DEPARTMENT OF VETERANS AFFAIRS' FIDUCIARY PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHT CONGRESS

FIRST SESSION

JULY 16, 2003

Printed for the use of the Committee on Veterans' Affairs

Serial No. 108–21

U.S. GOVERNMENT PRINTING OFFICE

94–196PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON VETERANS' AFFAIRS

CHRISTOPHER H. SMITH, New Jersey, *Chairman*

MICHAEL BILIRAKIS, Florida
TERRY EVERETT, Alabama
STEVE BUYER, Indiana
JACK QUINN, New York
CLIFF STEARNS, Florida
JERRY MORAN, Kansas
RICHARD H. BAKER, Louisiana
ROB SIMMONS, Connecticut
HENRY E. BROWN, JR., South Carolina
JEFF MILLER, Florida
JOHN BOOZMAN, Arkansas
JEB BRADLEY, New Hampshire
BOB BEAUPREZ, Colorado
GINNY BROWN-WAITE, Florida
RICK RENZI, Arizona
TIM MURPHY, Pennsylvania
LANE EVANS, Illinois
BOB FILNER, California
LUIS V. GUTIERREZ, Illinois
CORRINE BROWN, Florida
VIC SNYDER, Arkansas
CIRO D. RODRIGUEZ, Texas
MICHAEL H. MICHAUD, Maine
DARLENE HOOLEY, Oregon
SILVESTRE REYES, Texas
TED STRICKLAND, Ohio
SHELLEY BERKLEY, Nevada
TOM UDALL, New Mexico
SUSAN A. DAVIS, California
TIM RYAN, Ohio

PATRICK E. RYAN, *Chief Counsel and Staff Director*

SUBCOMMITTEE ON BENEFITS

HENRY E. BROWN, JR., South Carolina, *Chairman*

JACK QUINN, New York
JEFF MILLER, Florida
JEB BRADLEY, New Hampshire
GINNY BROWN-WAITE, Florida
MICHAEL H. MICHAUD, Maine
SUSAN A. DAVIS, California
SILVESTRE REYES, Texas
CORRINE BROWN, Florida

CONTENTS

July 16, 2003

DEPARTMENT OF VETERANS AFFAIRS' FIDUCIARY PROGRAM

WEDNESDAY, JULY 16, 2003

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BENEFITS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 334, Cannon House Office Building, Hon. Henry Brown (chairman of the subcommittee) presiding.

Present: Representatives Brown, Miller, Bradley, and Davis.

OPENING STATEMENT OF CHAIRMAN BROWN

Mr. BROWN. Good morning. The hearing will now come to order.

I am pleased to announce that our hearing this morning is the first VA committee hearing to be broadcast live over the Internet.

We are meeting today to learn about the Department of Veterans Affairs' fiduciary program, administered by the Compensation and Pension Service of the Veterans Benefits Administration, and what steps are necessary to ensure the integrity of the program.

When VA monetary benefits are payable to an individual who is incapable of managing his or her own financial affairs, a third party is required. A fiduciary is a person or a legal entity, such as a bank, charged with the duty of managing the estate of an incompetent beneficiary.

For the fiduciary and field examination activity, VA's compensation and pension services are responsible for protecting the incomes and estates of these beneficiaries. This includes monitoring the third party payee and scheduling periodic visits to the beneficiary to ensure his or her needs are being met.

As of this May 31, VBA personnel supervised the management of funds valued at over $2.7 billion for 100,157 beneficiaries, to include veterans, widows, and adult helpless children and minors.

It is an unfortunate fact that when someone is responsible for another person's money, temptations may arise to take advantage of that position, ultimately to the detriment of the person being assisted. To that end, the VA Inspector General has conducted reviews of regional offices and has found some offices where supervision of the program is lacking.

It is because of the IG's Combined Assessment Program reviews that the ranking member and I felt today's oversight hearing was warranted.

I look forward to hearing from today's witnesses and their recommendations for improvement to this program.

Before I welcome our first panel, Mrs. Davis, I will recognize you for opening remarks.

OPENING STATEMENT OF HON. SUSAN A. DAVIS

Mrs. DAVIS. Thank you, Mr. Chairman. It is a pleasure to join with you this morning. Mr. Michaud will be joining us as soon as he finishes a markup in another subcommittee.

I want to thank you for holding this hearing. The care and services we provide to VA beneficiaries who need fiduciaries is one of the VA's most important functions, and before we begin, I want to welcome the witnesses from the VA and the American Bar Association and thank you for your testimony, and I also look forward to reading your written testimony, which we will be receiving from the veterans' service organizations and other witnesses.

I am pleased that the VA is addressing some of the problems which have been identified by the Inspector General and other reports but also concerned that some of the problems which have been brought to the attention of the committee by interested persons have not been identified by the Inspector General and hope that future reviews will address those concerns.

In particular, earlier this year the committee received reports that a number of beneficiaries in the northwest had been declared incompetent and had their checks suspended for months and even for years.

While I appreciate the efforts of VBA staff to address this problem, I hope that the Inspector General will look at any fiduciary cases where benefits are in suspense due to the lack of a payee.

Beneficiaries need the monies provided by VA for their daily expenses, and it is only in rare cases that benefits should be suspended for lack of a payee.

I hope that the VA will discuss their efforts to educate fiduciary staff concerning the difficult to manage, dual diagnosed beneficiaries and under what circumstances fiduciaries are appointed to serve the best interests of veterans and survivors without a finding of incompetency.

It is my understanding that the fiduciary programs are operating successfully in some areas. A best practice reported by veterans' service offices at one regional office involved the periodic use of unannounced visits to the beneficiary, which helped to ensure that proper care is being provided.

I would encourage the use of such practices.

Problems have also been brought to the attention of the committee, and there appears to be some confusion concerning the fiduciary's obligation to make arrangement for payment of past debts when that is a prerequisite to obtaining current services, such as gas or electricity. Beneficiaries should not be living without utilities because a fiduciary does not make appropriate and necessary arrangements for payment of past debts.

We owe beneficiaries the most competent services VA can provide and have a responsibility here in Congress to ensure the regional offices have the staff and the resources to implement successful programs for them.

The oral and written testimony will provide us with needed insight into this program and assist us in our legislative and oversight duties.

I want to thank you, Mr. Chairman, and I look forward to working with you to improve the lives of VA beneficiaries who need fiduciary services.

Thank you, Mr. Chairman.

Mr. BROWN. Thank you, Mrs. Davis. Thanks for filling in for Mr. Michaud this morning.

We are ready for panel one. Mr. Richard Griffin is the VA Inspector General, and Mr. Griffin is accompanied by Mr. Michael Slachta, the Assistant Inspector General for Auditing.

Welcome, gentlemen, and Mr. Griffin, you may begin.

STATEMENT OF RICHARD J. GRIFFIN, INSPECTOR GENERAL, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MICHAEL SLACHTA, JR., ASSISTANT INSPECTOR GENERAL FOR AUDITING, DEPARTMENT OF VETERANS AFFAIRS

Mr. GRIFFIN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to be here today to highlight our efforts to protect our Nation's veterans and to identify and eliminate fraud, waste, and abuse in the Department of Veterans Affairs' fiduciary and field examination program.

My office provides program oversight of the fiduciary and field exam program activity through audits, combined assessment program reviews, hot line referrals, and investigations.

As a result of the lessons learned from prior audits and investigations, we targeted CAP coverage of VA's fiduciary and field examination activity to focus on high-risk areas vulnerable to fraud and other systemic weaknesses.

For the period of June 2000 through September 2002, we conducted reviews of the fiduciary and field examination program at 18 VA regional offices.

We reported improvements were needed at 10 of these 18 facilities.

Some of the more significant and recurring problems my staff has identified during these reviews are field examinations and reports of income, expenses, and assets have not been conducted in timely manner, resulting in backlogs of pending field examinations at some facilities.

Field examiners did not adequately evaluate the physical and mental condition of the beneficiary or assess the beneficiary's home environment. For example, one report noted the field examiner did not inspect the veteran's housing, and another report contained no evidence that the field examiner took any action after finding the beneficiary in deplorable living conditions.

We have made recommendations to ensure that VA's field examiners conduct thorough field examinations, that field examiners file and distribute their reports appropriately, that fiduciary accountings are reviewed within 14 days of receipt, and appropriate follow-up actions are taken when necessary, and that VA staff follow up on delinquent fiduciary accountings.

During the period of June 2000 to June 2003, my hot line division received 79 allegations concerning fiduciary and field examination activity. Of these 79 allegations, we found that 20 were substantiated and 13 cases remain under inquiry.

For the remaining 46, we determined that the allegations were unfounded.

Referrals of fiduciary fraud to my Office of Investigations staff are most often received from VA field personnel in the regional offices and also as a result of our CAP reviews.

Since July 1st of 1998, we have received 230 fiduciary case referrals and opened 126 criminal cases for investigation.

To date, our investigations have resulted in 37 arrests and monetary recoveries of more than $2 million.

The following examples illustrate the nature of the allegations received and the investigations we have performed.

In one egregious case, we found that an attorney who was appointed as counselor for the estates of several veterans, receiving VA and Social Security Administration benefit payments, embezzled over $400,000 for his own personal use. As a result of our investigation, this attorney was convicted and sentenced to 12 months of home confinement, 3 years' supervised released, and was ordered to pay $490,625 in restitution.

In another significant case, we investigated an individual appointed as a fiduciary for VA and Social Security beneficiaries and determined the individual embezzled over $200,000.

As a result of our investigation, he was convicted and sentenced to 32 months' incarceration, 3 years supervised release, and was ordered to pay $214,745 in restitution to VA and Social Security.

Program oversight of fiduciary and field examination activity is necessary to protect beneficiaries from mismanagement of funds, irregularities and fraud.

We are committed to continue our collaborative efforts with VBA to ensure the integrity of this most critical benefit program.

This completes my statement, Mr. Chairman. I would be pleased to answer any questions that you or other members of the committee may have.

[The prepared statement of Mr. Griffin appears on p. 18.]

Mr. BROWN. Thank you, Mr. Griffin. I truly appreciate your testimony this morning.

As you indicated in your statement, these are among the most vulnerable of VA beneficiaries, and I applaud you and your staff for the thorough review of this program.

Is there anything this committee can do to ensure effective supervision by the Compensation and Pension Service?

Is there something that needs to be done through the legislative process, anything legislative we can do to help make this program more secure?

Mr. GRIFFIN. I think that the program in place is good as long as there are sufficient field examiners available to ensure program integrity.

In some areas, it appeared that there was not sufficient staff, and in other areas, the weight of claims processing activity has been such that other areas have suffered.

I think that they have a good system.

I think the FBS, the computerized system for tracking these cases, is a good system, but it is only as good as the data that is entered and the people who are overseeing the field examination process.

Mr. BROWN. Mr. Griffin, could I get you to submit for the record those areas that you feel are deficient in the number of staff, and maybe there is something we can do to help.

Mr. GRIFFIN. Yes, sir.

Mr. BROWN. Mrs. Davis, do you have a question?

Mrs. DAVIS. Yes, Mr. Chairman, just a few.

When the funds are misused by a fiduciary, what priority is there for a replacement back to the beneficiary? Where does it rest, and how is that done?

Mr. GRIFFIN. I am sorry. Could you repeat the question?

Mrs. DAVIS. Does replacement of the beneficiary's funds have the highest priority when, in fact, those funds have been misused by a fiduciary? How is that done? Is recovery possible? Does that happen?

Mr. GRIFFIN. I believe Mr. Henke is probably in a better position to respond to your question. I am sure that we share a commitment to making sure that the most vulnerable of the veteran population are given a high priority.

Mrs. DAVIS. Mr. Slachta, did you want to comment on that?

