduciary Program misuse procedures represent important controls to ensure the protection of VA-derived estates and benefits of those who are unable to

manage their financial affairs. Unless VBA ensures the timely and appropriate processing of misuse actions, beneficiary estates are at increased risk of misuse. Additionally, beneficiary estates may not be reimbursed for misused funds, which could potentially cause financial hardships to affected beneficiaries.

## Recommendations

1. We recommended the Under Secretary for Benefits revise policy to require timely removal of a fiduciary from all assigned beneficiaries when an individual case of misuse has been determined.
2. We recommended the Under Secretary for Benefits retroactively establish debts for all fiduciaries who VBA determined misused beneficiary funds during calendar year 2013.
3. We recommended the Under Secretary for Benefits revise policy to include clear timeliness standards from the time the hubs determine misuse occurred to the time Pension and Fiduciary Service completes the negligence determination.
4. We recommended the Under Secretary for Benefits ensure the processing of all misuse actions are incorporated into quality reviews of Fiduciary Program operations.

### **Management Comments and OIG Response**

In response to our draft report, the Under Secretary for Benefits concurred with three of the four recommendations. The Under Secretary's response noted that the program had experienced considerable change in the last three years, including consolidation of fiduciary activities into six hubs, policy enhancements, implementation of standardized procedures, and technological advances. Although the Under Secretary did not disagree with our overall conclusion that VBA needs to take steps to improve its performance in taking actions when misuse of beneficiary funds are alleged or identified, the Under Secretary included a series of technical comments on our draft report.

The Under Secretary concurred with Recommendation 1 and requested closure, based on actions already taken. An acceptable action plan was provided for Recommendation 1 and, therefore, we consider the recommendation closed. VA proposed regulatory changes intended to clarify the removal of fiduciaries and bar the appointment or further service of any person or entity that misused or misappropriated VA benefits while serving as a beneficiary's fiduciary.

The Under Secretary also concurred with Recommendations 2 and 4, and initiated actions to address these recommendations, with target completion dates of September 30, 2015, and December 31, 2015, respectively. We consider these planned actions acceptable, and will follow up on implementation of actions taken by VBA.

The Under Secretary did not concur with Recommendation 3 to establish clear timeliness standards for completion of negligence determinations. The Under Secretary stated procedures intentionally do not provide timeliness standards for final negligence determinations. Furthermore, the Under Secretary responded that to set an arbitrary standard for completion of the entire negligence determination process would neither enhance decision making nor improve the efficiency of the process.

However, we maintain beneficiaries can face unnecessary financial hardship when restoration of misused funds is predicated on the completion of these internal reviews by VBA when the reviews are not completed timely. VBA performance in conducting reviews of its oversight of beneficiary estates found to have been misused by a Fiduciary has not been timely to date. Our audit determined it took an average of 207 days for negligence reviews to be assigned to P&FS staff, and an average of 68 days to complete the reviews, for the 14 of 17 required negligence reviews in our sample. A timeliness standard for conducting this function would act as a method for VBA management to clarify the relative importance of conducting negligence reviews concerning their oversight of beneficiaries under VBA supervision, provide a benchmark to measure staff performance, generate management information concerning the function use this information to make adjustments when necessary. Absent a timeliness standard, beneficiaries will continue to face undue financial hardships if VBA does not improve the timeliness of processing negligence determinations.

In response to our projections of beneficiary estates at risk due to VBA not taking timely and required actions when misuse is alleged or identified, the Under Secretary requested OIG update projections based on the actual number of cases and amount of total misuse. However, the OIG's projections are based on beneficiary funds at increased risk of misuse due to untimely actions, to include VA-derived estates and annual benefit payments, not solely on the actual misuse identified by VBA. Unless VBA timely completes misuse actions, beneficiary these funds remain at risk.

The Under Secretary stated OIG did not recommend further policy or procedural changes to decrease the incidence of misuse of a beneficiary's VA funds or enhance the identification of fiduciary misuse. However, this was not within the scope of our audit. We conducted this audit to determine whether VBA protects the VA-derived income and estates of beneficiaries who are unable to manage their financial affairs after misuse of beneficiary funds is alleged or identified. An audit of VBA's efforts to decrease the incidence or enhance the identification of misuse may be the subject of future OIG work in this area.

The Under Secretary requested OIG revise a statement in our report related to the removal of fiduciaries that misused funds in cases where the fiduciary served more than one beneficiary. Based on VBA's response to our draft report, we revised the report for one of the cases to address actions VBA has taken since our initial review. However, we did not change our conclusion

or recommendation. We stand by our assertion that, when VBA allows fiduciaries who have committed misuse to continue to serve beneficiaries, VBA places beneficiary funds at an increased risk of misuse. The Under Secretary concurred with our recommendation to revise policy pertaining to fiduciaries that service multiple beneficiaries and has already initiated corrective action. In the other case, the evidence obtained demonstrated the fiduciary continued to serve two beneficiaries after the Fiduciary Hub determined the fiduciary committed misuse related to another beneficiary.

