

**EXAMINING THE U.S. DEPARTMENT OF
VETERANS AFFAIRS FIDUCIARY PROGRAM:
HOW CAN VA BETTER PROTECT VULNERABLE
VETERANS AND THEIR FAMILIES?**

HEARING

BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS

OF THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

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CONTENTS

April 22, 2010

	Page
Examining the U.S. Department of Veterans Affairs Fiduciary Program: How Can VA Better Protect Vulnerable Veterans and Their Families?	1
OPENING STATEMENTS	
Chairman John J. Hall	1
Prepared statement of Chairman Hall	42
The Honorable Doug Lamborn, Ranking Republican Member	3
Prepared statement of Congressman Lamborn	43
WITNESSES	
U.S. Department of Veterans Affairs:	
Belinda J. Finn, Assistant Inspector General for Audits and Evaluations, Office of Inspector General	4
Prepared statement of Ms. Finn	43
Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration	31
Prepared statement of Mr. Mayes	68
U.S. Government Accountability Office, Daniel Bertoni, Director, Education, Workforce, and Income Security	6
Prepared statement of Mr. Bertoni	48
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL, KATHERINE R. PFLANZ, FIELD EXAMINER, WINSTON-SALEM VETERANS AFFAIRS REGIONAL OFFICE	
Prepared statement of Ms. Pflanz	22
Prepared statement of Ms. Pflanz	64
American Legion, Jacob B. Gadd, Assistant Director for Program Management, Veterans Affairs and Rehabilitation Commission	18
Prepared statement of Mr. Gadd	59
Gold Star Wives of America, Inc., Vivianne Cisneros Wersel, Au.D., Chair, Government Relations Committee	20
Prepared statement of Dr. Wersel	62
Vietnam Veterans of America, Richard F. Weidman, Executive Director for Policy and Government Affairs	15
Prepared statement of Mr. Weidman	56
Wounded Warrior Project, Sarah Wade, Coordinator, Family Issues and Traumatic Brain Injury	16
Prepared statement of Ms. Wade	57
MATERIAL SUBMITTED FOR THE RECORD	
Post-Hearing Follow-up Letter and Response:	
Hon. John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs, Committee on Veterans' Affairs, to Hon. Eric K. Shinseki, Secretary, U.S. Department of Veterans Affairs, letter and attachment, dated May 13, 2010, and response letter, dated July 23, 2010	70

**EXAMINING THE U.S. DEPARTMENT OF
VETERANS AFFAIRS FIDUCIARY PROGRAM:
HOW CAN VA BETTER PROTECT VULNERABLE
VETERANS AND THEIR FAMILIES?**

THURSDAY, APRIL 22, 2010

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:05 p.m., in Room 334, Cannon House Office Building, Hon. John J. Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall, Donnelly, Kirkpatrick, and Lamborn.

OPENING STATEMENT OF CHAIRMAN HALL

Mr. HALL. Good afternoon and welcome to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, hearing on Examining the U.S. Department of Veterans Affairs (VA) Fiduciary Program, How Can VA Better Protect Vulnerable Veterans and Their Families?

Please rise for the Pledge of Allegiance.

[Pledge of Allegiance.]

Thank you. My apologies for being late. I was on the phone trying to straighten out a problem for an individual in Darrell Issa's district. A friend of mine called across country to help, and fortunately, Congressman Issa has staff who are capably taking care of the issue at this moment.

We are here today just a day after we passed another comprehensive veterans' health bill that supports veterans' caregivers and enhances the veterans' physical and mental well-being of America's veterans.

I was happy to support Chairman Filner in winning unanimous passage of this bipartisan legislation, S. 1963, the "Caregivers and Veterans Omnibus Health Services Act of 2009." This bill incorporates the recommendations of nearly 20 Members of Congress, Democrats and Republicans alike.

Provisions in S. 1963 will provide training, education and counseling for caregivers of veterans of any era. In addition, the bill allows VA to recruit and retain nurses, home health aides and specialty care providers. It will help VA to better diagnose and treat those who suffer from the invisible wounds of war, the stigma asso-

ciated with them, and many other factors that make effective treatment difficult.

Specifically, the bill expands authority to fund services to treat wounded warriors suffering from post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other combat-related disorders which lead to homelessness and in some cases, suicide and criminal acts in some unfortunate instances by veterans who are suffering from these disorders.

Our hearing today is entitled, "Examining the VA Fiduciary Program: How Can VA Better Protect Vulnerable Veterans and Their Families?" This hearing is intended to examine VA's Fiduciary Program and assess how Congress and VA can work together to better protect veterans and dependents who are in need of fiduciary services.

Since 1926 when Congress passed the World War Veterans Act, VA has been providing oversight of its benefits paid to those beneficiaries who are incapable of handling their own affairs due to injury, disease, or infirmities of age.

Today, the Fiduciary Program that VA runs with authority contained in 38 U.S.C. 5502 is administered by VA regional offices (ROs) and their respective offices of regional counsel which interface directly with VA beneficiaries and State courts on guardianship and commitment matters.

On average, impaired beneficiaries received approximately \$14,400 in fiscal year 2008, about \$4,200 more per year than the average for all VA compensation and pension beneficiaries. In fiscal year 2008, fiduciaries managed approximately \$1.5 billion in VA benefits for more than 103,000 beneficiaries. Thus far, for fiscal year 2010, VA reports \$396 million in benefits have been paid to more than 102,000 beneficiaries with a cumulative estate value of \$3.1 billion.

Recently, both the VA's Office of Inspector General (OIG) and the U.S. Government Accountability Office (GAO) issued reports on VA's Fiduciary Program. These reports underscored the benefits of the program, and there are many; but it also pointed to insufficient staffing, training, and other resources that hampered effective oversight of the Fiduciary Program.

In the absence of adequate oversight and accountability, some fiduciaries have misused millions of dollars belonging to our veterans and their dependents.

Let me take a moment to highlight some of the concerns about the Fiduciary Program that were raised by the OIG and GAO reports. From October 1998 to March 2010, the VA OIG's Office of Investigations reports that it conducted 315 fiduciary fraud investigations resulting in 132 arrests and monetary recoveries of \$7.2 million in restitution, fines, penalties and administrative judgments. One of these cases involved the submission of false financial reports by a fiduciary who attempted to conceal her embezzlement of nearly \$1 million from 33 disabled veterans whose accounts she managed. The funds embezzled by the fiduciary were reportedly used to support her gambling habit.

It should be noted that these problems are not representative of all fiduciaries. The vast majority are doing an honorable and honest job of taking care of our veterans, who cannot handle their own

affairs, many of whom are family members. However, the program is susceptible to abuse as a result of deficiencies noted by both OIG and GAO reports. Specifically, they found that first, the Veterans Benefits Administration (VBA) was not taking effective action to obtain seriously delinquent accountings. Second, VBA was not consistently verifying questionable expenses reported by fiduciaries. And, third, VBA was not adequately following up and reporting on allegations of misuse of beneficiary funds and estates.

The VA OIG pointed out that VBA has also not been diligent in replacing problematic fiduciaries. In one case, a fiduciary was seriously delinquent in submitting multiple reports ranging from 134 days to 215 days late. In addition, during that period, VBA received numerous complaints concerning that particular fiduciary's performance. However, the VBA took no action to replace this particular fiduciary.

On the other end of the spectrum, we will hear from veterans service organizations (VSOs) who complain that family members who serve as fiduciaries are neither supported financially nor through training by VBA to discharge their duties. Moreover, the VSOs suggest that while some professional fiduciaries are not subjected to enough oversight by the VBA, family member fiduciaries often feel they are viewed with suspicion and mistrust by the VBA, despite the sacrifices they make to care for relatives who are incapacitated veterans and/or beneficiaries.

For example, the Wounded Warrior Project reports that VBA required a mother who served as a fiduciary for her mentally disabled veteran son to reimburse funds spent on toilet paper for their home.

This hearing provides a forum to explore concerns across the spectrum regarding the Fiduciary Program, and I look forward to the testimony of our witnesses and insightful comments or questions from my colleagues on the Subcommittee.

I would now like to recognize Ranking Member Lamborn for his opening statement.

[The prepared statement of Chairman Hall appears on p. 42.]

OPENING STATEMENT OF HON. DOUG LAMBORN

Mr. LAMBORN. Thank you, Mr. Chairman, and welcome everyone to this hearing on the Department of Veterans Affairs Fiduciary Program. The Fiduciary Program provides oversight of VA benefits to beneficiaries who are incapable of managing their funds as a result of injury or disease. When the VA or a court determines that a veteran is incompetent to handle his or her finances, the Fiduciary Program establishes an appropriate benefits payment method, appoints a fiduciary to oversee his or her finances, and provides continued oversight services. Through periodic personal visits to the beneficiary's residence, VA field examiners monitor the welfare and needs of the veteran.

My Subcommittee colleagues and I want to ensure that VA's Fiduciary Program is taking every measure and has the support necessary to fully safeguard beneficiaries' assets. During the 108th Congress, Congress passed legislation that President Bush signed into law on December 10, 2004 (P.L. 108-454). The law included provisions to make improvements to increase fiduciary account-

ability and strengthen protections for the beneficiary. This included more thorough investigation of fiduciaries prior to them being appointed, and required VA to reissue benefits that were misused in cases where negligence was found.

Today the Subcommittee would like to hear about the effectiveness of these provisions and whether further Congressional action is needed to ensure that our most vulnerable veterans are afforded the highest level of protection possible. I look forward to hearing from our witnesses today, and I want to thank you all for your participation.

Unfortunately, I have to leave soon for the airport, but you will all be in good hands with our Chairman.

[The prepared statement of Congressman Lamborn appears on p. 43.]

Mr. HALL. Thank you, Mr. Lamborn.

Votes are done. The good news is we will not be interrupted by votes as we sometimes are. Unfortunately, the Ranking Member and other Subcommittee Members may need to leave early.

There are no other opening statements, so we will move right along to our first panel. I would like to welcome Belinda J. Finn, Assistant Inspector General For Audits and Evaluations, Office of Inspector General, U.S. Department of Veterans Affairs, and Daniel Bertoni, Director, Education Workforce and Income Security with the Government Accountability Office. They are accompanied by Timothy Crowe, also with the VA Office of Inspector General. Welcome and thank you for being here today and for the work you do.

Ms. Finn, and all of the witnesses, your statements, written statements are entered into the record. I would like to ask you to present a 5-minute version if you can. You are now recognized, Ms. Finn.

STATEMENTS OF BELINDA J. FINN, ASSISTANT INSPECTOR GENERAL FOR AUDITS AND EVALUATIONS, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY TIMOTHY CROWE, DIRECTOR, AUDIT OPERATIONS DIVISION, ST. PETERSBURG, FL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND DANIEL BERTONI, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF BELINDA J. FINN

Ms. FINN. Thank you, Chairman Hall and Members of the Subcommittee. Thank you for the opportunity to talk today about how the Department of Veterans Affairs can better protect vulnerable veterans and their families.

With me today is Mr. Tim Crowe, Director of the Audit Operations Division in Bay Pines, Florida.

VA annually provides benefits totaling more than \$40 billion to over 3 million veterans and dependents. When a VA beneficiary cannot handle their own finances because of injury, disease or the infirmities of age, VBA or the courts appoint a fiduciary to receive monies and make necessary payments for the beneficiary's living

expenses. VBA reports that fiduciaries managed the finances of over 100,000 beneficiaries with cumulative estate values of over \$3 billion and those beneficiaries receive annual benefit payments of around \$700 million.