Mr. SLACHTA. In certain instances, in estates—generally, where veterans have estates of $20,000 or more, there is a bond that is usually required, a surety bond or a personal bond, and those bonds can be used to help make the veteran whole.

How quickly they can get to those funds, I don't know, but there is protection there for them.

Mrs. DAVIS. It is also my understanding that the ABA has recommended authority to impose a civil monetary penalty against organizations which misuse, which convert or misappropriate payments to beneficiaries when they are acting in a fiduciary capacity.

Do you think that there should be that authority to provide that kind of remedy?

Mr. GRIFFIN. I think that any law that would penalize fiduciaries who rip off veterans is a good law. That is why, when we get these criminal cases referred to us, we make them a priority.

Some cases can and have gone civil in order to, you know, extract fines and penalties and restitution.

Mrs. DAVIS. Obviously, if they have to go through other hoops, that really can be problematic, and so, we would like to work with that. Thank you.

The committee has also heard that, in some cases, fiduciary fees in excess of the 4 percent occur, and I am wondering, you know, how does the VA monitor that those fees stay within the statutory limit?

Mr. GRIFFIN. There are written accountings that are required to be submitted by the fiduciaries and reviewed by the VA. Any evidence of mischief on those forms might generate a lead.

Frequently, we get involved with cases one family member has been designated as the fiduciary and another member of the family thinks that they are not doing the right thing by the veteran. They will contact either the regional office, or our hot line.

So there are a number of different possibilities.

In our 1997 audit report, we gave to VBA a list of fraud indicators that we asked them to put issue to their employers, so they could be looking for these things in their day-to-day performance of their duties. VBA accepted and published them, and they have become part of their current standard operating procedures.

We also have participated in training sessions which VBA has held for all of their field examiners. I think the last one was in Baltimore a couple of years ago, and I sent our director of criminal investigations to that session just to make sure that we kept the lines of communication open. He also shared with them the wrong doing that we are seeing in the criminal cases that we have been working.

Mrs. DAVIS. Could you characterize how often that occurs in any way? Do you feel you are in a position to do that?

Mr. GRIFFIN. Well, the training that we went to, which was national in scope, was about 2 years ago. I understand we have been invited to another similar session. We have also made this part of our combined assessment program. When we go to a regional office, we do three or four fraud awareness seminars of about 45 minutes each, and during those seminars, we brief the VBA employees on actual fraud cases that have been perpetrated against VBA in the last 5 years.

Mrs. DAVIS. All right. Thank you.

Appreciate it, Mr. Chairman. Thank you.

Mr. BROWN. Thank you, Mrs. Davis.

Mr. Griffin, just as a follow-up question, the fiduciaries—are they all bonded, did you say?

Mr. SLACHTA. Not all of the fiduciaries are bonded. Some of them are spouses. Some of them are relatives. It depends upon the estate.

For example, if the veteran is receiving just sufficient funds to maintain, they probably would not bond, because there would be no estate being built up. So, no, they are not all bonded.

Mr. BROWN. I was just thinking, you know, just for protection in the fraud cases that you talked about with Mrs. Davis, that restitution, I guess, is important for me, and I was just wondering how those veterans who were defrauded—how would they get a remedy?

If it was a fraud of over $100,000—I think you said one of those cases was like 2 million—how would that money be distributed back to those people who had been defrauded, or would they ever be made whole, or what would be the result?

Mr. GRIFFIN. The $2 million that I referenced is the cumulative recoveries for fines and penalties and restitutions.

Often, that money is recovered, not from family members but from legal representatives who were designated as the fiduciary.

When it has been demonstrated that the veteran was not in receipt of the money, I believe that would trigger a decision for VBA.

Mr. BROWN. We will have somebody representing VBA on the next panel—so, we will ask that question to that level, then.

Okay.

Are there any further questions?

[No response.]

Mr. BROWN. Thank you, Mr. Griffin. We appreciate you coming and testifying, and thanks for looking out for this very vulnerable group of our veterans.

Mr. Ronald Henke is the director of the Compensation and Pension Service at the Veterans Benefits Administration.

Thank you for coming today, and I look forward to your testimony, Mr. Henke.

STATEMENT OF RONALD J. HENKE, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION

Mr. HENKE. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear today.

I am pleased to report on the activities and accomplishments of the Department of Veterans Affairs' fiduciary program.

Before addressing the specific Office of the Inspector General findings, I would like to explain the mission of the VA fiduciary program.

The fiduciary program's mission is to provide oversight of VA funds paid to beneficiaries who are incapable of handling their income and assets because of injury, disease, or the infirmities of age.

These beneficiaries are among VA's most financially vulnerable.

When they have been found to be incapable of handling their income or assets, it is the duty of the fiduciary program to determine an appropriate payment method, appoint the fiduciary when necessary, and provide continued oversight for as long as needed.

After the initial field examination, periodic personal contacts are made with the beneficiary to evaluate his or her personal welfare, the performance of the fiduciary, use of funds, and to adjust VA fund usage, as necessary. A review is also made of the competency of the beneficiary to manage his or her own affairs and the necessity for continuation of the fiduciary arrangement.

The frequency of these contacts, determined by the field examiner, varies from an interval of several months to several years on an individual basis, depending upon the mental condition of the beneficiary and the environment in which he or she is living.

I might point out that some of these visits are announced; some are unannounced.

In cases where it is necessary to obtain a court-appointed fiduciary, the fiduciary is required to submit an accounting at intervals established by state law. These accountings are audited, expenditures analyzes, reported assets verified, and surety bonds adjusted, as necessary, to assure proper estate administration.

Accountings are also required by Federal fiduciaries in instances where necessary to protect the beneficiary's interest.

The fiduciary program supervises the benefits of approximately 100,000 VA beneficiaries, including 65,000 veterans.

There are currently 224 field examiners and 127 legal instruments examiners in our 57 regional offices.

The IG CAP reviews points out deficient areas in 10 of the 18 offices visited. They are primarily concerned with the field examination process, accountings, and cross-cutting issues with VA medical center social workers. We and VBA have worked and will con-

tinue to work with the Inspector General to correct these deficiencies.

Some of the ways that VA has become involved in these corrections are as detailed.

Number one, we have a centralized quality review program.

Number two, we do quarterly fiduciary program nationwide teleconferences based on the findings of the quality review, an internal fiduciary program web page, an ongoing schedule of site visits, started in 2001. We have, thus, far visited approximately 30 offices, and we have also provided requested training beyond that of the site visits at many other regional offices in the past year.

A fiduciary program mailbox and all of the CAP finding areas are routinely reviewed either through quality reviews or at site visits.

Field examination completeness and thoroughness are tracked.

Documentation of meetings with the VA medical center social work staff is reviewed, and field examiners are trained to maintain ongoing communications.

We have emphasized the importance of rigorously following up and obtaining overdue accountings through training, data analysis, and management oversight.

In closing, the fiduciary program has made great strides over the past several years. There has been a renewed emphasis on the program within VBA, and I am proud to be part of that effort.

I am confident that we have addressed and will continue to monitor the terms detailed in the CAP review summary, and I thank you for the opportunity to share this testimony, Mr. Chairman, and I welcome any questions that you or other members of the subcommittee may have.

Thank you.

[The prepared statement of Mr. Henke appears on p. 23.]

Mr. BROWN. Thank you, Mr. Henke.

I certainly appreciate the information you shared this morning and your efforts to improve the oversight of this program, but it does appear from the IG's testimony that the fiduciary program is a rather low priority at the regional office level.

These are beneficiaries who would be most in need of trusted advisors.

I am glad to know that your office is working closely with the Inspector General, and my question today would be—we asked the previous witness, when a fiduciary misuses or even steals a beneficiary's monetary benefits, does the VA replace the money, or how is that handled?

Mr. HENKE. Mr. Chairman, there is currently no mechanism for the VA to replace the money directly to the beneficiary.

Mr. BROWN. In most of the cases that you receive, Mr. Henke, how do you get referrals? When in the life of a veteran does somebody decide that he is incapable of handling his own affairs?

Mr. HENKE. Referrals come from many places.

They could come from the hospitalization period and the report of that hospitalization.

They could be from someone who knows the veteran in the community.

They could, in fact, come from treatment records from a private source.

You know, we do not have just one source. We look at what comes in routinely from a veteran, in a claim for increase, for example, and then we would make a decision based on what we have before us as to whether or not we should proceed with the whole issue and the question of competency or incompetency.

Mr. BROWN. That is where your field examiners would come in. They would go out and actually investigate the individual cases.

Mr. HENKE. The field examiner actually does not become involved in the fiduciary situation until after the veteran has been determined to be incompetent by a VA rating board.

Mr. BROWN. Do you find that the 224 examiners you have now are sufficient to maintain over 100,000 cases you have to deal with?

Mr. HENKE. As the current fiduciary program exists, yes, I think that is sufficient numbers.

Mr. BROWN. Okay. Thank you very much.

Mrs. Davis, do you have a question?

Mrs. DAVIS. Thank you, Mr. Chairman.

I wondered if we could just go back to that issue again, whether or not funds are misused by a fiduciary and the ability of the beneficiary to receive—to recover those funds when, in fact, a fiduciary perhaps has the ability to make good on that.

Could the Secretary's equitable authority be used in that case? Why don't we have a mechanism for doing this?

Mr. HENKE. I am sorry, I don't know the answer to that question. Could I reserve that for later, please?

Mrs. DAVIS. Okay. Thank you.

Would you also discuss for a moment—I mentioned in the opening statement that there are concerns about managing difficult cases—dual diagnosis cases, perhaps. How do you necessarily train fiduciaries to manage those difficult cases?

I don't know what percentage might fall in that range, but do they receive some special training in order to do that?

Mr. HENKE. I do not know what percentage of cases would fall into the dual diagnosis criteria. However, I do know that we already have many of these cases on the rolls, and field examiners are trained, through the process—they begin with the guidelines that are outlined in the manual. They do a shadowing arrangement with an experienced field examiner.

They are very closely watched, with oversight, as they are in the beginning stages.

When they become more experienced, as they become more proficient, this oversight continues to ensure that what they do and how they perform their examinations are in accordance with the guidelines that are outlined.

Field examiners also are trained to keep close contact with the VA medical centers, should that be where the veteran is getting his or her treatment. In addition to that, if a veteran is receiving treatment from another source, whether it be private or whether it be some other state agency, they are in constant touch with those officials and those agencies, as well.

A veteran reviewed—excuse me—the field examiner reviews the entire file to see up front what the veteran's condition and state is

prior to going on the field examination and the examination of where the veteran is living and the current situation.

The field examiner also will have this in consideration when they are looking to get a fiduciary appointed. We realize that it may be more difficult in some cases than others, but we are very careful to ensure that whoever the fiduciary is, that they are—that they, themselves, are capable of handling the situation, and should a field examiner encounter a situation, in either the initial visit or subsequent visits, that is not in accordance with the veteran's needs, that will be reported to the fiduciary and to other authorities or agencies, as needed.

Also, the field examiner will schedule field exams in the future, depending on the conditions, from a very short period of time, especially during the initial period, where stabilization is needed, and then, dependent on the circumstances, perhaps stretch it a little bit longer, and as I stated in my statement, we do do unannounced visits to ensure that they don't know when we are coming.

Mrs. DAVIS. I am glad to hear that, the visits that you are talking about, and in most cases, do you believe that the system has that capacity to interact with mental health providers, social workers in the VA system?

Mr. HENKE. Our field examiners are assigned a basic territory within the jurisdictional area of the regional office.

Some of them live in that territory, and they have—they know the people, there is more familiarization in some areas, more so than in other areas, and they become acquainted with the agencies and/or, you know, whatever is out there to ensure that they can make these referrals when necessary.

