

**STATEMENT OF
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
HEARING ON
THE AID AND ATTENDANCE PROGRAM
OF THE DEPARTMENT OF VETERANS AFFAIRS
JUNE 6, 2012**

Mr. Chairman, Ranking Member Corker, and Members of the Committee, thank you for the opportunity to discuss the Department of Veterans Affairs (VA) Aid and Attendance (A&A) program and Office of Inspector General (OIG) investigations of allegations of criminal violations in charging for certain services and in hiding assets. Due to the limitations in current Federal law, OIG investigations have not resulted in prosecutions in these areas. However, the OIG continues to investigate fiduciaries who prey on the most vulnerable veterans through embezzlement, fraud, theft, and conspiracy, and veterans who make false statements in connection with these benefits.

BACKGROUND

VA's pension program provides a financial benefit to wartime veterans with limited or no income, who are age 65 or older; or under 65 and are permanently and totally disabled, a patient in a nursing home, or receiving Social Security disability benefits. Pension benefits for disability involve non-service connected disabilities; disabilities resulting from military service are compensated through VA disability compensation, which is not means-based. Veterans who are more seriously disabled may qualify for additional A&A or housebound benefits. Surviving spouses and dependent children may also receive pension benefits. Many VA pensioners have been determined to be incompetent and thus have fiduciaries appointed to manage their financial affairs. Although the OIG was asked to discuss specifically A&A benefit issues, the following discussion applies to all VA means-based pension benefits.

Veterans seeking a pension apply for benefits using VA Form 21-526, *Veteran's Application for Compensation and/or Pension* online, which requires the veteran to self-report sources of recurring monthly income, such as Social Security, civil service, railroad retirement, military retirement pay, etc., and other income in the form of cash, bank accounts, interest, retirement accounts, stocks, bonds, value of business assets, investment real estate, and other assets. As VA states on its public Website: "All net worth should be reported and VA will determine if a Veteran's assets are of a sufficient amount that the claimant could live off these assets for a reasonable period of time. The Pension benefit is a needs-based program and is not intended to protect substantial assets or build up an estate for the benefit of heirs." (VA Website, (<http://www.vba.va.gov/bln/21/pension/vetpen.htm>), Veterans Pension Program, "What about Net Worth?") However, despite being a means-tested program, VA pension programs currently have no look-back or penalty provisions that prohibit veterans from

hiding assets prior to applying for, or qualifying for, benefits. In contrast, Medicaid, another Federal means-based benefits program, has such provisions to prevent claimants from diminishing their income and assets to establish eligibility for benefits.

The instructions for the pension application form state:

You must disclose all financial transactions that involve a transfer of assets, even if the transaction occurred prior to the date of your application for VA pension. A gift of property or a sale below the property's value to a relative residing in the same household does not reduce net worth. Likewise, a gift of property to someone other than a relative residing in your household does not reduce net worth unless it is clear that you have relinquished all rights of ownership, including the right to control the property. (Instructions for VA Form 21-526, p. 4.)

The form itself, however, does not ask for anything beyond current income or net worth, using present tense and providing no spaces to include transferred assets. For purposes of this statement, we will refer to disposing assets for less than fair market value for whatever reason as “hiding” assets. Consequently, a veteran could honestly complete a VA benefits application immediately after hiding assets in order to demonstrate to VA he or she had insufficient means. Without a look-back provision and an accompanying penalty provision to delay or reduce benefits of veterans who have hidden assets, veterans have a financial incentive to hide assets to obtain VA benefits and still maintain a corpus in their estate to support them or leave to their heirs. Analogously, individuals or companies who counsel, advise, assist, or charge veterans to enable hiding assets have not broken any laws and are not subject to criminal prosecution.

In addition to the applicable pension law, VA's administration of the program introduces additional variables as to whether the program meets the intended purposes of providing support to the appropriate veterans. VA relies on the self-reported income and net worth of veterans who apply for pension benefits and performs limited verification of the reported information. VA does not require corroboration of information reported on the application, such as bank statements or tax returns. In addition, VA only requires verification of ongoing eligibility for pension benefits in limited circumstances. Only recipients who have previously reported income other than Social Security income must complete an annual Eligibility Verification Report (EVR). The EVR form, like the application form, does not contain spaces to report private retirement income, asset transfers, trusts, etc., and VA does not routinely seek independent verification of the EVR. VA's Income Verification Match¹ (IVM) only identifies some income and the information returned is generally years old. Due to concerns over privacy, claims processors of pension applications do not have access to fiduciary field

¹ The IVM is an annual computer match conducted by VA to compare Internal Revenue Service (IRS) and Social Security Administration (SSA) earned income and unearned income data with income reported by certain pension recipients to determine whether the recipients have any unreported income that impacts their eligibility for VA benefits.

exam reports in VA's electronic case management system, which may reveal asset transfers or unreported assets. Ambiguities in policy guidance provided to employees administering the pension program on what constitutes ownership and control of an asset can also contribute to inaccurate and inconsistent eligibility determinations.