VBA employees at regional offices are responsible for overseeing the fiduciaries to ensure that the VA-derived income and estates are used solely for the care, support, welfare, and other needs of VA beneficiaries.

From the OIG's perspective as an oversight agency, we know firsthand that a dishonest fiduciary can misuse funds and how they might hide that misuse. We recently completed a review of the Fiduciary Program's effectiveness in addressing potential misuse. We concluded that VBA lacks the elements of an effective management infrastructure to support the program. A previous audit in 2006 had identified some of the same weaknesses.

VBA's case management system, the Fiduciary Beneficiary System, or FBS, has functional and data limitations that severely limit its usefulness as a tool to support program operations. For example, FBS stores only 2 months' worth of data at any time and does not interface with other critical VBA systems. Further, the system cannot receive financial information electronically, and this means that program personnel must deal with manual reports and statements from fiduciaries and financial institutions. Late last year, however, VBA did start work to compare the current capabilities of the FBS system with their program needs.

VBA also needs a staffing and workload model to guide resource allocations across the program. For example, we found that the number of beneficiaries managed by individual VBA staff ranged from under 200 to over 1,500.

Finally, VBA needs to consistently assess the quality of operations at regional offices, provide more guidance to fiduciaries, and analyze the findings from program evaluations.

The program management issues lead to oversight lapses that can affect the safety of beneficiary funds. We found that VBA is not always taking effective action to obtain delinquent reports that detail beneficiary assets, income, and expenses. It also does not always verify the questionable expenditures that are reported by fiduciaries.

Veterans and dependents that need the services of a fiduciary depend on VA to oversee their financial well-being. We believe that the Fiduciary Program can better monitor the performance of fiduciaries with improved systems, staffing, and information on program operations. As an OIG, we will continue to work with VBA to improve the oversight of fiduciaries and ensure that vulnerable veterans and their families are protected.

Mr. Chairman, thank you for the opportunity to be here today and discuss these important issues. Mr. Crowe and I will be happy to answer any questions that you or the other Subcommittee Members may have.

[The prepared statement of Ms. Finn appears on p. 43.]

Mr. HALL. Thank you, Ms. Finn.

Mr. Bertoni.

STATEMENT OF DANIEL BERTONI

Mr. BERTONI. Mr. Chairman, Members of the Subcommittee, good afternoon. I am pleased to discuss the Department of Veterans Affairs Fiduciary Program and how it can be improved to better serve veterans and their families.

As you know, VA appoints fiduciaries to protect the funds of veterans who are unable to manage their own affairs. The fiduciary may be a spouse, other family member, or a private party that provide such services for a fee. Last year, fiduciaries served more than 100,000 beneficiaries and managed over 4 percent of all benefits paid by VA.

For years GAO, VA's inspector general and others have expressed concern that the program is not fully safeguarding beneficiary assets. You asked us to discuss areas of continuing vulnerability and possible ways the program can be improved. My statement draws on a recent report assessing VA's policies for safeguarding beneficiary assets, as well as challenges to program oversight and performance.

In summary, we found that VA did not always take required actions or sufficiently document the records to protect beneficiaries. First, our analysis of case file data showed that VA did not always conduct initial visits within required time frames to assess a fiduciary's suitability to manage VA benefits.

Beyond their value as a key screening tool, timely initial visits are important because individuals often cannot begin receiving benefits until they are completed. Moreover, in 18 percent of the cases we reviewed, the VA was also late in completing required follow-up visits to monitor beneficiaries and fiduciaries, or lacked sufficient documentation for us to determine whether any action occurred at all. Similarly, while we estimated that about 39 percent of fiduciaries were late in submitting financial reports, program staff did not consistently follow-up to obtain required information or failed to document their actions. Many cases involved reports that were more than 120 days late and considered seriously delinquent under program rules. In the most egregious case, we found a fiduciary submitted financial reports almost 2 years late and only after VA initiated action to suspend payment.

We also identified weaknesses and staff confusion around VA's processes for ensuring that fiduciaries who oversee high-dollar-value estates are properly bonded. Of the cases we reviewed that required a bond, 13 percent lacked documentation that one was purchased or that the requirement was appropriately waived. Some cases have estate values approaching \$100,000 leaving beneficiaries exposed to substantial loss if funds were misused. We have recommended that VA take additional steps to ensure that staff better understand and execute program policies for file documentation, initial and follow-up visits, and bond acquisition. The agency concurred with our recommendations and is moving to revise key policies and enhance its oversight role.

In addition to program compliance issues, we identified weaknesses in VA's ability to monitor professional fiduciaries who manage substantial funds for multiple beneficiaries. Although VA is required to conduct on-site financial reviews of these fiduciaries, the agency did not use a unique identifier such as a Social Security

number (SSN) or taxpayer identification number to identify and match them to all beneficiaries they may serve. Thus, the VA cannot be ensured that all required reviews are being conducted and beneficiary funds appropriately spent. However, per our recommendation, the VA recently noted that it plans to require staff to begin obtaining SSN or tax ID numbers for all professional fiduciaries.

Finally, our report identified limitations in VA's electronic fiduciary case management system and the training provided to fiduciary staff as two key challenges to improving program performance going forward. Specifically, we found that restricted data fields in the current system prohibit staff from systematically recording important case management information such as when multiple financial reports are due or tracking historical information on prior performance problems with fiduciaries. In so many other areas, this system falls short in terms of helping staff monitor their very complex workloads.

In regard to training management and staff in the offices we visited, we observed that available training was insufficient to ensure that they had the necessary expertise to carry out their responsibilities.

In two of the three locations we visited, most fiduciary staff and managers had less than 2 years of programmatic experience. Managers at these locations told us that staff inexperience and limited training has likely contributed to the problems we identified, including failure to properly monitor fiduciaries or document certain actions in beneficiary case files.

We have issued recommendations in both of these areas, and VA is moving to address them.

Mr. Chairman, this concludes my statement. I am happy to answer any questions that you or other Members of the Subcommittee may have. Thank you very much.

[The prepared statement of Mr. Bertoni appears on p. 48.]

Mr. HALL. Thank you, Mr. Bertoni.

I will have one question of both of you, and then I will ask Mrs. Kirkpatrick if she would like to go first, and then Mr. Lamborn because they may have travel plans sooner than mine. Mr. Mayes' prepared testimony on our third panel states that the GAO and OIG reports "confirm the validity of the VA's current efforts."

Do you believe that VA is complying with the OIG and GAO's recommendations?

Ms. FINN. Our current effort found problems with how the Department had implemented our recommendations from 2006. Several of our recommendations were similar to what we had issued in 2006, and the Department's efforts had not quite fixed the problem.

For the current audit, though, of course they certainly took action during our audit on issues that we brought up. They have concurred with all of our recommendations, and the actions we see seem to indicate that they are moving forward on those recommendations.

Mr. BERTONI. In the case of our report that we just issued at the end of February, and what we have is essentially concurrence with

our recommendations and a litany of things that they have either planned or are underway.

In some areas, I believe they have already taken action. I believe they are now requiring that professional fiduciaries are tracked via their Social Security number or tax identification number. I think that is very important.

If you have a fiduciary who is perhaps less than honest and wants to game the system, under the old way they could list their name as John Smith. In another case, John Q. Smith and Johnny Smith. In that kind of situation they could have multiple beneficiaries and you wouldn't know it. With a unique identifier like a Social Security number or tax number, you will be able to tie them all together and follow a financial trail.

In other areas in the on-site reviews, we were concerned that there was no national quality assurance process. My understanding is that there is one now in place, or at least beginning.

In several areas it looks like they have already begun to initiate action per our recommendations. In others, what they plan to do sounds like sound practice.

Mr. HALL. Thank you. I am sure when Mr. Mayes speaks, he will elaborate.

Current efforts to move in the direction your reports have suggested is progress, and we like progress. We are not expecting perfection, but we are after progress here.

Mrs. Kirkpatrick.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman, for letting me go first. I do have to leave for a flight.

I am very concerned about this program. Before I was elected to office, I did a lot of guardianships and conservatorships in my law practice, and then served for a period as a judge pro tem just reviewing guardianship and conservatorship accountings. As a judge, we have the power of the court to crack down and apply fairly swift sanctions. But I will tell you just the mere nature that you are combining resources that aren't really having to be accounted for to me just raises a huge red flag. So I have a couple of questions for both of you.

Ms. Finn, first of all, is there training for the fiduciaries? Are there specific rules and regulations within the VA as to what the money can be spent for and are the fiduciaries trained?

Ms. FINN. Mr. Crowe will answer that.

Mr. CROWE. I would characterize the training that is given when they are appointed as being limited to a listing of their responsibilities. One of the things we brought up in our report was that a Web portal that lists responsibilities, training aids, frequently asked questions and answers, might be helpful in this regard.

Mrs. KIRKPATRICK. That concerns me. I hope to see some improvement in the training.

My personal experience in the area led me to believe that a lot of people don't understand the nature of a fiduciary relationship. They think that money is their money and they can spend it any way they wish, and there really has to be tight control on that.

Mr. Bertoni, I wanted to ask you, are there limitations on fiduciary fees? I want to tell you, there is a high-profile case in Arizona right now where a million dollars went to the fiduciaries and their

attorneys leaving the ward almost bankrupt. Can you tell me, are there limitations on what the fiduciaries can charge themselves?

Mr. BERTONI. Yes. Generally the fee is 4 percent of the annual benefit amount. There are exceptions to that, as well as exceptions when it is related to the courts. The courts often mandate higher fees. I believe VA is required to comply with the court's dictates. So yes, they can go higher, and oftentimes it is due to a court-ordered fee.

Mrs. KIRKPATRICK. I noticed in some of the statements that were submitted that it appears in the Department of Veterans Affairs, someone can be appointed a fiduciary. In my county, we have public fiduciaries. That is one person with a staff, but that person can be appointed the fiduciary. Do we have something similar in the VA system?

Ms. FINN. The VA appoints the fiduciary and many, many times it is a family member, in a lot of cases, not necessarily a professional fiduciary.

Mrs. KIRKPATRICK. Are there professional fiduciaries within the VA who can serve in that capacity if the person doesn't have a family member who can serve?

Ms. FINN. They are not employed by the VA. They register with VA but are not part of VA.

Mrs. KIRKPATRICK. My last question is I am very concerned about the lack of timely reporting and accounting and lack of documentation to support that. What kind of sanctions are there in the system if someone delays in reporting?

Mr. BERTONI. In the financial area?

Mrs. KIRKPATRICK. Any kind of sanction. For instance, I would oftentimes remove a fiduciary who wasn't compliant. I always took a pretty strict approach because they are really dealing with someone else's money. So is there a process for removing them or fining them or some kind of sanction?

Mr. BERTONI. Sure. In terms of the annual financial reports, I believe it is sort of a sequential process. If someone is late in filing, in the first 35 to 65 days, the VBA is required to reach out and remind them in various ways to submit reports. Once that gets up to be 90-plus days, then the VBA is required to reach out again and can in fact suspend benefits at that point. After 120 days, it becomes what is known "seriously delinquent" and then again the VBA can take more rigorous actions, which could be suspending the benefits and pursuing the funds.

Mrs. KIRKPATRICK. I hope we can do some more work on this. I do appreciate you appearing here today. The Chairman and I talked about wanting to do some additional oversight. I have a concern about the sanction of removing benefits hurts the veteran who needs the care. But we can keep talking.