In response to another report statement that prior to November 2013 only misused funds restored by VA were considered a fiduciary's liability to the government, the Under Secretary indicated this statement was inaccurate and requested OIG remove the statement from our report. Prior to November 2013, VA was only required to establish debts to the Government (liabilities) for funds that were restored by VA. In November 2013, VBA issued policy requiring Fiduciary Hub Manager's to request in all cases where misuse was determined, local Station Finance staff to establish debts (liabilities to the Government) for fiduciaries. Therefore, we did not change this statement in the report.

The Under Secretary also requested OIG remove a statement that VBA did not have a timeliness standard for performing collection actions because standards were set up in the November 2013 policy, prior to the start of our audit. However, while timeliness standards for debt collection were established in the November 2013 policy, these standards apply only to finance staff once debts have been established. Timeliness standards for Fiduciary Hub staff to initiate establishing a debt with Finance, however, are not part of this policy and do not exist. If Fiduciary Hub staff does not effectively perform actions to initiate collection of misused funds, these funds may never be recovered. Therefore, we did not change this statement in the report.

The Under Secretary stated VBA's site visit protocol for Fiduciary Hubs was updated in December 2014 to include a comprehensive review of the workflow, procedures, and processes for all misuse actions, including financial reconciliation of debt collection activities and reissuance of misused benefits. This partially addresses Recommendation 4. However, prior to closing this recommendation, VBA must provide us with updated procedures for expanding the Systematic Technical Accuracy Review quality assurance program for the Fiduciary Program and demonstrate comprehensive reviews are being performed.

Appendix D contains the full text of the Under Secretary's response.

## Appendix A Background

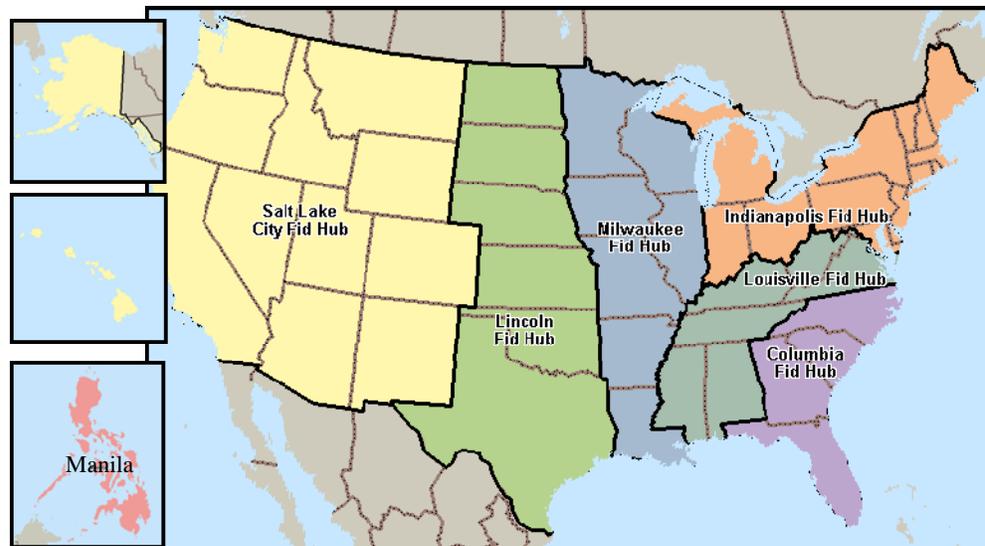
**Fiduciary Program** VA manages the Fiduciary Program under the authority of Title 38 Code of Federal Regulations, Sections 13.100 through 13.111. The Fiduciary Program’s mission is to protect VA beneficiaries who, due to injury, disease, or age, are unable to manage their VA benefits. In cases where medical evidence indicates the beneficiary cannot manage their VA benefits, VA may decide the beneficiary needs the assistance of a fiduciary. VA appoints a fiduciary (individual or entity) to receive and disburse VA benefits on behalf of the beneficiary.

### Organizational Structure

According to congressional testimony, former Secretary Shinseki consistently noted the need for heightened awareness with regard to many of VA’s most vulnerable beneficiaries, who rely on the services of VA-appointed fiduciaries to properly manage their VA benefits. In April 2011, VBA established P&FS to more directly control and implement the Fiduciary Program to focus on the unique needs of these beneficiaries and to strengthen oversight of VA-appointed fiduciaries.

In March 2012, VA completed consolidation of its fiduciary activities into six regional Fiduciary Hubs and one fiduciary activity at the VARO in Manila, Philippines. Under the hub model, the Fiduciary Hub manager for each hub administers VA’s regional fiduciary activities and reports to the Director of the VARO where the hub is located. Figure 1 depicts hub geographic areas of responsibility.

**Figure 1. Fiduciary Hub Alignment Map**



Source: Pension and Fiduciary Service

**Misuse**

Section 6106(b), Title 38, United States Code defines misuse of benefits as any case where the fiduciary receives payment for the use and benefit of a beneficiary and uses any part of that payment other than for the use and benefit of the beneficiary or the beneficiary's dependents. A fiduciary failing to provide timely accountings is also considered potential misuse. Section 6107 requires VA to pay the beneficiary when VA is negligent in the investigation or monitoring of a fiduciary.

