

**VA'S FIDUCIARY PROGRAM:
ENSURING VETERANS' BENEFITS
ARE PROPERLY MANAGED**

HEARING
BEFORE THE
SUBCOMMITTEE ON DISABILITY
ASSISTANCE AND MEMORIAL AFFAIRS
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U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DISABILITY ASSISTANCE & MEMORIAL
AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 360, Cannon House Office Building, Hon. Morgan Luttrell (chairman of the subcommittee) presiding.

Present: Representatives Luttrell, Ciscomani, Self, Pappas, Deluzio, McGarvey, and Ramirez.

OPENING STATEMENT OF MORGAN LUTTRELL, CHAIRMAN

Mr. LUTTRELL. The subcommittee will come to order. Good morning. Welcome back, Mr. Friel. Good to see you again as always. Ms. Van Haeren, how are you?

Ms. VAN HAEREN. I am doing well.

Mr. LUTTRELL. I like to mix things up a little bit.

Ms. VAN HAEREN. Great.

Mr. LUTTRELL. Today we will be taking a closer look at the VA's Fiduciary Program. The Fiduciary Program at VA is responsible for appointing and overseeing the men and women who assist veterans and other beneficiaries that are unable manage their VA benefits on their own. Over 67,000 veterans use fiduciaries. The last time the committee looked at the program was in 2015. I believe it is time that we take another look at this program to ensure it is meeting the needs of today's veterans' community.

In Fiscal Year 2022, the program oversaw \$2.6 billion in benefits. A program this size requires effective oversight to ensure that beneficiaries are being taken care of, especially because these beneficiaries are typically our Nation's most vulnerable veterans. The subcommittee has also heard directly from VA regional offices' employees who are directly responsible for the oversight of the fiduciaries and beneficiaries about potential instances of fraud and misuse in the program.

A fiduciary should be using a beneficiary's VA funds for the beneficiary's care or the care of the dependents. VA should be doing a better job of preventing, investigating, and remedying these instances of fraud and misuse to protect veterans first and foremost. That being said, some of these instances are not the result of mali-

cious or on the part of fiduciaries, but simply because Veterans Affairs has not provided family members acting as fiduciaries proper access to support resources they need to properly manage the beneficiary's benefits.

Frankly, the program seems somewhat disorganized and we need to hear from the VA about how they are going to fix it. To that end, we will be hearing from our Office of Inspector General (OIG) on the recommendations on how VA can better oversee the Fiduciary Program as well as updates from VA on what steps they are taking to do so. Again, I would like to thank everyone for being here today. I am looking forward to our conversations about what we can do to prevent the misuse of veterans' hard-earned benefits, enhance the VA Fiduciary Program, and ensure the misused funds are returned to the veterans they earned in a timely way. With that, I yield to the Ranking Member Pappas for opening statement.

OPENING STATEMENT OF CHRIS PAPPAS, RANKING MEMBER

Mr. PAPPAS. Well, thank you Mr. Chairman, and I appreciate you holding this hearing, and thank you to our panelists for joining. VA's Fiduciary Program has a long history dating back to its establishment in the 1930's. The program provides oversight and protection of VA's most vulnerable beneficiaries. These are veterans and survivors who are unable to manage their VA benefits or their own affairs. The Fiduciary Program is incredibly important to our Nation's veterans and their families. Fiduciaries are trusted to manage VA benefits in the best interests of these beneficiaries. Accordingly, Pension and Fiduciary Services' oversight of VA appointed Fiduciaries to ensure the beneficiaries' needs are met is absolutely vital.

However, over the years, the program has faced persistent challenges, including instances where fiduciaries entrusted with veterans' finances have breached their duty. This has led to financial hardship and distress for some beneficiaries, highlighting the need for robust oversight and accountability within the program. As ranking member of the subcommittee, it is my job to ensure that the Fiduciary Program is taking every measure and has the support necessary to fully safeguard beneficiaries' assets.

At today's hearing, we will seek to assess whether further congressional action is needed to ensure that our most vulnerable veterans are afforded the highest level of protection possible. Recently, OIG has issued several reports on the Fiduciary Program. These underscore the benefits of the program, but they also point out deficiencies, wait times and misuse of benefits that have hampered effective oversight of the program.

For example, an OIG report published in 2021 brings to light issues of timeliness in Veterans Benefits Administrations (VBA's) Fiduciary Program operations. Delays in determinations and reimbursements of misused funds pose a significant challenge. To address this, the OIG recommends that VA implements streamlined procedures, enhanced training, and advanced tracking mechanisms. These measures are essential for bolstering the program efficacy and safeguarding the financial interests of veterans.

A second report published in 2023 highlights a critical concern within the program, the timely return of funds belonging to de-

ceased beneficiaries. The issue at hand underscores the necessity for rigorous verification processes and suggests that improved protocols and technology integration can also enhance the program's oversight, ensuring a more efficient and responsible handling of beneficiaries' finances.

These two reports are concerning to me. I look forward to hearing more about VA's progress toward implementing the OIG's recommendations. Further, my staff has heard from numerous fiduciary hub employees about insufficient authority to ensure beneficiaries are receiving their benefits or are properly being taken care of. VA employees also have noted that guidelines within the program are too broad and are left up to interpretation, making it difficult for these employees to do their jobs.

The program is particularly vulnerable to fraud and abuse. It is VA's job to prevent that to the extent possible. It should be noted that the problems around fraud and misuse are not representative of all fiduciaries. The vast majority of fiduciaries are doing an honorable and honest job taking care of our veterans who cannot handle their affairs, many of whom are family members themselves. The need for robust oversight is clear and cannot be overstated.

I am interested in hearing more from our witnesses about the present challenges and concerns facing this program, how we might work together to address them, especially how to improve the reimbursement of beneficiaries when fiduciaries misuse VA funds. We must leave here today with a better understanding of where VA currently stands in the management of this program for our most vulnerable veterans and what further assistance Congress can provide in these efforts. To that end, Mr. Chairman, I appreciate you holding this hearing, and I yield back my time.

Mr. LUTTRELL. Thank you, Mr. Pappas. Our witnesses today, Mr. Friel from the Veterans Affairs, the Deputy Director of Pensions and Fiduciary Services. Also, we have with us today Ms. Van Haeren. Did I say that correctly, ma'am?

Ms. VAN HAEREN. Yes.

Mr. LUTTRELL. Who is the Director of Claims and Fiduciary Division for the Office of Audits and Evaluations from the Office of Inspector General. Would you both please rise? I ask the witnesses on our first panel to stand physically and raise your right hand.

[Witnesses sworn.]

Mr. LUTTRELL. You may be seated. Thank you. Let the record reflect that the witnesses have answered in the affirmative. Thank you all again for being here today. Mr. Friel, you are now recognized for 5 minutes to deliver your opening statement.

STATEMENT OF KEVIN FRIEL

Mr. FRIEL. Chairman Luttrell, Ranking Member Pappas, and distinguished members of the subcommittee, thank you for inviting me here today to discuss the Department of Veterans Affairs Fiduciary Program and the vital role we serve in protecting vulnerable beneficiaries. Mr. Smith sends his regrets that he is unable to attend today.

In August 2023, Legal Instrument Examiner Terry Smith of the Salt Lake Regional Office received a call from a veteran in our Fiduciary Program. Her mother was her appointed fiduciary but was

in the hospital with a poor prognosis. The veteran requested funds to visit her mother before she passed. Mr. Smith spoke to Field Examiner Roland Parrish.

Mr. LUTTRELL. I am sorry, Mr. Friel, can you move closer to the microphone?

Mr. FRIEL. Yes, sorry about that, sir.

Mr. LUTTRELL. We can barely hear you. Thank you, sorry.

Mr. FRIEL. You are welcome, sir. The veteran requested funds to visit her mother before she passed. Mr. Smith spoke to Field Examiner Roland Parrish, who personally drove to the bank with a fiduciary agreement to withdraw funds so that she could be with her mother in her final hour. Concurrently, Salt Lake City staff began a successor fiduciary appointment process to coordinate uninterrupted benefit payments to the veteran through her time of need. Mr. Smith and Mr. Parrish demonstrated through action the highest values of VA; veterans are at the heart of everything we do.

These employees' commitment and advocacy helped to offer the veteran peace and support in time of need and ensure her dignity going forward through prompt appointment of a new fiduciary. I am proud to represent them and more than 1,200 VBA staff who work every day to protect our most vulnerable veterans and survivors.

With values demonstrated by our Salt Lake City fiduciary hub in mind, I would like to describe key tenets of the Fiduciary Program, whose mission is to protect the over 104,000 beneficiaries who are unable to manage their VA benefits because of injury, disease, infirmities of age, or being under the age of majority. The decision to appoint other person to manage a beneficiary's funds is never taken lightly. VA always presumes competency, unless clear and convincing evidence states otherwise.

A potential fiduciary must be qualified, willing to serve, and the appointment must serve the beneficiary's interest. VA thoroughly investigates the proposed fiduciary's criminal background and credit history to assess suitability. VA will also assess the input and needs of the beneficiary and their dependents. There are approximately 83,000 fiduciaries who are responsible for ensuring that the beneficiary funds are used for the sole purpose of meeting the needs, security, and comfort of the beneficiary and their dependents.

Except in certain circumstances, fiduciaries are required to submit either an annual accounting or a biannual fund usage report. VA investigates any credible allegation or finding of misuse of VA funds swiftly to protect all beneficiaries. VA will remove a fiduciary from service and appoint a successor if the allegation of misuse is substantiated, if the fiduciary refuses to respond to VA's auditing requirements, is unwilling to serve, or is found unfit through annual criminal background investigations.

In Fiscal Year 2022, VA conducted more than 2,000 misuse investigations and removed 817 fiduciaries. VA referred 25 cases to the Office of Inspector General for investigation, of which 15 resulted in conviction, with more than \$1.7 million in restitution ordered to the beneficiaries.

Since the establishment of the Independent Pension and Fiduciary Service in 2011, VA consolidated all fiduciary activities to six

regional fiduciary hubs, revised its regulations to align VA policy with current law, clarified the rights of beneficiaries, and refined the roles that VA and fiduciaries play to ensure that VA monetary benefits are managed in the best interest of the beneficiaries.

In Fiscal Year 2021, the Fiduciary Program implemented a comprehensive plan to reduce unnecessary intrusiveness in the lives of VA beneficiaries and their families, while also improving oversight. For example, VA streamlined the interview and investigation process to improve VA's fiduciary appointment timeliness and access to benefits. As of August 31, 2023, VA reduced the average days awaiting an initial appointment field exam from 38 days at the end of Fiscal Year 2020 to 26 days as of August 31, 2023. VA also migrated from a legacy IT system to the Veterans Benefit Management System, allowing for more effective delivery of Fiduciary Program services with more improvements planned.

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today to discuss these valuable services to veterans and their survivors. I am prepared to respond to any questions you or other members of the subcommittee may have.

[THE PREPARED STATEMENT OF KEVIN FRIEL APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Mr. Friel. The written statement of Mr. Friel will be entered into the hearing record. Ms. Van Haeren, you are now recognized for 5 minutes to deliver your opening statement.

STATEMENT OF LISA VAN HAEREN

Ms. VAN HAEREN. Thank you. Good morning, Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee. Thank you for the opportunity to discuss the OIG's oversight of VBA's Fiduciary Program.

Given VA's commitment to serving vulnerable veterans and the large amount of money dispersed by the Fiduciary Program, the need for effective oversight is vitally important. Our recent reviews have found gaps in VBA's program management and internal oversight processes. These gaps have contributed to delays in determining whether a fiduciary is warranted, reimbursing veterans when their benefits have been misused, and issuing deceased veterans' VA derived funds to their heirs or back to VA. In addition to this oversight work, the OIG's Office of Investigations is involved in criminal cases to help deter and investigate fiduciary fraud to reduce its impact on victims.

In a report released last month, we substantiated allegations that VA derived funds were not always promptly dispersed to the deceased beneficiary's heirs or returned to VA. We focused on two fiduciaries who had not released the funds, with delays in distribution ranging from 19 months to 12 years. There is not a statute or VA regulation that sets a timeliness standard for disbursement. However, as stewards of taxpayer dollars, VA should be promptly reclaiming funds when there is no valid will or heir to receive them. Heirs also should not have to wait excessive periods to receive funds to which they are entitled.

Although not statutorily required, VBA is not prohibited from verifying funds are disbursed due to deceased beneficiaries' estates. Such verification would not only ensure heirs receive funds to which they are entitled, it would also help identify funds that must be returned to VA.

The OIG made three recommendations to VBA to clarify their internal procedures, implement stronger electronic controls, and better track workload. These recommendations are not yet implemented, and we will monitor VBA's progress through the follow-up process. We also recommended VBA consider reimplementing the procedure to verify that funds are dispersed to veterans' heirs. VBA responded that they did consider the recommendation, but do not intend to implement the change since there is no legal requirement to do so. We closed this recommendation because while we consider it a best practice, VBA is ultimately responsible for making this management decision.

Our prior oversight also showed that insufficient monitoring and program management not only led to significant delays in essential Fiduciary Program processes, but also increased the risk that beneficiaries would be vulnerable to fraud, theft, or financial loss. In 2020, while assessing the merits of a Fiduciary Program hotline allegation, we discovered VBA had not finalized a veteran's incompetency proposal despite receiving medical evidence that the veteran was not capable of managing their VA benefit payments. We expanded our review to identify broader process issues and found that over 4 years, VBA had not finalized incompetency proposals for over 200 beneficiaries. We provided VBA with these records so they could determine whether further action was needed.

In a July 2021 report, we examined whether program staff properly addressed allegations of benefit payments being misused by fiduciaries and if VBA reimbursed beneficiaries as required. Our team found instances of significant wait times for staff to make determinations and reimbursements. For example, one beneficiary waited 19 months for staff to complete a negligence determination. VBA then reimbursed the beneficiary over \$20,000.

We concluded that VBA should consider whether the average number of days taken to complete each type of misuse action is acceptable. We also found VBA needed to better monitor all follow-up actions on reported misuse as they were unaware of many of the unprocessed negligent determinations we identified. We made two recommendations to ensure prompt completion of determinations and reimbursements. In response, VBA implemented new technology that allowed for electronic monitoring of these processes. Both recommendations have been closed as implemented.