Mrs. DAVIS. Thank you. I appreciate that. I would suspect that there probably are those areas where we really do have gaps, and so, the extent to which we can follow up with those and try and provide those services would certainly be very helpful.

Thank you.

Mr. HENKE. We are constantly on the lookout for those.

Mrs. DAVIS. Thank you.

Mr. HENKE. Thank you.

Mr. BROWN. Thank you, Mrs. Davis.

Any other members have a question?

Mr. Henke, let me restate, I guess, the question I asked earlier about the loss of benefits because of the fraud of the fiduciary, and my original question was that if they were reimbursed or they were able to get money from the settlement, but I know the last witness testified that, in one case, there was $2 million that was misappropriated.

Is there no remedy for the veteran? You don't have a program in place to allow him to—allow them or whoever is being defrauded—some consideration?

Mr. HENKE. We do not have a program in place, I think, that you are referring to in the sense that we would repay the veteran what was lost, you know, as their monthly benefit is concerned.

However, you know, we do work with the Inspector General. We do work with the local regional councils. We do work with the Department of Justice in the prosecution of these perpetrators, for example, and also, if there is a fine or if there is something set up

by the court, the court would administer the collection and restitution in those particular cases.

So my response would be that directly we do not; however, indirectly, I believe, you know, we do to some extent.

Mr. BROWN. Okay.

Thank you very, very much. Thank you for coming and being with us today, I appreciate this testimony, and anything we can do to help make that job easier, let us know.

Mr. HENKE. Thank you, Mr. Chairman.

Mr. BROWN. Good morning.

Mr. PICKERING. Good morning.

Mr. BROWN. Mr. John Pickering is a member of the American Bar Association and is the former chairman of the Commission on Law and Aging, Senior Law Division. Mr. Pickering is accompanied today by Ms. Nancy Coleman, and we welcome you, Mr. Pickering and Ms. Coleman, and look forward to your testimony.

STATEMENT OF JOHN H. PICKERING, FORMER CHAIR, COMMISSION ON LAW AND AGING, AMERICAN BAR ASSOCIATION; ACCOMPANIED BY NANCY COLEMAN, DIRECTOR, COMMISSION ON LAW AND AGING, AMERICAN BAR ASSOCIATION

Mr. PICKERING. Thank you, sir.

As you said, I am here on behalf of the American Bar Association, which is the world's largest voluntary professional organization, with over 400,000 members. I am here in my capacity as a former chair of the ABA Commission on Law and Aging. I am also a member of the bar association's House of Delegates, which is its policy-making organization.

The ABA is pleased to have been asked to testify before this committee, and we have developed policy in many areas to protect vulnerable older people who have been found to lack capacity under state guardianship affairs and Social Security capability determinations and in the veterans' incompetency determinations.

Last year, the American Bar Association adopted policy which is quoted in my written statement, which I ask be made a part of the record——

Mr. BROWN. Yes, without objection.

Mr. PICKERING (continuing). That is directly related to fiduciary performance.

While this policy was developed to apply to the Social Security representative payment program, it is directly applicable to the Department of Veterans Affairs' similar program for incompetent veterans.

I might say I was very pleased to hear the prior testimony from the Veterans Administration about identification of some of the problems in this large program and the positive steps that they are taking to remedy those deficiencies.

The veterans' program allows for the appointment of a fiduciary for a veteran who is incompetent or unable to manage his or her own affairs.

The beneficiary does not have to be adjudicated incompetent or rated incompetent by the Veterans Administration.

Under the governing statute, whenever it appears that the interest of a beneficiary would be served by appointment of a fiduciary,

payment of benefits may be made to a relative or some other person or entity for the use and benefit of the beneficiary regardless of the extent of legal disability.

There are approximately 100,000 fiduciaries now serving our veterans who are unable to manage their own affairs. This is a small number in comparison to the similar Social Security representative payee program, which serves over 6.6 million beneficiaries.

Nevertheless, this is still an important number since it amounts to 3.3 percent of those who receive benefits from the Department of Veterans Affairs.

As I indicated before and as you heard in testimony, the Department of Veterans Affairs' Office of Inspector General has commented over the years about needed changes in the fiduciary benefit system.

In 1997, the Office of the Inspector General stated that the fiduciary system needed to be updated, and a 2002 summary report found 11 basic needs in the fiduciary and field examinations in 10 of the 18 VA regional offices.

These needs included (1) ensuring that the fiduciary activity supervisor meets annually with appropriate personnel at the supporting VA medical center to coordinate visits, (2) ensure that the field examination staff follow up on delinquent accountings, (3) ensure that fiduciary accountings are reviewed within 14 days of receipt and appropriate follow-up actions are taken, (4) ensure that field examiners are notified of pertinent issues to be addressed, conduct thorough field examinations, make recommendations or referrals and appropriately file and distribute field examination reports, (5) continue efforts to complete fiduciary accountings before holding hearings, (6) ensure that the field examination staff meet with medical center staff to discuss and coordinate services provided to incompetent veterans, (7) advise Office of Inspector General investigations of incompetent veterans abuse cases that are referred to adult protective services, (8) ensure that field examiners conduct thorough field examinations and make appropriate recommendations, (9) provide enough staff to ensure that field examinations and accountings are completed timely, and (10) follow up on delinquent accountings by letter, telephone, or personal services.

These Office of Inspector General findings are similar to the deficiencies found in the Social Security—by the Social OIG with regard to the Social Security representative payment program.

Numerous required accountings are not filed in a timely fashion, and thus, the agencies are unable to identify whether funds were spent on the beneficiaries themselves.

H.R. 743 of this session of Congress, passed by the House this spring, suggested various ways to deal with the problems that have been created in the Social Security representative payee program, similar to the protections advocated by the American Bar Association in the policy statement quoted in my prepared statement.

The veterans' fiduciary program could benefit by many of the same types of reforms, which would undergird and strengthen some of the actions which the Veterans Administration is already taking.

These reform include matters such bonding of payees, making whole the beneficiary when the payee misuses funds, and greater

oversight on the part of the Department of Veterans Affairs for making sure the system responds to the needs of the vulnerable beneficiary.

As I have said before, the ABA appreciates the opportunity to be here today, provide some information about this important benefit for so many veterans.

I am proud to say I am among the veterans that this matter is addressed to, and I commend the subcommittee for holding these hearings.

I am ready to take questions.

With me is Nancy Coleman, the staff director of the Commission on Law and Aging, who has done a detailed study of the representative payee program under the Social Security Administration, to which ABA policy is addressed.

[The prepared statement of Mr. Pickering appears on p. 32.]

Mr. BROWN. Thank you, Mr. Pickering.

We certainly appreciate you coming today and sharing your wealth of knowledge with us on this certainly vulnerable constituency that we have out there.

We raised a question—and I appreciate you bringing a parallel between the Social Security and the Veterans Administration, and I noticed you raised a couple of points that we had raised earlier in questioning the other witnesses, about the bonding and making the beneficiary whole, I guess, and whatever that program might be.

Is there something that Congress need to do, or can that be done as an administrative function? Do you know?

Mr. PICKERING. I think it is a recommendation we have made. It would be, I think, helped by being enacted in statute, and that is one of the safeguards in the House bill that I have referred to.

The problem we have found in the Social Security Administration relates primarily to the organizational payees.

The representative payees who are family members—spouses, children, and so on—is much less evidence of any abuse there.

In the close-knit family, it works well, but because of the enormity of the program, 6.6 million people, some of these organizational payees take on too much and they screw it up in one way or another, and we particularly recommended that they be bonded, so there can be restitution.

I applaud the Veterans Administration for referring cases to the Department of Justice to get money back and so on, but there ought to be some kind of a statutory guarantee. I mean these are the most vulnerable of people, particularly the veterans who are dependent on the benefits for their very survival, and there has to be some way found to make them whole.

Mr. BROWN. Do you know whether, in the Social Security Administration, whether the beneficiary is made whole in cases of fraud-related instances?

Ms. COLEMAN. In the legislation which this House adopted earlier in the spring, it does make the person whole again.

Currently, under current law, it does not. That bill has not passed in the Senate yet, but the intent is to make the beneficiary whole.

Mr. BROWN. I thank you very much, Mr. Pickering.

Mrs. Davis, do you have a question?

Mrs. DAVIS. Thank you.

I appreciate your all being here. I feel like it would be wonderful to just pick your brains for a little bit more in terms of what you have seen.

What do you consider to be the chief obstacles for best practices? Is it institutional? Is it training?

We always have problems—we are dealing with human beings who perhaps are going to not always do the right thing, but could you help us out a little bit more? Is there something, especially, that should be directed—I understand the legislation is in place, at least it has passed the House, in that one area, but what else should we be looking at?

Mr. PICKERING. The programs are designed to save the money of the beneficiary and of the government, given the size, so they don't have the formality of state probate proceedings, but even in those proceedings, in state matters, you have problems to which the American Bar Association has spoken.

I had the privilege of appearing several years ago before the late Claude Pepper, who conducted hearings into guardianship abuses and so on, but the preference in all of these is to have some close family member who would do the work, but there has to be closer supervision in a program that is as flexible as this is and not formal, but even formal programs, as I have said, can have abuses which have to be corrected.

Nancy, you add to that.

Ms. COLEMAN. I guess I would add a few points.

First of all, I think that the question is whether or not there is enough formal—both statutory and regulatory oversight of who the fiduciary is and how that person is chosen.

In the case of where a court acts as the fiduciary for the veteran, there needs to be a greater look-see that that is the appropriate person.

It may be that a court was appointed to be the fiduciary or the conservator of somebody's estate but not necessarily have the interest of the individual in mind and be able to make the personal kinds of decision-making that you would hope a fiduciary would be able to do.

So there needs to be closer scrutiny there and ties between where the court acts as the fiduciary and where the person is in need of additional services.

The second thing, it seems to me, is that while the bonding requirement in H.R. 743 goes to organizational payees, the bonding requirement should really relate to the amount of money that is of concern.

There could be major back awards, for instance, that somebody who had a pending decision for several years, and how does that relate to two things—one, the 4-percent rule and, two, the bonding requirement. So, again, we are looking at not simply the fiduciary acting on the monthly amount but on past amounts.

The third thing which I think is really quite difficult to understand is, at least in the Social Security rep payee program, the rep payee may only be the rep payee for the Social Security dollars.

That is, in order for Social Security to determine who the rep payee is, it can't be the guardian unless the guardian comes in and asks to be the rep payee, and it seems to me that the differentiation of roles—and in several of the cases that were pointed out this morning in both the IG's testimony and in the benefits testimony—related to the question of where you have somebody who has multiple roles—that is, the person is the rep payee, he is also the fiduciary, and he may have been the guardian.

In those cases, it seems to me there has to be a written agreement between the agencies as to who is responsible for doing the oversight, because at times, the person just sort of pins one oversight agency against the other, and in those cases where you have somebody who has all three of the responsibilities and may be receiving other funds from other sources, you may have conflicts as to who is going to do the oversight.

So it seems to me that greater specificity would be helpful there, as well.

Mrs. DAVIS. Does the system have the capacity to respond in that way? I mean, is it also a matter of training in terms of this oversight function, where you have multiple——

Ms. COLEMAN. Well, I think that there needs to be an agreement between the two major departments, the VA—and perhaps even with OPM, where you have OPM—people receiving those kinds of benefits, as well, as well as with Social Security, and then I think some agreement with the courts, depending upon the dollars, and I think that that is an agreement at the highest levels of the VA and Social Security. It is not at the sort of staff level. So, I think there is a capacity to do that, whether or not there is a willingness to do that.

Mrs. DAVIS. Did it surprise you that the VA responded that they didn't really have the authority to deal with this?