**Prior OIG Reviews Related to Misuse Processing**

In 2014, OIG issued the *Review of Alleged Mismanagement at the Eastern Area Fiduciary Hub*. The OIG substantiated the Eastern Area Fiduciary Hub did not properly complete required actions in response to identifying misuse of beneficiary funds. As a result, VBA may be responsible for repayment of approximately \$944,000 to the affected beneficiaries. In 2010, OIG issued the *Audit of the Fiduciary Program's Effectiveness in Addressing Potential Misuse of Beneficiary Funds*, which concluded the program does not consistently pursue delinquent fiduciary accountings and follow up on potential misuse of beneficiary funds.

**Sources of Allegations and Indications of Misuse**

VBA staff may identify potential misuse when performing routine supervision and estate administration. Additionally, allegations and indications of misuse may come from other sources such as beneficiaries, third parties, and other VA staff discovery.

**Misuse Investigations**

According to VBA's Annual Benefits Report for FY 2013, fiduciary personnel conducted 325 misuse investigations, of which 118 fiduciaries were removed based upon a finding of misuse of benefits. VA OIG accepted 24 misuse cases referred by VA for further investigation. During FY 2013, restitution ordered in cases arising from the misuse of benefits by a fiduciary was approximately \$3.6 million.

## **Appendix B Scope and Methodology**

### **Scope**

We conducted our audit work from April 2014 through April 2015 to determine whether VBA protects the VA-derived income and estates of beneficiaries who are unable to manage their financial affairs when misuse of beneficiary funds is alleged. The audit focused on misuse procedures initiated by VBA personnel from January 1, 2013, through December 31, 2013.

Our scope included a universe of 1,089 beneficiaries, which VBA initiated one or more Fiduciary Beneficiary System misuse action Work Product Codes during the period January 1, 2013, through December 31, 2013, excluding Manila, Philippines. The Fiduciary Beneficiary System estate value reported for these beneficiaries totaled approximately \$66 million. We performed site visits to P&FS in Washington, DC; and statistically selected Fiduciary Hubs in Lincoln, NE; Columbia, SC; Louisville, KY; and Salt Lake City, UT.

### **Methodology**

In order to determine whether VBA processed misuse actions timely and according to policy, we first selected a stratified sample of four Fiduciary Hubs based upon the number of beneficiaries with misuse actions initiated during our scope. We then selected a stratified sample of 135 beneficiaries with 319 misuse actions performed by these hubs to review. In addition, we performed the following review procedures.

- Reviewed the Fiduciary Program's policies and procedures manuals and applicable Federal laws and regulations pertaining to processing misuse actions.
- Conducted a site visit to P&FS to obtain an understanding for recent program changes and roles and responsibilities.
- Conducted site visits to four statistically selected Fiduciary Hubs to obtain an understanding for the process and verify errors identified during our review.
- Analyzed data associated with our sample from the Fiduciary Beneficiary System and Virtual VA. Virtual VA is VA's system for storing electronic veterans' claims folders.

### **Fraud Assessment**

The audit team assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this audit. The audit team exercised due diligence in staying alert to any fraud indicators by taking actions such as:

- Interviewing Fiduciary Hub management concerning potential fraudulent activity within the scope of our objectives

- Determining whether staff investigated allegations of misuse when evidence suggested misuse occurred
- Determining whether VBA took appropriate actions to identify the extent of misuse by fiduciaries and mitigated any further damages
- Ensuring VBA referred misuse cases to VA OIG Office of Investigations as required

We did not identify any instances of fraud during this audit.

***Data Reliability***

We used computer-generated data from VA's Fiduciary Beneficiary System, which maintains individual records, workload, and timeliness data for each beneficiary supervised by the Fiduciary Program. To test the reliability of data, we compared key elements from our sample selection, such as file number and name of beneficiary, with source documentation present in Virtual VA. We did not identify any material inconsistencies with the reviewed records. VBA also provided data regarding negligence determination timeliness, which we compared with source documentation presented in Virtual VA and relied on the data for some of our conclusions. As a result, we determined the computer-generated data to be sufficiently reliable to meet the audit objectives and support our recommendations.

***Government Standards***

Our assessment of internal controls focused on those controls relating to our audit objectives. We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require 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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## **Appendix C Statistical Sampling Methodology**

To evaluate VBA's processing of misuse actions, we selected a statistical sample of beneficiaries with misuse actions initiated in VA's Fiduciary Beneficiary System during the period from January 1, 2013, through December 31, 2013, excluding Manila, Philippines. Our sample consisted of beneficiaries associated with four of the six Regional Fiduciary Hubs.

**Population** The population consisted of 1,089 unique beneficiaries with misuse actions initiated in VA's Fiduciary Beneficiary System during the period from January 1, 2013, through December 31, 2013.

**Sampling Design** We used a two-stage sampling approach to select the sample. In the first stage, we grouped the Fiduciary Hubs into two strata based on the amount of misuse actions each hub initiated during the period from January 1, 2013, through December 31, 2013. Then we randomly selected two Fiduciary Hubs from each stratum.