OIG teams have found that the Pension and Fiduciary Service should ensure effective program management and internal monitoring processes are in place. This, in turn, will help beneficiaries receive the program support to which they are entitled. The OIG is committed to continuing its oversight work of the Fiduciary Program and criminal investigations into potential fiduciary fraud that affects program beneficiaries and hinders the most effective use of taxpayer dollars. Mr. Chairman, this concludes my statement, and I would be happy to answer any questions you or other members of the subcommittee may have.

[THE PREPARED STATEMENT OF LISA VAN HAEREN APPEARS IN THE APPENDIX]

Mr. LUTTRELL. Thank you, Ms. Haeren. The written statement of Ms. Haeren will be entered into the hearing record. We will move on to questioning. I recognize myself for 5 minutes.

Ms. Van Haeren, is it true that VA does not monitor or track with any electronic controls whether a fiduciary returns the funds of a deceased beneficiary?

Ms. VAN HAEREN. Yes. We found monitoring issues when it came to specific tracking of the dispersed funds to veterans' heirs. This was a best practice that we recommended that they implement, or reimplement. This was once a requirement.

Mr. LUTTRELL. No longer?

Ms. VAN HAEREN. No longer.

Mr. LUTTRELL. Mr. Friel, is not the VA supposed to ensure that taxpayer dollars are going where they are supposed to go? Is not VA a steward of taxpayer dollars? If that is the case, why does not the VA make sure that a fiduciary gives a deceased beneficiary funds to the veteran's heirs or back to the VA?

Mr. FRIEL. Thank you for that question. As it relates to back to the VA, we do a notification of death. We will institute a requirement for a—

Mr. LUTTRELL. If you get a notification of death?

Mr. FRIEL. When we get notification of death.

Mr. LUTTRELL. What happens if you do not get a notification, which—

Mr. FRIEL. Well, typically, sir, we have installed several different mechanisms within our systems to get the notifications of death. We have a direct feed from Social Security so that we get their indications of notices of death so we can activate them. We also work with Veterans Health Administration (VHA) if the veteran happened to die in a VA medical facility so we can activate it there. We are constantly seeking other opportunities to get notifications of death. We are dependent upon third party notification because we do not have the mechanism to be, you know, there all the time to see what is happening. We also require, you know, look to the fiduciary to provide us notice of death when the beneficiary passes away.

Once we have the notice of death, we will determine whether or not heirs have been identified or if there is a will for the estate. In those circumstances, we have the fiduciary will establish a trust so that the funds are available basically on the decisions of the estate and whether there is a probate court involved and the decisions they made about how the funds should be distributed. If the funds need to be returned to VA, then we work with the fiduciary to have those funds returned to VA. We have—

Mr. LUTTRELL. Just so I understand, but you do not track the program of work on notice of death. The VA does not—

Mr. FRIEL. We do track the program.

Mr. LUTTRELL. You do?

Mr. FRIEL. Yes, we do.

Mr. LUTTRELL. Are you 100 percent sure on that one, sir?

Mr. FRIEL. Sir, yes, sir. As I said, we have mechanisms in place for notices of death, right? When the first notice of death is triggered within our systems, whether it be we receive information

from Social Security, whether we receive a call from a third party letting us know that the beneficiary is deceased, whether we receive something from VHA, we have numerous avenues. We get notifications of an individual—of a potential veteran's death.

We will then trigger that within our system. Within Veterans Benefits Management System (VBMS), what happens now is that creates a trigger to the fiduciary hub, and the fiduciary hub is given notification. They create a task to then determine whether or not an accounting needs to be done and if we have information about to determine where the funds will go. If the funds are to escheat to the state, then VA will reclaim those funds. If the funds are to be distributed to an heir or have to go through probate court then we have the fiduciary will establish a trust so that the funds will be available.

Mr. LUTTRELL. Okay.

Mr. FRIEL. I would say in—I am sorry, sir.

Mr. LUTTRELL. I am tracking.

Mr. FRIEL. Okay.

Mr. LUTTRELL. Why are not fiduciary cases in the National Work Queue (NWQ) for assignment and tracking? I will give you a little grace, the National Work Queue is, I would not say a dumpster fire, but it has its issues. The amount of money that is going out the door from VA through our fiduciaries is substantial. I am curious why it is not a part of the National Work Queue.

Mr. FRIEL. Sir, with the recent migration into VBMS, we have been in VBMS for about 2 years now. Prior to that, we had a beneficiary fiduciary field system which did not allow for us, it definitely restricted us on the data flow and the data sharing. Now that we are in VBMS, all the records are available.

We are working with our NWQ partners as well as Office of Information and Technology (OI&T) to see about the potential to move the fiduciary workload into an NWQ type environment. However—

Mr. LUTTRELL. When you say see, what do you mean by that?

Mr. FRIEL. Excuse me?

Mr. LUTTRELL. You said, we will see if we are able to do that. What does that mean?

Mr. FRIEL. Well, there are certain restrictions within the Fiduciary Program that would limit what we can do within NWQ. For example—

Mr. LUTTRELL. Is that legislation?

Mr. FRIEL. No, it is not, sir. It has to do with the way that the work is distributed within the field examiners, right? Field examiners are regional or have specific areas that they are responsible for. The NWQ workload would not benefit. We distribute that workload via—

Mr. LUTTRELL. Fiduciaries cannot go in the National Work Queue because it is dispersed across the country and it needs to stay in one particular spot.

Mr. FRIEL. Right. We believe parts of it can, like the accounting pieces, we believe there is a potential for putting them into a national because we do not have a need to particularly go out to a beneficiary from the accounting perspective.

Mr. LUTTRELL. Okay.

Mr. FRIEL. As far as the field exams, we are restricted in that, you know, we have people assigned to take care of specific areas so that work is distributed that way and cannot be distributed nationally.

Mr. LUTTRELL. Okay, thank you. I now recognize the ranking member for 5 minutes of questioning.

Mr. PAPPAS. Thank you, Mr. Chairman. Mr. Friel, I want to ask about the process of determining the most appropriate fiduciary for a beneficiary. I recently heard from a constituent who had a relative pass away, and upon their passing, he learned that this family member had been already assigned a fiduciary. In this case, there was a power of attorney on file for the beneficiary. Yet, when VA proposed to appoint a fiduciary for the beneficiary, the person with the power of attorney was not contacted or informed about the proposal to appoint a fiduciary, nor were they considered for this appointment. Instead, a private law firm was appointed without any notice to the family.

My question is, when there is a power of attorney on file for a beneficiary, is this considered? To what extent is the Pension and Fiduciary Service required to consider a family member as a potential fiduciary when there is this power of attorney that already exists?

Mr. FRIEL. Yes, sir. As it relates to the appointment of a fiduciary, upon the final decision of incompetency, we will initiate a field examination. Part of that field examination will be an individual from VA, a field examiner, going out and meeting with the beneficiary. One of the things that we strive to do is seek if the beneficiary has anyone that they would like appointed as their fiduciary. We try to make that relationship happen first. If there is a relationship that would work, we would do that.

In that, we also hold that fiduciary responsible to meeting the same requirements. We do a criminal background investigation. We do a credit check to ensure that there would be nothing that would bar that individual from meeting the fiduciary.

Sometimes, sir, we do not know what the family relationship is. If the family is not, you know, they are not connected and the beneficiary may not want to appoint one of their family members. In that case, where we cannot find somebody that has that type of relationship, we will seek to look at a professional fiduciary where we will go out and we appoint attorneys or some other organization or an individual who does multiple fiduciaries who is professional. In that space, when we have a professional fiduciary, we do limit them. Their fee cannot exceed more than 4 percent of the beneficiary's entitlement.

Mr. PAPPAS. Just getting back to this specific case and maybe we can follow up—

Mr. FRIEL. Yes, sir.

Mr. PAPPAS [continuing]. on some of the details because I know you cannot get specific here for this individual. This was a veteran who had a family member as a power of attorney. This individual was not even consulted or notified that the veteran was appointed a fiduciary. There is no requirement to consider a close family member who has power of attorney?

Mr. FRIEL. To your point, sir, without knowing the specifics, because that power of attorney, if it is not designated in our system, we may not be aware of it. It may not have been raised by the beneficiary that there was a power of attorney appointed outside of the VA space.

Mr. PAPPAS. Yes, I believe in this case it was on file, but we will follow up—

Mr. FRIEL. Yes, sir.

Mr. PAPPAS [continuing]. with you on that.

Mr. FRIEL. Appreciate it.

Mr. PAPPAS. I appreciate it. Mr. Friel, in my opening, I mentioned being concerned about the authority that fiduciary staff have when it comes to monitoring beneficiaries. The question is, how is VA empowering employees to ensure beneficiaries' well-being? If they determine that a once yearly virtual visit is not enough to protect a beneficiary, what other steps are taken?

Mr. FRIEL. We have within our purview, as I stated in my opening statement, we tried to increase our oversight while also reducing our intrusiveness, you know, into the beneficiary's life. Previously, if a beneficiary wanted to give funds to a grandson or granddaughter for graduation from high school, they would have to clear it with VA, and we did not think that was appropriate. If the funds are there and they have that ability, then we do not see a reason we should be that intrusive to say no.

What we have done is we have streamlined our processes somewhat. Now we have the video, the ability to do video, which we did not have prior to COVID, but we give the leeway to the fiduciary hubs. If they feel that something, you know, is amiss and they should go out and do a field exam, they have the right to do that. We do not restrict that. It is based off their decision. However, we do try to limit how much time we spend, you know, intruding into a beneficiary's life.

Mr. PAPPAS. For our most vulnerable beneficiaries, those with severe mental illness, maybe those who may not be in a position to report suspected fraud or misuse, that is taken into account?

Mr. FRIEL. Yes, it is. We limit the—and, sir, I believe you are referring to the annual written contact that we have where we send a letter. That letter, though, is restricted, right? We do not open it up to the entire population. The only individuals who are open to receive that type of contact are where we have a spouse fiduciary, who is appointed, and we have a good standing relationship. We have a custodial parent of a child who is a minor. Or they are in a state or federal institution, or they are in a VA institution where the government has oversight of that individual in that facility.

Mr. PAPPAS. Okay, thank you for that. I yield back.

Mr. LUTTRELL. Thank you, Mr. Pappas. Mr. Self, you are now recognized for 5 minutes.

Mr. SELF. Thank you, Mr. Chairman. At your hubs, how many total employees do you have managing 108,000 beneficiaries?

Mr. FRIEL. Total is approximately 1,200.

Mr. SELF. Twelve hundred. You just talked about intrusive. Fiduciary is financial, right?

Mr. FRIEL. Yes, sir.

Mr. SELF. Is there not some way to audit this, because this is elder and disabled, very open to abuse. Let us just face it, regardless of who the fiduciary is. This is a system that is open to abuse. It looks to me like the audit, without being intrusive, I agree you should not be approving every spending line, but there has got to be an audit. I am getting to the point that almost every hearing we have with VA, we hear a lot of process. There is a lot of process here the way I understand it.

There are also people behind every process. Something that I did not see in the notes that I was given is it says we were supposed to figure out how someone qualifies as a fiduciary, whether it be an individual or an entity. How do you qualify them?

Mr. FRIEL. Sir, thank you for the question. We will first go out and as I said, meet with the beneficiary and see if the beneficiary has someone they would like, right? Once we have that, what we look for qualifications is we do a criminal background check on every fiduciary before we appoint them. We are looking to see if there is any triggers that would say this person should not be a fiduciary. We also do a credit check on them to see if they have had any credit history issues that would also say that they should not be a fiduciary. That is up front.

Once they are in place, we continue to monitor. If a beneficiary receives more than \$10,000 a year in VA funds, the fiduciary is required to do an annual accounting, which means every 12 months they have to submit all the statements from us from the bank, as well as any big-ticket receipts. We will do an audit of that account.

For those who do not meet that process, 2 years ago—several years ago—excuse me—3 years ago, we instituted the Funds Under Management Review. In that period, what we do is we look at 3-month periods biannually for all fiduciaries to see and evaluate to make sure that they are spending the funds properly.

Mr. SELF. Okay. Now, it also says that the regional offices do not track all work through the National Work Queue. Does anyone?

Mr. FRIEL. We are able to track the work. We do not use the National Work Queue for work distribution because of the way that the fiduciary hubs were established to be regional. We separate the work by zip code, basically, and the work is assigned to the fiduciary hubs based on the zip codes that they are responsible for.

The fiduciary hubs as well as the Office of Field Operation, as the Office of Pension and Fiduciary Service now have access, since we have moved into VBMS. We have access, more sufficient access to the data, we have better oversight of the workload and are able to monitor it in a much better way.

Mr. SELF. Is there some way to simplify this process?

Mr. FRIEL. Sir, that is a good question. I think we are continuing to strive to look for opportunities to improve it. What we have done in the last couple of years with the move into VBMS, as well as the review and the streamlining of our oversight, and looking adding the funds under management review which did not exist properly, adding the additional background check or the—yes, the background check for sitting fiduciaries, which had never happened before, are all things that we are looking to do to continue to provide oversight, improve our oversight and ensure we are doing the right things.

Mr. SELF. Mr. Chairman, I think we need to—because this is a recurring theme, the complexity of the VA. Everything we hear is just the complexity. I think we ought to recommend somehow trying to figure out how we simplify this whole place. With that, I yield back.

Mr. LUTTRELL. Thank you, Mr. Self. Mr. Deluzio, you are recognized for 5 minutes, sir.

Mr. DELUZIO. Mr. Chairman, thank you and good morning. Ms. Van Haeren, start with you. What is your estimate of the percentage of fiduciaries who are committing fraud in the program?

Ms. VAN HAEREN. I work for the Office of Audit and Evaluations. That is more of a question for our Office of Investigations that do that work and look into more of the fraud aspect of it. I can take that question back and get back to you.

Mr. DELUZIO. Thank you. Mr. Friel, do you have a sense of what that number is?

Mr. FRIEL. Sir, there is—we distinguish between fraud and misuse.

Mr. DELUZIO. Right.

Mr. FRIEL. We, in Pension Fiduciary Service, we determine fraud that is an Inspector General (IG) investigation because that is more of a legal determination. We look into misuse as where a beneficiary—where the funds for the beneficiary are not being used specifically for the beneficiary.