Ms. COLEMAN. Right, and also, I think that the question has been in the civil monetary penalty question. The IG within Social Security has the right to go after money, to recover it, and then to pay back, short of the H.R. 743, and it seems to me that, in VA, that doesn't exist, and you are then relying on U.S. attorneys to go after fiduciaries who misuse funds, as compared to whether or not they are going after drug cases or something else.

I mean you have got a conflict within agencies to seek restitution.

Mrs. DAVIS. Thank you.

Mr. Pickering, did you have anything else you wanted to add to that?

Mr. PICKERING. Just one additional thought. It is very important that these agencies do the best they can in appointing these fiduciaries.

We, in our investigations, came across one administrative law judge who said that the fellow who caused him the most problem, been appointed as a rep payee, was the local bartender, and hopefully we don't have many more of those.

Thank you very much, appreciate the opportunity to share thoughts with you.

Mrs. DAVIS. Thank you.

Mr. BROWN. Are there any further questions?

[No response.]

Mr. BROWN. Mr. Pickering, thank you very much. It has absolutely been a delight to have you come and to share this with us and to—also, I guess, if you identified 400,000 attorneys around the Nation who are volunteering to this program, that is an enlightenment, too, and thank you for your participation.

We stand adjourned.

[Whereupon, at 11:27 a.m., the subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF CONGRESSMAN MICHAUD

Good morning Mr. Chairman.

Thank you for holding this hearing today on the VA's fiduciary program.

I want to welcome all the witnesses from the VA and the American Bar Association and thank them for their testimony.

VA's fiduciary program cares for some of the most vulnerable individuals served by the VA.

We owe them the most competent services VA can provide.

I am troubled when I hear that beneficiaries go for months without basic necessities because VA has made a determination of incompetency, but has suspended payments because a fiduciary has not been appointed.

I am troubled when I hear that a veteran with severe mental illness compounded by drug or alcohol abuse is directed to a food pantry in order to obtain food.

I am also troubled when I read reports of beneficiaries living in squalor without adequate actions being taken to address their needs.

I hope that today's hearing will help us address some of these troubling problems.

This oral and written testimony will provide us with insight into this program and assist us in our legislative and oversight duties.

Thank you Mr. Chairman, I look forward to working with you to improve the lives of VA beneficiaries who need fiduciary services.

STATEMENT OF

THE HONORABLE RICHARD J. GRIFFIN

INSPECTOR GENERAL

DEPARTMENT OF VETERANS AFFAIRS

BEFORE

THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON VETERANS AFFAIRS

SUBCOMMITTEE ON BENEFITS

HEARING ON THE DEPARTMENT OF VETERANS AFFAIRS'

FIDUCIARY AND FIELD EXAMINATION ACTIVITY

JULY 16, 2003

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to highlight some of our efforts to protect our nation's veterans and to identify and eliminate fraud, waste, abuse, and mismanagement in the Department of Veterans Affairs' (VA) fiduciary and field examination program.

Unlike other fraud perpetrated against the Department, fiduciary fraud targets individuals who are unable to protect themselves. My office provides program oversight of the fiduciary program activity through audits, Combined Assessment Program evaluations, Hotline referrals, and investigations.

In May 1997, we issued an audit report titled *Audit of Appointment and Supervision of Fiduciaries* (Report No. 7R5-B13-074). The audit found that the Department could provide more effective supervision of fiduciaries to reduce the risk of theft or misuse of beneficiaries' funds. The Department needed to strengthen their monitoring of fiduciaries by following up on questionable or inconsistent data submitted in the fiduciaries accounting, independently verifying beneficiaries' assets, and requiring documentation supporting selected expenses reported by fiduciaries.

Another report, published in September 1997, titled *Completeness of Data in the Veterans Benefits Administration's Fiduciary Beneficiary System* (Report No. 7R5-B13-129) found that the Department's Fiduciary Beneficiary System did not include records for all incompetent beneficiaries whose financial affairs must be monitored by VBA personnel. These beneficiaries did not have records because

responsible personnel overlooked, or were unaware of, applicable policies and procedures, or because personnel made clerical errors. Establishment of appropriate Fiduciary Beneficiary System records would help fiduciary program personnel monitor the financial affairs of incompetent beneficiaries and reduce the risk of theft or misuse of the beneficiaries' funds. We recommended that the regional offices ensure that any beneficiaries, whose financial affairs must be monitored, are included in the Fiduciary Beneficiary System and receive appropriate supervision.

The Department agreed with our recommendations and provided us with their implementation plans for these two reports. However, we are once again identifying similar program weaknesses during our recent reviews.

To ensure ongoing oversight of VA's operations including the Department's fiduciary and field examination program activity, I extended our Combined Assessment Program (CAP) to the VA's regional offices. Regional office CAP reviews provide management independent and objective evaluations of key programs, activities, and controls.

As a result of lessons learned from prior audits and investigations, we targeted CAP coverage of VA's fiduciary and field examination activity to focus on high-risk areas vulnerable to fraud and irregularities by fiduciaries. We also review various aspects of field examiners' performance where past history has resulted in instances where the veterans' welfare could be compromised. During CAPs, we also conduct fraud and integrity awareness briefings to raise employee awareness of fraudulent activities that can occur in VA benefit programs. Our CAPs have identified investigative leads, systemic weaknesses, and vulnerabilities in the fiduciary and field examination program areas and conditions that require additional management attention.

For the period of June 2000 through September 2002 we conducted CAPs at 19 VA regional offices. We reviewed VA's fiduciary and field examination activity at 18 of the 19 facilities. At 10 of these 18 regional offices, we identified improvements needed in the management of fiduciary and field examination program activity.

Some of the more significant and recurring problems my staff has identified during CAP reviews are:

- Field examinations and reports of income, expenses and assets (referred to as fiduciary accountings) have not been conducted in a timely manner, resulting in backlogs of pending field examinations at some facilities. In some instances backlogs resulted because staffing resources were insufficient.

- We also found instances where field examiners did not adequately evaluate the physical and mental condition of the beneficiary or assess the

beneficiary's home environment. For example, one report noted the field examiner did not inspect the veterans' housing and another report contained no evidence that the field examiner took any action after finding the beneficiary lived in deplorable living conditions.

- During one CAP review, we identified a field examiner who did not adequately address the physical, mental, or environmental conditions of the beneficiary. A letter received by a VARO counselor on August 11, 1998, alleged that the beneficiary had a drug abuse problem resulting in numerous incarcerations for drug use and prostitution, and that the assets of the beneficiary were being used by and for the fiduciary. The following field examination did not address the issues raised in the August 11th letter, nor did the field examiner offer the beneficiary a referral to a health care facility to assess her condition. We were informed that the field examiner did not know of the issues raised because he did not have access to the original complaints and had not reviewed the Principal Guardianship Folder.

- During another CAP review, we identified a field examiner who did not visit incompetent veterans and falsified the field examination reports. VA regional office management informed us that this particular field examiner did not always visit the incompetent veterans assigned to him. He resigned prior to our CAP review, after admitting that he had falsified field examination reports. As a result, we recommended that the 166 veterans, who were allegedly visited by this field examiner during his last 14 months of employment, should be given top priority for follow-up examinations.

We made recommendations in our CAP reviews to ensure that:

- Adequate staff is assigned to ensure that field examinations and fiduciary accountings are completed timely.
- VA's field examiners conduct thorough field examinations.
- Field examiners file and distribute field examination reports appropriately.
- Fiduciary accountings are reviewed within 14 days of receipt and appropriate follow-up actions are taken, when necessary.
- VA's staff follow-up on delinquent fiduciary accountings.

An aggressive field examiner program is instrumental in exposing fraud, particularly in the fiduciary program. During our 2002 review of benefits paid to veterans in the Philippines, we noted that the Manila VA regional office had ten field examiners who spent a large portion of their time verifying fiduciary data to prevent fraud. The potential for fraud in the Philippines is high because of the lack of effective public records systems and a lack of a reliable communications system to easily verify a claimant's information. During our benefit review, we noted that the Manila VA regional office's focus on exposing fraud using field examiners helped to prevent and avoid large losses to beneficiaries.

A strong field examiner program is essential and the program in the Philippines is a good example of a successful program. I cannot overstate the importance of hiring and training a competent, professional force of field examiners and their impact on exposing fraud.

The OIG Hotline also receives allegations of fiduciary and field examination irregularities. During the period of June 2000 to June 2003, my Hotline Division received 79 allegations concerning fiduciary and field examination activity. Of these 79 allegations, we found that 20 were substantiated and 13 cases remain under inquiry. For the remaining 46, we determined the allegations were unfounded.

Typical examples of hotline allegations that we substantiated include instances where a fiduciary did not provide a veteran with adequate quality of care or ensure adequate living conditions. We have also found instances where a fiduciary was negligent managing veteran's expenses and bill payments and instances where veterans' funds were misappropriated and misused.

Referrals of fiduciary fraud to my Office of Investigations staff are usually received through the VAOIG Hotline, CAP reviews, or from VBA field personnel in the regional offices. Unlike other frauds perpetrated against VA, fiduciary fraud targets the most vulnerable, those particularly incapable of handling their own affairs. Whether the perpetrator is an attorney or a relative of the victim, the act remains the same, embezzlement of money due the veteran. We have received 231 fiduciary case referrals and opened 126 cases for criminal investigations, which resulted in 37 arrests and monetary recoveries of more than $2 million in restitution, fines, penalties, and civil judgments.

The following examples of recent cases illustrate the nature of the allegations received and investigations we perform.

- In one egregious case, we found that an attorney, who was appointed as conservator for the estates of several veterans receiving VA and Social Security Administration (SSA) benefit payments, embezzled over $400,000 for his own personal use. As a result of our investigation, this attorney was convicted and sentenced to 12 months of home confinement, 3 years' supervised release and was ordered to pay $490,625 in restitution.

- In another significant case, we investigated an individual appointed as fiduciary for VA and SSA beneficiaries and determined the individual embezzled over $200,000. As a result of our investigation, he was convicted and sentenced to 32 months' incarceration, 3 years' supervised release, and was ordered to pay $214,745 in restitution to VA and SSA. He was also ordered to reimburse the Government $89,929 in fees that he had earned as a fiduciary.

- A former attorney, appointed the fiduciary for a World War II disabled veteran, was sentenced to 18 months' imprisonment, 3 years' probation and ordered to pay restitution of $133,500 after being convicted of embezzeling the veteran's funds for his own use. Investigation had disclosed that the attorney, soon after being appointed fiduciary, had begun withdrawing large sums of money from the veteran's bank account to pay personal expenses.

- In another investigation, a veteran's sister, who was acting as the veteran's fiduciary, was convicted after pleading guilty to filing false statements relating to annual fiduciary accounting reports filed during a 4-year period when the veteran was incarcerated. The veteran's mother, appointed his fiduciary in 1989, was assisted by the veteran's sister in falsifying the annual fiduciary accountings. They diverted the majority of the $92,400 total payments VA made for themselves. The veteran's sister was sentenced to 5 years' probation and ordered to repay VA restitution of $70,466.

The Department has been responsive to the issues we have identified in our CAP reports and progress is being made to reduce the pending number of field examinations. VBA has reported an improvement of field examination timeliness from 84% in FY 2001 to 91% for FY 2002. However, program oversight of fiduciary and field examination activity remains necessary to protect beneficiaries from fiduciary mismanagement of their funds, irregularities and fraud. We are committed to continue our collaborative efforts with VBA to ensure the integrity of this most critical benefit program.

This completes my statement Mr. Chairman. I would be pleased to answer any questions you and the Committee may have.