For the second stage of our sampling, we created four additional strata based upon beneficiaries with misuse actions as described in Table 7, on the next page. We then randomly selected 135 beneficiaries out of the population of 787 for these 4 hubs and their 319 associated misuse actions initiated during CY 2013 for review. We designed our sample this way to ensure sufficient, unbiased selection of all misuse actions performed by the selected hubs.

Table 7 shows the population and sample size for each stratum for the selected Fiduciary Hubs.

**Table 7. Population and Sample Size of Beneficiaries by Stratum for the Four Selected Fiduciary Hubs**

Stratum Number	Stratum Definition	Population	Sample Size
1	<ul style="list-style-type: none"> <li>• Beneficiaries with only allegations</li> <li>• Beneficiaries with allegations and other actions such as:                             <ul style="list-style-type: none"> <li>○ Investigations</li> <li>○ Investigations and determinations</li> <li>○ Investigations, determinations, reconsiderations</li> <li>○ Investigations, determinations, reconsiderations, and no misuse is found</li> <li>○ Investigations, determinations, reconsiderations, and misuse is found and the fiduciary was referred to OIG</li> </ul> </li> </ul>	666	84
2	Beneficiaries with OIG referral and/or other actions like investigations, determinations, and reconsiderations	41	18
3	Beneficiaries where no misuse was found and/or other actions like investigations and determinations	43	15
4	<ul style="list-style-type: none"> <li>• Beneficiaries with only investigations</li> <li>• Beneficiaries with only determinations and/or investigations</li> <li>• Beneficiaries with only reconsiderations, and/or investigations and determinations</li> </ul>	37	18
<b>Total</b>		<b>787</b>	<b>135</b>

*Source: VA OIG sample selection performed in consultation with the Office of Audits and Evaluations statistician*

**Weights**

We calculated estimates in this report using weighted sample data. Sampling weights are computed by taking the product of the inverse of the probabilities of selection at each stage of sampling. We used WesVar to calculate population estimates and associated sampling errors. WesVar employs replication methodology to calculate margins of error and confidence intervals that correctly account for the complexity of the sample design.

**Projections and Margins of Error**

Our review indicates VBA did not timely complete required misuse actions to ensure the protection of 758 beneficiaries’ VA-derived estates totaling approximately \$45.2 million and beneficiary payments totaling approximately \$16 million from January through December 2013. VBA also did not restore approximately \$2.1 million in misused funds for

110 beneficiaries as required in CY 2013. Margins of error and confidence intervals are indicators of estimates precision. If we repeated this audit with multiple samples, the confidence intervals would differ for each sample, but would include the true population value 90 percent of the time. For example, in Table 8, we are 90 percent confident that benefit estates at risk are between approximately \$22.1 million and approximately \$68.2 million. For our projection, we used the midpoint of the 90 percent confidence intervals or the range between the lower and upper limits of the confidence intervals.

**Table 8. Statistical Projections**  
(Dollars Are in Millions)

Results	Projection	Margin of Error Based on 90% Confidence Interval	90% Confidence Interval Lower Limit	90% Confidence Interval Upper Limit
Benefit Estates at Risk	\$45.2	+/- \$23.0	\$22.1	\$68.2
Benefit Payments at Risk	\$16.0	+/- \$3.8	\$12.3	\$19.8
Restoration of Misused Funds	\$2.1	+/- \$1.5	\$.6	\$3.6
Beneficiaries (Restoration of Misused Funds)	110	38	71	150

*Source: VA OIG statistical analysis of audit sample results projected over our audit universe*

Note: We multiplied the projected benefit payments at risk by five to project the potential benefit payments at risk from CYs 2014 through 2018. This resulted in a 5-year projection of approximately \$80 million in benefits payments at risk from CYs 2014 through 2018 (\$16.0 million x 5 years). Numbers have been rounded for reporting purposes.

## Appendix D Under Secretary for Benefits Comments

### Department of Veterans Affairs

### MEMORANDUM

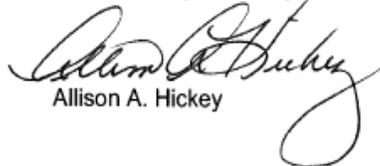
Date: June 26, 2015

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report—Audit of Fiduciary Program Controls Addressing Beneficiary Fund Misuse [Project No. 2013-03922-R9-0206]—VAIQ 7603541

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

1. Attached is VBA's response to the OIG draft report: Audit of Fiduciary Program Controls Addressing Beneficiary Fund Misuse.
2. OIG's findings regarding the removal of two fiduciaries and the dollar amount identified as at risk are not accurate. OIG reported two fiduciaries that misused beneficiary funds were allowed to continue to manage the estates of 48 other beneficiaries valued at approximately \$947,000. As described in VBA's attached response, only one fiduciary representing only one other beneficiary was not removed timely and placed \$488 at risk.
3. OIG's report includes projections of VA funds at risk due to untimely completion of misuse actions for calendar years 2013 and 2014 through 2018. Misuse of benefits is rare in the fiduciary program; historically one-tenth of one percent of beneficiaries are the victims of fiduciary misuse. In calendar year 2013, VBA found that there was misuse of VA benefits of \$5.4 million in 125 cases and in calendar year 2014, \$6.3 million in 144 cases. The actual number of cases and amount of total misuse are significantly less than OIG's projections of VA funds at risk due to the untimely completion of misuse actions.
4. VBA does not agree with the findings as outlined in OIG's Report Highlights section and described in further detail in the body of the report and recommends that all references be revised accordingly.
5. Questions may be referred to Ruma Mitchum, Program Analyst, at 632-8987.

