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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.