I can tell you so far as of August 30 in 2023, we have had 1,164 allegations. Of those, we have only found 167 cases where misuse actually occurred. We continue to monitor that and the misuse allegations can come from anyone as well as from the oversight that we provide.

Mr. DELUZIO. So, 167, I mean, we are talking sub-1 percent.

Mr. FRIEL. Less than 1 percent, sir.

Mr. DELUZIO. Okay. Do you think that your—actually, I will ask Ms. Van Haeren first. Is VA's oversight here whether it can be improved or not, I think we suspect here it can be improved. Do you think it is part of keeping that number as low as it is at the moment?

Ms. VAN HAEREN. Sure. Based on what we found in our targeted reviews that we have done, we found program deficiencies with internal oversight. I think it is a continued, theme that we have seen, but I think it is something that, can continually be improved with monitoring of programs and so forth, and procedures.

Mr. DELUZIO. Mr. Friel, if we head to a government shutdown on October 1, how will that impact your ability to conduct oversight here?

Mr. FRIEL. Sir, if we stay to the same manner that we did with the last shutdown, the field individuals, employees responsible for claims and that oversight at that level will continue to work. They will continue to provide the oversight and the claims processing that we have to do, right, to meet the needs of the veterans.

The oversight, as far as, you know, the central office may be minimized somewhat due to staffing because we are not considered the essential part of actually producing claims and providing that level of oversight. We will have the opportunity to work with the field and monitor the field as far as what is happening and making

sure the right things continue to happen even during the shutdown.

Mr. DELUZIO. At a minimum, you are expecting some of leadership and central oversight to diminish if we are shut down?

Mr. FRIEL. As a minimum, yes, sir.

Mr. DELUZIO. Do you think that will impact the ability to find misuse or fraud allegations?

Mr. FRIEL. I do not, sir. Typically that misuse allegations and that finding happens at the field level, right? It is our 1,200 employees who are engaged within the fiduciary hubs who are out there doing the work every day, those are typically the individuals who identify that. Even in cases where we have the IG fraud and the investigation, the majority of those are triggered by the field identifying that there was, in fact, misuse, and then forwarding that information to OIG so that they can take action.

Mr. DELUZIO. I guess walk me through then what the impact of the folks you have just described who will be impacted or would not be considered essential, what is their role in this oversight process and machinery?

Mr. FRIEL. Within a central office function, we have the responsibility for providing quality oversight. We do quality reviews on the work that happens, you know, at a national level. We also do special focused reviews to look at specific areas within programs to identify if there is any deficiencies in there or opportunities for improvements, as well as we do site visits. We go out to the field and we will visit the offices and when someone—

Mr. DELUZIO. Okay. Let me ask, then—I see. Would the lack of quality reviews, do you think, impact the effectiveness of your program?

Mr. FRIEL. I do not. This year, the fiduciary hubs are performing at the exceptional level for their quality, and I do not see any reason why that would not be maintained. So, I—

Mr. DELUZIO. Ms. Haeren, do you have the same view?

Ms. VAN HAEREN. I cannot—

Mr. DELUZIO. Ms. Van Haeren, excuse me.

Ms. VAN HAEREN. That is Okay. I cannot speak to the quality review percentage at this time, but I think it is important that they continue to monitor this type of work.

Mr. DELUZIO. Would you recommend eliminating the quality review and the central office functions that would be impacted during a shutdown, in general? Would you ever recommend removing those folks?

Ms. VAN HAEREN. We have not done any work in that area, and I cannot speak to that.

Mr. DELUZIO. Okay. Thank you. Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. Deluzio. Mrs. Ramirez, you are now recognized for 5 minutes.

Ms. RAMIREZ. Thank you, Chairman Luttrell. I want to thank the witnesses for joining us today as well. We have been talking about fraud and how do we make sure the beneficiaries are actually getting their funds. I may have missed this question, but I want to just jump into some of the questions I have around that, and then I want to move into the dependents of the beneficiaries.

Mr. Friel, how long does it currently take the VA to recoup stolen benefits and return them to the veteran who is rightfully entitled to them?

Mr. FRIEL. Thank you for that question. The recoupment of the benefits is not a key factor in making the beneficiary whole. We are able to make the beneficiary whole once we have finished the misuse determination and determined how much funds were misused. We have an internal negligence determination requirement that we have to meet.

Once those two items are in place and we have completed them and the review is done, typically we initiate trigger to the field to submit to reimburse those funds within 14 days of the final.

Ms. RAMIREZ. So, about 14 days once that has happened.

Mr. FRIEL. Yes.

Ms. RAMIREZ. How long on average is it taking?

Mr. FRIEL. Currently from misuse allegation to determination is about 80 days. The turnaround time for the negligence determination is probably another 10 days or more, so.

Ms. RAMIREZ. It could be up to about 90 days?

Mr. FRIEL. It could be, yes.

Ms. RAMIREZ. Okay. In the state legislature, I chaired the Child Welfare Committee. As we are talking about the beneficiaries, one of the things that comes to mind for me is also its own dependents. As we are discussing this issue, I want to talk about the children impacted by fraud. Specifically, I am concerned with foster youth.

It has come to my attention that this committee asked the VA in 2022 how they were tracking vulnerable population. The answer was, and I quote, "the VA does not currently track the number of children in foster care, and so it is not aware of any data points that would allow for an accurate estimation of this number." Here is why that is concerning to me. I am concerned for children, especially young children, who are unlikely to detect and report fraudulent behavior.

Question, Mr. Friel, can you tell me how the VA tracks which dependents of veterans are in foster care? If you do not, what are your next steps to ensure that this population is being tracked and protected?

Mr. FRIEL. Currently, we do not have the ability to distinguish what the current status of the child is. We do, however, appoint a fiduciary for those individuals in foster care that we monitor with all of our—as we would with any other fiduciary. I will let you know that we have had internal discussions, and we are working toward a requirement for our Office of Information and Technology to actually identify an opportunity within our system to be able to add that as a field where we can track that in a better manner.

Ms. RAMIREZ. In my State of Illinois, there are children of deceased veterans who are currently in foster care and they are receiving benefits. I know this because we checked in with the Illinois Department of Children and Family Services, and they confirmed that they produce and submit a quarterly report on the children to the VA. My question to you is, Mr. Friel, as you are discussing internally how you are able to better understand and track that information, what are you doing with the data from states like Illinois who are providing this information? I know that it may not

be the case that every single state is providing this information, but I am interested in knowing what you are actually doing with the information you are receiving from states like Illinois.

Mr. FRIEL. Yes, ma'am. I do not have that information readily available. I believe it is probably a factor that they work with the fiduciary hub within their space. I will take that back, and we will work to get you an answer.

Ms. RAMIREZ. Chairman, I just want to put this on the record, and I appreciate that. As we are talking about our beneficiaries and the fraudulent behavior that we see from many of the fiduciaries, I am concerned by the number of veterans, particularly as we talk about veterans who are experiencing homelessness or veterans who have passed away and their children are in foster care, that the various agencies that are supposed to be their fiduciary or manage their benefits or the fiduciary person responsible for their benefits, in fact, may be engaging in fraudulent behavior, and these children are not getting their benefits. I do want to make sure that we continue to follow up on this because there are a number of children who I am concerned have no process in making sure that these allegations are followed up with. With that, I yield back.

Mr. LUTTRELL. Thank you, Mrs. Ramirez. Mr. McGarvey, you are recognized for 5 minutes, sir.

Mr. MCGARVEY. Thank you, Mr. Chairman. Thank you all very much for being here. As you know, my district in Louisville, Kentucky is home to one of the VBA's seven fiduciary hubs. It services six states, along with D.C. and Puerto Rico. The Louisville hub, like each of the fiduciary hubs, is responsible for handling oversight of the fiduciaries in those states and administering the program. The hub's dedicated public servants are doing their best to ensure that veterans and their benefits are protected. I want to thank them for their service. As you know and see in this committee, this is something we all want to do and all want to protect to make sure our veterans get their benefits they have earned and they deserve.

I do want to note that they need funding. They need resources to carry out their mission and ensure that our veterans are not being defrauded and that the Fiduciary Program is working as it is intended. Mr. Friel, how does the VBA monitor fiduciaries and what does the oversight look like? I guess the big question is, is it enough?

Mr. FRIEL. Thank you for that. In monitoring, we use several mechanisms. We do for a fiduciary, as I stated earlier, has a beneficiary that receives over \$10,000 a year in benefits from VBA or they are rated 100 percent, we will require an annual accounting from that fiduciary so that we can audit and make sure that the expenditures are being made correctly.

For those who do not meet that criteria, we also have the biannual review where we do an audit of 3 months' worth of benefits every 2 years to ensure that those are, in fact,—their benefits are being used properly. We also have the ability to react to any instances where we are provided information, someone provides information that there may be an allegation of misuse. The field examiners have the ability to go out and investigate and to see to ensure that everything is happening correctly.

Additionally, we instituted back in 2020, we instituted a standing background check for all sitting fiduciaries. Prior to that, once you were appointed, until somebody told us something, we did not know. Well, now we run a background check on every fiduciary. This year we identified 958 fiduciaries that were flagged that had under previous checks or at appointment, did not have any indicators. Well, they have been flagged and we are working now to replace them because we have information that says they should not be sitting in that position as a fiduciary.

Mr. MCGARVEY. I appreciate that. You talk about 2020, though. We do know that in the OIG reports, there were deficiencies found in both 2021 and 2023 showing that the Fiduciary Program is susceptible to abuse. The steps you have outlined, are these some of the steps that you have taken to fix some of those specific issues in those reports? If so, what more can you do? How can you take the lessons that have been learned into the future and do better?

Mr. FRIEL. Sir, our goal is to be 100 percent oversight and 100 percent ensuring the security of our beneficiaries. We know there is bad actors out there. We have instituted that. The move to VBMS has allowed us to provide better oversight.

I will call into reference, you know, in particular the IG report that indicated the funds sat there. Those funds were all prior to our move into VBMS, right? We now have better oversight. On top of that, you know, even if we go back how long it took us, the fiduciary was aware of the responsibilities. Those funds were available when we reached out to see where they were at. We were able to recoup or distribute those funds as appropriate, you know, when the IG brought it to our attention. Our Fiduciary Program as far as the appointment and the directions and the understanding of the fiduciary responsibilities is evident there that they knew what they were supposed to do with the funds.

Mr. MCGARVEY. I guess the question is, I mean, because what you see is we are all on the same team, right? We want our veterans to get the care they deserve. Just tell us in the remaining time, are there additional resources or support from Congress that are necessary to protect beneficiary funds and prevent future misuse? What changes do you recommend? How can we be of better help?

Mr. FRIEL. Yes, sir. We would appreciate support for Representative Connolly's bill, H.R., I think it is H.R. 4108. That bill would fix an issue that was created by the Isakson and Roe Act. Basically, when they allowed us to make all fiduciaries whole, which is something that we wanted—all beneficiaries whole, excuse me, which is something that we had been wanting to do prior to that act, we could make certain beneficiaries whole and other beneficiaries it was dependent on the negligence requirement.

That act allowed us to make all beneficiaries whole. What it did, though, is it actually slowed down our process because now it mandated that we do a negligence determination for every claim or every misuse that occurs, which has no impact on the funds that are going to be dispersed to the beneficiary.

With the proposed bill, it would push the responsibility of the negligence determination down to the field, which would basically allow them to more quickly get those benefits out. It would make

the oversight of that, it would make it at the pension and fiduciary level, at the national level, it would be more of an oversight feature than an actual having us make the determination.

Mr. MCGARVEY. Thank you, Mr. Chairman. I yield back.

Mr. LUTTRELL. Thank you, Mr. McGarvey. We are going to move into our second round of questioning at this time.

Mr. Friel, do you have a rough guesstimate on the dollar amount, let is just say the last 2 years that have been lost in the Fiduciary Program?

Mr. FRIEL. This year, I do have the data for this year. This year to date, as I said, we found 167 misuse cases, and the funds that have been reissued was just in excess of 618 million, or excuse me, \$618,000.

Mr. LUTTRELL. Six hundred 18 thousand, just this year?

Mr. FRIEL. Just this year, sir.

Mr. LUTTRELL. Okay. Is it true that fiduciaries must only account for 3 months of expenses every 2 years?

Mr. FRIEL. Not all fiduciaries, sir. It is only fiduciaries where they do not meet the threshold for the requirement to report annually. If the funds under management, the funds that they are being disbursed yearly for the veteran exceed or the beneficiary exceed \$10,000 or the veteran is rated 100 percent, they are required to report annually. Outside of that, previously, we had no accounting requirement. One of the things that we instituted was the 3-month Funds Under Management Review. That happens biannually so that we can continue to evaluate those individuals to make sure those funds are being spent properly.

Mr. LUTTRELL. That is individuals in those particular areas going out just to speak directly with the fiduciary? Or is it a letter, an email?

Mr. FRIEL. So, they—

Mr. LUTTRELL. How are we tracking that?

Mr. FRIEL [continuing]. they actually are required. We will trigger a letter to the fiduciary letting them know they are responsible to provide an accounting. Then we let them know that accounting needs to include the last, you know, 3 months of bank statements, as well as receipts for any big-ticket items. We will evaluate those bank statements to see if there is anything that we see in there that should not have occurred. Then we will work with the fiduciary to figure out how it happened and why it happened.

Mr. LUTTRELL. Ms. Van Haeren, in your opening statement, you had three ideas you wanted to pass off to the VA that might help increase the—or the loss of not only money, but responsibilities for the fiduciaries. Can you tell me those three again?

Ms. VAN HAEREN. Sure. The recommendations were to update the procedural requirements to help verify funds for dispersing, to help staff verify funds for those that are dispersed to heirs or back to the regional office, or excuse me, yes, back to the regional office. Another one was to establish electronic controls to monitor that workload. They had a system in place, but they were unable to consistently find or be able to track that type of workload and those funds, whether they are being dispersed back to VA or to the heirs. Last, it was to determine the methodology on how they plan to monitor.

Mr. LUTTRELL. How long ago was that report given to Veterans Affairs?