  
Allison A. Hickey

Attachment

Attachment

**Veterans Benefits Administration  
Comments on OIG Draft Report  
Audit of Fiduciary Program Controls Addressing Beneficiary Fund Misuse**

**The Veterans Benefits Administration provides the following general comments:**

The fiduciary program protects the benefits paid to our most vulnerable beneficiaries, who because of disease, injury, or infirmities of advanced age, are unable to manage their Department of Veterans Affairs (VA) benefits. In fiscal year (FY) 2014, VA's fiduciary program protected more than 172,800 beneficiaries, which is a 41 percent increase in the number of beneficiaries from FY 2011 (122,271).

The fiduciary program has experienced considerable change in the last three years, including consolidation of fiduciary activities into six regional fiduciary hubs, policy enhancements, implementation of standardized procedures, and technological advances. During this transition, the program also faced dramatically increasing workload through program growth. The Office of Inspector General (OIG) conducted its audit of the fiduciary program in the midst of this transition.

After fiduciary hub consolidation in 2012, the Veterans Benefits Administration (VBA) began an effort to identify and complete all pending misuse matters, including final misuse determinations, debt establishment, and benefit reissuance. Misuse of benefits is rare in the fiduciary program, approximately one-tenth of one percent of beneficiaries are the victims of fiduciary misuse. However, VBA recognizes that fiduciary misuse of benefits can cause financial hardship for beneficiaries and has taken the following steps to identify and address fiduciary misuse:

- VBA requires fiduciaries to submit detailed financial documents, including bank records, with their annual accountings. This policy allows VA to detect inappropriate movement of funds for the purpose of concealing misuse.
- VBA emphasized the identification and reporting of misuse allegations to fiduciary field personnel, resulting in an increase in documented allegations. VBA centralizes these allegations of misuse within its National Call Centers.
- VBA is aggressively pursuing recoupment of VA benefits in all cases of misuse; this is particularly important in cases where VA is not authorized to reissue benefits. In November 2013, VBA implemented formal procedures for creating a debt against a fiduciary who misused VA benefits, initiating debt collection activities, and referring debts to the U.S. Department of the Treasury for offset against other Federal payments, including Federal tax returns. Through formal guidance and field staff training, VBA significantly increased the number and amount of debts established as the result of fiduciary misuse.

- VBA designed its new information technology (IT) system, the Beneficiary Fiduciary Field System (BFFS), to add misuse controls and reporting of misuse data and protocol timeliness. VBA's previous IT system only maintained limited misuse case data and did not monitor or track the misuse protocol. In addition, VBA continues to build additional internal controls in BFFS to ensure the integrity of debt collection and benefit reissuance data. For example, at the end of June 2015, VBA will release a BFFS enhancement to the existing misuse workflow to improve user interface, data collection, and automation functions.
  - User interface improvements include data organization and naming conventions that clarify case status and user actions during each phase of the misuse process.
  - Data collection enhancements consist of requiring existing fields and creating new fields to facilitate misuse analysis, reporting, and oversight.
  - Rules-based automation expedites debt collection, automatic reissuance, and negligence determination procedures by emailing or assigning activities as required.
- VBA developed a web-based misuse training course designed for the specific roles of fiduciary field personnel. The misuse training is mandatory for all fiduciary staff and provides the knowledge and tools necessary to properly address misuse allegations, conduct investigations, and finalize misuse determinations. In addition to this centralized training effort, onsite training is provided to field fiduciary program personnel on hub-specific misuse topics.
- VBA developed a standardized computer-based training module for fiduciaries that VA hosts on its internet site. VBA also published A Guide for VA Fiduciaries, which is a reference booklet for fiduciaries that helps them understand their responsibilities and perform their duties. These training products aim to educate fiduciaries on beneficiary rights, fiduciary responsibilities, management of funds, and accounting and audit procedures, which will assist in deterring misuse of benefits.
- In July 2014, VBA added a Daily Fiduciary Workload Report to BFFS to include the number of misuse actions outside the timeliness standard to assist field personnel in prioritizing their misuse cases. To ensure accountability of misuse action processing timeliness, VBA added a misuse timeliness performance measure to the FY 2015 Director's Performance Dashboard.
- In December 2014, VBA revised its Fiduciary Site Survey Protocol to include a comprehensive review of the workflow, procedures, and processes for all misuse actions, including financial reconciliation of debt collection activities and reissuance of misused benefits. Currently, VBA is developing procedures for expanding the National Systematic Technical Accuracy Review quality assurance program for fiduciary work to include the tasks associated with investigating fiduciary misuse.
- VA submitted a legislative proposal during the 2016 budget process that would authorize VA to automatically reissue misused benefits in all cases of fiduciary