Mr. Chairman, thank you very much.

Mr. HALL. Thank you, Congresswoman Kirkpatrick. I hate to say it because it sounds like a joke, but we may have stumbled upon a fiduciary backlog.

Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. I have a couple of questions to build on the questions that Representative Kirkpatrick already asked.

As she noted, there is a State process. In Colorado, it is through the probate courts and the judge will grant someone's application normally, sometimes appoint a guardian ad litem. Does the VA just accept what the State courts, whoever has been appointed by the State courts, or is there a parallel process? Just so I understand better.

Ms. FINN. I can't give you a specific answer on that right now mainly because our report didn't focus on the appointment process. At this point in time, we focused more on the misuse of funds.

Mr. BERTONI. We have done some work in guardianship in the court systems. Generally I believe they defer to the court in terms of the arrangement that was made, the fee collection agreement, and the entity that is going to be the guardian and/or the fiduciary.

I believe their controls allow them to screen at a later point to determine whether that person still meets the bar in terms of being suitable for being a fiduciary. But I would defer the specifics to VA on that.

Mr. LAMBORN. If I am not here to ask questions of the VA panelists, I will possibly use the option of submitting questions in writing.

Along that line, and I know you may not know the answer to this, if there is a contest as happens occasionally with heirs or other interested parties, does the VA ever take sides and determine between contesting applicants? Do you ever get into disputes over who is the guardian?

Mr. BERTONI. We have not done that level of work to answer that question.

Ms. FINN. I think that is a VA question.

Mr. LAMBORN. So that is not so much GAO matter of review. Okay, then I have some other technical questions. I will defer them to the VA. Thank you for being here and for the information you provided.

I yield back.

Mr. HALL. Thank you, Mr. Lamborn.

Ms. Finn, your OIG report indicates that the program is plagued by VBA's inability to detect the misuse of incompetent beneficiary estates, insufficient staff follow-up on questionable or incomplete data in fiduciary annual accounting statements, and the failure of VBA to require documentation from fiduciaries to support expenses that are claimed. These challenges were identified in your 2006 audit, and in your 2010, which audit show that these weaknesses still exist. What steps does the OIG plan to take to ensure that VA resolves these issues to protect the beneficiaries who are unable to protect themselves?

Ms. FINN. We have a multifaceted approach right now. We are currently conducting a new audit where we are looking at the large, retroactive payments that are made to beneficiaries through a fiduciary. We are concentrating on those large payments over \$10,000.

We also work with our Office of Investigations on investigations as they take on fiduciary fraud. We are doing some work in our benefit inspections as we go into each regional office and we look at the Fiduciary Program across the board, not just misuse but we

look at issues related to appointments and accountings and anything that comes to our attention in those regional offices.

Finally, we will continue to follow-up on our recommendations and conduct future work in the program to look at other aspects that we may not have been able to address at this point. It is a pretty large program and we focused really on one aspect for this period of time.

Mr. HALL. Thank you. From a statistical sample of Fiduciary Program reports, the OIG anticipates that legal instruments examiners may not have adequately verified approximately \$2.9 million in expenditures for 551 of 1,906 accountings. That is 29 percent of the accountings completed between April 1, 2009, and May 22, 2009. Based on this 29 percent error rate, how many of the Nation's 104,000 incompetent beneficiaries do you predict or estimate are at risk of fiduciary misuse?

Ms. FINN. Our statistical sample was somewhat constrained by the fact that the system included only 2 month's worth of data on accountings that were due and that is what we pulled our sample from. So we didn't have a whole year's worth of accountings, we just had 2 months of data. In the absence of data, we cannot do an estimate of possible impact to the program.

Mr. HALL. Thank you. That would be welcomed.

OIG contends in the 2010 report that VBA was not taking effective action to obtain the delinquent financial accountings from fiduciaries. Your report was based upon visits to a number of regional offices. What in your observation distinguishes a regional office that is properly overseeing a Fiduciary Program from one that is having problems?

Mr. CROWE. I think the lack of a strong national management oversight infrastructure of the program, which meant that there were great performance variances from regional office to regional office. The effectiveness of the program largely fell to the abilities of local staff and management. We saw great differences.

Mr. HALL. That is good for us to know since having consistency, training, and standards that everyone is expected to meet and taught to meet, are goals I am sure we would all support.

The OIG's recent report notes that from fiscal year 2005 through 2008, VBA has failed to include statistical information pertaining to misuse of funds by fiduciaries in the annual benefits report to Congress as required by title 38 U.S. Code section 5510. We know that the failure to provide this report to Congress impairs our ability to effectively provide oversight of the Fiduciary Program. How has this reporting failure in your opinion harmed veterans and other beneficiaries? And if so, what can we do to address this issue?

Mr. CROWE. I think investigating allegations of misuse go to the heart of the mission of this program. I think we were surprised to find that their policies were not being followed largely because it appears that their performance in this area was not being measured by performance standards or any other measurements. And certainly some staff, I wouldn't characterize everybody, but some staff talked about this as being a lower priority, and we considered it to be a very high priority. And some of the misuse actions that they had taken in investigating these allegations were either un-

timely or not documented. Therefore, if they weren't reported in their system, what was being reported to Congress would be understated by definition.

When you get allegations of misuse from a beneficiary, from a family member or from a friend, I think these are very important leads that something is going wrong and a great way for them to find out. We were trying to emphasize to the VBA the importance of making sure that this becomes a higher priority among their staff.

Mr. HALL. Mr. Bertoni, in the GAO report to the Subcommittee, you observed that the Fiduciary Program is hindered by its electronic fiduciary case management system or FBS which some VA staff have called antiquated and cumbersome. I understand that this system prevents VBA from identifying all fiduciaries in the program since it may not be able to connect a Social Security number with a name, or it may have the same person's name entered in different ways and perhaps the VA cannot tell the difference or identify the sameness of John Hall, John J. Hall, John Joseph Hall, et cetera. Are there better systems that could be used by VA that are being used by other agencies that you oversee that could replace FBS and what recommendations do you have regarding the FBS system?

Mr. BERTONI. I can't speak to specific systems, but I can speak to other Federal benefit programs, and to my knowledge, as I said, I have disability portfolios that entail the U.S. Department of Defense (DoD), VA, and the Social Security Administration (SSA), 20 other agencies, and within those 20 agencies, 200 Federal programs, and it is a rarity not to capture the full Social Security number as the control number.

In this situation, you can have a fiduciary in California who runs a afoul of the rules and regulations and pulls up stakes and ends up in Oregon and changes his name slightly and you would never know that. If you had a unique identifier, you could catch that kind of activity. That is just one example.

I don't know what the system is. I do know that they are not capturing it now. I don't think it is a matter of capability. I think we were told that they could capture the Social Security number under the existing system. But I would say that FBS is problematic.

In our case, you asked why the Legal Instruments Examiners (LIEs) were missing so many of their accountings. Well, if the system only holds the most recent account due, then the four prior that the fiduciary didn't submit drop off the radar screen. When we went out into the field, we found field examiners who had sticky notes on the wall to sort of remind them that this particular fiduciary was late in four accountings. The system wasn't doing that. These folks were working in their own paper system outside the electronic system.

So as far as the apparent lack of attention on the LIE's part, I think much of that can be attributed to, number one, the system is not helping them. Second, the ratio of wards to staff. What I heard just a moment ago in terms of how many folks that these LIEs and field examiners are managing, that is alarming. At some point folks and tasks are going to fall through the cracks. If you look at the consolidated hub, I think the ratio is 800 wards per LIE

and 400 wards per field examiner. I don't know if that is appropriate, but at least they know what they want to achieve.

Mr. HALL. Thank you for that information. Regarding the site visits that GAO conducted to three of the 43 program units, St. Petersburg, Cleveland and Salt Lake City, which is the location of the western hub, I understand that the western hub is a new initiative and your examination did not yield conclusive findings, but you predicted this consolidation effort has promised to standardize training procedures and implementation. How long do you think it will take before the western hub shows those results?

Mr. BERTONI. GAO, in general, is on record for much of the consolidation of workloads and activities that are happening at VA. They are consolidating a lot of workloads across a lot of different activities, and conceptually that makes sense to us. When you can pull together that many States and that many field examiners, give them consistent training, give them an opportunity to specialize in what they do instead of being the generalist, jack of all trades, I think there are real opportunities to increase timeliness and accuracy and consistency of the workload.

Our concern is that we heard some noise out there in terms of how the hub came about, perhaps it was rolled out when there weren't enough support systems in place. How some of the cases that came in were not what I would say appropriately worked and they had to be reworked to make sure that the accountings were up to date. So I think there were some speed bumps in terms of implementation. We have asked that they do an evaluation to see lessons learned and what they could do different going forward. I believe that is underway or will be soon.

As far as when it will be up to maximum productivity, I don't know. But I am starting to see some data that they are starting to exceed national targets in terms of submissions of the reviews of the financial accountings.

Mr. HALL. Thank you. I have a couple of more questions for you and then we will give you some more in writing next week. I am going to try to get to our other panels here while we are all still awake and on solid food. But in your estimation, Ms. Finn or Mr. Bertoni, what misuse of beneficiary funds occurs more, that by fiduciaries who are related to beneficiaries or by professional, non-familial fiduciaries?

Ms. FINN. It is hard to say what we don't know, but I can tell you that our Office of Investigations has told me that more than half of their investigations are related to a family member. I find that very sad to speak of, especially on Bring Your Child to Work Day, but that is the case.

Mr. HALL. Well, we are talking about a lot of money and human beings here, so I guess we shouldn't be surprised that the temptation certainly exists.

Mr. BERTONI. We couldn't answer that specifically either. We haven't done that work. But I do believe that when you have this level to date of management inattention, that that invites and can open the door to misuse.

If you have structured oversight of the program, strong program integrity tools in place, I think that clamps down the temptation for abuse.

I did get a call this week from a citizen, I get these quite frequently, who was having trouble contacting VA in terms of getting a fiduciary. I tried to work through various scenarios for that person, and I kept going back to: Do you have a family member that could take this on? And that person had family members but did not feel that they could trust their funds with a family member. But that is all I know.

Mr. HALL. Just a couple of more things. We have some reports from family members who are acting as fiduciaries who have been barred from using VA funds for living expenses. One question is have you an opinion about that and also do you think that VA should consider paying familial fiduciaries?

Ms. FINN. I would hesitate to voice an opinion on that. I guess if I were in that situation, I would hope my child would do that without a salary. But I can see where the occasion could arise where it is a large undertaking to take care of someone who needs that level of attention.

Mr. BERTONI. Again, I don't have any work to bear any of this out, but I would say expenses should be associated with the care and well-being of the beneficiary. There are other programs, aide and attendants that can be sort of rolled into the equation to meet the supplementary needs of the beneficiary. But I have no opinion on whether living expenses should be part of it.

Mr. HALL. My last question is do you have an opinion as to whether we should put a cap on the number of beneficiaries that one fiduciary may handle or whose affairs they may handle?

Ms. FINN. It would seem to me to be a prudent undertaking to do because a professional fiduciary who is managing the funds of many beneficiaries has the greatest ability to move funds between fiduciaries and the most funds that are at risk. Certainly that is where we really need the controls to ensure that all of the funds for the many beneficiaries that may be under a fiduciary's management are well accounted for. I don't have a specific number that I would recommend, however.

Mr. BERTONI. Is your question should we place a cap on the number of beneficiaries that professional fiduciaries can serve?

Mr. HALL. Right.