Ms. VAN HAEREN. The report was published in August 2023. We have a robust follow-up process. About 90 days from when it is published, we will reach back out to VA and——

Mr. LUTTRELL. How far along are you, Mr. Friel, on engaging those?

Mr. FRIEL. We have started to look at those.

Mr. LUTTRELL. What does that mean, started to look at?

Mr. FRIEL. We are working on, so, some of it is an IT solution. We are working on developing the requirements to get the system enhancements and get it scoped.

Mr. LUTTRELL. I do not know if I am necessarily going to allow you to tuck that into the IT space.

Mr. FRIEL. I am not pushing it in IT space. For us to do there as far as like being able to track the workload today, as far as the first notice of death, the way it is triggered to the fiduciary hub, we want to create an end product, a work item, so that they can actually go do that as opposed to a task. We are working with IT to make that happen in the system. We would change the system, enhance the system to give us better oversight and tracking of those through the end product.

Mr. LUTTRELL. The other two?

Mr. FRIEL. The other two, I am sorry. The one was the heir, which we had spoke about earlier, was distributing to the heirs. You know, we have worked with the Office of General Counsel (OGC). We have received OGC opinion that it is not within our purview to make sure that, you know, the estate and the will and whatever decisions are made in the probate court are within our purview. They are not part of VA's oversight. Our oversight is would the funds be issued to the state? If so, then we need to ensure they come back to VA.

Mr. LUTTRELL. There is a point of convergence right there where VA is going to have to pass it off to the state, and the state's going to look to the VA to solve the problems?

Mr. FRIEL. It is not so much convergence, it is the laws of the state, yes, sir, I guess. Yes, you are correct, sir. The laws of the state, as far as if there is an error or if there is a will or probate where how that money will be dispersed to the family members is not within our purview. However, if there are no will or heir, then we look to make sure that the funds come back to VA.

Mr. LUTTRELL. Okay. Thank you, sir. Mr. Pappas, do you have anything?

Mr. PAPPAS. Sure. Maybe a quick one for Mr. Friel. You were talking about some prospective legislation that could help the Department with making determinations out in the field. I just want to ask you a bit about deceased beneficiaries. You can have a beneficiary who passes away whose funds must be distributed to their estate or returned to VA. You can also have a veteran who passes away while a claim of fraud or misuse is still being adjudicated.

Just to understand a little bit about how things work now for that first population, a beneficiary who passes away while part of the Fiduciary Program, how does VA currently determine the order

of priority for dispersing benefits to the estate of a deceased beneficiary?

Mr. FRIEL. As it relates to the disbursement to the estate, we would go into trust until either the funds—the fiduciary would put the money, the funds into trust until either the will is determined or the probate court acts to make determination on how the funds would be distributed. VA does not have any role in that other than the fiduciary putting the funds into some type of trust.

As far as if the funds would go back to the state, right, so, if there are no heirs, there is no will, then VA assumes those funds, and we have the fiduciary return them to us.

Mr. PAPPAS. Just thinking about what steps you can take to ensure that sufficient guidance for fiduciary hub staff is in place to determine whether VA derived funds of deceased beneficiaries need to be returned to VA, any thoughts there?

Mr. FRIEL. We do have currently within our requirement with the field exam, we try to identify if there is an heir or a will during that initial field exam process. We are now working on actually in a system enhancement to be able to trigger that within the system too, so that we have that identification and we can utilize that data to kind of push out, to let them know that, hey, we have information on an heir or a potential will. That we can utilize our systems to let the fiduciary know that there is, in fact, someone out there that exists that the funds could be disbursed.

Mr. PAPPAS. Okay. If a beneficiary passes away where there is suspected fraud or misuse, can you talk about the authority that VA has to reimburse the estate of the beneficiary as the fraud claim is being processed. Do you have that authority?

Mr. FRIEL. Yes.

Mr. PAPPAS. If not, what do you need?

Mr. FRIEL. Today, we currently, if there is a misuse pending at the time of death, we will process that misuse to fruition, and we will make the estate whole as part of our process.

Mr. PAPPAS. Okay. Well, I appreciate that. Thank you very much for those comments.

Mr. FRIEL. Thank you.

Mr. LUTTRELL. Yes, thank you, Mr. Pappas. Mr. Self, you are recognized, sir, for 5 minutes.

Mr. SELF. Thank you, Mr. Chairman. I do not have the figure in front of me. I am trying to get it, but if I remember right, there are like 8,000 Government Accountability Office (GAO) recommendations that the VA, across the VA, has not enacted. Can you tell me how many GAO recommendations that this program has outstanding?

Mr. FRIEL. Sir, I do not have that information available, and we can take that back and delve into it to see if we can identify any.

Mr. SELF. I would like to see it. I understand your current yearly you have not had time to close, but I believe that there are outstanding GAO recommendations from years past, and I would kind of like to know that number.

Mr. FRIEL. Yes, sir.

Mr. SELF. With that, Mr. Chairman, I yield back.

Mr. LUTTRELL. Thank you, Mr. Self. Mr. Ciscomani, you are now recognized for 5 minutes, sir.

Mr. CISCOMANI. Thank you, my friend. Thank you, Chairman and friend, for holding this important hearing. Thank you also to the witnesses for being here today. One of the issues I have heard about facing veterans relates to the Veterans Benefit Administration Fiduciary Program. I know we have talked a little bit about that and the instances in which an appointed fiduciary misuses a veteran's funds.

While I am sure that many of these VA appointed fiduciaries are working hard to manage veterans' benefits, some bad actors exist, like in anything else, in this program that allow for fraud and misuse. I am proud to have joined Representative Trone in introducing the Restoring Benefits and Defrauded Veterans Act, which would ensure the families and beneficiaries of a deceased veteran in the Fiduciary Program are able to be reimbursed for the amount of misused funds as well.

Also, I co-lead a bill with Representative Connolly titled the Veteran Fraud Reimbursement Act, which would allow veterans who fall victim to fraud to receive their reimbursements before the VA's internal negligence determination is finished. I believe these commonsense bills can ensure veterans and their families are financially made whole, and I look forward to working with my colleagues on the issue and continue to support the men and women who serve this great country.

Now, my question is for Ms. Van Haeren here. Is it true that the VA has no timeliness standard for determining whether a fiduciary misuses, a fiduciary's misuse of funds was actually the result of VA negligence?

Ms. VAN HAEREN. Yes, at the time of our report, we found that there were no timeliness standards.

Mr. CISCOMANI. How has this resulted in delays in removing the fiduciaries and reimbursing misused funds? How does that impact that?

Ms. VAN HAEREN. Sure. Based on the time that we conducted our review of the hotline, there was a significant amount of time before veterans were made whole from when the misuse determination, or the allegation was made, through the entire process and the negligence determination was finally made. It was over 400 days at the time.

Mr. CISCOMANI. What best practices would you say has the OIG recommended for the VA to ensure that we are effectively monitoring and tracking the VA's misuses of—determinations of the reimbursement of the funds?

Ms. VAN HAEREN. We recommended that VBA put in measures to—controls again, and also monitoring procedures to follow up specifically on negligence determinations and reimbursement.

Mr. CISCOMANI. Would you mind naming a few examples of that, of what it can look like and how it can be improved?

Ms. VAN HAEREN. At the time we conducted the review, VBA was in the process of moving from one system to another that was able to actually have reports made that they could actually track some of the negligence determinations that were once tracked on, let us say, outside of a system. They did not even have the information within a system at the time until they migrated into VBMS-Fiduciary (VBMS-Fid). When they migrated into that system, they were

able to then track it electronically and then, of course, monitor that work.

Mr. CISCOMANI. Thank you. Mr. Friel, on the same light of timeliness of these services, from the 2021 Inspector General Report on the Fiduciary Program, it states that, "staff took from about 3 to 23 months to complete the 14 negligence determinations with an average of 468 days." To your point as well. "Half the cases were pending in excess of 500 days before being completed. The remaining two were not completed due to active criminal investigations."

I have learned that processes have changed, but I believe that these negligence determinations are still taking way too long to also the previous point here. What is the average wait time you would say currently for the negligence determination to be made? What steps has the pension, specifically in the Pension and Fiduciary Service taken to reform this process? Same line of questioning here, but can you speak from your perspective on this?

Mr. FRIEL. Yes. As far as the negligence determinations, we are completing them in an average of like 24 days. I would have to get you the exact number.

Mr. CISCOMANI. Okay.

Mr. FRIEL. As Ms. Van Haeren's spoke, we moved into VBMS, which definitely improved our ability and our oversight to be able to track this work and be able to manage it in a much better quicker and faster basis. The allegation from misuse to the determination completion takes about 79 days. That is the investigative part a, to determine whether or not there was actually misuse, and then it is working with the fiduciary to get the final accountings.

I can tell you that we do have a standard for replacement of a fiduciary once misuse has been determined. If we determine that misuse did occur, we replace that fiduciary within 60 days of that happening. That is one of our traction pieces.

Mr. CISCOMANI. Thank you. I am out of time. Would you agree that moving these determinations to after reimbursements would ensure veterans are made financially whole while still allowing the VBA to determine if negligence happened?

Mr. FRIEL. Yes, I would, because the negligence determination has no impact on the amount of funds that are going to be distributed.

Mr. CISCOMANI. Excellent. Thank you. I appreciate the quick, straightforward responses from both of you. We do not always get that, but I appreciated that. Thank you.

Mr. LUTTRELL. Thank you, Mr. Ciscomani. Okay. Thank you to all our witnesses for testifying before us today about this important issue. The Fiduciary Program is responsible for ensuring that the veterans who need extra help managing their VA benefits are taken care of. It is our responsibility as Congress to ensure that the VA effectively oversees fiduciary and protects beneficiaries of this program.

One veteran or beneficiary whose benefits are being misused is one too many. I look forward to further conversations about improving oversight efforts of this program and about VA's efforts to implement the recommendations that we discussed today. With that, I yield to the ranking member for closing remarks.

Mr. PAPPAS. Well, thank you, Mr. Chairman. I look forward to working with you to ensure the continued oversight over this program, which is incredibly important for veterans and their families. I think it is important that our staff works together to ensure that OIG's recommendations are fully implemented by VA and that we see some areas of improvement that were identified in the hearing today. Our veterans deserve the best, and I know we can work together to help get it done. I want to thank our panel for their comments and their work. I yield back.

Mr. LUTTRELL. Thank you, Mr. Pappas. Mr. Friel and Ms. Van Haeren, thank you for your testimonies today. I do not envy the pressures that you are feeling on your shoulders, sir. I can only imagine how overwhelming that is. Please understand that this committee is absolutely here to assist you in any way that we can to make sure the veterans are the beneficiaries of all of our acts, everything that we do. Ms. Van Haeren, thank you for your report. If you do not mind, I would like to speak to you after the committee closes out.

I ask unanimous consent that all members have 5 legislative days to revise and extend their remarks and include extraneous material. Without objection, so ordered. This hearing is adjourned.

[Whereupon, at 11:02 a.m., the subcommittee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF WITNESS

Prepared Statement of Lisa Van Haeren

Chairman Luttrell, Ranking Member Pappas, and members of the Subcommittee, thank you for the opportunity to testify on the Office of the Inspector General's (OIG) oversight of the Veterans Benefits Administration's (VBA) Fiduciary Program. The OIG is committed to conducting independent audits, reviews, and inspections that result in clear findings and practical recommendations to help VA promptly provide veterans with the quality care, services, and benefits they are due. To that end, the OIG works diligently to ensure every report it releases—even if focused on a single medical facility or benefits office—serves as a road map for VA leaders nationwide and contributes to overall program improvements. It also vigorously pursues criminal investigations involving potential fraud and other crimes affecting veterans and VA operations, programs, and services.

The purpose of the Fiduciary Program is to protect VA beneficiaries who are unable to manage their VA benefits as a result of injury, disease, the infirmities of advanced age, or being younger than 18 years old. VA appoints fiduciaries to receive direct payments on behalf of beneficiaries and disburse those funds for beneficiaries' care, support, welfare, and other needs.¹ During fiscal year 2022, the Fiduciary Program served more than 108,000 beneficiaries who received \$2.6 billion in VA-derived funds.²

Given the amount of money at issue and VA's commitment to serving vulnerable veterans, the need for strict accountability and effective oversight are vitally important to the continuous improvement of the program.³ The OIG's recent reviews have found weaknesses in program governance that have allowed gaps in workflow management and inadequate oversight processes to persist. The OIG has identified delays in determinations of whether a fiduciary is warranted, veterans' reimbursements when their benefits have been misused, and the distribution of deceased veterans' fiduciary-controlled funds to their heirs or back to VA. The delays often created unnecessary risks to veterans' welfare and exposed beneficiaries and their families to potential hardships when VA's assistance was critical. In addition to this oversight work, the OIG's Office of Investigations is deeply involved in criminal cases that identify bad actors to help deter fiduciary fraud and reduce its impact on victims.

This statement focuses on the OIG's most recent report on the Fiduciary Program, which reviewed allegations that deceased beneficiaries' VA-derived funds were not being timely and appropriately disbursed as required. The report illustrates deficiencies in VBA's oversight of the program and describes how the identified weaknesses can deprive veterans' heirs (or others named in their wills) of benefit funds to which they are entitled. The concerns with lax program oversight and inadequate processes are not new; prior oversight of the Fiduciary Program reflects similar findings as described in this statement.⁴ These weaknesses increase opportunities for bad actors. OIG investigators routinely work with their law enforcement partners to bring to justice those individuals who have defrauded or stolen vulnerable veterans' pensions and VA benefit compensation.

RECENT OVERSIGHT OF THE FIDUCIARY PROGRAM

¹ VA beneficiaries rely on their appointed fiduciaries to make financial decisions in their best interests. When choosing a fiduciary, VA considers factors including a beneficiary's preference (such as a spouse or other family member if qualified), the identified individual's willingness to serve, and the potential fiduciary's ability to act in the beneficiary's interest.

² VBA, *Annual Benefits Report Fiscal Year 2022*, p. 142.

³ The Pension and Fiduciary Service establishes policy and procedures, provides training, and generally oversees claims-processing accuracy. The program is implemented by six VBA fiduciary hubs—each responsible for administering the program in an assigned geographic region.