STATEMENT OF RONALD J. HENKE

DIRECTOR, COMPENSATION AND PENSION SERVICE

VETERANS BENEFITS ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON BENEFITS,

COMMITTEE ON VETERANS' AFFAIRS

JULY 16, 2003

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear today before this Subcommittee. I am pleased to report on the activities and accomplishments of the Fiduciary Program in the Veterans Benefits Administration. In particular, I will address the findings of the Office of the Inspector General in its December 2002 Summary Report of its Combined Assessment Program Reviews.

Background

The Fiduciary Program has a long history of providing oversight of VA benefits paid to those beneficiaries who are incapable of handling their funds because of injury, disease or the infirmities of age. When VA or a court finds that a beneficiary is incompetent to handle his or her finances, the Fiduciary Program determines an appropriate benefits payment method, appoints a fiduciary to oversee his or her finances when necessary, and provides continued oversight services. Through periodic personal visits to the beneficiary's residence, VA Field Examiners monitor the welfare and needs of the beneficiary, assess the continued suitability of a fiduciary, and ensure that all available VA and non-VA benefits are being received.

Prior to 1924, the traditional approach employed by the federal government, when benefits were payable to a mentally ill veteran or an orphan, was to arrange for the appointment of a guardian by a state court. This was usually accomplished by mail and, thereafter, benefits were payable to the appointed fiduciary without further question. Legislation was passed in the

World War Veterans Act of 1924, amended in 1926, to strengthen oversight of guardians. A Guardianship Service was established in the Veterans Bureau to verify qualifications of prospective guardians and to assure proper fund usage and compliance with State law requirements as to estate administration.

Total payments for all minor and incompetent beneficiaries during this period were estimated to be about $12,000,000 annually. In the first two years of operation under this new legislation, the Bureau's attorneys established that nearly $3,000,000 had been stolen or otherwise illegally diverted by guardians of minor and mentally ill beneficiaries.

The Congressional inquiry that followed demonstrated that a vastly more comprehensive and aggressive program was necessary to oversee the role of fiduciaries. Subsequent to the passage of Public Law 74-262, enacted on August 12, 1935, VA established a comprehensive nationwide program capable of preventing the abuses found to exist.

The Function of the Fiduciary Program Today

The Fiduciary Program has undergone many changes since its inception, moving from an oversight unit that relied on attorneys to one that, since a policy change in 1974, uses lay employees or "field examiners" for field visits, court contacts, and other duties. Administration of the Fiduciary and Field Examination (F&FE) program was transferred in 1997 to the Compensation and Pension Service, where it remains today. While some attorneys remain as field examiners, Regional Counsel attorneys are also available to represent VA.

Under the regulations governing this program, payment of VA benefits may be made to a State court-appointed fiduciary, to a fiduciary whose duties and authority are established by federal statute, or by means of supervised direct payment to an incompetent adult beneficiary. State court-appointed fiduciaries are employed only when the broad trust powers of such a fiduciary are needed to protect the beneficiary's interests, because such arrangements are costly and reduce the amount of money available for the beneficiary's care.

Federal fiduciaries may be the wife or husband of a veteran; the chief officer of a non-VA institution in which a veteran is receiving hospital treatment, domiciliary, institutional or nursing home care; or a legal custodian who is the person or entity caring for the beneficiary or his estate.

Not all fiduciary cases require the same degree of attention and supervision. Our program concentrates available resources where they are most needed. We administer the program through F&FE activities at our 57 regional offices and their respective Regional Counsels that deal directly with VA beneficiaries and State courts in guardianship and commitment matters.

To determine the type of fiduciary best suited to the individual situation, a field examiner personally contacts the minor or incompetent beneficiary and his or her family, if any, and observes the living conditions, fund requirements, and in the case of an adult beneficiary, the capacity to handle benefit payments. The field examiner decides on the best method of payment, and also recommends appropriate action in State court, when necessary to protect the rights of the beneficiary and the government.

At the time of the initial contact, the field examiner also determines the nature and extent of future VA involvement. In adult cases, periodic personal contacts are made with the beneficiary to evaluate his or her personal welfare and the performance of the fiduciary, and to adjust fund usage as necessary. A review is also made of the competency of the beneficiary to manage his or her own affairs and the necessity for continuation of the fiduciary arrangement.

The frequency of these contacts, determined by the field examiner, may vary from an interval of several months up to several years depending upon the mental condition of the beneficiary and the environment in which he or she is living. Supervision by telephone or letter is authorized in specific cases that involve minimal VA benefit payments and/or close supervision by another agency or institution.

In cases with a court-appointed fiduciary, the fiduciary is required to submit an accounting at intervals established by State law. These accountings are audited, expenditures analyzed, reported assets verified, and surety bonds

adjusted as necessary to assure proper estate administration by the fiduciary. Accountings are also required from Federal fiduciaries in instances when necessary to protect the beneficiary's interest. Certificates of balance on deposit are furnished with accounts. VA independently verifies the information on a certificate that does not appear to be authentic, or when the financial information does not agree with other information in the accounting.

Fiduciary Program Statistics

The Fiduciary Program today supervises the benefits of approximately 100,000 VA beneficiaries. Although this number represents about 3% of total VA beneficiaries, these individuals are among our most vulnerable claimants and need VA's special help and protection. Of the 100,000 supervised beneficiaries, 65,000 are disabled veterans, 32,000 are widows or adult disabled children and 3,000 are minors. The benefits paid to these beneficiaries total just over $1 billion per year. The current total value of supervised estates, comprised of both VA and non-VA income, is $2.8 billion dollars.

There are currently 224 Field Examiners and 127 Legal Instruments Examiners (LIEs) located in our 57 VA Regional Offices. They are charged with monitoring the needs of Fiduciary Program beneficiaries and the protection of their VA and non-VA funds. In the last fiscal year, 54,269 field examinations were conducted.

LIEs audited and analyzed 21,284 accountings to monitor proper use of VA funds in FY 2002. Formal accountings are not required in all fiduciary cases, but when they are, it is the job of the LIE to follow-up and obtain overdue accountings, promptly analyze them, inquire into questionable expenditures, and initiate objections or field examinations when in order. VA Regional Counsel offices work hand-in-hand with the local Fiduciary activities in court fiduciary cases requiring legal action such as filing objections to expenditures or fiduciary and other guardianship related fees.

VBA Response to VA Office of the Inspector General Findings

The VA Office of the Inspector General (IG) conducted Combined Assessment Program (CAP) Reviews of 18 field Fiduciary Activities for the period June 2000 through September 2002. The Summary Report listed findings in 10 areas identified for improvement in 10 of the 18 offices visited. These findings pertain to three main issues:

- 3 of the findings dealt with the thoroughness of the field examinations and the need to ensure that all pertinent issues are addressed and appropriate recommendations and referrals are made when necessary
- 5 of the findings dealt with fiduciary accountings and the need to timely follow up on delinquent accountings, promptly analyze the accountings once they are received so that objections can be filed in court cases, and ensure that there is adequate staffing to do so, and
- 2 of the findings dealt with regional office fiduciary staff interactions and communications with other VA elements and the need to meet annually with local VAMC social work staff to share information on cross-cutting issues and make certain that proper referrals are made to OIG or VAMC when appropriate.

Before I address these findings specifically, I would like to briefly comment on our relationship with the IG and actions that we have taken to improve Fiduciary Program quality and timeliness over the past several years. The Fiduciary Program maintains an excellent working relationship with the IG. We share information in cases of mutual concern, refer cases involving potential waste, fraud and/or abuse of VA benefits, assist in investigations at the request of IG, and otherwise support each other's mission. The VA Central Office (CO) Fiduciary Program Staff worked closely with IG in developing the review guidelines currently used for the ongoing CAP Reviews.

Even prior to the CAP reviews, however, we had been proactive in monitoring the work of the 57 regional office Fiduciary and Field Examination

Activities and providing program guidance and training. We were aware of and actively working to resolve many of the issues found during the CAP Reviews.

Findings related to Field Examination activities

The CAP Review Summary Report noted the need to ensure the thoroughness and quality of field examinations, including proper referrals and recommendations. Several initiatives have been started by the VACO Fiduciary Program Staff within the past several years to improve field examination quality. Beginning in 1999, VA reinstated a nationwide program of ongoing centralized quality reviews of Fiduciary Program work products from each of the 57 regional offices. The purpose of these reviews was not only to assess the quality of work being done in the field, but also to identify deficiencies that additional training would rectify. These reviews were followed by that training. At the beginning of this review process, Fiduciary Program quality nationwide was only 51%. Through more active oversight and additional training, we have improved quality to 79% nationwide. We continue to improve.

As a result of more stringent oversight, quarterly teleconferences, and training given during site visits, our field examinations are more thorough, our fiduciary reports are more consistent nationwide, and the overall quality of the fiduciary activity has markedly increased. Field Examiners are now fully aware of the issues they must review and document on each field examination.

The results of our quality review program are used as training tools and to correct individual case deficiencies. We have augmented these reviews by quarterly nationwide teleconferences, begun in April 2000, for all regional office fiduciary program staff. We use these teleconferences to discuss common issues arising from quality review findings in order to provide consistent, useful information to the field. The transcripts of the teleconferences are posted on our Fiduciary Intranet web-site so that they are accessible to all field personnel and are a permanent source of program guidance.

In addition, this internal web-site, begun in February 2000, contains excellent information on the Fiduciary Program, tools that can be used by both managers and employees in their daily work, and links to pertinent program manuals and regulations. We update it on a regular basis as program changes occur. It is a valuable asset to the field stations.

The VACO Fiduciary Program staff takes pride in its accessibility to field personnel who have questions or concerns. The VACO Fiduciary Program staff has been increased over the last 4 years to support the work of the Field Station F&FE Activities. Through either telephone contact or via e-mailed inquiries to a Fiduciary Program mailbox, any F&FE individual in the field can now contact a member of the VACO Fiduciary Program staff and be assured that his or her questions will be answered in a prompt, professional manner. By the same token, if the VACO staff receives multiple inquiries on the same topic, indicating confusion in the field on a particular issue, we can provide clarification via e-mail simultaneously to each station's dedicated Fiduciary Activity mailbox. This mentoring aspect of the Program ensures that consistent information is provided to all field stations.

For the past three years, the Compensation and Pension Service has also been conducting site visits at Regional Offices. We will have visited all offices by the end of next fiscal year. The site visit team includes a VACO Fiduciary Program staff member who reviews the local F&FE program, and provides on-site training to the local staff during the visit. The training focuses on deficiencies noted during the site visit plus other issues identified by that station's management. This training aspect of the site visit is very much appreciated by the stations and has been instrumental in improving program quality, which ultimately improves the quality of service to our beneficiaries.

We currently have a software application in the final testing stages, that will aid in the completion of a thorough, complete field examination report; it will require reporting on specific standard issues in a standard format.

Findings Related to Fiduciary Accountings

The second group of CAP Review findings dealt with the timely receipt of fiduciary accountings, aggressive follow-up on delinquent accountings, and prompt review of the accountings once received. Our Fiduciary Program staff had also identified this as an area of concern as a result of its own analysis of quality reviews, other available statistical data, and site visits.

We focused on overdue accountings in a July 2002 teleconference in which we provided training on this issue. We re-emphasized the training at the Veterans Service Center Manager conference in October 2002 and have subsequently closely monitored overdue accountings during all site visits. Field station managers are now regularly monitoring overdue accountings, F&FE staff are aggressively following up with fiduciaries to obtain these accountings and are initiating changes in the fiduciary arrangement when necessary. As a last resort, we can suspend benefits to force a fiduciary to account. Cases are referred to Regional Counsel offices for legal assistance in obtaining overdue accountings in Court fiduciary cases.