Mr. BERTONI. I would say, just as the point I made a few moments ago regarding the ratio of LIE to wards and field examiners to wards, I think at a certain point it becomes very difficult to manage the finances of folks when you have many, many beneficiaries to worry about. I don't know what that is, but I think at some point you have to look at does this person have the capacity or entity have the capacity to serve the needs of the beneficiaries.

Mr. HALL. Thank you, sir. I would assume it would possibly vary depending on the degree of disability and impairment of the veteran beneficiary, but there is probably a limit to what any one person can do competently, even assuming total honesty.

Mr. BERTONI. And it also depends on the capacity of the professional fiduciary. There are probably organizations and entities out there that have support staff in place that can sort of help with that. You really need to look at it on a case-by-case basis as to which entities might be able to handle more.

Mr. HALL. Thank you very much, Mr. Bertoni, Ms. Finn, and Mr. Crowe. Your testimony has been very helpful. We will submit some more questions to you most likely. We thank you. You are excused, and now we welcome the second panel.

Our witnesses are Richard Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America (VVA); Sarah Wade, Coordinator, Family Issues and Traumatic Brain Injury, Wounded Warrior Project (WWP); Jacob Gadd, Assistant Director for Program Management of the American Legion; Vivianne Cisneros Wersel, Gold Star Wives of America; and Katherine Pflanz, Field Examiner from the Winston-Salem VA Regional Office and American Federal of Government Employees (AFGE) representative. Welcome. Thank you for your patience. Again, it is good to see those of you who we have seen many times before. Your written statements are in the record. You are recognized for 5 minutes each, and then we will have some questions.

We will start with Mr. Weidman.

STATEMENTS OF RICHARD F. WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA; SARAH WADE, COORDINATOR, FAMILY ISSUES AND TRAUMATIC BRAIN INJURY, WOUNDED WARRIOR PROJECT; JACOB B. GADD, ASSISTANT DIRECTOR FOR PROGRAM MANAGEMENT, VETERANS AFFAIRS AND REHABILITATION COMMISSION, AMERICAN LEGION; VIVIANNE CISNEROS WERSEL, AU.D., CHAIR, GOVERNMENT RELATIONS COMMITTEE, GOLD STAR WIVES OF AMERICA, INC.; AND KATHERINE R. PFLANZ, FIELD EXAMINER, WINSTON-SALEM VETERANS AFFAIRS REGIONAL OFFICE, ON BEHALF OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL

STATEMENT OF RICHARD F. WEIDMAN

Mr. WEIDMAN. Mr. Chairman, thank you for the opportunity for Vietnam Veterans of America to present some thoughts about the fiduciary reports that you all are considering today, one by the OIG and one by GAO and looking at the overall problem.

One thing is clear from both anecdotal experience that we have as an organization both directly and through our local leadership around the company as well as our service representatives in that things in this program have been not good for a very long period of time, mostly because it hasn't been paid attention to.

So first and foremost, after reading both of these reports, there is not a good solid program. The axiom that is always useful to remember is that a unit does well is that which a commander checks well. And because this thing is not set up well, you can't even check well what is happening with each and every veteran.

My second concern has to do with standards for the fiduciaries as well as training, and this is something that needs to be done.

Three, we are very troubled that most of the 2006 recommendations were not followed and implemented or at least a number of them were not.

And the next observation that we have really has to do with care. Both of these reports focused on the fiduciary and the financial obligation that VA has to make sure that taxpayer dollars go to the intended recipient for his or her benefit and don't end up elsewhere. And that is an important function. But equally important is that these are folks in pretty rough shape, these 103,000 folks. They need medical care on an ongoing basis. They need lots of things on an ongoing basis, not the least of which is to make sure that they eat right.

We, frankly, are not all that concerned where it is a spouse, which is true in a number of cases. We are concerned with those who have many, or perhaps even hundreds, in their caseload because that element of making sure that people get the medical care that they need when they need it, we believe, is a key part of this program. And of course, we have the exposure of billions of dollars potentially.

It is almost akin when you don't have a system to check and follow-up to the genius idea of sending \$10 billion in cash into the war zone into Iraq and then being surprised that more than 70 percent of it couldn't be accounted for. It is almost that foolhardy that you don't have checks and balances in this system that really make a great deal of sense. But it is easily done and we would urge Mr. Mayes and his folks that produce information technology (IT) that can give you that capability and start constructing a parallel system virtually immediately.

We believe that some of the progress that has been made recently on the compensation and pension (C&P) system and a change in attitude on the part of VBA leadership towards those of us who are partners with them, and major stakeholders, is something that means that we can move towards solving the C&P problems within the next year and a half or 2 years. We need the same sort of attention and the same collegiality, if you will, and the same openness of attitude toward new solutions and working with stakeholders at the State, national as well as at the local level in order to solve the problems of the fiduciaries.

With that, I will conclude my statement. I look forward to any questions you may have, sir.

[The prepared statement of Mr. Weidman appears on p. 56.]

Mr. HALL. Thank you, Mr. Weidman. Ms. Wade.

STATEMENT OF SARAH WADE

Ms. WADE. Chairman Hall, Ranking Member Lamborn and Members of the Subcommittee, thank you for inviting Wounded Warrior Project to testify on VA's Fiduciary Program. Through our work with severely wounded veterans and their family caregivers, many of whom are fiduciaries, Wounded Warrior Project has a unique perspective on this program. As a caregiver myself of a severely wounded veteran of both Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) who sustained a severe traumatic brain injury, and as someone who has worked with many caregivers of severely wounded warriors, I believe I can provide helpful insight.

WWP appreciates the critical mission and vital work performed by the VA's Fiduciary Program, but we are gravely concerned that

in managing the program, VA fails to take account of the unique circumstances of family members who are devoting themselves to the full-time care of severely wounded warriors and who also serve as their fiduciaries. Many have given up careers and depleted their own savings to care for these wounded warriors. Family members who have made these kinds of sacrifices hardly pose a risk of misusing the veterans' benefits.

WWP recognizes the need for the VA Fiduciary Program and for appropriate oversight, and we appreciate the Government Accountability Office's helpful report on the need to strengthen the program and improve compliance with fiduciary policies. Importantly, those policies recognize that all fiduciary cases do not require the same degree of attention and supervision and that field examiners should consider the unique circumstances of each individual case. Unfortunately, we see wide variability in how the judgment is exercised.

The many caregivers of wounded warriors, who are my friends and with whom I have worked over the years, have put their own lives on hold to be caregivers. Typically they have chosen to give up or independently suspend their own career plans and made other financial sacrifices. I can assure you of one thing regarding those who have been appointed fiduciaries: their dedication to their wounded spouses or children did not change by virtue of taking on responsibilities of a fiduciary, yet VBA's fiduciary oversight seldom recognizes the sacrifice of those who are also caregivers. Too often these family members encounter a VBA oversight system marked by rigidity, intrusiveness and unreasonable decision-making.

Let me illustrate by way of a few examples. A VBA field examiner imposing a summer vacation expenditure limit for a profoundly wounded warrior, his wife and two children; a mother caregiver having to explain to a VBA examiner why she allowed her wounded warrior son to spend "too much money" on Christmas gifts; the spouse caregiver of a traumatically brain injured veteran having to get permission from their VBA field officer to purchase a couch for their home.

As Chairman Hall mentioned in opening remarks, a devoted mother caregiver was required to pay back money for toilet paper purchased for the home. A family being questioned about expenditures for gasoline that was used in transportation of the wounded veteran; several instances of mothers who are full-time caregivers being required to pay rent to the wounded veteran rather than residing in their home for "free." A field examiner denying a mother caregiver's request to place the now-wheelchair bound veteran's 8-year-old high mileage truck that she uses to transport him in a rural, snowy area; a mother caregiver having to relinquish her role as a fiduciary because she had had to declare bankruptcy after leaving the workforce to care for her wounded warrior son.

Let me assure you from personal knowledge that these families do not deserve to be treated this way. Not every case is mishandled, but these aren't isolated problems. Moreover, caregivers experience stark variability in VA's oversight across the country. The impression frankly is of a program marked by arbitrary and capricious decision-making. It should be recognized that family caregivers typically reside with the veteran and may no longer

have their own income. We see no reason to preclude such families from applying part of their loved's one benefits to help maintain a household that they share. VA Fiduciary Program policies should make that abundantly clear.

But even more fundamentally, a devoted family member who provides daily care for a severely wounded veteran should not be treated as the object of suspicion, either in terms of rigid management of the budget or intrusive home visits simply because the individual serves as the veteran's fiduciaries. We believe these families are owed a presumption of honesty and should be treated with dignity.

Over the past year, WWP has discussed these concerns with VBA officials and offered to work with them, even arranging for them to meet a family caregiver fiduciary to appreciate better this family's experience, but we have yet to see any change in policy or practice. Clearly both are needed.

In addition, VA must provide more training. Its own staff needs training, but VA should also better clarify to family members their responsibilities when they agree to serve as a fiduciary.

Finally, it is noteworthy that caregivers of wounded warriors are well known to VA. Each has worked closely with a Federal Recovery Coordinator and/or other case manager in connection with the veteran's care. In the isolated instance in which there is some indication of a problem concerning a caregiver, case workers in the Veterans Health Administration become aware of it. From the caregiver's perspective, VA is a single entity and they have every reason to believe VA knows they are reliable and have integrity, so imagine how confusing it is for a caregiver who has worked closely and developed relationships of trust with other VA staff to encounter VBA personnel whose fiduciary requirements convey fundamental mistrust. It doesn't seem too much to expect that VBA and other arms of the Department work more closely to share information relating to caregiver fiduciaries rather than requiring these dedicated individuals to prove themselves yet again.

Mr. Chairman, we look forward to working with the Subcommittee to address these concerns regarding the VA's Fiduciary Program.

This concludes our testimony. I would be pleased to address any questions you may have.

[The prepared statement of Ms. Wade appears on p. 57.]

Mr. HALL. Thank you very much.

Mr. Gadd.

STATEMENT OF JACOB B. GADD

Mr. GADD. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to provide the American Legion's views on the Department of Veterans Affairs' Fiduciary Program.

Without effective oversight, coordination, and management, our Nation's veterans with mental health illnesses or diseases will continue to experience delays and financial hardships in accessing their earned benefits.

Title 38, Code of Federal Regulations, section 13, provides the guidance for VA to manage the Fiduciary Program. VA is charged with the point of fiduciary to manage and handle the veterans com-

pensation and pension benefits if a veteran is deemed mentally incompetent.

A recent OIG report found that Veterans Benefits Administration lacks elements of an effective management infrastructure to monitor program performance, utilize staff, and oversee fiduciary activities. Furthermore, the Government Accountability Office recommended VA strengthen the Fiduciary Program monitoring policies, improve staff compliance, and consolidate the 14 western Fiduciary Program units.

While VA is, indeed, moving forward with the fiduciary hub in Salt Lake City and taking actions to rectify the problems as noted by OIG and GAO in their reports and through testimony today, the American Legion still continues to have several concerns. These concerns include the difficulty and delay in processing the appointed fiduciary, the VA's centralization model, and then, three, feedback from American Legion State service officers and the Pension Management Center (PMC) staff.

First, in researching the number of forms, accompanying delay in processing, and the stress that it places on veterans and their beneficiaries, that is monumental. In fact, as noted in my written testimony, there are 21 different VA forms required to appoint a fiduciary.