OIG INVESTIGATIONS

On March 16, 2012, the OIG provided the Committee documents related to investigations conducted on the A&A program. During the past 12 years, OIG's Office of Investigations has opened fewer than 20 investigations involving criminal allegations of charging for certain services, charging illegal fees, and hiding assets in the A&A program. None of the cases has resulted in criminal prosecution because of current Federal law. The cases involve four common patterns of allegations:

- The veteran has been solicited or charged fees from an outside entity for financial planning or management, often with the express goal of hiding assets from VA to establish eligibility for pension benefits. Companies openly market these services. In a typical arrangement, for a fee, a financial planner establishes an irrevocable trust—so the veteran can honestly state that he or she has relinquished control over the funds in the trust—for the purpose of providing support to the veteran. Since the trustee, usually a family member or friend, has control over the trust assets, the veteran has no entitlement to, for example, a monthly payment from the trust that he or she would have to report on the VA pension application. Another method of hiding assets is to give them away or sell them at less than fair market value prior to applying for VA benefits. As these practices are not illegal, there is no criminal violation for the OIG to investigate or pursue. Allegations of excessive charges and unfulfilled service promises are private matters between the veteran and the company, over which OIG has no jurisdiction.
- Individuals or companies may charge veterans fees for completing VA applications or other paperwork. While this practice is illegal under Title 38 United States Code, Section 5905, it is rarely prosecuted because it is a misdemeanor offense, the low dollar amounts (usually in the hundreds of dollars) are below prosecutive thresholds and other cases create higher demands for prosecutive resources. In addition, the perpetrators are usually clever enough to disguise these fees among other fees for planning, management, and care services. OIG has not obtained prosecution of any illegal fees in A&A program cases.
- The veteran is alleged to have hidden assets from VA. Since the current law permits this practice, which we have confirmed with the VA Office of General Counsel, there is no illegal or criminal conduct for OIG to pursue.

- Veterans agree to pay companies or individuals to provide home care or similar services for them and the provider fails to provide the required services or overcharges for services. VA does not choose, pay, or monitor the provider, and has no authority to do so. This purely private contractual dispute between the veteran and the provider is also outside the OIG's jurisdiction to investigate and seek prosecution. The veteran has private remedies under contract law, and may even have criminal fraud recourse with state or local authorities, but there is no nexus to OIG oversight jurisdiction.

The OIG has jurisdiction to investigate and seek criminal prosecution of criminal violations involving VA programs and operations, including the pension and A&A programs. The OIG regularly investigates allegations of, and has obtained successful prosecution of, false statements and fiduciary fraud. For example, if a veteran knowingly and willfully falsifies, omits, or under-represents his or her income or net worth on the application for VA benefits, this is a criminal violation of Title 18 United States Code, Section 1001.

The OIG also focuses on fraud by fiduciaries. A fiduciary, appointed to protect an incompetent veteran's assets and utilize those assets for the benefit of the veteran, who abuses that trust and preys on the most vulnerable veterans, will be charged with criminal embezzlement, conspiracy, theft, or fraud. The difference between these cases and the discussion above is that in the latter a clear standard for criminal misconduct exists that can be used for investigation and prosecution. The OIG will continue to work these cases and will include other areas involving VA benefits as the law allows.

CONCLUSION

Due to the limitations of current law in not providing look-back or penalty provisions for hiding assets, the OIG cannot investigate or seek prosecution of any criminal violations in the A&A program because hiding assets and charging veterans for assistance in hiding assets are not illegal acts. While some individuals or companies may be charging illegal fees for applying for VA benefits, the misdemeanor offense and low dollar amounts involved have not produced prosecutions. Finally, overcharging or not performing privately contracted home care services to veterans receiving A&A or housebound benefits or any veteran is not a program or operation of VA within the oversight jurisdiction of OIG.

Thank you, Mr. Chairman, for the opportunity to submit this statement.