Once accountings are received, stations now audit and analyze them quickly in order to timely file any objections with the Court. Recent data shows that, on average, Federal fiduciary accountings are analyzed within 15.8 days of receipt; 77.5% of these are completed in under 14 days. The average completion time for court-appointed fiduciary cases is 27 days with 77.4% of the accountings reviewed within 30 days of receipt. We have trained local Fiduciary Program managers on how to use existing data reports to track the timeliness of accounting reviews in order to closely monitor this situation. This area is also reviewed on site visits.

Findings related to VBA and VAMC Coordination

The third area mentioned in two of the CAP findings was the proper coordination of services between F&FE staff and VAMC officials as well as appropriate referrals when adverse conditions were found during a field

examination. When adverse conditions are found, Field Examiners are required to make the appropriate referrals to the VAMC, to other agencies such as Adult Protective Services, or to other social service agencies. The necessity to document findings and referrals dovetails with the increased emphasis on complete, thorough field examinations. Field Examiners routinely contact VA Medical Center social workers on cases of mutual concern. Program managers have been instructed to meet annually with appropriate personnel at the supporting VA Medical Centers to discuss issues that affect both activities and to delineate areas of responsibility. These meetings are documented and we review this documentation during site visits.

In closing, I feel that the Fiduciary Program has made great strides over the past several years to provide consistent, quality service to our deserving beneficiaries. The VACO Fiduciary Program staff has made special on-site monitoring visits to stations identified as having particular problems with its fiduciary program and we provide work flow analysis and training on site. We also welcome the opportunity to provide additional training to stations at their request and have arranged special instructional sessions at several locations in the past year alone. Most significantly, a nationwide Fiduciary Program Manager's Conference was held in Baltimore in February 2001, bringing managers together for the first time in over 10 years. As there has been a great turnover in F&FE managers since that conference, we hope to provide another conference. In the interim, new managers are encouraged to utilize the information available on the web-site and invited to contact VACO staff for any questions.

There has been a renewed emphasis on the Program within VBA and I am proud to be a part of that effort. I am confident that we have addressed and will continue to monitor the items detailed in the CAP Review Summary.

Thank you for the opportunity to share this testimony, Mr. Chairman. I welcome any questions that you or any other member of the Subcommittee may have.

Statement of

JOHN H. PICKERING
Former Chair, Commission on Law and Aging

on behalf of the

AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS

of the

U.S. HOUSE OF REPRESENTATIVES

on the subject of

DEPARTMENT OF VETERANS' AFFAIRS FIDUCIARY PROGRAM

July 16, 2003

Mr. Chairman and members of the Subcommittee:

My name is John H. Pickering and I am here today on behalf of the American Bar Association, the world's largest voluntary professional organization with more than 400,000 members. I appear before you today at the request of ABA President Alfred P. Carlton Jr. in my capacity as former Chair of the Commission on Law and Aging and as a member of the ABA House of Delegates. The ABA has developed policy in many of the areas that protect vulnerable older people whether they have been found to lack capacity under state guardianship statutes, in Social Security capability determinations or in Veterans incompetency determinations.

I. Protection of Beneficiaries

In February 2002, the ABA adopted policy that is very directly related to the fiduciaries performance. While the policy was developed to apply to the Social Security Representative Payment program it is directly applicable to the Veterans Administration program. In part the policy provides as follows:

> RESOLVED, that the American Bar Association urges the Administration to support and Congress to enact legislation that would strengthen the safeguards and protections of individuals receiving benefits under the Old Age, Survivors and Disability Insurance programs and the Supplemental Security Income program of the Social Security Act (Beneficiaries) which, because of such Beneficiary's disabilities and incapacities, are being received and managed by organizations designated by the Social Security Administration (SSA) as "representative payees." Such protections should include:
>
> (A) Replacement by SSA of any benefits misappropriated or misused by an organizational representative payee if not otherwise reimbursed;
>
> (B) Mandatory initial and continued bonding of organizational representative payees in all states where they provide services;
>
> (C) Forfeiture by representative payees of any fees normally allowed by SSA for any months in which an organizational payee has misused all or part of a Beneficiary's benefits; and
>
> (D) Authority for SSA to impose a civil monetary penalty against organizations which misuse, convert, or misappropriate payments for Beneficiaries received while acting in a representative payee capacity.
>
> FURTHER RESOLVED, that SSA should require organizations or agencies that make application to serve as representative payees to:
>
> A) Provide advance notice of their intention to family members (parents, siblings, children, and grandparents) of Beneficiaries and to other legal representatives and, in so doing, advise such parties of SSA's general preference for appointment of individual payees, with a demonstrated interest in the Beneficiary, over organizational payees [20 C.F.R. §§ 404.2021, and 416.635, 640 and 645];
>
> B) Utilize all benefit payments received for the current exclusive use and welfare of the individual Beneficiary and make a maximum effort to conserve any unused funds to meet the special and future needs of such Beneficiary, pursuant to SSA's regulatory requirements and guidance on use, expenditure, and conservation of benefits [20 C.F.R. §§ 404.2035, 2040, and 2045 and 416.635, 640, and 645]; and
>
> C) Ensure that representative payees manage benefit payments in a way that prevents Beneficiaries from unnecessarily exceeding asset limits that would render them ineligible for federal benefit programs.

Not many years after enactment of the Social Security Program in 1936, Congress passed legislation granting the Social Security Administration (SSA) the power to appoint "representative payees" (RPs) to receive and disburse benefits for Social Security beneficiaries who were too frail, too young or too incapacitated to manage their own finances [currently laid out in 42 U.S.C. §405(j) for old age, survivor and disability benefits and §1383(a) for SSI benefit recipients]. That initiative took place in 1939, then covering retired workers, their spouses, their widows and children of deceased workers.

Today, the Representative Payment System is potentially available to all of the more than 50 million individuals receiving some form of Social Security benefit (including disabled workers and means-tested Supplemental Security Income beneficiaries whose benefit eligibility was established by legislative amendment several years after initiation of the RP system).

There are now more than 6.6 million persons whose benefits are actually under representative payee management, a group comprised of roughly 60% of children and 40% of adults. This equates to an approximate (and surprising) caseload of 1 out of 8 Social Security Act benefit recipients in the United States. Moreover, that proportion promises to rise in the near future as the number of our aged (and frail aged) citizens with "baby boomer" roots attain Social Security retirement benefit ages and the as incidence of SSI disabled child beneficiaries continues to expand.

In overall volume, the hybrid and mammoth "special guardianship" program represented by the federal RP system now exceeds by a factor of more than 10 the combined number of all court guardianships/conservatorships active in the 50 states (estimated at roughly 600,000). Fortunately, more than 80% of today's RPs are parents, spouses, other relatives, friends of long standing, and court appointed guardians of the adult and child beneficiaries who they serve and, thus, can be generally counted on for loving and responsible benefit management. However, no program this large could avoid instances of fiduciary fraud and abuse. Such incidents have indeed occurred and these have been particularly troublesome in the area of multi-client "organizational payees."

Organizational payees are typically non-profit agencies and organizations which serve as RPs for individuals without access to family members or close acquaintances who might be able to step in to meet their needs for responsible benefit management. Such organizations have a definite need to fill and most are responsible state institutions and community agencies with long histories of competent service. However, these entities, by their nature and the vacuum that they fill, frequently wind up in charge of the monthly Social Security income of 15 or 50 or 100 or 200 or more SSA beneficiaries with large accumulations of funds to administer on a regular basis and enormous power over the economic well being of the incapacitated individuals they have been authorized to serve. Unfortunately there is a potential for many of the same problems with fiduciaries who serve Veterans.

The Veterans Administration allows for the appointment of a fiduciary for a beneficiary who is incompetent or unable to manage his or her own affairs. The beneficiary does not have to be adjudicated incompetent or rated incompetent by VA. Under the governing statute, whenever it appears that the interest of a beneficiary would be served by the appointment of a fiduciary, payment of benefits may be made to a relative or some other person or entity for the use and benefit of the beneficiary, regardless of any legal disability on the part the beneficiary. 38 USCA § 5502 (a). There are approximately 100,000 fiduciaries that serve veterans who are unable to manage their own affairs. In comparison to the Social Security Representative Payment program this is a small number. However it is approximately 3.3 percent of those who receive benefits from the Veterans Administration.

The Department of Veterans Affairs Office of Inspector General has commented over the years about needed changes for the Fiduciary Beneficiary System. In 1997 it stated that the Fiduciary System needs to be updated to reflect records of incompetent beneficiaries. (Report N.: 7R5-B13-129.) The September 2002 Summary Report by the Inspector General found eleven basics in the fiduciary and field examinations in 10 of the 18 VA regional offices. (Report No. 02-01811-38) These included:

1. Ensure that the fiduciary activity supervisor meets annually with appropriate personnel at the supporting VA medical centers to coordinate visits to veterans in nursing homes and residential care facilities.
2. Ensure that Fiduciary and Field Examination staff follow up on delinquent fiduciary accountings.

3. Ensure that fiduciary accountings are reviewed with 14 days of receipt and appropriate follow-up actions are taken when necessary.
4. Ensure that field examiners: a) are notified of pertinent issues to be addressed during field examinations; b) conduct thorough field examinations; c) make appropriate recommendations or referrals; and d) appropriately file and distribute field examination reports.
5. Continue efforts to complete fiduciary accountings before fiduciary hearings.
6. Ensure that Fiduciary and Field Examination staff meet with VA medical center staff to discuss and coordinate services provided to incompetent veterans.
7. Advise OIG Investigators of incompetent veterans' abuse cases referred to Adult Protective Services.
8. Ensure that field examiners conduct thorough field examinations and make appropriate recommendations or referrals.
9. Provide enough staff to ensure that field examinations and fiduciary accountings are completed timely.
10. Follow up on delinquent fiduciary accountings by letter, telephone, or personal contact.

The OIG findings are similar to those found by the Social Security OIG with regard to the Representative Payment program. Numerous required accountings are not filed in a timely fashion and thus the agencies were unable to identify whether funds were spent on the Veteran. H.R. 743 passed by the House this spring suggested several avenues to deal with problems created in the Social Security Representative Payee program similar to those advocated by the American Bar Association. The fiduciary program available through the VA could benefit by many of the same types of reforms. These reforms include elements such as bonding of payees, making whole the beneficiary when the payee misuses funds, and greater oversight on the part of the Veterans Administration for making sure that the system responds to the needs of the vulnerable beneficiary.

The American Bar Association appreciates the opportunity to be here today and provide some information about this important benefit for so many Veterans.

STATEMENT FOR THE RECORD OF CARL BLAKE,

ASSOCIATE LEGISLATIVE DIRECTOR,

PARALYZED VETERANS OF AMERICA,

BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS,

SUBCOMMITTEE ON BENEFITS

CONCERNING THE DEPARTMENT OF VETERANS' AFFAIRS

FIDUCIARY PROGRAM

JULY 16, 2003

Chairman Brown, Ranking Member Michaud, members of the Subcommittee, PVA would like to thank you for the opportunity to submit a statement for the record on the Department of Veterans' Affairs Fiduciary Program. It is important that the Subcommittee conduct oversight on the Fiduciary and Field Examination Activity, a program that is very important, but that gets very little attention.

The Fiduciary Program was originally intended to provide oversight of the payment of VA benefits to veterans who are incapable of managing their own finances due to injury or age. A court must first determine that a veteran is incapable of handling his or her finances before a fiduciary may be appointed. Under current federal regulations, the wife or husband of a veteran may be designated, chief of staff of a non-VA institution where a veteran is receiving care, or a legal custodian who is overseeing the care or estate of a veteran may be designated as a fiduciary. A state court-appointed fiduciary may also be designated.

The best fiduciary for an individual veteran is determined after a field examination is completed by a VA official. The VA official uses this opportunity to observe the living conditions, as well as the ability of a veteran who will receive the benefits to handle his or her own finances. The official then makes a recommendation to a state court about the best means to provide the veteran with his or her benefits through a particular fiduciary.