⁴ VA OIG, *VBA's Fiduciary Program Needs to Improve the Timeliness of Determinations and Reimbursements of Misused Funds*, July 21, 2021; VA OIG, *Fiduciary Program: Some Incompetency Decisions Not Completed, Putting Those Beneficiaries' Funds at Risk*, January 27, 2021.

In a report released last month, the OIG assessed an anonymous allegation to its hotline that two fiduciaries under the jurisdiction of a VBA hub in Indianapolis, Indiana, had not released the funds of four deceased beneficiaries who died in 2010, 2013, 2015, and 2020.⁵ During the course of the review, the OIG was made aware of two additional cases, for a total of six cases, associated with the two fiduciaries.

The OIG substantiated allegations that VA-derived funds were not always promptly disbursed to the deceased beneficiaries' heirs or returned to VA when there was no valid will or heir. Although the OIG's review focused only on the two fiduciaries related to the initial allegations, the process deficiencies that the review team identified could have significant effect across the Fiduciary Program.

Background

When a beneficiary dies, the fiduciary must disburse the remaining VA "funds under management."⁶ If the beneficiary has a valid will or heir, the fiduciary must hold the remaining funds under management in trust for the deceased beneficiary's estate until the will is probated or heirs are ascertained and then disburse the funds according to applicable State law. If the beneficiary died without a will and no heir has been identified, the funds that would typically revert to the veteran's state of residence are returned to VA.⁷

Although federal regulations require a fiduciary to submit a final accounting to VA within 90 days of the beneficiary's death, neither statute nor regulation includes a timeliness standard for fiduciaries to distribute VA-derived funds of deceased beneficiaries to heirs or return them to VA.⁸

Until March 2021, VBA procedures required fiduciary hub staff to verify that the fiduciary had indeed disbursed the remaining funds under management for deceased beneficiaries to both heirs and VA. The Pension & Fiduciary (P&F) Service terminated this procedure with regard to a veteran's estate, as no statute requires them to do so, and this is consistent with a VA Office of General Counsel opinion that states, "VA's responsibilities with regard to protection of estate assets for the benefit of others generally cease with the death of the veteran."⁹

In contrast, the opinion states that, generally, VA is authorized to assure the preservation of assets that *must be returned to VA* when no valid will or heir exists. Although the procedure to verify disbursement to an heir was removed, other procedures stated that a determination must be made as to the existence of a will or heir to determine whether funds must be distributed through the estate or returned to VA.¹⁰ Procedures and any related guidance do not, however, outline steps the fiduciary hub staff must take to make such a determination, such as actions and evidence needed to verify whether the fiduciary identified any valid will or heir.

In March 2021, VBA updated its procedures to include a requirement to establish electronic controls to track the workload only for cases in which VA-derived funds of deceased beneficiaries must revert to VA.¹¹ Because the manual does not designate a unique identifier for electronic controls related to the return of deceased beneficiaries' VA-derived funds to VA, it is difficult for staff to monitor this workload.

The OIG Found Fiduciaries Were Not Promptly Disbursing VA Funds

⁵ VA OIG, *The Fiduciary Program Needs to Verify the Prompt Return of Deceased Beneficiaries' Funds to VA*, August 17, 2023.

⁶ 38 C.F.R. § 13.250 (2018). For the purposes of this report, VA-derived "funds under management" are beneficiaries' unspent VA disability compensation or pension benefits payments. VA has no oversight responsibility for other sources of income beneficiaries may have, such as social security or retirement income.

⁷ 38 U.S.C. § 5502; 38 C.F.R. § 13.250.

⁸ 38 U.S.C. § 5502; 38 C.F.R. § 13.250; 38 C.F.R. § 13.280 (2018). A fiduciary accounting is a written report outlining the management of a beneficiary's VA benefits payments and expenses for a specified period.

⁹ VA Office of General Counsel Precedent Opinion, VAOPGCPREC 5-98 (April 2, 1998). The General Counsel has the power to designate an opinion as precedential, and opinions involving veterans' benefits are binding for VA officials and employees in subsequent matters involving the legal issue.

¹⁰ VA Manual M21-1MR, "Actions Required to Determine if Escheat is in Order," part XI, chap. 4, section D.16.d in Adjudication Procedures Manual, updated February 2, 2005. The Adjudication Procedures Manual serves as a general guide for processing and adjudicating claims for compensation, pension, and related benefits for veterans and their dependents. VBA's Compensation Service is responsible for updating the Adjudication Procedures Manual.

¹¹ VA, Fiduciary Program Manual, "Actions Required When Escheat is in Order," part 2, chap. 1, sec. C, topic 3.e, updated March 17, 2021. The Fiduciary Program Manual serves as a general guide for activities and decisions inherent to providing fiduciary assistance to VA beneficiaries. The Pension and Fiduciary Service is responsible for updating the Fiduciary Program Manual.

The OIG substantiated that, as of June 2022, two fiduciaries, under the jurisdiction of the Indianapolis hub, had not promptly released the funds of six deceased beneficiaries. Between August 2022 and November 2022, both fiduciaries returned the funds to either the VA or an heir. The delay, however, ranged from more than 19 months to 12 years from the time of death (or the date the final accounting was received by VA, if required) to the distribution of the funds.¹²

For two of the six cases, VA-derived funds were not promptly distributed to the deceased beneficiaries' heirs. In total about \$800,000 of VA-derived funds were not released for more than 19 months in one case and nearly seven years in the other.

For the remaining four cases, no heirs were identified, and VA-derived funds were not promptly returned to VA. For these four cases, about \$9,300 of VA-derived funds were not promptly returned to VA, with delays ranging from five to 12 years after the beneficiaries' deaths.

As stated earlier, neither statute nor regulation includes a timeliness standard for disbursement. As stewards of taxpayer dollars, however, VA should be promptly reclaiming funds when there is no valid will or heir to receive them. Heirs also should not have to wait excessive periods to receive funds to which they are entitled. Even though it is not a statutory requirement, VBA is not prohibited from verifying disbursement of funds due to deceased beneficiaries' estates. Such verification would not only ensure heirs received funds to which they are entitled, it would also help identify funds that must be returned to VA if potential heirs thought to have existed at the time that the case was initially reviewed could not be verified. Moreover, a fiduciary can dispose of related records after two years from the date that VA either removes the fiduciary or the fiduciary withdraws. As a result, there is a potential risk of fraud, theft, and loss, if there has been no verification within those two years that funds were properly distributed.

What the OIG Recommended

To address identified weaknesses, the OIG made four recommendations to the under secretary for benefits to ensure that the P&F Service conducts the following actions:

1. Clarify procedural requirements to fiduciary hub staff on how to verify whether VA-derived funds of deceased beneficiaries must be returned to VA, including whether the fiduciary identified any valid will or heir to whom the funds are otherwise due.
2. Consider reimplementing the procedural requirement to verify the disbursement of VA-derived funds to deceased beneficiaries' estates when a valid will or heir exists.
3. Identify existing electronic controls or implement new ones that allow VBA staff to track Fiduciary Program tasks, timelines, and workload related to the return of deceased beneficiaries' VA-derived funds to VA that would otherwise escheat (revert) to a state if not disbursed to heirs.
4. Collaborate with the Office of Field Operations to establish a methodology and monitor the workload to ensure the prompt return of deceased beneficiaries' VA-derived funds.¹³

The OIG found that VA submitted actions plans generally responsive to the recommendations. The review team acknowledged VBA's decision not to reimplement the procedural requirement to verify the disbursement of VA-derived funds to deceased beneficiaries' estates when a valid will or heir exists, as proposed in recommendation 2, but reiterates that VBA is not prohibited from doing so to help ensure fiduciaries promptly disburse funds to individuals to whom the funds are due.

The OIG will monitor implementation of all planned actions and will close recommendations 1, 3, and 4 when VBA provides enough evidence to demonstrate sufficient progress in addressing the intent of the recommendations and the issues identified.¹⁴

PREVIOUS OIG WORK ON THE VA FIDUCIARY PROGRAM

¹²A delay in probate proceedings could cause a delay in disbursement. However, the OIG team found no evidence that any of the six cases were involved in probate.

¹³The Office of Field Operations sets production goals and manages the employees who process veterans' claims.

¹⁴The OIG requests updates on the status of all unimplemented recommendations every 90 days. This is reflected on the recommendations dashboard found on the OIG website. For this report, the OIG will request the first update in late November 2023.

As stated earlier, the OIG's prior oversight of the Fiduciary Program also showed insufficient monitoring and workflow management, leading to significant delays in essential tasks. These delays included finalizing incompetency determinations and reimbursing misused funds—increasing risks of poor outcomes for eligible beneficiaries also more vulnerable to fraud, theft, or financial loss.

Some Incompetency Decisions Were Not Timely Completed, Affecting Beneficiaries' Receipt of Funds

In January 2021, the OIG published a management advisory memorandum after assessing the merits of a hotline allegation that a deceased veteran's VA funds had been misused while he was living at a California nursing home.¹⁵ As part of its assessment, the OIG discovered VBA had not finalized the veteran's incompetency proposal, despite VBA staff receiving medical evidence that the veteran was incapable of managing the VA benefit payments. This proposal, which can result in VA appointing a fiduciary, was not completed for three years prior to his death. This delay conflicts with VBA guidance that the decision be made and a fiduciary appointed within 141 days.¹⁶

The OIG expanded its review to identify broader process issues and found VBA had not finalized incompetency proposals for 221 beneficiaries from January 1, 2016, through December 31, 2019.¹⁷ Generally, the incomplete decisions occurred because staff did not update the workload management tool to show an incompetency proposal was pending a decision. Without that update, the case does not appear in the inventory of incompetency proposals requiring final action, so no decision is made or fiduciary appointed, and vulnerable beneficiaries' funds could be mismanaged. VBA agreed that 52 of the 55 records the OIG reviewed were incomplete (stalled); the others were on appeal or had been flagged for a decision. The OIG provided VBA with the remaining 166 of the 221 records found to have incomplete decisions so that VBA could determine whether further action was needed to ensure incompetency proposals were finalized.

VBA Needs to Improve the Timeliness of Determinations and Reimbursements of Misused Funds

In a July 2021 report, an OIG review team examined whether program staff properly addressed allegations of benefit payments being misused by fiduciaries and then reimbursed beneficiaries as required.¹⁸ Program staff initiated inquiries into approximately 12,000 allegations of fiduciary misuse of funds from January 1, 2018, through September 30, 2019.¹⁹

The team assessed staff actions for a sample of misuse determinations and did not find systemic issues. However, there were instances of significant wait times for program staff to determine misuse and negligence and to reimburse misused funds. For example, one beneficiary waited 19 months after an initial determination of misuse before staff completed a negligence determination. VA then reimbursed the beneficiary over \$20,000 in misused funds. Another beneficiary waited 14 months after the misuse determination before VA staff authorized reimbursement of approximately \$5,800. The report concluded that VBA should consider whether the average number of days taken to complete each type of misuse action is acceptable to meet oversight responsibilities and fulfill the stated mission of protecting vulnerable veterans and other beneficiaries.

The OIG also found VBA did not adequately monitor all follow-up actions on reported misuse. VBA was unaware of many of the unprocessed negligence determinations that the team identified. Additionally, the team examined the workload management plans and the systematic analysis of operations for the two fiduciary hubs visited but none of the related documentation discussed or identified pending reimbursements.

The OIG made two recommendations to VBA to ensure prompt completion of determinations and reimbursements. In response, VBA implemented new information technology that allowed for electronic monitoring of negligence determinations and

¹⁵ VA OIG, *Fiduciary Program: Some Incompetency Decisions Not Completed, Putting Those Beneficiaries' Funds at Risk*, January 27, 2021.

¹⁶ This includes a 65-day due process period and a 76-day target for completing the initial appointment process.

¹⁷ VA OIG, *Fiduciary Program: Some Incompetency Decisions Not Completed, Putting Those Beneficiaries' Funds at Risk*, January 27, 2021.

¹⁸ VA OIG, *VBA's Fiduciary Program Needs to Improve the Timeliness of Determinations and Reimbursements of Misused Funds*, July 21, 2021.

¹⁹ Misuse occurs when a fiduciary spends a beneficiary's benefit payments for something other than the "use and benefit" of the beneficiary. Use and benefit is any expense reasonably intended for the care, support, or maintenance of the beneficiary or the beneficiary's dependents.

reimbursements. Both recommendations have been closed as implemented after reviewing VBA's responsive actions.

OIG CRIMINAL INVESTIGATIVE EFFORTS TO COMBAT FIDUCIARY FRAUD

The OIG's Office of Investigations has a robust approach to identifying and holding accountable individuals who have violated the law and their duty to protect vulnerable veterans' financial interests. The OIG criminal investigators' multi-tiered approach to combating fiduciary fraud includes

1. maintaining a close collaboration with VBA's fiduciary hubs to proactively share concerns, stay apprised of new schemes, and solicit referrals for OIG review;
2. promoting publicly a fraud toolkit on the OIG website that details key indicators of fiduciary and other types of fraud and additional information on making reports to the OIG hotline; and
3. investigating potential fiduciary fraud and pursuing the prosecution and conviction of bad actors.

Together, these efforts have helped increase the awareness of fiduciary fraud and led to the successful arrest and prosecution of many fraudsters who were stealing benefits and taking advantage of veterans.

OIG's Collaborative Efforts with Fiduciary Hubs

OIG criminal investigators have developed strong working relationships and communicate regularly with VBA personnel on cases of suspected misuse of benefits committed by VA-appointed fiduciaries. This highly effective engagement ensures that fiduciary hub personnel send referrals to the OIG for suspected criminal activity. The OIG also completes an annual comprehensive summary of all fiduciary-related actions taken during the previous fiscal year, to include investigations opened, cases prosecuted, indictments obtained, arrests made, restitution ordered, and other moneys recovered by VA. This report is provided to the P&F Service and incorporated into their Annual Benefits Report.²⁰ More information on reported investigations that flowed from these hubs and other sources is discussed in the section on fiduciary fraud criminal cases below.