misuse. Under 38 U.S.C. § 6107, VA must reissue benefits to victims of fiduciary misuse when the fiduciary is not an individual, or when the fiduciary is an individual who manages benefits for 10 or more beneficiaries. In all other cases of fiduciary misuse, VA's authority to reissue benefits is limited to cases in which VA was negligent in its appointment or oversight of the fiduciary. Absent negligence in these cases, the Government's ability to make the beneficiary whole is limited to recoupment from the fiduciary, court-ordered restitution in a criminal or civil action, or recovery under a surety bond that the fiduciary purchased.

- VA submitted a legislative proposal during the 2016 budget process that would authorize an exemption to the Right to Financial Privacy Act (12 U.S.C. § 3401), so that VA will have enhanced access to financial accounts held by all fiduciaries of VA beneficiaries. It provides fiduciary staff with an efficient tool to verify account balances, as well as detect common misuses including pooled accounts, ATM withdrawals, payments for unauthorized expenditures, and checks written to inappropriate payees. This proposal will allow VA to monitor fiduciary activities more effectively, provide VA with the ability to investigate quickly when there are signs of possible misuse, and serve as a deterrent to misuse.
- VBA is developing procedures to initiate a review for potential misuse when an accounting becomes seriously delinquent. Also, VBA is improving the language and increasing the frequency of accounting letters to notify fiduciaries of the importance of submitting timely and correct accountings. As an additional tool for fiduciaries, VBA is developing an on-line accounting assistant to aid fiduciaries in completing their accounting forms.

These initiatives reflect VBA's priority and focus on improving and enhancing our oversight of beneficiaries to ensure their well-being, and conducting oversight of fiduciaries who manage their benefits.

OIG's report includes projections of VA funds at risk due to untimely completion of misuse actions for calendar year 2013 and calendar years 2014 through 2018, as shown below.

Page 2, paragraph 6:

“If VBA does not timely complete misuse actions, beneficiary funds are at increased risk of misuse. We project, during CY 2013, VBA did not timely complete required misuse actions to ensure the protection of 758 beneficiaries' VA-derived estates valued at about \$45.2 million.”

Page 3, paragraph 1, line 1:

“Additionally, unless VBA improves the timeliness of actions in response to allegations and indications of misuse, we project VBA may not adequately protect annual benefit payments to beneficiaries valued at approximately \$16 million, or \$80 million during CYs 2014 through 2018.”

In some misuse cases, the untimely completion of an action may allow the fiduciary continued access to the beneficiary's VA funds, placing these funds at greater risk of misuse. In calendar year 2013, VBA found misuse of VA benefits of \$5.4 million in 125 cases and in calendar year 2014, \$6.3 million in 144 cases. VBA's actual misuse data incorporates any misuse that may have occurred due to a fiduciary's continued access to the benefits under their management. The actual number of cases and amount of total misuse are significantly less than OIG's projections of VA funds at risk due to the untimely completion of misuse actions. VBA requests that OIG update projections throughout the report using actual misuse data.

During the audit, OIG noted that VBA delayed finalization of misuse actions and as a result, beneficiaries may not have received timely reissuance of benefits, as shown below.

Page 8, paragraph 4, line 7:

“Another hub manager stated staff did not restore misused funds because they thought these actions could interfere with potential or concurrent OIG criminal investigations. The OIG's Office of Investigations stated an OIG criminal investigation of a fiduciary should not preclude VBA from performing required internal procedures, such as restoring funds.”

VBA agrees that under 38 U.S.C. § 6107 it must timely reissue benefits to victims of fiduciary misuse, regardless of whether any criminal investigation or action is pending. This statutory obligation is predicated upon completion of VBA's entire misuse protocol, including the misuse investigation, determination, fiduciary notification, and reconsideration upon receipt of new and material evidence. OIG's audit found that the hub had delayed completion of the protocol in cases that OIG had under review for criminal action and consequently delayed potential automatic reissuance of benefits under section 6107(b) or reissuance under section 6107(a) based upon VA negligence. VBA is in the process of developing procedures to continue required misuse protocol actions concurrent with OIG criminal investigations, to include misuse investigation, determination, reconsideration, debt establishment and reissuance of benefits, when applicable.

OIG did not recommend further policy or procedural changes to decrease the incidence of misuse of a beneficiary's VA funds or enhance the identification of fiduciary misuse.

**VBA provides the following technical comments:**

Report Highlights, paragraph 5:

“Remove two fiduciaries that misused funds and allowed them to continue to manage 48 other beneficiaries.”