PVA understands that VA field examiners then maintain periodic contact with the veteran to ensure that his or her needs are being met and that the fiduciary is doing a satisfactory job of providing financial management for that veteran. However, this program provides a perfect opportunity for individuals to perpetrate fraud against a veteran who is incapable of protecting himself or herself without the presence of dedicated and regular VA oversight.

PVA has particular interest in the handling of veterans' benefits through the fiduciary program activity. Many PVA members are incapable of handling their own finances due to the severity of the disability which they suffer. Our members are at great risk to agencies that claim to hold the best interests of the veteran, but that only seek to take advantage of a veteran who is in a desperate situation. PVA members cannot afford to be subject to the poor decision-making of some fiduciaries. Without proper management of his or her benefits, as well as quality living conditions, a spinal cord injured veteran's well-being, even his or her life, may be placed in jeopardy.

PVA has read the recommendations that the VA Inspector General has made with regards to ensuring proper function of the Fiduciary Program, and we concur with its findings. We would urge the Veterans Benefits Administration to heed these recommendations and make every effort to ensure that our most vulnerable veterans are not the victims of fraud and abuse. A veteran needs to believe that his or her finances are not being mismanaged. It is the responsibility of the Fiduciary and Field Examination Activity to ensure that these veterans are not exploited and taken advantage of.

PVA would like to thank the Subcommittee for the opportunity to submit testimony for the record. We look forward to working with this Subcommittee to ensure that our most vulnerable veterans are properly cared for.

VETERANS OF FOREIGN WARS

OF THE UNITED STATES

STATEMENT OF

DENNIS CULLINAN, DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

TO THE

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

THE DEPARTMENT OF VETERANS' AFFAIRS FIDUCIARY PROGRAM

WASHINGTON, D.C. JULY 16, 2003

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I appreciate the opportunity to submit our views on the Department of Veterans Affairs' (VA) Fiduciary Program.

VA's Compensation and Pension Service (C&P) maintains a benefits protection program (Fiduciary Activities) for incompetent veterans, minors and other adult beneficiaries who are incapable of handling their funds. When an individual receiving VA compensation or pension is found to be incompetent, employees of the fiduciary program determine the appropriate benefit payment method, appoint a fiduciary to oversee his or her VA finances and provide field investigative services responsible for oversight in determining fraud and abuse.

VFW MEMORIAL BUILDING ● 200 MARYLAND AVENUE, N.E. ● WASHINGTON, D.C. 20002-5799
AREA CODE 202-543-2239 ● FAX 202-543-6719

According to Veteran Benefits Administration (VBA) statistics, there are 224 Field Examiners and 127 Legal Instruments Examiners (LIEs) located throughout VA's 57 Regional Offices. They are charged with monitoring the needs and finances of fiduciary program beneficiaries (which include both VA and non-VA income). Currently they are supervising the benefits of 100,000 VA beneficiaries with funds valued at approximately $2.8 billion.

The VA Office of the Inspector General recently conducted a Combined Assessment Program Review of 18 VA Regional Offices' Fiduciary Field Activity sections. The summary report concluded that improvements were needed in 10 of the 18 offices, with the following problems identified:

- Under-developed field examinations and inappropriate referrals and recommendations.
- Failure to pursue delinquent accounts in a timely manner.
- Inadequate management oversight and insufficient staffing.
- Poor coordination of services between the Fiduciary and Field Examination staff and VA Medical Center officials.

As an accredited Veteran Service Organization, the VFW's service officers assist incompetent veterans and beneficiaries with their estates on a daily basis. During the many years that we have provided this service and in working closely with VA's fiduciary sections, we have found several areas for improvement and make the following additional recommendations:

- Increase the fee paid to appointed fiduciaries. The current 4% fee (authority 38 U.S.C. 5502) given fiduciaries for services rendered within a 12-month period has remained the same for decades. By increasing the fee you will help to provide quality services and ensure that more time is spent to evaluate the needs of a VA beneficiary.

- Periodic accountings should be required by spouse-payee to avoid the possibility of misappropriation of funds and abuse of the veteran due to possible estrangement. Under current law, "a spouse-payee is not required to file accountings."

- An appointed fiduciary should be required to live within a reasonable distance of the VA beneficiary. If the situation changes and that is not possible, another fiduciary in the local area should appointed. For example, a few years ago one of our service officers in the Northwest had a situation where a veteran's son was appointed as his fiduciary, against the veteran's wishes. The son was in the military and moved around a lot. Shortly after VA appointed him as fiduciary, he was transferred to Florida. Many problems arose with respect to the care of the veteran due to the fact that the son was absent and in control of his father's disability compensation. According to the service officer, the veteran visited the office every day complaining about inadequate care and misuse of funds.

- Increase staffing at the LIE position. These individuals are often the first person to notice irregularities in accountings and/or abuse. Currently this position requires the employee to answer phones, review mail and deal with walk-in concerns of VA beneficiaries. This leaves little or no time to notify Field Examiners of issues that need to be addressed.

Based on the Inspector General's report and our experience with regional fiduciary sections, we believe a more comprehensive and aggressive review of cases under the Department of Veterans' Affairs Fiduciary Program is crucial. Only when this is accomplished will we be able to ensure that the system can protect and respond to the needs of our most vulnerable VA beneficiaries.

Again thank you for the opportunity to present the views of the Veterans of Foreign Wars and we look forward to working with the subcommittee in improving this most important program.

SERVING
WITH
PRIDE

Statement for the Record

of

Richard "Rick" Jones
AMVETS National Legislative Director

before the

Committee on Veterans' Affairs
Subcommittee on Benefits
U.S. House of Representatives

on

VA Fiduciary Program

Wednesday, July 16, 2003
10:30 AM, Room 334
Cannon House Office Building

A M V E T S

NATIONAL
HEADQUARTERS
4647 Forbes Boulevard
Lanham, Maryland
20706-4380
TELEPHONE: 301-459-9600
FAX: 301-459-7924
E-MAIL: amvets@amvets.org

Chairman Brown, Ranking Member Michaud, and Members of the Subcommittee:

On behalf of AMVETS National Commander W.G. "Bill" Kilgore and the nationwide membership of AMVETS, I am pleased to offer our views to the Subcommittee on Benefits regarding the VA Fiduciary Program. For the record, AMVETS has not received any federal grants or contracts during the current fiscal year or during the previous two years in relation to any of the subjects discussed today.

Mr. Chairman, AMVETS has been a leader since 1944 in helping to preserve the freedoms secured by America's Armed Forces. Today, our organization continues its proud tradition, providing, not only support for veterans and the active military in procuring their earned entitlements, but also an array of community services that enhance the quality of life for this nation's citizens.

AMVETS applauds this Subcommittee and its efforts to exercise its oversight role by holding this hearing on the performance and accountability of the VA Fiduciary Program. We firmly believe our nation's veterans earn the benefits provided to them by the VA as a result of their service to our nation. Many veterans utilize these benefits for the chance at a college education and to realize the dream of owning a home.

To those veterans at the margins of society, VA benefits provide a chance to reclaim their lives and once again take part in the society they once defended. And for the 65,000 veterans and 35,000 dependents who can no longer adequately manage their affairs due to physical or mental difficulties, the VA Fiduciary Program has been established to ensure benefits provided these veterans and dependents actually benefit those intended. These veterans and dependents look to this program to allow them to maintain their quality of life.

As this Subcommittee is aware, some veterans and dependents in this program have had their benefits suspended due to the actions of their appointed fiduciary. When a program fails its mission, such as in these cases, the need for better oversight is clearly warranted. AMVETS is encouraged by the scrutiny of the program, its administrators, and participants by the continued

audits of the VA Inspector General. However, we believe the program continues the show repeated weaknesses in oversight and accountability on behalf of the affected veterans that must be corrected.

This program currently encompasses $1 billion in federal funds and as noted earlier, provides for the needs of 100,000 veterans and their dependents. AMVETS believes with this level of federal expenditures in question, the program must conduct thorough field examinations to establish eligibility and provide follow-up review of all appointed fiduciaries. The daily living conditions of eligible veterans must be closely monitored to ensure these veterans live in safe and healthy conditions.

Fiduciaries should be bonded and insured and be subjected to vigorous prosecution if any benefits are misappropriated. Additionally, VA personnel should review all fiduciary activity within the VA system yearly and VA must ensure that all cases of delinquent accounting by fiduciaries receive follow-up in a timely manner. The veteran is paramount in this program and all measures must be exhausted to ensure they receive the benefits and care to which they are entitled.

In closing Mr. Chairman, AMVETS looks forward to working with you and others in Congress to ensure the earned benefits of all of America's veterans provide for the veteran. As we find ourselves in times that threaten our very freedom, our nation must never forget those who ensure our freedom endures. AMVETS thanks the panel for the opportunity to address these issues.

STATEMENT OF
RICK SURRATT
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
FOR JULY 16, 2003, HEARING

Mr. Chairman and Members of the Subcommittee:

The Disabled American Veterans (DAV) is pleased to submit its views on the functioning of the Fiduciary and Field Examination (F&FE) Program of the Department of Veterans Affairs (VA). Disabled VA beneficiaries served by this program are the most dependent upon the fidelity and responsible actions of others, those entrusted with the prudent, honest management of beneficiaries' VA funds. Because this program is by its nature one vulnerable to improprieties, knowledgeable and conscientious VA employees must closely, carefully, and diligently supervise and monitor the performance of those charged with fiduciary responsibilities. Moreover, because of the nature of the program, action by this Subcommittee to review the program's functioning to ensure it is properly serving these vulnerable beneficiaries is a most appropriate fulfillment of the Subcommittee's oversight responsibilities.

The DAV's involvement with this program is not as extensive as it is with VA's benefit lines and administrative claims processes. However, we hold VA power of attorney for many of these incompetent veterans, and we are sometimes called upon to intervene in their behalf when problems arise regarding fiduciary activities. To aid us in reporting to you accurate and helpful information on the administration of this program, we surveyed our National Service Offices across the country to hear of their experiences.

We asked our National Service Officers four specific key questions and a fifth question inviting other views and comments on the effectiveness of the fiduciary program in their locations:

1. Are you aware of any problems arising from VA finding a beneficiary incompetent and then suspending payment of benefits for extended periods of time pending appointment of a fiduciary?

2. Is VA conducting adequate oversight of fiduciaries through field investigations and other means to ensure they are properly managing incompetents' funds?

3. How does VA ensure cooperation and coordination between VA-appointed fiduciaries and court appointed fiduciaries or fiduciaries for other benefit programs such as Social Security?

4. Does VA give preference to qualified family members in appointing fiduciaries?

5. Tell us any other observations you may have about the effectiveness of fiduciary activities in your regional office.

All but a very few answered the first question with an unqualified "no." Several observed that VA procedure is to continue regular monthly benefit payments to the beneficiary pending appointment of a fiduciary, although any lump-sum retroactive payments would not be disbursed until the fiduciary is appointed. On average, the process for establishing a fiduciary takes about 45 days, according to the responses. One office reported delays because of the heavy workload of field examiners. Another stated that the payment of benefits based on new awards and the appointment of a fiduciary are delayed due to a combination of due process requirements and an average of another 60 days to appoint a fiduciary:

> It is very common to find that when a proposal to rate a veteran incompetent is made in the same decision that grants benefits then no action is taken to increase the veteran's compensation and no retroactive payment is made while the veteran is afforded due process. As you know, the veteran must be afforded a minimum of 60 days to respond to the proposal. Following the 60 days of due process action may then be taken to make a decision on competency. At that point the process begins to identify a fiduciary. This process routinely takes 60 days or longer. As you can see this process can easily prompt a veteran to wait four months or more from the date of the decision awarding benefits before any monies become available. During these times I have witnessed veterans who are in need of better housing, automobile repairs, or that are in some type of financial distress be forced to wait for this process to take place at which time the fiduciary then decides what the veteran's needs are.