OIG Public Outreach

The Fraud Indicator Toolkit, found on the OIG's website, provides a list of key characteristics related to 10 types of fraud.²¹ It alerts VA personnel, contractors, and the veteran community when to report suspicious activity and alleged wrongdoing to the OIG hotline. The following examples from the toolkit relate to fiduciary fraud:

- The beneficiary has overdue or unpaid bills or medical copayments, or needs do not appear to be met (insufficient food, medication, clothing, heating, or other expected costs).
- The fiduciary is secretive or vague about spending or lacks documentation for expenses.
- The beneficiary's VA benefits are deposited into an account that is also used for other non-VA deposits (comingled funds).
- VA benefits and other government deposits are distributed among various accounts or checks payable to "cash" are made from the beneficiary's account.
- Large or repeated ATM withdrawals and/or in-person withdrawals are made from the beneficiary's account.
- The fiduciary appears to be using or borrowing the beneficiary's VA benefits for their own personal use, particularly when there have been purchases of high-priced vehicles, property, or other goods or services.

Examples of Recent OIG Fiduciary Fraud Investigations

The OIG receives and reviews referrals of potential cases of fiduciary fraud from the VBA hubs and the OIG hotline. Since October 1, 2019, the Office of Investigations has opened more than 115 criminal cases, made 55 arrests, and secured 51 convictions. During this period, there was a \$15 million dollar financial impact on

²⁰VBA, *Annual Benefits Report Fiscal Year 2022*, p. 143.

²¹VA OIG, *Fraud Program FAQ*.

VA and a \$10 million dollar impact on veterans.²² To appreciate the consequences for vulnerable veterans, the following are just a few examples of fiduciary fraud cases recently investigated by the OIG and prosecuted by our partners at the Department of Justice.

An OIG investigation revealed that a former VA-appointed fiduciary misappropriated more than \$143,000 in VA funds intended for her severely disabled veteran husband.²³ The fiduciary was married to a US Army Reservist who suffered a severe traumatic brain injury in a military service-connected accident. Because of this injury, her husband had many serious physical challenges. As his guardian and VA fiduciary, she subsequently received \$258,613 in VA disability payments and \$36,000 in Social Security payments intended for her husband. She withdrew \$199,649 in cash and accrued about \$900 in ATM and overdraft fees, and then misappropriated most of the funds by spending the money on methamphetamine for herself and others, living expenses for five other people, vehicles for numerous individuals, and other nonapproved items. In October 2022, she was sentenced in the Eastern District of Arkansas to 20 months' imprisonment, three years' supervised release, and restitution of \$143,000.

Another OIG investigation found that a former VA-appointed fiduciary embezzled VA funds intended for his veteran brother, including over \$130,000 in unauthorized money transfers, over \$25,000 in ATM cash withdrawals, and numerous purchases for his own personal use.²⁴ The purchases included a diamond ring, a pickup truck, and two motorcycles. In November 2021, the fiduciary was sentenced in the Western District of Pennsylvania to 1 day of incarceration, three years' supervised release, restitution of \$75,000, and a fine of \$4,000 after previously pleading guilty to misappropriation.

From November 2006 to July 2017, four defendants were found to have engaged in a sophisticated financial scheme to defraud victims of their VA and Social Security funds.²⁵ The investigation was conducted by the VA OIG, Social Security Administration OIG, Internal Revenue Service Criminal Investigation, and the Federal Bureau of Investigation. The defendants used a nonprofit corporation that provided guardianship, conservatorship, and financial management to hundreds of people with special needs. The organization also served as a VA-appointed fiduciary for dozens of veterans. The defendants used funds that were unlawfully transferred from their clients' accounts to purchase homes, vehicles, luxury recreational vehicles, and cruises. Fifty-two veterans were harmed by this scheme. The loss to VA was approximately \$3.3 million. In July 2021, the nonprofit owner was sentenced to 47 years' imprisonment, and her husband was sentenced to 15 years. The other two defendants were sentenced to 20 years in prison and five years and 11 months in prison, respectively. The owner of the nonprofit was also ordered to pay approximately \$6.8 million in restitution to the victims of the fraud scheme. The other defendants were ordered to pay the entire amount of the stolen funds as restitution to the victims.

CONCLUSION

An effective process to detect and resolve deficiencies is a fundamental element of accountability for any VA program. The OIG found that the P&F Service had deficiencies in both and should strengthen the fiduciary program's governance, including its oversight of the fiduciary hubs' operations. VBA leaders should ensure effective workflow management processes are in place and consistently implemented to make certain that there is adequate oversight of fiduciaries. This, in turn, will mitigate the risks that beneficiaries do not receive the program support to which they are entitled. The OIG is committed to continuing its oversight work in this area and investigating potential fiduciary fraud that not only affects program beneficiaries, but also makes the most effective use of taxpayer dollars.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions you or members of the Subcommittee may have.

²² Financial impact includes restitution, civil judgments, penalties, fines, forfeitures, and cost savings.

²³ US Department of Justice, "Jonesboro Woman Sentenced to 20 Months in Prison," October 4, 2022, <https://www.justice.gov/usao-edar/pr/jonesboro-woman-sentenced-20-months-prison>.

²⁴ US Department of Justice, "New Kensington Man Sentenced for Misappropriating VA Benefits," November 1, 2021, <https://www.justice.gov/usao-wdpa/pr/new-kensington-man-sentenced-misappropriating-va-benefits>.

²⁵ US Department of Justice, "Albuquerque Couple Sentenced to Federal Prison in Ayudando Guardians Case," July 15, 2021, <https://www.justice.gov/usao-nm/pr/albuquerque-couple-sentenced-federal-prison-ayudando-guardians-case>.

STATEMENTS FOR THE RECORD

Prepared Statement of Kenneth Smith

Chairman Luttrell, Ranking Member Pappas and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the Department of Veterans Affairs (VA) fiduciary program and the vital role we serve for our Veterans and beneficiaries. Accompanying me today is Kevin Friel, Deputy Director, Pension and Fiduciary (P&F) Service. I want to express my appreciation for your continued support of the Nation's Veterans, their families and survivors. VA takes the protection of our most vulnerable beneficiaries very seriously, and we are grateful for the opportunity to share with the Committee the significant updates VA has made to the fiduciary program.

Fiduciary Program Purpose and Structure

Since as early as 1924, the mission of VA's fiduciary program is to protect Veterans and other VA beneficiaries who are unable to manage their own financial VA benefits because of injury, disease, infirmities of advanced age or who are dependents under the age of majority. VA protects these vulnerable beneficiaries by appointing and overseeing fiduciaries who manage their VA benefits. VA provides oversight over fiduciaries to ensure that VA monetary benefits are being used to meet the care and needs of those beneficiaries adjudged incompetent to manage their VA-derived benefits. VA does not take the action to appoint a fiduciary lightly and strives to preserve dignity by serving these beneficiaries with a high degree of sensitivity in the least intrusive way possible.

The statutory authority for the fiduciary program is 38 U.S.C. Ch. 55 and 61. VA has established Federal regulations for this program under 38 C.F.R. Part 13, Fiduciary Activities. In 2018, P&F Service revised its regulations to refine VA policies and procedures, ensuring consistency with current law. It also clarified the rights of beneficiaries in the fiduciary program and the roles that VA and fiduciaries play in ensuring that VA monetary benefits are managed in the best interest of impacted beneficiaries.

In March 2012, VA consolidated all fiduciary activities to six regional fiduciary hubs, comprised of over 1,200 Field Examiners, Legal Instrument Examiners, Fiduciary Service Representatives and other management and support staff. As of August 2023, these hubs collectively provide oversight of approximately 104,000 beneficiaries and 83,000 fiduciaries. The Office of Field Operations monitors the operations of the six fiduciary hubs while P&F Service provides policies, procedures, and additional oversight of the fiduciary program.

VA Modernization Efforts

VA has undergone significant modernization and improvement in its approach to fiduciary activities. In November 2020, VA implemented a comprehensive plan aimed at reducing unnecessary intrusiveness in the lives of VA beneficiaries and their families, while also improving oversight of fiduciaries. This initiative also allowed VA to re-focus efforts on expeditiously conducting interviews and investigations that are paramount to enrolling and monitoring beneficiaries and their associated fiduciaries in the program. VA focused on the completion of initial appointments and investigations, as well as follow-up face-to-face examinations for situations where an issue or concern in the beneficiary-fiduciary relationship was identified.

These programmatic improvements have also positively impacted the time it takes VA to appoint a fiduciary to serve Veterans and other beneficiaries, thereby ensuring faster access to benefits. Since implementing the procedural modernization efforts which began in February 2020, VA reduced the average days pending for an initial appointment field examination from 37 days to 26 days, as of August 31, 2023. Additionally, VA has further enhanced oversight of fiduciaries by increasing the completion of financial reviews for beneficiary funds by 49 percent from 45,204 in fiscal year (FY) 2020 to 67,223 in FY 2022.

In November 2020, VA also modernized information technology systems for fiduciary program activities by migrating from a legacy system to VA's central benefits claims processing system, the Veterans Benefits Management System. This allowed for the use of VA's modern claims processing application to deliver fiduciary services efficiently and effectively.

Accountings are paramount to the oversight of certain fiduciaries. In August 2020, VA delivered the Fiduciary Accounting Submission Tool (FAST). Prior to implementing FAST, fiduciaries were required to submit accountings and financial documents to VA through the mail. The FAST system provides an alternative to mail by allowing for the electronic submission of accountings reports which streamlines the current process for accounting submission and reviews. Fiduciaries may use FAST to submit new and existing accountings, fund usage reviews and provide accounting revisions in a centralized repository. VA continues to work to enhance the FAST system to streamline workload processing of accountings and fund usage reviews.

VA has also leveraged technology to accommodate the fiduciary program throughout the global pandemic. The pandemic curtailed in-person visits with Veterans and other beneficiaries. VA quickly researched viable options and leveraged the Veterans Health Administration's (VHA) video teleconferencing tools to conduct field examinations with beneficiaries. In March 2022, the fiduciary program released its own video conferencing tool, P&F Service Video Conferencing. This allowed VA employees to see the beneficiary and their living situation when circumstances prevented an in-person visit, enabling VA to continue its oversight responsibilities.

Referrals to the Fiduciary Program

VA beneficiaries may be referred to the fiduciary program in multiple ways. A referral to the fiduciary program may result from a proposal of incompetency from a VA regional office based on medical evidence of record or receipt of a court determination finding that a beneficiary is unable to manage their financial affairs. VA's regulation (in 38 C.F.R. § 3.353(a)) defines a mentally incompetent person as "one who because of injury or disease lacks the mental capacity to contract or to manage [their] own affairs, including disbursement of funds without limitation." Additionally, beneficiaries under the age of majority are required to be referred to the fiduciary program. VA refers to individuals who have not yet reached the age of majority as minor children. The age of majority is determined by the laws of each individual State or U.S. territory.

When the evidence demonstrates that a proposal of incompetency is appropriate, VA provides written due process notice of the proposed decision to the beneficiary. This notice explains the evidence used to make the decision and their rights. The beneficiary is informed of their right to provide additional evidence, a hearing and the implications of a finding of incompetency by VA. Beneficiaries have the right to a minimum due process period of 60 days, unless they waive their due process rights. If VA does not receive a waiver of due process, VA will review all evidence of record and make a final determination on incompetency after the due process period has expired. VA cannot determine a beneficiary is incompetent unless there is clear, convincing medical evidence which leaves no doubt as to the person's incompetency. In the absence of clear and convincing evidence to the contrary, VA presumes that a person is competent.

It is important to note that judicial findings of a court with respect to the incompetency of a beneficiary are not binding on VA's rating activity. If VA accepts the court's finding of incompetency based on a review of the evidence, no additional notices are provided to the beneficiary and VA designates the beneficiary as incompetent. However, if a Veteran is declared incompetent by a court, VA develops for all necessary evidence to complete a rating determination.

Fiduciary Appointment

In each case where a beneficiary requires a fiduciary, VA strives to appoint an individual that can assist VA in meeting the care and needs of the beneficiary. VA appoints various individuals and entities as a fiduciary, such as a spouse or family member, a court-appointed fiduciary, another interested party or a professional fiduciary.

During the appointment of a fiduciary, VA will assess the well-being and needs of the beneficiary and their dependents by way of an in-person field examination. A VA field examiner will conduct an in-person visit to assess the beneficiary's living situation and will review the beneficiary's personal situation. VA will consider the beneficiary's preference of a fiduciary and attempt to appoint the preferred individual, provided that the proposed fiduciary is qualified, willing to serve, and the

appointment would serve the beneficiary's interest. As of August 31, 2023, two out of three (72,534) fiduciaries appointed are spouses or other family members.

If the beneficiary is unable to identify a preferred individual to serve as their fiduciary, VA will make every effort to appoint an individual or entity that is willing to serve without a fee. However, in certain circumstances, VA must appoint a professional fiduciary who receives a fee for their services. Fees for a professional fiduciary are limited by statute to 4 percent of the beneficiary's monthly VA payment.

When appointing any fiduciary, VA thoroughly examines the fiduciary's ability to meet their responsibilities as outlined in regulation and statute. VA investigates a proposed fiduciary's criminal background and credit history and assesses their suitability. To be considered suitable, the proposed fiduciary must not possess a bar to fiduciary service, such as a recent conviction of a felony offense. VA will not appoint a person to serve as a fiduciary if they have misused a beneficiary's VA benefits, refuse to comply with VA regulations and/or are unable to fulfill their fiduciary responsibilities.

During the fiduciary appointment process, VA instructs the fiduciary on their duties and responsibilities and provides information about the needs of the beneficiary and any dependents, as applicable. VA provides fiduciaries with the training resources available on VA's website. VA ensures the fiduciary understands their responsibility to know all monthly bills and monetary considerations to meet the care and needs of the beneficiary.

As part of the appointment process, VA considers whether the beneficiary has the capacity to manage their own benefits with limited VA oversight. If the beneficiary demonstrates the capability to manage their funds, VA will place the beneficiary on Supervised Direct Pay. When Supervised Direct Pay is utilized and the beneficiary demonstrates the sustained ability to manage their funds under this appointment, VA will act to make a determination that finds the beneficiary to be competent.

In FY 2023 through August 31, VA has completed 1,600 initial appointment field examinations in an average of 42 days.