VBA Comment: This statement is not correct. One of the fiduciaries identified by OIG served 47 beneficiaries at the time it was alleged that the fiduciary fraudulently accepted benefit payments for a deceased beneficiary. In this case, VBA notified OIG of the reclassification of the case as fraud instead of misuse on May 19, 2014. On June 9, 2014, OIG informed VBA that the deceased beneficiary's adult children were arrested on May 7, 2014, for their role in this matter. VBA subsequently

determined that the beneficiary's children had misrepresented the beneficiary's situation to the fiduciary to continue their receipt of funds from the fiduciary for the beneficiary's support. VBA determined that the fiduciary did not misuse or knowingly receive funds fraudulently and the fiduciary continues to serve as a VA fiduciary for VA beneficiaries. The beneficiary's children were criminally prosecuted and ordered to pay restitution for the funds they fraudulently received.

The other instance cited by OIG regards a fiduciary who served three beneficiaries. OIG contends that VBA failed to remove the fiduciary in two of the cases when misuse was found in the third case. However, VBA closed one case the month prior to receiving the allegation of misuse. The second beneficiary continued to be served by the fiduciary who misused benefits. This beneficiary was entitled to VA benefits of \$61 per month. The amount of benefits at risk as a result of VBA not timely replacing a fiduciary in one case is \$488.

This statement should be corrected to read, "Remove one fiduciary that misused funds and allowed them to continue to manage one other beneficiary."

Report Highlights, paragraph 7, line 8:

"Unless VBA ensures actions taken are timely and according to policy, VBA may not adequately protect approximately \$16 million in annual benefits payments or \$80 million during CYs 2014 through 2018."

VBA Comment: VBA does not agree with OIG's projections as documented above in VBA's general comments. VBA requests OIG update projections based on actual misuse data.

Page 2, paragraph 1, line 4:

"VBA also did not replace two fiduciaries who misused beneficiary funds."

VBA Comment: This statement is not correct as documented above in VBA comment regarding OIG's statement in the Report Highlights, paragraph 5. This statement should be corrected to read, "VBA also did not replace one fiduciary who misused beneficiary funds."

Page 2, paragraph 4:

"Replace two fiduciaries that misused beneficiary funds and allowed both to continue to manage the combined estates of 48 other beneficiaries valued at just under \$947,000."

VBA Comment: This statement is not correct as documented above in VBA comment regarding OIG's statement in the Report Highlights, paragraph 5. This statement should be corrected to read, "Replace one fiduciary that misused beneficiary funds and placed \$488 in VA benefits at risk."

Page 2, paragraph 6:

"If VBA does not timely complete misuse actions, beneficiary funds are at increased risk of misuse. We project, during CY 2013, VBA did not timely complete required misuse actions to ensure the protection of 758 beneficiaries' VA-derived estates valued at about \$45.2 million."

VBA Comment: VBA does not agree with OIG’s projections as documented above in VBA’s general comments. VBA requests OIG update projections based on actual misuse data.

Page 3, paragraph 1, line 1:

“Additionally, unless VBA improves the timeliness of actions in response to allegations and indications of misuse, we project VBA may not adequately protect annual benefit payments to beneficiaries valued at approximately \$16 million, or \$80 million during CYs 2014 through 2018.”

VBA Comment: VBA does not agree with OIG’s projections as documented above in VBA’s general comments. VBA requests OIG update projections based on actual misuse data.

Page 3, paragraph 11, line 3:

“Prior, only misused funds restored by VA were considered a fiduciary’s liability to the government.”

VBA Comment: This statement is not accurate and should be deleted. Prior to release of Fiduciary Misuse Debt Processes, fiduciary program procedures instructed fiduciary personnel to initiate debt collection activities, per Fiduciary Program Manual (FPM), 5.D.14.e. “When misuse is confirmed, notification will instruct the fiduciary to submit repayment to the Fiduciary Activity of jurisdiction, with funds payable to the Department of Veterans Affairs.”

Page 4, first sentence:

“VBA did not have a timeliness standard for performing collection actions.”

VBA Comment: This statement is not accurate and should be deleted. Prior to the audit, in November 2013, VBA clarified debt collection procedures and established timeliness standards and responsibilities.

Page 8, paragraph 2, line 5:

“In addition, we identified two fiduciaries VBA determined misused beneficiary funds who continued to manage the estates of 48 other beneficiaries.”

VBA Comment: This statement is not correct as documented above in VBA’s comment regarding OIG’s statement in the Report Highlights, paragraph 5. This statement should be corrected to read, “In addition, we identified one fiduciary who VBA determined misused beneficiary funds and continued to manage the funds of one other beneficiary.”

Page 10, paragraph 4, line 2:

“However, we identified two fiduciaries in our sample who VBA determined each misused a beneficiary’s funds. Yet, VBA allowed both to continue to manage the combined estates of 48 other beneficiaries. The 48 beneficiaries’ estate values totaled just under \$947,000.”

VBA Comment: This statement is not correct as documented above in VBA comment regarding OIG statement in the Report Highlights, paragraph 5. This statement should be corrected to read, “However, we identified one fiduciary in our sample who VBA determined misused a beneficiary’s funds. Yet, VBA allowed the fiduciary to continue to manage the estate of one other beneficiary entitled to receive VA benefits of \$61 per month. The amount of benefits at risk as a result of VBA not timely replacing a fiduciary in this case was \$488.”