Second, the American Legion has been concerned about VA's centralization policies and that VSOs are not being included in these processes. The American Legion continues to urge VA to provide internal access phone numbers for accredited VSO representatives. VA commented on this recommendation, stating that, "Providing direct internal telephone access would require the redirection of resources currently dedicated to disability claims processing." This is the same communication problem that VA and VSOs are experiencing with the Fiduciary Program.

At the Pension Management Centers, the American Legion has three national staff in Minneapolis, Philadelphia, and Milwaukee that have all shared the same concern, and that is improving the coordination between the regional offices, the pension centers, and the fiduciary hubs.

For example, a service officer files for benefits for a veteran in August of 2009. The rating decision is then completed in February 2010, proposing incompetency. In March, the letter is sent to the veteran in regards to this incompetency and the veteran waives the due process, which enables VA to act on the claim prior to waiting the 65 days. The award letter then goes back to the veteran, the first payment, in May, but those retroactive benefits are withheld until the guardianship unit can make their visit.

So, after all this process is complete, the Pension Management Center then sends VA the form to the hub back in Salt Lake City. The hub then would notify the guardianship unit. And, once the field exam was completed, it was sent back to the Pension Management Center.

So, as you can tell from all of this explanation, it is a very cumbersome and lengthy process, and the coordination between these offices can definitely be improved.

In addition, our service officer in one of the Pension Management Centers helped schedule a fiduciary field exam because the veteran

had been waiting for 4 years to access his benefits. And that field exam agent went out to his home on a Sunday for that particular exam. And I just want to note that this is unconscionable, that a veteran's claim can be delayed for this period of time, and that our Nation's veterans and their beneficiaries deserve better.

And the American Legion's focus with our testimony was on the front end of this process and how we need to improve, as we heard today, on the centralization, working with the IT component. And, in that regard, the American Legion has several recommendations:

First, that a full-time employee be funded and authorized within each RO and PMC. Second, that Congress authorize and fund VBA's IT budget to develop that integrated IT software package that we have heard today.

Third, the Legion recommends that Congress ensure VSO representatives are given an internal access phone number so we can improve the communication between VSO and VA. Fourth, that Congress direct VA to create a national fiduciary toll-free number for their family members and the general public so that they can get that information for that fiduciary.

Fifth, that Congress direct VA to allow fiduciaries to sign the paperwork in advance so that a temporary fiduciary can be appointed, and it might shorten that delay that they are currently experiencing. And, lastly, that VA establish a VA voluntary service pilot program which may be able to train volunteers on how to become VA fiduciary volunteers.

So, Mr. Chairman and Members of the Subcommittee, the American Legion sincerely appreciates the opportunity to submit testimony today. Thank you.

[The prepared statement of Mr. Gadd appears on p. 59.]

Mr. HALL. Thank you, Mr. Gadd.

Dr. Wersel.

STATEMENT OF VIVIANNE CISNEROS WERSEL, AU.D.

Dr. WERSEL. Mr. Chairman and Members of the Subcommittee, I am pleased to be here today and to testify on behalf of Gold Star Wives.

My name is Vivianne Wersel, Chair of the Government Relations Committee. I am the widow of Lieutenant Colonel Rich Wersel, Jr., United States Marine Corps, who died suddenly on February 4, 2005, a week after returning from his second tour of duty in Iraq.

We begin by thanking this Subcommittee and our Government for providing essential services necessary to help us through our loss and grief. Many services are being done well and in a caring and helpful way. We must stress the importance of staying vigilant so no one grieving the loss of a loved one will endure any indignities or forfeit benefits due to the lack of knowledge. Therefore, we need consistent and relevant assistance at the time of death and for some period of time thereafter.

Gold Star Wives was unaware of the VA Fiduciary Program until requested to testify at this hearing. Even one of our most seasoned Government relations members, Mrs. Edith Smith, stated she was unaware of the Fiduciary Program. And this, in itself, posed a concern about the lack of information for eligible beneficiaries. "Fiduciaries" is not a word in our vocabulary; yet, it should be.

We are concerned with the lack of publicity about the program and the information available to eligible beneficiaries. There is no mention of the Fiduciary Program in the VA Handbook for Veterans, Dependents, and Survivors. We need prior knowledge in order to obtain specific information on the VA Web site.

Furthermore, this subject has neither been discussed in prior testimonies that included Gold Star Wives, nor has it been a topic of discussion with the VA/DoD Survivor Forum quarterly meetings. Lack of information and participation does not promote optimal care for surviving families.

In preparation for this hearing, we discovered some Gold Star Wives were their spouses' fiduciary before their military spouses died. Some required an annual bonding fee as the designated fiduciaries. Why do spouses have to pay significant fees to be bonded?

In 2002, Petty Officer Second Class Anthony Palmer collapsed while playing basketball. He was kept alive via medical devices. When the respirator was removed, he unexpectedly continued living; however, he was totally incapacitated. He was then medically retired, but when he died 2 years later, his VA disability compensation suddenly stopped. His wife and two children were suddenly left without support. What role did the VA Fiduciary Program play for his family?

When the Servicemembers' Group Life Insurance (SGLI) was assigned by name to Mrs. Palmer's two small children, she had to pay several thousand dollars for civilian court guardianship. Why is this required when she is the biological parent of two small children? She is one of the many young widows with children who are experiencing this problem. Why is the Fiduciary Program not used for SGLI, which is administered by the VA?

Mrs. Dora Aja married her college sweetheart in 1953. His heart attack in 1976 eventually left him totally incapacitated. She had to be bonded to be a fiduciary, at the cost of \$250 annually. When she relocated to be closer to her family, she had to receive permission from the VA and Defense Finance and Accounting Service to purchase a home. In addition, she must submit, yearly, a spreadsheet of all her expenses.

Are spouses provided with the tools they need to monitor the administration required of them annually? Mrs. Aja stated, "I have cared for him and loved him for over 50 years, and the Government treats me like a juvenile. It is a good thing that my husband is not aware of what is happening because he would be angry." She is neither a widow nor a veteran, nor is she treated as the dedicated military spouse that she is, even though she is soon to be a Gold Star Wife.

On another note, there are approximately 35,000 surviving spouses and adults who are incapacitated and have fiduciaries. Who takes the lead when the surviving spouse becomes incapacitated? If the surviving spouse was not a fiduciary for the veteran spouse, they may not know anything about the program and, by extension, neither would their children.

Our main concerns with this program is the lack of publicity and available information for our surviving spouses. It is imperative that pertinent information about the Fiduciary Program be made

available to eligible beneficiaries to provide meaningful support for present and future surviving spouses.

Please refer to our questions and concerns in our written testimony. We thank you all for all your past support and look forward to working with you to help improve this program. I will be happy to answer any questions you may have, and I thank you very much.

[The prepared statement of Dr. Wersel appears on p. 62.]

Mr. HALL. Thank you very much, Doctor.

Ms. Pflanz.

STATEMENT OF KATHERINE R. PFLANZ

Ms. PFLANZ. Chairman Hall and Members of the Subcommittee, thank you for the opportunity to testify on behalf of AFGE and the National Council in order to share the perspective of the field examiner and other employees of the fiduciary unit.

The fiduciary unit may be a very small part of the VA, but it involves tremendous responsibilities. We are the unseen workers who are tasked with ensuring that VA benefits are protected. Field examiners are in the field 100 percent of the time. I, for example, live 220 miles from my regional office and over 100 miles from any other field examiners. We count on the legal instrument examiners for assistance and guidance. They are our eyes and ears for the protection of beneficiaries but also for our personal safety.

Field examiners meet the fiduciary, who has been rated incompetent by VA or adjudicated incompetent by the court, face to face. We often live in the same community. We see them in the grocery stores. We meet their families, sit in their homes, and are provided a unique insight into their lives. We see them at their best, worst, on and off medications, mad at the VA, happy to have a visitor, and usually armed with many questions. We are tasked with gathering personal information, from finances to incontinence.

Field examiners are investigators, social workers, auditors, medical personnel, financial advisers, information resource specialists for local, State, and Federal benefits. We work under very demanding production standards while striving for high quality.

With a growing number of beneficiaries needing the service and oversight of the fiduciary activity, lack of experience, training, and guidance makes this task difficult to accomplish.

When I was a VSR, veterans service representative, I got formal training by subject-matter experts as instructors. This training gave me the opportunity to ask questions, meet coworkers from other regional offices, work on mock cases, learn to conduct interviews, and work in live cases.

In the fiduciary unit, formal training is not available. The only hands-on training provided is by observing other field examiners for a short time. Although useful, it does not provide enough exposure to the wide variety of cases and situations. We really need a comparable challenge course for the field examiners.

Frontline supervisors, known as coaches, also need more training. Supervisors throughout the regional office rotate between stations or teams, but the fiduciary station requires a very different skill and knowledge other than these different teams. Too often, supervisors who do gain experience in the fiduciary unit are rotated.

We also really need more field examiners. The workload keeps increasing, and we cannot meet timeliness, and our quality also suffers.

We also need better tools to do our job. Often, we have to share cars, which hurts timeliness. The report generator, which is what we use to write our report, is only for one of the many types of reports that we have to prepare. The current production expectations are unrealistic.

The standards make an assumption that every case is alike, even though it varies so much from case to case on how long it takes to gather the data required to properly assess the beneficiary's need, protect funds, assess possible benefits, and answer any questions the family may have. We are sometimes forced to choose to either not make our production goal or make errors or secretly work longer hours and risk facing the consequences.

Giving the frontline employees a voice in the design and testing of fiduciary tools would both save time and improve quality. Me and my colleagues who work in the hub pilot in the West are also very frustrated because they had no say in the design of the pilot project. This model does not work, and AFGE and VA Council urge you to discontinue it. The pilot deprives veterans of the personal touch they need. It is depriving employees out on the road, who are trying to protect the veterans, from full support they need to do their jobs.

The Salt Lake City hub covers 13 States with 13 different sets of State laws. There are a lot of morale problems. Field examiners are not getting the backup they need. I have been told that the San Diego hub also has big problems. Again, we urge you to listen to the fiduciary unit employees who do the job on the front lines.

I want to close by saying: A bad day as a field examiner still beats a good day in the office any day. I feel this position is the most rewarding, emotionally and physically challenging, humbling, and enlightening position in the VA.

Thank you.

[The prepared statement of Ms. Pflanz appears on p. 64.]

Mr. HALL. Thank you very much for your testimony, Ms. Pflanz.

And thank you all. I am sorry I had to leave the room for a minute there, but I do have written statements from everyone.

I wanted to start with Ms. Wade and ask you: In your testimony, you suggest that VBA staff does not recognize the unique circumstances of family members who are fiduciaries and who have devoted themselves to the care, sometimes full-time care, of severely wounded veterans, nor does it provide the support needed for these caregivers.

What specific steps would you recommend that VBA take to better recognize the sacrifices of family members who oversee the financial affairs of our veteran beneficiaries?

Ms. WADE. I think, first, it is important to distinguish between what kind of family members we are discussing here. I know in your previous question you asked about the number of family members that were investigated. And we are not talking about just any family member that suddenly came out of the woodwork after this veteran started receiving their benefits from the VA. The people I am talking about are ones that oftentimes handled that individ-

ual's money through multiple deployments when they were still on active duty and that is who they entrusted with their money. A lot of these people were asked to be the power of attorney of that servicemember before they were injured.

Also, these are family members that have likely been at the bedside since day one of that veterans injury and done this at their own financial sacrifice. I know, in my own situation, when my husband was injured, I quit school and left my job to do it. I think these are people that have sorted themselves out, have proven themselves. Many are also court-appointed guardians, fiduciaries recognized by Social Security or just a power of attorney.