Fiduciary Oversight

VA provides robust oversight for all fiduciaries in the fiduciary program. Through its modernization efforts, VA has refined and strengthened its oversight responsibilities for the fiduciary and beneficiary. Fiduciary oversight focuses on a fiduciary's management of a beneficiary's benefits. VA reviews each case's individual circumstances to determine the level of oversight needed. All fiduciaries are subject to regularly scheduled financial oversight which is achieved by submitting either an accounting or a fund usage report unless the appointment involves either a chief officer of a non-VA facility where the cost of care for the beneficiary equals or exceeds the monthly VA benefit, or a chief officer of a Federal institution if the officer is receiving VA benefits in a fiduciary capacity.

Annual Accounting

VA requires an annual accounting when the VA funds under management exceed \$10,000, the fiduciary is authorized to collect a fee for their service or the beneficiary is paid VA disability compensation benefits for total disability. VA may also determine that an accounting is necessary to ensure that beneficiary funds are properly managed by the fiduciary.

The annual accounting describes, in detail, all activity in the fiduciary accounts, regardless of the source of funds, such as Social Security payments and interest earned on deposits. The fiduciary is required to submit the annual accounting report, along with financial documents and statements covering the entire accounting period. VA conducts a thorough audit of the accounting and pertinent financial documents, examining funds received and expenditures. If the audit shows any indication of misuse of funds, VA investigates and removes the fiduciary from their appointment if misuse is confirmed.

In FY 2023 through August 31, VA completed 31,841 accountings, completing them in an average of 71 days.

Biennial Fund Usage Report

If the beneficiary's individual circumstances do not meet the criteria for an annual accounting, VA conducts targeted oversight of the fiduciary's use and management of VA funds through biennial fund usage reports. A fund usage report consists of a review of 3 months of all financial statements for the beneficiary. The fund usage report must include any supporting documents regarding irregular purchases so that VA can confirm the beneficiary's funds are being spent in their best interest. As with the accounting audit, if the fund usage review shows evidence of misuse

of the beneficiary funds, VA investigates and removes the fiduciary from their appointment if misuse is substantiated.

In FY 2023 through August 31, VA completed 15,805 fund usage reviews, completing them in an average of 70 days.

Follow-Up Contact

VA completes follow-up field examinations and telephone contact oversight when the fiduciary fails to fulfill their responsibilities. For example, VA follows up on delinquent accountings and funds usage reports and seeks further clarification if the necessary information is not submitted. Should the fiduciary refuse to submit the accounting, fund usage report or supporting documents when contacted, VA will remove the fiduciary.

In FY 2023 through August 31, VA completed 13,567 follow-up contacts in an average of 29 days.

Onsite Reviews

An onsite review strengthens VA's oversight of fiduciaries. Onsite reviews are intended to ensure fiduciaries who serve multiple beneficiaries are performing their duties satisfactorily and to protect beneficiaries from misuse. VA conducts scheduled periodic onsite reviews under 38 U.S.C. § 5508 on fiduciaries who meet all the following criteria:

- Are located in the United States;
- Serve more than 20 beneficiaries; and
- Total VA funds under management for beneficiaries is more than \$78,860.76 as of December 1, 2022.

VA may conduct unscheduled onsite reviews of fiduciaries as necessary to ensure the well-being of beneficiaries or prevent exploitation of beneficiary funds.

Beneficiary Oversight

In addition to overseeing the fiduciary's performance, VA conducts regular oversight of vulnerable beneficiaries to ensure their well-being through various means, based on the unique circumstances of each case. VA strives to conduct the least intrusive method of oversight to maintain a beneficiary's dignity and to minimize any disruption of family routine.

Annual Written Contact

VA contacts every beneficiary in the fiduciary program annually through written correspondence to remind them of their rights and status in the fiduciary program. This letter also advises the beneficiary and their representative to contact VA if there is an issue or concern with their fiduciary.

For some beneficiaries, an added layer of oversight is not deemed necessary because their well-being is actively monitored by a trusted individual or entity. In these instances, VA leverages annual written contact as the least intrusive form of regular contact while continuing oversight of the beneficiary. These situations include where the fiduciary is:

- The beneficiary's spouse;
- The beneficiary's parent (in cases of minor beneficiaries);
- VHA; or
- Another government agency.

As of August 31, 2023, there are approximately 66,303 beneficiaries served through this type of oversight.

Telephone Contact

If the beneficiary's situation does not meet the criteria for annual written contact, the beneficiary may qualify for scheduled telephonic contact. Beneficiaries who qualify for telephonic oversight are not socially isolated, able to respond to VA requests and oriented to person, place, events and time as of the most recent VA contact.

VA will conduct a telephone call with the beneficiary to assess their well-being, and the beneficiary-fiduciary relationship. Telephonic oversight allows VA to maintain oversight of beneficiaries in a way that is minimally intrusive when the beneficiary's evidence of record indicates that they are able to correspond with VA. As of August 31, 2023, there are approximately 9,722 beneficiaries served through this type of oversight.

Biennial Face-to-Face Contact

For the most vulnerable beneficiaries, such as those who are socially isolated, unable to respond to VA requests or are not oriented to person, place, events and time during the most recent contact, VA will schedule a face-to-face field examination with the beneficiary. These examinations occur every 2 years and help ensure the beneficiary's well-being and assess the current fiduciary situation. As of August 31, 2023, there are approximately 24,935 beneficiaries provided this type of oversight.

Fiduciary Removals and Withdrawals

A fiduciary may withdraw from service by providing a written intent to withdraw that includes the reason for withdrawal. However, a fiduciary is not relieved of their fiduciary duties until they receive written notice in response to their request to withdraw, which includes their requirement to transfer the beneficiary's funds to a successor fiduciary and receive notice of approval for a final accounting.

VA will also take action to remove a fiduciary when oversight reveals evidence of misuse, if the fiduciary refuses to respond to VA's request for accounting or fund usage report documentation or is otherwise found unfit or unsuitable to continue performing fiduciary responsibilities. For VA to further ensure proper oversight of the fiduciary and complete removal actions timely, an annual criminal background inquiry is completed on all active individual fiduciaries to determine whether any active fiduciary has been convicted of an offense which would be a bar to serving as a fiduciary since VA's most recent criminal background investigation. VA takes action to remove any fiduciary found to have a bar to service because of the annual criminal background inquiry.

VA takes misuse of beneficiary funds very seriously and any credible allegation or finding of such is swiftly and comprehensively investigated. Misuse of benefits occurs when the fiduciary receives payment of VA benefits and uses any part of such payment for a purpose that is not for the use and benefit of the beneficiary or their dependents. VA fiduciary program personnel investigate and act on misuse, which is distinct from fraud. For example, fraud could be the continued acceptance of payments after the entitlement to the payment ceases to exist, such as when a beneficiary dies, and the fiduciary conceals the fact to continue receiving VA payments. Allegations of fraud are immediately referred to VA's Office of Inspector General (OIG) for criminal investigation.

VA's oversight is designed to detect and address misuse through accountings, funds usage reports, beneficiary interviews and other contacts, but it is not fool-proof. VA relies on allegations of misuse of funds from many sources, such as from the beneficiary themselves, a concerned family member or friend or a beneficiary's social worker. Every allegation, whether written or verbal, is taken seriously and investigated thoroughly, objectively and impartially. If misuse of a beneficiary's funds is confirmed, VA issues a formal misuse determination which serves as the basis to immediately remove the fiduciary if removal has not already occurred. VA simultaneously establishes a debt against the fiduciary and refers the case to VA's OIG for possible criminal investigation. Any fiduciary found to have misused a beneficiary's funds is further barred from serving as a VA fiduciary in the future.

VA's primary obligation is always the beneficiary and their well-being. If a beneficiary's VA benefits were misused by their VA-appointed fiduciary, VA will make the beneficiary or the beneficiary's successor fiduciary whole, while simultaneously seeking recovery from the person who misused the funds.

VA Negligence

VA does not spare itself from scrutiny and conducts review of its own oversight. After VA issues a formal finding of misuse, VA reviews the record to determine if VA was negligent, as required by law. VA is considered negligent if the misuse would not have occurred but for VA's failure to exercise proper oversight. VA is also considered negligent when VA fails to:

- Review an accounting within 60 days of receipt;
- Decide to investigate an allegation of misuse within 60 days of receipt of the allegation; or
- Take action to replace the fiduciary within 60 days of the allegation of misuse after deciding to investigate an allegation of misuse and finding misuse.

Thanks to congressional action, P.L. 116-315, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, VA was able to improve its ability to make beneficiaries whole after a finding of misuse by decoupling a finding of VA negligence from reissuance. With the passing of this law, VA is now able to reissue the equivalent amount of funds misused by a fiduciary to the beneficiary in every instance of misuse.

Conclusion

The VA fiduciary program has undergone significant modernization in recent years and VA remains committed to protecting the most vulnerable of its beneficiaries. VA strives to maintain the balance of oversight and intrusiveness, while remaining steadfast in our oversight of appointed fiduciaries and the funds it has entrusted to them. VA shares Congress' goal of continuous improvements to its program and its customer service to Veterans and beneficiaries and looks forward to continued collaboration. VA expresses its appreciation for your continued support of Veterans and their families, caregivers and survivors. Chairman Luttrell, Ranking Member Pappas, this concludes my statement. I am happy to respond to any questions you or the Committee may have.

Prepared Statement of Disabled American Veterans

Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee: Thank you for inviting DAV (Disabled American Veterans) to submit testimony for the record of your oversight hearing titled, "VA's Fiduciary Program: Ensuring Veterans' Benefits are Properly Managed."

DAV is a congressionally chartered and VA-accredited national veterans' service organization (VSO) of more than one million wartime service-disabled veterans. To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the Nation, including the Board of Veterans' Appeals (Board).

Mr. Chairman, based on our experience of providing VA-accredited claims representation and assistance to veterans, their families, survivors and those deemed to warrant a fiduciary, we are enthused to provide our concerns about the VA incompetency process, the Fiduciary Program, oversight of VA appointed fiduciaries and DAV's recommendations.

VA'S INCOMPETENCY PROCESS

Under VA regulation 38 C.F.R. 3.353(a), a mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation. The Veterans Benefits Administration (VBA) has sole authority to make official determinations of competency and incompetency for purposes of disbursement of benefits.

In general, most VA incompetency decisions, stem from the VA Compensation and Pension (C&P) examinations. On the VA Disability Benefits Questionnaire (DBQ) for mental health, the examiner must address the question, "Is the veteran capable of managing his or her financial affairs? It comes with a note, "For VA purposes, a mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation."

The DBQ, however, does not indicate the questions asked by the examiner or how they specifically conclude the veteran not being capable of handling financial issues. There is no requirement that this information be based on an actual review of the veteran's finances. In addition, the September 13, 2023, VA Office of the Inspector General (OIG) report found that inconsistent DBQs may lead to inaccurate mental competency determinations.

Unless the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency, the rating agency will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities. Determinations relative to incompetency should be based upon all evidence of record and there should be a consistent relationship between the percentage of disability, facts relating to commitment or hospitalization and the holding of incompetency.

Where reasonable doubt arises regarding a beneficiary's mental capacity to contract or to manage his or her own affairs, including the disbursement of funds without limitation, such doubt will be resolved in favor of competency.

Whenever it is proposed to make an incompetency determination, the beneficiary will be notified of the proposed action and of the right to a pre-determination hearing. If the pre-determination hearing is requested within 30 days of the notice, VBA cannot make a final determination on the issue of incompetency until the outcome from the hearing.

Once incompetency is proposed, any retroactive benefits owed to the beneficiary are withheld until a decision is made regarding competency. The beneficiary will still receive their monthly VA disability benefits check. To put this into context, if the beneficiary were granted a 100 percent rating for PTSD, but the issue of incompetency has been raised, they will receive monthly checks reflecting the 100 percent rating, but will not receive any of the retroactive benefits until a decision has been made regarding competency.

If the beneficiary is deemed incompetent, the retroactive benefits will be paid to the fiduciary, once the fiduciary is appointed. Once a beneficiary has been determined to be incompetent for VA purposes, VBA's Fiduciary Program will then start the process to appoint a fiduciary to manage the beneficiary's financial affairs.

VBA'S FIDUCIARY PROGRAM

VBA's Fiduciary Program provides protection to veterans and other beneficiaries who are unable to manage their financial affairs. This program is managed by Fiduciary Hubs, currently there are six Fiduciary Hubs, meaning that multiple states will be assigned to the same Fiduciary Hub.

Once incompetency has been determined, the case is provided to the Fiduciary Hub closest to where the veteran resides. The Fiduciary Hub will start the process to assign the veteran a fiduciary.

One of the first steps in the fiduciary process is a home visit with a VA field examiner. The field examiner works for VA and is responsible for choosing a suitable fiduciary for the veteran, as well as supervising the fiduciary once chosen and ensuring that the fiduciary acts in compliance with VA. The field examiner will visit with the veteran in their home to assess their needs and determine how to best proceed with filling the fiduciary role, this is often referred to as the Field Examination.

The Field Examination will give the field examiner insight into the veteran's life-style, finances, and health care needs. As such, it can be helpful for the veteran to have documentation prepared prior to the visit, specifically lists of expenditures, bills, and outstanding debts. During this examination, the field examiner may make evaluations regarding:

- Physical status of the veteran, such as age, appearance, and physical disabilities or mobility limitations;
- Mental health of the veteran, including any mental conditions, and ability to discern time, place, and events;
- Current medications and specific health concerns;
- Veteran's current capacity to manage finances;
- Inventory of assets;
- Standard of living, with specific regard to the monthly finances and funds used;
- Social adjustment, such as social relationships;
- Industrial adjustment, such as work capability;
- Dependents and needs of dependents;
- Information regarding next of kin; and
- Any changes to benefit entitlement.

Generally, the most common types of fiduciaries are federal fiduciaries and court-appointed fiduciaries. Court-appointed fiduciaries are rarer and only used in instances where a Federal fiduciary may not be found. A federal fiduciary may include spouses, family members, or legal custodians.

The goal is finding the fiduciary who best suits the veteran's needs, and, where feasible, preferences. VA has a set of guidelines to choose a fiduciary. VA's internal handbook instructs field examiners to "determine the most effective, practical, and/or economical type of fiduciary appropriate to the situation." As well as "discuss payee selection with the beneficiary to the extent possible" and "take into consideration the beneficiary's request where feasible."