Page 10, paragraph 5, line 3, and paragraph 6:

“However, in the case of a fiduciary who manages multiple beneficiaries, VBA policy does not require hubs remove the fiduciary from all assigned beneficiaries.”

“P&FS officials stated they would expect staff to remove all beneficiaries from a fiduciary for whom staff confirmed misused funds. When VBA allows fiduciaries who have committed misuse to continue to serve beneficiaries, VBA places additional beneficiaries’ care and funds at an increased risk of misuse.”

VBA Comment: These statements are not accurate and should be removed. Currently, for any determination that misuse occurred, VBA is required to conduct a special unscheduled onsite review if the fiduciary is a multi-fiduciary regardless of the number of cases managed, per FPM, 5.D.12.g. During any onsite review, when misuse or potential misuse is discovered, VBA must initiate appropriate action, including take immediate action to replace the fiduciary (FPM, 6.B.8.c.) and make a referral regarding the need for a misuse investigation for each case of potential misuse

(FPM, 6.B.7.a.).

Page 11, paragraph 4, line 4:

“A review of a September 2014 Site Visit protocol indicated most of the misuse actions were included as part of the reviews; however, the protocol did not specifically address whether the team would determine if funds were restored to beneficiaries when applicable.”

VBA Comment: This statement is outdated as the Fiduciary Site Survey Protocol was updated in December 2014, to include a comprehensive review of the workflow, procedures, and processes for all misuse actions, including financial reconciliation of debt collection activities and reissuance of misused benefits. A copy of this protocol was sent to the OIG, prior to the issuance of this draft report.

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

Recommendation 1: We recommended the Under Secretary for Benefits revise policy to require timely removal of a fiduciary from all assigned beneficiaries when an individual case of misuse has been determined.

VBA Response: Concur. VBA’s current practice is to remove a fiduciary from all assigned beneficiaries when an individual case of misuse has been determined. For

any determination that misuse occurred, VBA is required to conduct a special unscheduled onsite review if the fiduciary is a multi-fiduciary, regardless of the number of cases managed, per Fiduciary Program Manual (FPM), 5.D.12.g. During any onsite review, when misuse or potential misuse is discovered, VBA must initiate appropriate action, including take immediate action to replace the fiduciary (FPM, 6.B.8.c.) and make a referral regarding the need for a misuse investigation for each case of potential misuse (FPM, 6.B.7.a.).

VA's proposed rules, which were published at 79 Fed. Reg., January 3, 2014, would clarify current practice regarding removal of fiduciaries and bar the appointment or further service of any person or entity that misused or misappropriated VA benefits while serving as a beneficiary's fiduciary.

VBA requests closure of this recommendation.

Recommendation 2: We recommended the Under Secretary for Benefits retroactively establish debts for all fiduciaries who VBA determined misused beneficiary funds during calendar year 2013.

VBA Response: Concur. VBA is finalizing procedures to perform monthly reconciliation of misuse debt collection and reissuance of benefit activities. Each month, Pension and Fiduciary (P&F) Service will provide a reconciliation list for field use in performing the necessary actions for the establishment of all debts in fiduciary misuse cases, including retroactive establishment of debts for fiduciaries who misused beneficiary funds during CY 2013.

Target Completion Date: September 30, 2015.

Recommendation 3: We recommended the Under Secretary for Benefits revise policy to include clear timeliness standards from the time the hubs determine misuse occurred to the time Pension and Fiduciary Service completes the negligence determination.

VBA Response: Non-concur. Under current law, VA's authority to reissue benefits to most victims of fiduciary misuse is limited to cases in which VA was negligent in its appointment or oversight of the fiduciary. To set an arbitrary standard for completion of the entire negligence determination process would neither enhance decision making nor improve the efficiency of the process. The negligence determination process, as performed by P&F Service, is not a linear process and does not lend itself to the timeliness standard recommended by OIG. On August 12, 2013, P&F Service issued 21PF Circular 13-02, *Negligence Determinations*, to provide the procedure used to determine whether VA is negligent in certain cases, including timelines for completion of various steps involved in determining negligence. VBA places a high priority on completing negligence determinations, which frequently require additional actions by the fiduciary hubs and application of the negligence standard to the facts of each case. In some cases, additional hub action may require a review of the misuse investigation, a revised misuse determination and the corresponding notification, and reconsideration actions.

Each negligence case is complex and unique, and although the circular specifies timelines for individual steps in the determination process, the circular intentionally does not provide a timeliness standard for final determination.

Recommendation 4: We recommended the Under Secretary for Benefits ensure the processing of all misuse actions are incorporated into quality reviews of Fiduciary Program operations.

VBA Response: Concur. VBA is developing procedures for expanding the National Systematic Technical Accuracy Review quality assurance program for fiduciary work to include the tasks associated with investigating and determining fiduciary misuse.

Target Completion Date: December 31, 2015.

## **Appendix E Office of Inspector General Contact and Staff Acknowledgments**

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OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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Acknowledgments	Timothy Crowe, Director Jessica Blake Debra Cato Matthew Hammond Kristopher Kasey Anne Mullett Bryan Shaw Nelvy Viguera Butler Berry Ward
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