But I think what we are talking about here is trusting these people by virtue of the fact that they have already proven themselves. And sometimes what that means is that—for instance, in the example I used of several moms that live with their veteran and take care of them, I don't think they are living there for free; I think they are earning their living. I don't think that it is that uncommon for family members to house another family member in a time of need. I know my own family has done it under numerous circumstances.

So I think recognizing that these funds that are being used to take care of the household are for the veteran's well-being, that it allows that person to be there to care for them, it allows that veteran to stay out of institutional care and to have quality of life.

I also think that it is very intrusive to have a complete stranger who is a Government employee decide how that person's budget gets spent when they didn't know that person before they were injured. I think a good example would be one of the ones I stated, of a family—a wife and her husband and two children, who were given a spending limit for what they could use for a vacation.

I think it is important to include that I went on an alternative ski trip with that very family this winter, and the mother-in-law had to come, too, because there was no way the mom could take care of both her husband and the two children. And, heaven forbid she had gotten injured skiing or something, someone would have to take her place. So we are talking about quite a few people traveling.

But my husband loved to travel before he was injured. And I think that how someone spends their money and chooses their financial priorities are oftentimes based on quality of life. We have made some financial adjustments in our lives. We went from a three-bedroom house to a two-bedroom house. We have one car. We sold the car that I dearly loved before he was injured to get something less expensive with better gas mileage that would require less expensive maintenance. We don't eat out as much. But we do still have a special account, actually, that we contribute to monthly to pay for recreation and trips.

So I think that some leniency needs to be afforded to these families. But, also, I really think that if these family members are able to pay the bills and they are not putting this veteran into debt, then I think how they spend their money for fun and quality of life shouldn't be a stranger's business.

Mr. HALL. Thank you, Ms. Wade.

I would just like to say—and I am sure the rest of the Subcommittee and full Committee Members would concur—that we thank you and admire you and the other caregivers, fiduciaries or not, who take care of their husbands or wives or sons or daughters who have been injured serving this country and made a sacrifice that affects the entire family so gravely and seriously and requires the changes and the sacrifices that you described.

Ms. WADE. We appreciate your support of the bill yesterday, sir.

Mr. HALL. I thank you for coming here and giving us such moving examples of what I would assume are isolated and misguided actions that can be corrected. I don't believe that the VA staff are intentionally trying to make life harder for you, when it is already difficult.

The job of this Subcommittee and that of the Congress in general is to perform oversight. And we are going to do that with this program, to try to improve it in ways that you and others are suggesting.

Mr. Gadd, in your statement you indicate that the process for approving a fiduciary is long and tedious. Could you suggest some ways that that process could be improved, please?

Mr. GADD. Sure. And thank you, Mr. Chairman.

The American Legion's primary concern was the delay in processing the fiduciaries. We indicate in our written testimony several different reasons why, whether it be the number of forms or the lack of communication between the RO, the Pension Management Center, and the guardianship unit that are actually scheduling these visits.

And some of the ways that we suggested improving this was a comprehensive approach, such as training, IT software package, and having there be alerts or reminders to make sure that that process keeps continuing, and just more communication with the veterans service organizations. We walk together with the VA to try to help veterans and their beneficiaries.

And so, again, we just focus, really, on the delay and on the front end. And we felt that if we addressed those problems and the length in time that these veterans and their beneficiaries are having to wait, that the program could be improved.

And we also indicated, that a VA volunteer program—VA has the Department of Veterans Affairs Voluntary Service Program—that they could train and do a better job of standardizing the training for this program.

Mr. HALL. Mr. Gadd, you suggest that there is a disconnect between the public and the Fiduciary Program. If a public contact number was provided and widely publicized, do you think this would help to alleviate some of the commonly asked questions that both veterans and their families need answered?

Mr. GADD. Yes, sir, the American Legion feels that way. Part of our testimony today was a recommendation to have a 1-800 national call number for this. As many of the panelists today have indicated, the public doesn't know enough about this program. Some may have questions on what the program actually does or how to get in touch with someone if you have a question. So that 1-800 number, maybe if it was run out of the Salt Lake City hub, will go a long way in improving that communication.

Mr. HALL. Mr. Gadd, in your testimony you mentioned that one or more full-time employees should be dedicated exclusively to this program in each designated regional office. How many full-time employees do you think would be necessary to fully staff the Fiduciary Program in each RO?

Mr. GADD. Well, the American Legion would contend that we would need one additional full-time equivalent (FTE) in each regional office to improve the Fiduciary Program. But, as we have heard from the panelists today and from OIG and GAO, we might also need an additional FTE looking at the compliance side, to manage and make sure that those funds are being allocated and used to the intention that they were supposed to be.

So a number of 200 comes to mind with the regional offices, and then the hub out in Salt Lake City.

Mr. HALL. Thank you.

Mr. Weidman, thank you again for coming before this Subcommittee. I was wondering what your organization's experience has been in interfacing with the Fiduciary Program field examiners or legal instrument examiners. Do these VBA staffers demonstrate the level of professionalism and diligence that you believe is necessary for adequate oversight of the program?

Mr. WEIDMAN. When I talked earlier about complaints from the field, almost every one of them has to do with the multiples, if you will, those who have many. And it is usually an attorney in a firm that is ostensibly a law firm but is much more like law firms that are really bill collectors, if you will.

So that has been our major concern. And trying to get something done about those, we have not been particularly successful anywhere. The majority of those have been in the western States, as I think of it now. But also, here in this area, we have had problems also.

And the question is, lack of a clear chain of command and who does what. You can always call the OIG if you know to call the OIG. The lack of information, which was talked about very eloquently by the Gold Star Wives here today. People don't know about the Fiduciary Program, but they don't know about any VA program. VA's outreach is something that this Committee has again and again and again discussed. The VA lacks public education and public outreach to let veterans and their families know what they have earned by virtue of military service. And the Fiduciary Program is just another example of that.

Mr. HALL. Would you suggest that greater training for fiduciaries would help to curb the cases of misuse of funds that we have heard about today?

Mr. WEIDMAN. Well, it is partly that, and it is also the selection of the fiduciaries themselves.

I mentioned earlier that we are not particularly concerned, because we had never had complaints, that I can recall, about a spouse misusing the moneys and not taking care of the vet. And all of our complaints have been about the multiples.

But there clearly has to be some kind of differentiation between the spouse where the marriage was intact prior to the individual becoming disabled and those multiples. You shouldn't be treating them the same.

I would say, when people asked about a living allowance separate and above the 4 percent, hopefully a lot of that will be taken care of with the caregivers bill, which passed the House yesterday—and I think almost unanimously on the part of the veterans organizations, will, knock on wood, pass the Senate easily—and that and a much better coordination with the VA chain when it comes to making sure people get their care.

Mr. HALL. Thank you, Mr. Weidman. And may your words go straight to the Senate's ears. We have 290 bills that we have passed in the House waiting for Senate action. This one might jump to the head of the line and hopefully pass before Memorial Day.

Dr. Wersel, in your testimony, you note the lack of information published by the VA about the Fiduciary Program and the fact that your organization was unfamiliar with the Program due in part that the omission of any mention of it in the VA Handbook for Veterans, Dependents, and Survivors.

How are spouses caring for VA beneficiaries harmed by this scarcity of information? How much of an impact is that having on the families, that they don't know about the Fiduciary Program?

Dr. WERSEL. When you don't have the information—and we are looking at the—say, for instance, I am the surviving spouse. I have funds coming in to my account automatically. In the event something should happen to me catastrophically, am I prepared to know what will happen? I have children that are young, and one is over 18. It is just protecting—being able—that the funds are going to be protected to care for my family still.

My children are not—I still have to have them go through college. If I was alive and if I was not incapacitated, as a mother I still would be providing a lot of support for my children. I would hate the fact that my children, who would be my fiduciary, would have to be limited in what they could spend and what they could not spend. On the other hand, accountability is important.

But, still, I think the lack of knowledge to any program is compromising to our optimal well-being, just knowing, in the event something should catastrophically happen to us.

Mr. HALL. Dr. Wersel, you also note that one spouse was required to seek permission from the VBA to purchase a home to be closer to family, that she was also required to be bonded.

Dr. WERSEL. Yes. She is in California. And they were living in northern California, and her family was in southern California. And it was really challenging for her to be up at the VA where he was, or at the care facility where he was, and she wanted to be closer to family. And when she said, okay, to get to California, they had to approve. She had to ask for permission to move to San Diego.

I don't know if it is the State requirement that is asking her to be bonded, but we were told that she is required to pay \$250 a year to be bonded. Because, at the time, it was decided that she did not have the correct criteria to not be bonded. But she does pay \$250 a year to be bonded as fiduciary of her husband. And part of the insult is that, you know, they went through college together; she has been with him all these years, and now she is being monitored carefully.

Mr. HALL. I understand that and I sympathize with it. I think all of us do. And I think most Americans would feel that this is, on the face of it, illogical, onerous and insulting, particularly for a family member who goes back many years and went to school with a veteran who is now incapacitated, like cases that Ms. Wade mentioned, had a power of attorney, was handling the finances while the spouse was serving overseas before the injury occurred and so on.

But the question is, do you recommend any level of scrutiny and accountability that would be acceptable to family members to prevent misuse of funds.

Dr. WERSEL. At what level.

Mr. HALL. Yes, the question is, what level?

Dr. WERSEL. At what level. I think Ms. Wade said it well. It is the fact that someone who has a vested relationship with that servicemember or with that survivor is that spouse, someone who has cared for that person unconditionally, that should not be scrutinized in that level. That is where we have issues with the wife who is still caring for the person who said, "Here is your power of attorney, and I am naming you as the person in my power of attorney." The servicemember chose, and legally chose, to have this person care for them in the event that there was a traumatic event or a catastrophic event. So that was chosen.

To have the Government come in and say, we want to monitor where you live, how you live, how you spend—and in our relationship, very much like her husband, we did a vacation every year, every single year. Now, unfortunately, my husband is not alive, but I would be insulted if someone wanted to know why we chose the vacation we chose this year. And it is something we tried to keep the tradition going. If it was something we did in the past, you continue. It never should be questioned. It is that close family member that has invested the time with that servicemember.

So if you are thinking about levels, I think that the next of kin should probably not be scrutinized as much as someone who doesn't have that connection or perhaps wasn't named legally before there was a death—I mean, a catastrophic event that left them incapacitated.

Am I getting there?

Mr. HALL. Oh, you are, yes.

Dr. WERSEL. Okay. Good.

Mr. HALL. I appreciate your suggestion. And I want to thank you also.

Dr. WERSEL. There is one thing that we talked about, that first question, and I think I didn't touch upon it correctly. You know, in the event of one of our children, if they became incapacitated and there were special needs, can you all come in and say, we don't want the mother to be the fiduciary? Can VA pick and choose who they will choose to be the—do we have any control of that?

Mr. HALL. I am sure Mr. Mayes can answer that in the next panel when the time comes.

Dr. WERSEL. Okay. That is a concern.

And those are the questions we have. The main concern is, when you are a surviving spouse or a survivor, sometimes what you don't know is okay, but then when you discover there are programs out

there, you want to be prepared, you want your ducks in a row. We need to know what would happen in the event of a catastrophic event that would happen to me tomorrow.

Mr. WEIDMAN. Mr. Chairman, may I just offer one comment?