Another office reported that some of this delay is avoided because VA "tries to set up a fiduciary during the due process period so there is a smooth transition." Of course, that practice might be criticized because the veteran is not adjudicated incompetent until after expiration of the 60-day period he or she is afforded to counter VA's proposed finding of incompetency. The practice might leave the impression that the due process procedure is merely a hollow formality. However, many beneficiaries will not contest VA's proposals to find them incompetent, and this expedited procedure would benefit them. Yet another office cited a problem in which directors of facilities housing or treating veterans withdraw as fiduciaries because of reduction in the fees paid them, causing suspension of the veterans' awards until new fiduciaries can be found. Without stating specific reasons, two other offices reported delays in appointments of fiduciaries. One reported VA delays in beginning payments to fiduciaries after they are appointed.

In response to our second question regarding the adequacy of VA oversight of fiduciaries, most of our National Service Officers again reported favorably on VA's performance. Apparently, VA follows timetables for periodic reviews and conducts field examinations when indicated by the facts or circumstances in particular cases, in addition to regular audits. One office reported that a backlog of reviews presently exists because of the volume of the workload and because of the travel expenses required. There, VA schedules visits to groups of

beneficiaries in places distant from the regional office to cut travel expenses. Our Boston, Massachusetts, office reports more serious problems: "There are only three field examiners in the Boston Regional Office and they have a caseload of about 1,500 veterans. As of today there are 213 pending field exams of which 105 are past due." Our Cincinnati, Ohio, office also described serious problems:

> As for adequate oversight, the Cleveland VARO falls short of this due to the field examiners in the Cincinnati VA Contact Office. This is due to personal oversight of the situation. I have had numerous incompetent veterans we represent contact me about a certain Fiduciary/Guardian in the Cincinnati area as to the inability to get into contact with the person or get any type of assistance from the Fiduciary. After contacting the VA Contact Office personnel, I was told they would not go out to investigate as they do this on an "as needed" basis and nothing more. Some of the issues brought up were: The fiduciary bouncing checks for a totally disabled veteran, overpaying from the accounts until checks were bounced, needing to relocate the veteran due to physical disabilities vs. living arrangements, etc. . . I was met by an individual who told me he did not want to be involved with these problems and I would have to take these up with the Fiduciary office in the Cleveland VARO. I have sent memorandums to the Fiduciary office in Cleveland without response. We have asked for audits and intervention. As of yet nothing has taken place. I feel the veterans in the Cincinnati area are not being adequately overseen through this Fiduciary/Guardian.

Our offices indicated they receive complaints from incompetent beneficiaries that their fiduciaries are not providing them with sufficient funds or do not allow them money for things other than absolute necessities. For example, they are refused money for such things as vacations, automobiles, or pleasure items. On the one hand, it is the responsibility of fiduciaries to ensure incompetents' funds are spent wisely. On the other hand, if sufficient funds are available, even incompetent beneficiaries should not be deprived of the amenities others enjoy to improve the quality of life.

Our third question, which concerned the level of coordination and cooperation between VA and court-appointed or other agencies' fiduciaries, drew the greatest mix of answers, revealing great inconsistencies among the various VA offices. Several of our offices did not have sufficient information to answer this question. Two stated that VA does not coordinate with other fiduciaries. Some said that their offices attempt to coordinate with other fiduciaries. Others said that their offices attempt to use other fiduciaries for VA when possible. One office indicated that VA would routinely use a court-appointed fiduciary but had no procedure to learn of or use one appointed by the Social Security Administration. Another indicated that VA will accept a fiduciary appointed by the Social Security Administration, but not necessarily a court-appointed one. Some offices noted that VA does not automatically accept a court-appointed fiduciary and makes its own independent determination of what would be in the best interests of the veteran. One office indicated VA takes a "very strong line on this issue" and does not hesitate to have court-appointed fiduciaries removed to protect veterans' interests. Some offices reported local agreements and procedures for coordination with other agencies and courts. For

example, one reported that VA had begun training sessions with Social Security and contracted fiduciaries and had entered into an agreement with them to communicate information quickly. One office that reported no current coordination between Social Security and VA noted that "SSA proposals are being reviewed to have their program meet the same criteria and standards as the VA." Another responded: "The VA conducts regular meetings with the Court personnel and Social Security representative payee program manager. They try to avoid having different payees for DVA benefits and Social Security benefits." A few offices indicated that VA advises its fiduciaries to seek appointment as fiduciaries for Social Security. For example, one response stated that VA notifies other agencies when it is paying benefits to a fiduciary and asks that the VA fiduciary go to the other agencies to become payee for all benefits. Another said that, when VA appoints a fiduciary, the fiduciary will take the VA appointment letter and Fiduciary Agreement to Social Security and requests Social Security to recognize the appointment as a Federal payee, upon which Social Security then appoints the VA fiduciary as its fiduciary. Other offices reported that it is essentially standard practice for VA to appoint the same fiduciary as appointed by a court or another agency. Our Boston office reported that, in most instances, VA will appoint the court or Social Security fiduciary in order to expedite the case but that VA does not have enough employees at its Boston Regional Office to adequately coordinate the program. Several offices indicated that VA personnel in the fiduciary program attempt to exchange information and cooperate with other fiduciaries.

All those responding answered "yes" to question four, which asked whether VA gives preference to family members for appointment as fiduciaries. One of our offices reported that VA prefers to appoint family members as fiduciaries to avoid paying commissioned fiduciaries out of veterans' funds. Another office noted, however, that VA appoints a family member only if the veteran lives with that family member. In other cases, VA appoints a lawyer or the head of the facility where the veteran is institutionalized.

Many who responded to our fifth question—which invited other observations about the effectiveness of fiduciary activities in their offices—were highly complementary of VA employees in the F&FE program at their stations. They perceived these employees to be compassionate, dedicated, conscientious, and proficient. Others thought VA employees were doing a commendable job, despite limited resources. Some stated VA performance was being hampered by insufficient resources. The response from one office stated that an increase in field personnel was needed to speed the process. Another office reported that field examiners are diverted from their duties to take regular calls from veterans seeking information on benefits and claims. In addition to mentioning strains due to short staffing, one office noted that the service loses field examiners because of a lack of upward mobility, in that GS-10 is the highest grade for that position.

Some complaints in response to question five dealt with fiduciaries. Again, disputes sometimes involve fiduciaries' refusal to release funds for purchase of convenience items. Considering the impaired judgment of many of these incompetents, it is difficult to determine whether the complaints are valid or whether refusal is appropriate. One office reported that veterans seem to have more difficulties in this regard with banks who act as fiduciaries: "It seems the real problem comes when the banks are involved as the veteran's fiduciary. We hear constant complaints from veterans that they can not speak with the person handling the case nor

are they given enough money each day to be able to live normally. They also complain about the fiduciary not paying their bills on time such as rent or utilities." On this point, it would be easy to imagine that bankers would not want to personally interact with veterans, especially difficult ones, and might be aloof or inaccessible. We think it is questionable whether banks are well suited for this role, and, in fact, whether there might be inherent conflicts of interest arising from the incentive to keep monies on deposit versus disbursing them to veterans.

Two offices indicated that incompetent veterans were being charged excessive fees. The response from one of those offices remarked: "We in the office see an overabundance of fees being placed on veterans without just cause." The other office reported: "Some court fees have been authorized on many occasions well above the reasonable rate."

Our Atlanta, Georgia, office, which was generally critical of VA's fiduciary activities at that station, listed several examples of problems:

- An incompetent veteran who relocated from Texas to Georgia was having difficulty getting his bills paid but could not get in contact with his Texas fiduciary; the Georgia VA office was apparently powerless to get Texas to relinquish jurisdiction so a Georgia fiduciary could be appointed, and VA's position toward the veteran was "let him go back to Texas."

- An incompetent veteran wanted to find another place to live but his fiduciary refused to pay rent at any new location.

- VA refused to reinstate a spouse as fiduciary although requested to do so by a judge and although VA acknowledged that the spouse was not at fault in the veteran's creation of debt, unknown to her, which resulted in the veteran's bankruptcy.

- The fiduciary appointed to replace the wife in the example above refused to pay arrears due the power company so the electricity could be restored because, under his contract with VA, he was responsible for current and future expenses, not past debts.

Our Atlanta office was one of two offices that did not report good cooperation between service officers and F&FE personnel. As noted above, our National Service Officer in the Cincinnati office reported receiving no cooperation from either the VA personnel in Cincinnati or Cleveland, Ohio. Our National Service Officer in Salt Lake City, Utah, suggested that fiduciary activities should be more open to service officers to enable them to work more closely with VA in solving problems and to allow them to fulfill their responsibilities as advocates. Several of our offices reported good, very good, or excellent cooperation, communication, and working relationships with local F&FE personnel.

Service officers from two locations questioned the soundness of rating decisions on incompetency. Our Columbia, South Carolina, office observed that VA is too quick in proposing to rate a veteran incompetent based on one questionable examination. Our National Service

Officer in Manchester, New Hampshire, who cited no other difficulties at that station, described the problem similarly:

> This may not be limited to this [regional office], but it seems a main problem with the fiduciary/competent vs. incompetent veteran process is that the status of the veteran's competency can change with the day of the week. It seems the rating board goes with any physician recommendation on competency put before them, no matter how recent the last one, or no matter how adequate it is or is not. This leads to lots of paperwork, aggravation for the veteran, and delay in the payment of compensation. It would seem a more established process detailing just how often competency can be considered or what remarks by physicians can be used to determine competency would simplify the process and result in less frequent changes to the veteran's competency status.

We note for the Subcommittee's information that section 3.354(c) of title 38, Code of Federal Regulations, does direct VA adjudicators to consider all the evidence of record bearing on the question of competency and to make no determination that a veteran is incompetent without a "definite expression regarding the question by the responsible medical authorities" unless "the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency." Section 3.354(d) restates the rule that the benefit of the doubt must be resolved in favor of the beneficiary on this question.

Finally, in response to our fifth question, our Boston office, which, as noted above, reported serious problems with understaffing in F&FE at that location, thought the fiduciary program could be much more effectively operated under the supervision and control of the VA Regional Counsel in each VA regional office:

> We believe that the effectiveness of the Fiduciary Program has seriously deteriorated over the past decade. The Fiduciary Program is flawed and doomed to failure as long as it is incorporated into the Regional Office, under the current system of assigning FTE. Our recommendation would be to consolidate the Fiduciary Program with Regional Counsel, based on the complex legal issues, which arise with these issues of incompetency and the enforcement of the program.

Overall, the responses we received from our National Service Officers across the country suggest that VA is operating its fiduciary activities in a reasonably effective manner. Perhaps VA could develop better guidelines for fiduciaries regarding the appropriate ratio of monthly spending to monthly benefits received and the purchase of items beyond necessities in those cases where the incompetents can well afford them and have the ability to use them. In addition, VA may wish to review its staffing levels in relation to workload for each of its regional offices to determine if caseloads are even and appropriate among its field examiners. If it has not done so recently, VA could conduct a special review of a national sample of ratings on incompetency to ensure that the instructions in section 3.354 are being followed. Based on the specific complaints communicated from our offices in Cincinnati and Boston, VA should review these matters and take corrective action if indicated.

We appreciate the interest of this Subcommittee in ensuring that VA's Fiduciary and Field Examination Program is serving VA beneficiaries in the manner Congress intended, and we appreciate the opportunity to provide our input on the matter.