Additionally, field examiners investigate the eligibility of a potential fiduciary candidate by reviewing:

- Identification information, including name, address, date of birth;
- Occupation status;
- Relationship to the veteran;
- Education level;

- Credit report information (this is not necessary if the proposed fiduciary is a spouse or parent);
- Response to criminal background check inquiry; and
- Character witness statements

After the field examiner completes the investigation into potential fiduciary candidates, they will appoint a fiduciary and this requires the field examiner to notify the veteran through an official notification, similar to a VBA rating decision.

If the fiduciary is a spouse, the spouse will receive a packet of paperwork by mail which will need to be filled out. If the fiduciary is someone other than a spouse, the veteran will be provided with the fiduciary's identification information and a meeting will be scheduled for the veteran to meet with the new fiduciary in person. Once this meeting has occurred, the fiduciary will take over all financial responsibilities and obtain all the financial information necessary to do so.

The fiduciary process is designed to protect the veteran and their assets. Veterans have certain rights to ensure that the system is not abused and that the fiduciary is best suited for the veteran's needs. Veterans have the right to:

- Be notified when VA appoints a fiduciary;
- Appeal the appointment of a fiduciary to the Board;
- Request that VA replace a current fiduciary with a new fiduciary; and
- Be assigned a new fiduciary at any time.

According to VBA's Annual Benefits Report for Fiscal Year (FY) 2022, updated in February 2023, the Fiduciary Program is serving more than 108,000 beneficiaries who receive over \$2.6 billion in VA compensation or pension. Given this large amount of beneficiaries with third-party individuals who have access to billions of benefits, DAV is concerned that these veterans and beneficiaries are vulnerable to fraud and misuse of VA funds. Oversight must be priority one.

FIDUCIARY OVERSIGHT

VBA states the Fiduciary Program closely monitors fiduciaries for compliance with program responsibilities to ensure that VA benefits are being used for the sole purpose of meeting the needs, security, and comfort of beneficiaries and their dependents.

Additionally, two offices within VBA share oversight responsibility for the Fiduciary Program. The Pension and Fiduciary Service establishes policy and procedures, provides training, and generally oversees claims processing accuracy. The Office of Field Operations sets production goals and manages the employees who process veterans' claims. Additionally, as noted above, the field examiner is responsible for compliance as well.

DAV is concerned with the amount and levels of oversight for incompetent veterans and beneficiaries, as we feel more oversight is needed to actually protect veterans. There are numerous reports on fraud and misuse by VA-appointed fiduciaries. For example, the FY 2022 Annual Report noted above, reported fraud and misuse indicating that fiduciary personnel conducted 2,067 misuse investigations, of which 817 fiduciaries were removed. Of the cases VA referred to the VA OIG, 25 misuse cases were accepted by OIG for further investigation.

The number of OIG prosecutorial outcomes during fiscal year 2022, so far, resulted in 12 arrests, 16 indictments and 15 convictions. The total amount of restitution ordered in cases arising from the misuse of benefits by a fiduciary was \$1,773,706. The total amount of money recovered by the government in misuse cases was \$299,865. The total amount of benefits reissued to beneficiaries was \$1,346,660.

Examples of these cases can be found in the VA OIG reports, specifically, in their March 2023 Highlights report:

The recent VA OIG report of August 17, 2023, found that, "VBA Did Not Have Adequate Procedures to Ensure Fiduciaries Promptly Returned Deceased Beneficiaries' Funds to VA." The OIG substantiated the allegation that as of June 2022, two fiduciaries under the jurisdiction of the Indianapolis fiduciary hub had not released the funds of four deceased beneficiaries who died in 2010, 2013, 2015 and 2020, respectively. The OIG identified two additional cases in which the fiduciaries had not released funds promptly. Between August 2022 and November 2022, both fiduciaries returned the funds for all six cases to either VA or an heir, but the delay ranged from more than 19 months to 12 years before the funds were distributed. Probate proceedings could cause a delay in disbursement; however, the OIG team reviewed VA electronic records and contacted the fidu-

ciaries involved in these cases and found no evidence that any of the six cases were involved in probate. In total, these six cases involved about \$810,000 of VA-derived funds.

Additional instances of fiduciary fraud are noted below from the VA OIG Highlights Report of May 2022:

Former VA-Appointed Fiduciary Pleaded Guilty for Stealing Benefits from Veterans. VA OIG investigators determined that a former VA-appointed fiduciary stole over \$300,000 that was intended for use by 10 different veterans that he was appointed to represent. He pleaded guilty in the District of South Carolina to theft of government funds.

Another Former VA Fiduciary Indicted for Fraud. In collaboration with the South Carolina Attorney General's Office, the VA OIG conducted an investigation that resulted in charges alleging that a former VA-appointed fiduciary stole over \$65,000 from a veteran she was appointed to represent. The former fiduciary was indicted in the County of Lexington (South Carolina) Court of General Sessions on charges of breach of trust with fraudulent intent and exploitation of a vulnerable adult.

As a grateful nation honoring service and sacrifice, we provide compensation to veterans, their families and survivors; however, if we are failing to protect the most vulnerable of them, we are not truly honoring them.

DAV RECOMMENDATIONS

Our cumulative experience in providing VA-accredited representation to veterans and their families, has provided us with insight in assisting incompetent veterans and dealing with their fiduciaries. Thus, we make the following recommendations to improve the incompetency process and the thoroughness of the Fiduciary Program:

- **Improve the DBQ question about ability to manage financial affairs.** As we noted above, there are no specific questions asked by the examiner. We recommend the DBQ question be clarified. Additionally, there is no requirement that a finding of incompetency be based on a review of the veteran's finances. We recommend that all determinations of incompetency be based on an actual review of the veteran's finances coupled with their ability to make decisions regarding their financial affairs.
- **Require annual audits with veterans and the VA appointed fiduciary.** VA does require reporting from the fiduciary; however, we recommend an annual in-person interview with the veteran about the fiduciary and then a subsequent in-person audit of the fiduciary. This will assist in identifying potential fraud and misuse. This requirement would have quickly identified those fiduciaries who were collecting veterans' benefits 12 years after their death.
- **All claims of fraud and misuse to be investigated within 72 hours.** In our experience, when incompetent veterans make complaints about their VA-appointed fiduciary, they are not always taken seriously. In some instances, this has had dire results for veterans. We recommend that all complaints from incompetent veterans be taken seriously and investigated within 72 hours.

We acknowledge that most of the VA-appointed fiduciaries provide protection to veterans and follow all VA-mandated requirements. However, when there is this much at stake, we must be vigilant and ensure compliance.

Mr. Chairman, together we must resolve to care for the most vulnerable veterans and protect them from life's worst hazards, specifically fiduciary fraud. DAV believes that with changes to the incompetency process, annual audits with veterans and their fiduciaries, as well as immediately investigating complaints of fiduciary fraud, we will protect and honor these men and women who sacrificed so much for this Nation.

This concludes my testimony and we thank you for the opportunity to provide our comments, concerns and recommendations.

Prepared Statement of Paralyzed Veterans of America

Chairman Luttrell, Ranking Member Pappas, and members of the Subcommittee, Paralyzed Veterans of America (PVA), would like to thank you for the opportunity to submit our views on the Department of Veterans' (VA) Fiduciary Program. Fiduciaries play an important role in protecting the interests of veterans who because

of disability or age are unable to properly manage their financial affairs. Proper management of the program is critical, and congressional oversight is essential in ensuring its mission is successful.

Assignment of a VA Fiduciary

VA fiduciaries help veterans manage their VA benefits when they lack the mental capacity to do so due to cognitive issues, such as dementia. A recent VA Office of Inspector General (OIG) report, however, highlighted some troubling findings in the program.¹ The OIG found that two of the four disability benefit questionnaire (DBQ) forms addressing mental competency are inconsistent and may lead to inaccurate determinations and the unnecessary assignment of a fiduciary.

38 C.F.R. § 3.353(a) says that “a mentally incompetent person is one who, because of injury or disease, lacks the mental capacity to contract or to manage his or her affairs, including disbursement of funds without limitation.” The regulation further states that, “unless the medical evidence is clear, convincing and leaves no doubt as to the person’s incompetency, the rating agency will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities.”² The OIG determined, however, that the “language discrepancies on the questionnaires could lead to inaccurate assessments and disparate outcomes for veterans.”

All DBQs addressing mental competency should use standardized language to limit the potential for inequitable or inconsistent decisions. Although not specifically identified by the OIG, a similar problem exists with the Amyotrophic Lateral Sclerosis (ALS) DBQ. Question 12 of the ALS DBQ asks the medical examiner, “In your judgment, is the veteran able to manage his or her benefit payments in his or her own best interest, or able to direct someone else to do so?” This is the same language used in the DBQs that the OIG identified as deficient.

Several years ago, the VA added the caveat to question 12 that a veteran can “direct someone else to do so,” meaning they could communicate their financial need to their caregiver or spouse. This clarifying language has reduced the number of improperly assigned fiduciaries. However, our National Service Officers continue to see some ALS and Multiple Sclerosis (MS) veterans assigned fiduciaries despite their being mentally competent to handle their finances.

Veterans with ALS or MS may be physically unable to write a check or manage their online banking due to weakness, loss of use of extremities, or other physical limitations; however, a physical barrier or limitation is not the same as a cognitive impairment. The ambiguity in the phrasing of question 12 on the ALS DBQ leaves room for errors by a medical examiner or a rating veterans service representative (RVSR) processing the claim. The VA must act to ensure that there is no room for misinterpretation on all DBQs that have the potential to result in the assignment of a fiduciary.

If a medical examiner answers “no” to question 12, the RVSR may lack sufficient context for the veteran’s whole situation, which might result in the improper assignment of a fiduciary. When the VA proposes a determination of incompetency, veterans have 60 days to provide evidence to support their competency. If the VA moves ahead and assigns the veteran a fiduciary, a higher-level review or supplemental claim might be necessary, and there is potential for an appeal to address the issue. However, correcting these mistakes often takes weeks or months which is time that veterans living with ALS simply do not have.

Recently, VA has placed a tremendous focus on hiring and training new RVSRs as a result of the hiring and retention tools implemented with the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT) Act (P.L. 117–168).

Understanding the complexities of disability benefits is no small task, and we commend VA on their efforts to ensure a sufficient workforce. That said, additional training for the Fiduciary Program’s workforce would help RVSRs better understand the nuance of complicated cases such as those for veterans with complex injuries and illnesses.

Increased Fraud and Misuse Allegations

According to data from the VA’s Annual Benefits Report, there has been an increase in fraud and misuse allegations in recent years. During fiscal year 2016,

¹ US Department of Veterans Affairs office of Inspector General, Inconsistent Disability Benefits Questionnaires May Lead to Inaccurate Mental Competency Determinations, September 13, 2023.

² 38 C.F.R. § Annual Benefits Report Archive—Veterans Benefits Administration Reports (va.gov) 3.353(a)

there were more than 233,000 fiduciaries participating in the program with 1,487 misuse investigations. In fiscal year 2022, there were 2,067 misuse investigations despite there being 125,000 fewer fiduciaries in the program.³

It is evident from the data provided by the VA that the number of misuse cases is increasing, while the number of prosecutions has remained relatively flat. This raises several questions that must be addressed. For example, why is the number of misuse allegations increasing if prosecutions are not? Also, have appropriate resources been provided to the program to investigate allegations of misuse properly? In addition, has the VA done its due diligence in ensuring that fiduciaries have been adequately educated about new guidelines and expectations?

Caregiver Burden

When an individual is fulfilling dual roles, such as being a veteran's caregiver and fiduciary, the requirements and expectations of that individual can be overwhelming. If someone is acting as a caregiver for a veteran with a spinal cord injury or disorder, they may be the veteran's family caregiver under the Program of Comprehensive Assistance for Family Caregivers or they may be the veteran's bowel and bladder care provider under VA's Bowel and Bladder Program. These and other similar programs have many requirements that a caregiver must navigate, which can add to stresses that increase the possibility of caregiver burnout.

VA must look for ways to reduce the burden on these caregivers. Unlike the VA's Fiduciary Program, a representative payee for Social Security benefits who is also the spouse of a beneficiary is exempt from keeping meticulous records as required by the VA. When acting as the representative payee, the spouse is expected to use "good judgment" in approving purchases requested by the beneficiary. The VA should consider implementing this requirement for caregivers who are also acting as a VA fiduciary for their veteran spouse.

We must recognize the time, effort, administrative duties, and complexities of caring for another individual. Every effort should be made to ease the burden caregivers face, and resources must be available whenever needed to avoid misuse allegations and unintentional errors.

For example, the VA should consider developing an online portal or a frequently asked questions (FAQ) page on the main program website. Within the VA Fiduciary Guide, which is available online, there is a toll-free number where a fiduciary can connect with one of the hub locations. However, the line is only available during regular business hours. In addition to expanding the accessibility of this line, VA should model its FAQ page after the one on the Social Security website for representative payees, where the Social Security Administration lists the helpline in several locations.⁴

The VA Fiduciary Program is critical in ensuring our most vulnerable veterans are safe, healthy, and can recover or heal free from the burden of managing their VA benefits. A fiduciary is a trusted and valuable member of the veteran's support system, but with that trust comes certain expectations of performance and responsibility. It is incumbent on the VA to provide appropriate resources to ensure fiduciaries can make sound and proper decisions on behalf of their beneficiaries to avoid misuse allegations and other mistakes. However, if a veteran's fiduciary abuses the trust given to them, then they must be dealt with in a timely and efficient manner to ensure that the veteran does not suffer further harm.

PVA thanks the Subcommittee for the opportunity to submit our views on this critical program. We would be happy to answer any questions you may have.

³ VBA Annual Benefits Report, FY 2022.

⁴ Social Security Administration Representative Payee Frequently Asked Questions

Information Required by Rule XI 2(g) of the House of Representatives

Pursuant to Rule XI 2(g) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2023

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events—Grant to support rehabilitation sports activities—\$479,000.

Fiscal Year 2022

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events—Grant to support rehabilitation sports activities—\$ 437,745.

Fiscal Year 2021

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events—Grant to support rehabilitation sports activities—\$455,700.

Disclosure of Foreign Payments

Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.