Mr. HALL. Yes, Mr. Weidman.

Mr. WEIDMAN. That comment is, one size clearly does not fit all. And Brad Mayes and his competent pension staff are bound to act according to the law as interpreted by the General Counsel. This is the place in statute—and I would encourage and suggest that we encourage the administration to work with this Committee to fashion language so that they have the latitude to treat situations differently—to a distant nephew, who the individual was not close to who may end up being the guardian of an elderly vet, is not the same as a spouse of 50 years. And right now the law doesn't provide for Brad's people being able to use their discretion to what makes sense. And that is why it would be my suggestion that you look at, how do you still have accountability yet have the latitude not to insult the people who have become fiduciary who have that kind of relationship?

Mr. HALL. Right. Thank you, Mr. Weidman. Or a parent would probably fall in the same category of closeness to the individual, in my opinion. But we will follow up with our next panel with that.

Ms. Pflanz, in your testimony you stated that field examiners often lack adequate training. What training would you recommend? And how often should field examiners receive updated training or refresher training to ensure that they remain current with all Federal Fiduciary Program policy and procedures?

Ms. PFLANZ. I think that field examiners, before they go out, should get the same kind of training as the veterans service representatives do in the challenge program that they have. And I also think that they should—as field examiners, we should be retrained every 2 years, you know, enhance our training. We deal with so many different levels, different regulations, State laws, Federal laws, and things change. So I think every 2 years would keep us at the best we can be to provide a service to those who need us the most.

Mr. HALL. That is similar to lawyers doing continuing legal education or other professions where there have to be yearly or bi-yearly updates and education.

And in your statement, also, you recommend getting rid of the western fiduciary hub, contending that it has adversely affected training, case management, and tracking. Could you give us any more details on the problems of the hub in your opinion, and indicate any specific examples of how a case was mishandled by staff in the western hub or how the case could have been better handled if it was located in another office?

Ms. PFLANZ. Personally, I am a field examiner out of the Winston-Salem office, and we have—you know, ours are in-house. But I know that my coworkers in-field are having a hard time getting service from a different regional office. It is totally in a different State. They don't know the local in-State benefits that we, as field examiners, are required to also speak about.

And we have a timeliness issue, which affects our production, on being able to get it to a totally different State, our reports, so that

if any actions need to be done, you know, it can be done in a timely manner. We count on the mail system, and it is just not working.

With better training and then more tools, be automated, and vehicles—our regional offices, we are there. Our frontline supervisors are in the State. With better training, we would be able to provide a much better service, you know. Just as this lady had said, you know, to get the word out there. We also talk about State benefits, local benefits. And one hub handling 13 different States with 13 different rules or different benefits is cumbersome.

Mr. HALL. I understand that and appreciate that comment.

You also have mentioned that you would like Congress to improve the lines of communication between the VA Fiduciary Program and other Federal agencies, and you note in your testimony a joint program between VBA and Social Security Administration.

Could you elaborate on this program? And what are the pros and cons of establishing similar joint programs between VBA and other Federal and State agencies?

Ms. PFLANZ. As a field examiner, when I go out, there is—and we see misuse. It is not always just on the VA benefits. Normally, that person also has control of our beneficiary's Social Security, military retirement, personal retirement. As field examiners, we can only take so much action. There is no follow-up. We don't send our reports to Social Security, you know, saying, "Hey, there is a problem." Social Security, if they have somebody that is rated, you know, as incompetent or a fiduciary that is not doing what they are supposed to do, there is no feedback, no warning to me on the road, you know, out there working. You know, it is trial and error on both parts of a system that could work.

Mr. HALL. So interagency communication would help both?

Ms. PFLANZ. Tremendously for everybody, especially our beneficiaries.

Mr. HALL. From the AFGE point of view, I gather you would like to see a total revamp of the program that would allow field examiners to have more input, better training, better equipment, cell phones, et cetera, improved policies and procedures.

Which is the most urgent of these changes? Or how would you have prioritized them? And what other changes might you recommend based on what you have heard today?

Ms. PFLANZ. Our senior field examiners, they have been on the road, they have dealt with several situations, and they should be the voice to writing policies and procedures. That would be my number-one thing, would be to get them, who have the experience to change because they have been there, they have gone through it. And they have met people who don't understand the programs. And they are more experienced than I on how to make it work, what we can do to make us more productive.

We need tools. We need—like, they were talking about with the report generator, it is a great start, but it only provides one report that I as a field examiner am required to write. Our FBS program only gives our coaches a very limited scope or reports because it is for only 60 days. That also needs to be addressed. We need vehicles. We are where the rubber meets the road.

Mr. HALL. Well, I want to thank you, Ms. Pflanz, Dr. Wersel, Mr. Gadd, Ms. Wade, Mr. Weidman. Thank you all for your testimony.

Thank you for the perspective and the dedication and insight that you have brought us today, and for your patience. As usual, these hearings can take a long time, and we want to thank you.

We may have some follow-up questions for you in writing, which we will send to you. But, for now, I just want to say thanks, and you are now excused. And have a great rest of your day. We will try to do our best to solve some of these problems.

We will ask panel three to join us: Gary Chesterton, Chief of VBA's Fiduciary Program staff; Bradley G. Mayes, Director of Compensation and Pension Service for the Veterans Benefits Administration, U.S. Department of Veterans Affairs; with Diana Rubens, Associate Under Secretary for Field Operations of VBA, U.S. Department of Veterans Affairs.

Mr. Mayes, the floor is yours, sir.

STATEMENTS OF BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY DIANA M. RUBENS, ASSOCIATE DEPUTY UNDER SECRETARY FOR FIELD OPERATIONS, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND GARY CHESTERTON, CHIEF, FIDUCIARY STAFF, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. MAYES. Thank you, Mr. Chairman. I am pleased to appear before you today to speak of the initiatives under way to enhance the Department of Veterans Affairs' Fiduciary Program.

I am accompanied by Ms. Diana Rubens, as you mentioned, Associate Deputy Under Secretary for Field Operations, and Mr. Gary Chesterton, Chief Fiduciary Staff for Compensation and Pension Service. I don't know if I could handle two of them, but he is doing a lot of great stuff for us.

The Fiduciary Program oversees VA benefits paid to those veterans and beneficiaries who, because of injury, disease, or the infirmities of age, are unable to manage their financial affairs. VA currently supervises more than 108,000 VA beneficiaries, with cumulative estates exceeding \$3 billion. These veterans and their widows and children are among our most vulnerable clients.

First, let me say that VA takes very seriously the recommendations made by the Government Accountability Office and VA's Office of Inspector General and is working to implement recommendations made in their recent reports as well as other important measures that we believe will further strengthen our program.

I would like to briefly highlight some of the strides VA has made within the last 18 months which are contributing to improved service delivery and oversight of benefits to this group of veterans and beneficiaries.

In September 2008, a new Chief of the Fiduciary Staff, Gary, who is sitting to my left, was recruited to spearhead our reform efforts in this program. Shortly thereafter, we selected a new Assistant Director for Veterans Services, who has overall responsibility in this program area. And these individuals bring many years of technical and management experience to bear on our efforts to

strengthen the program and the service delivery for these veterans and beneficiaries.

In addition to these leadership changes, we have doubled the size of the staff responsible for fiduciary policies and procedures and we have reassigned quality assurance case reviews to our national quality assurance staff, located in Nashville, Tennessee.

We are taking steps to clarify existing procedural guidance. The operations manual for fiduciary activities is undergoing a complete revision. Several policy changes are already in place to increase protections, to include changes in bonding requirements and documentation requirements for certain categories of both budgeted and unbudgeted expenses. And this guidance was contained in Compensation and Pension Service Fast Letters that have been issued to the field within the last year.

VA has deployed several measures to improve oversight of investigations into allegations of misuse of beneficiary funds. In cases where a misuse allegation has occurred, policy is now in place that requires regional office fiduciary activities to provide VA's Central Office all documentation pertaining to the investigation of these allegations.

To improve operational efficiencies, VA consolidated the management of 14 fiduciary activities within the western area under the fiduciary hub pilot program located at the regional office in Salt Lake City, Utah. Analysis of the pilot, along with recommendations, will be completed by September 30th of this year and will address program strengths, weaknesses, and lessons learned, and make recommendations on the feasibility of expansion of the hub concept.

The hub is the only fiduciary activity operating in a paperless environment, which has served its unique configuration well. The hub also created a misuse team which specializes in these types of investigations.

The hub is unique in that it has integrated Microsoft MapPoint software in the scheduling of field exams within the hub's jurisdiction. Utilizing this technology has reduced overall travel times and increased the effectiveness of our field examiners.

These are examples of improvements that have been realized with this consolidation.

We also recognize the need to improve the information technology systems available to our field fiduciary personnel in the administration of this program. The current electronic case management system, the Fiduciary Beneficiary System, poses some limitations with historical data, as you heard, interfacing with other systems currently employed by VA, and workload management and fiduciary oversight. We have initiated steps to replace the system. We are developing a request for information to solicit interest from the private sector in an alternative electronic case management system.

In conclusion, I want to affirm the commitment of VA to serve and protect our most vulnerable population of veterans and beneficiaries. The interest expressed in our program by the Office of Inspector General, the GAO, and this Committee is a testament to the very important task we have at hand. VA is committed to take every step necessary to ensure that we fulfill our obligations to pro-

tect this special segment of veterans and beneficiaries whom we serve.

Mr. Chairman, this concludes my prepared remarks. And I would be glad to address any questions or comments regarding my testimony here today.

[The prepared statement of Mr. Mayes appears on p. 68.]

Mr. HALL. Thank you, Mr. Mayes.

I know the report isn't due until September on the pilot western hub. But have you heard anything? Do you have any response to the earlier critique about 13 different States' differing regulations causing a problem for work being done from that hub?

Mr. MAYES. I am going to defer that question to Ms. Rubens, who has management responsibility for the hub.

[The following was subsequently received from the VA:]

The analysis of the Western Area Fiduciary Hub has been completed, and the draft report is expected to be finalized by the end of the calendar year. VA will share the report with the Subcommittee at that time.

Ms. RUBENS. Thank you, Mr. Chairman.

I will tell you that I was the western area director when we decided we needed to look at how we do this better within the constraints that we live with today.

One of the things we recognized right off was we would be bringing together an amalgam of different States, different court systems, different rules. We work closely with the folks from General Counsel and the local regional counsels in an effort to develop the training program that we would need to incorporate for the legal instruments examiners that would be living in Salt Lake. We continue to review that in an effort to ensure we have made that connection the way we need to.

At the same time, I would say to you that the field examiners all remained out based. They need to be in the communities where the veterans are. And so we continue to have that local relationship then with our regional council and the local courts in an effort to ensure we are aware of changes that might come about in individual States and can inform the folks in the hub of any of those changes.

Mr. HALL. Thank you, Ms. Rubens.

Mr. Mayes, given the persistence of the problems OIG identified in the 2006 study and again in the 2010 report, could you elaborate on the steps VBA intends to take to address these issues that have lingered in the Fiduciary Program?

Mr. MAYES. Yes, Mr. Chairman. I will break this along two lines of discussion.

One has to do with ensuring that funds are appropriately utilized on behalf of a beneficiary who we have determined can't manage their affairs for whatever reason. We have instituted new bonding requirements. We are checking to make sure that bonds are in place every time we do an accounting and that they are current.

We are insisting on pre-approval for any unbudgeted expenses in excess of \$1,000. We have set a national standard on that. We have a requirement that budget expenses that exceed 15 percent more than what we have in the fund usage agreement, require receipts, if we can't determine at the time of the annual accounting what those monies were spent on.

Another thing that we are doing is, during our annual accountings, we are requiring bank statements that show all transactions during the accounting period. Previously, the requirement simply required evidence that funds were in the account. And we were concerned that, in particular, fiduciaries who were managing multiple beneficiaries might have been moving monies around, and then they were appearing at the time of the accounting and there was no evidence, from our point of view, that those monies weren't in that particular fiduciary's account for the entire period.

So we have done a lot of things along those lines. Any time there is an allegation of misuse, we are going to review the documentation that either led to a formal misuse determination—in other words, there was some merit to the misuse allegation, we investigated it, and we did a formal determination. We are going to review that. But even in cases where we determined that there isn't merit to the allegation, we want to see those. So there is much more oversight that we are putting in place.

And the second thing that we are doing is we are focusing on the training. The previous panels hit this pretty hard, and we agree. That is one of the things that the Government Accountability Office said, was we really need to focus on the training.

Gary and his staff have been out to nine stations. We are scheduled to visit 20 more stations. They have developed a training program to deliver in person to the field examiners and the legal instruments examiners in these regional offices. So we are hitting the road, basically. I have given him more staff, and we are going to hit the road and make sure that everybody is up to speed.

Mr. HALL. Well, that is good to hear.

I am happy to hear you say that FBS is going to be replaced. Do you have a timeline in mind for that, in terms of the proposals coming back and one being chosen?

Mr. MAYES. We have been working with subject-matter experts to help us identify the requirements, and we are working closely with field representatives, with folks in Ms. Ruben's chain of command, to come in.

Mr. MAYES. We need, as I think someone on an earlier panel said, we need those subject matter experts to help us identify the requirements.

We intend to put a request for information (RFI) out on the street to solicit interest from the private sector. This is a workload management tool that we need to build, to replace. So we would like to engage the private sector community to see if maybe there is something that we can use off the shelf and not rely on in-house development. I believe that we can have that RFI on the street within a matter of weeks.

Mr. HALL. There might be reason to make sure that it is compatible with VA's new electronic system that will be handling claim, in general, which also is supposed to be compatible with DoD so that there will be a continuous stream of compatibility. There will be, of course, veterans who move from being self-sufficient to being incapacitated and perhaps being in the Fiduciary Program, and it might be helpful to have all three of these systems talk to each other.

I also wanted to you ask regarding FBS, during the interim now while this search for the new system is going on, is it possible to somehow tweak it so it can accept say the last four numbers of the Social Security number? I just called one of the unions that I belong to because they sent me a letter about something, and they wanted to know which John Hall they were talking to. It is a fairly common name. They are a national organization, and the first person I got on the phone asked for the last four digits of my Social, and I gave it and they pulled up the right account. As the reports mentioned, that would be a quick and easy fix. Hopefully that is an attainable improvement.

Mr. MAYES. Mr. Chairman, we actually have the capability to collect a tax ID number in our system. We have mandated that at this point, that we collect a tax ID number.

The key, and Mr. Bertoni made reference to this, the key is to make sure that we can associate every veteran or beneficiary that is in this program with their fiduciary because there are certain requirements that we have with respect to oversight, especially in those cases where you have a fiduciary handling multiple beneficiaries and certain liabilities that incur as a result of legislation.

So now that is a requirement, whether it be an individual Federal fiduciary or a professional fiduciary who is handling multiple beneficiaries.

Mr. HALL. When did that requirement go into effect?

Mr. MAYES. That requirement just went into effect this past week in a policy letter that went out.

Mr. HALL. That is good. OIG also noted deficiencies in staffing and workload models for the program. For example, decisions regarding staffing are left to the judgment of individual RO directors. As a result, the OIG contends that a wide variation exists in the number of beneficiaries managed by different individual legal instrument examiners. It is a pretty wide variation, from the hundreds to well over a thousand. What steps are being taken to remedy this problem, and how long do you think it will take to get to a more uniform level?

Mr. MAYES. Mr. Chairman, I would just like to make one point because I heard that from members of the previous panel. You know, when we are talking about field exams, the circumstances with which we perform these field exams vary across jurisdictions. If you are located, for example, in Montana, you may have to drive literally hundreds of miles to conduct a single field exam as opposed to maybe Chicago where while you are not traveling so far, you are in rush hour traffic as compared to Topeka, Kansas, where going 10 miles, you are there in 10 minutes. So I don't think we can say that the requirements in Montana would be exactly the same as they would in Kansas vis-à-vis a metropolitan area in the east.

But we have some work to do here. When we set up the western area, Ms. Rubens was very involved in helping us figure out what is the proper allocation of resources.

Ms. RUBENS. I can address that. One of the challenges, of course, is as we look at the resources we have and how we ensure that they are effectively and efficiently spread across the organization, there is an overarching resource allocation model for the service

centers across the country that looks at not only receipts in terms of work, but it looks at qualities and production and timeliness and all of those things as we look at how do we make sure that we distribute resources in a way that allows them to be used effectively.

When we established the western area hub, one of the things that we started out with was looking at how many incompetent veterans and guardians that we had out there and appointees, as well as each individual office, breaking that down, how many legal instruments examiners did they have. Quite frankly, part of my concern was I didn't think we were doing the job as well as we needed to. My hope was to help build a cadre of legal instruments examiners that would not be left behind. If there were only two and one retired, we have some redundancy built in so we can absorb any of those changes that might come unexpectedly.

We have worked hard to ensure that initial staffing model which aggregated those legal instruments examiners into Salt Lake, as well as maintain those field examiners out there, to ensure that we can still get out and do all those field exams.

It is part of an ongoing review that I regularly talk with the now-western area director about in terms of how are we doing in performance, are we meeting our obligation to appoint those fiduciaries in a timely manner for those initial appointments as well as getting those follow-ups done.

Currently we are going to work with the service to conduct that overview of how is it going? Is the fiduciary hub a concept that we are ready to advocate as an organization and spread across the country? That is a key. At the moment I will tell you we continue to evaluate the surges in field exams that need to be accomplished when we lose field examiners.

We have worked with the service employees. AFGI was part of a group last year that looked at what are the performance standards for our field examiners, and redesigned those in an effort to address the issues Brad raised when it comes to the different locations that you have. I believe in Salt Lake we have the right ratio. As I look at those numbers of 400 per field examiner, and I think the 745 per LIE in Salt Lake are manageable. We have made some tremendous strides in the accountings and in the work we are doing. We have made some tremendous strides in ensuring that seriously overdue accountings are acted upon timely, that we are appointing successor fiduciaries when that is required. But we will have an overarching review to ensure that we have those ratios proper, that we have the right training and the right standards before we make any adjustments about how do we go forward, if that is the decision.

Mr. HALL. Thank you.

We have all heard and know that, thanks to faster, better medical care on the battlefield, that more of our servicemen and women are surviving today in OIF, OEF than previously in Vietnam, for instance. There is a much higher ratio of injured that survive, but much more serious injuries for many of them, debilitating injuries. Have you seen an increase percentage-wise in terms of the recent veterans, post-2001 veterans relative to the overall veterans' population who need the services of a fiduciary? Or does it still track

with the veterans' populations based on the age groups and conflicts in which veterans served?

Mr. MAYES. Mr. Chairman, I am going to ask Mr. Chesterton to go ahead and take that question.

Mr. CHESTERTON. Yes, sir. We have actually recently looked at that and we wanted to see if there was an increase proportionally as to the total population. What we found is proportionally it is growing exactly the same as the total beneficiaries.

Mr. HALL. Thank you. That is interesting. I am sure that age probably accounts.

Mr. MAYES. I was going to say, lots of time that is what happens.

Mr. HALL. It is the great leveler. As a friend of mine wrote, Time, the conqueror.

Can you tell us or if you don't have the information, supply it to the Subcommittee later, which RO offices experience the highest volume of cases involving the misuse of beneficiary funds?

Mr. MAYES. We will have to take that one for the record, Mr. Chairman.

[The VA subsequently provided the following information:]

Since FY 2005, when P.L. 108-454 put the requirements in for misuse, the following States had the most misuse allegations/determinations: Georgia (Atlanta RO), California (now being processed by Salt Lake City RO), and Alabama (Montgomery RO).

Mr. HALL. How many cases has the VA discovered on the scale of that one involving the fiduciary who embezzled nearly a million dollars to support her gambling habit as we understand? Is that an isolated incident or are there other cases of that scale?

Mr. MAYES. Mr. Chairman, I would like to give you an accurate answer on that because I think you are asking are there other cases of fraud in excess of a million dollars?

Mr. HALL. Or in that ballpark?

Mr. MAYES. It is isolated, I will tell you that. It is certainly isolated, but let me take that question for the record and I will give you an accurate answer.

[The VA subsequently provided the following information:]

Since enactment of P.L. 108-454, three cases have involved embezzlement of approximately \$1.0 million. The three cases were in California, Minnesota, and Texas.

Mr. HALL. When does the VA plan to launch the new Internet portal for VA fiduciaries? What information is currently available on the Web site for families and others who are interested in securing the appointment of a fiduciary to care for their beneficiaries, and what will be up on the new portal when it goes up?

Mr. MAYES. Right now we have actually provided, I have seen it, an E-benefits portal. The E-benefits portal is leveraging the authentication that exists already within the Department of Defense. So as an active duty service person separates, they move into VA. They can be in the system and access information that is up in this portal. In its infant stages, what we are deploying up on the portal are parts of our applications that might give an individual for example information on the status of their claim. Did VA receive a piece of evidence, for example, and that information will be available to an accredited representative.

In the Fiduciary Program, I suppose that we would provide access to a family member if they can represent the claimant before the VA. So in that respect, they would be able to access the information to see what is transpiring in the claims process.

Beyond that, Mr. Chairman, I am not sure what we would put out there. In other words, when we set up a fiduciary for a veteran or a beneficiary, really the interaction is on a very personal level because we are out there conducting a field exam. We do follow-up beneficiary exams, and sometimes there is interaction when we are doing the annual accountings. We did take a note about a 1-800 number, I think was the suggestion, some place for someone to go if they have questions about how they can utilize those benefits and that is something that we will also take back. Maybe we can put that information up and have it be accessible through the Web as well, but I don't know that it would be in that Web portal because that is designed for the individual to access their report.

Mr. HALL. Thank you. Regarding the OIG report which noted that from FY 2005 through 2008, VBA has not included statistical information pertaining to misuse of funds as required by title 38, U.S. Code, section 5510. When can we expect VBA to provide this information?

Mr. MAYES. There is some information on misuse in the 2009 and 2010 annual benefits reports. I believe the piece we are missing is what we saw in the OIG report. I believe that the statute also requires that we report in the *Annual Benefits Report* (ABR) the results of the cases that are referred to the OIG. So now that we have that, we will include that in the ABR.

Mr. HALL. Thank you. Present company excepted, and not to raise questions about the honesty of family members, but in your experience and the statistics that you have, what is VBA's opinion or view of professional versus familial fiduciaries and the misuse of funds that occurs?

Mr. MAYES. For us, we want the most effective, least restrictive fiduciary. That's what we care about. We care that the fiduciary is willing to serve in that capacity. We care that the fiduciary is willing to adhere to our legal requirements. We care that they have the beneficiary's best interests at heart, and we require that they meet certain credit and criminal history requirements. That is what is important to us.

Now, I would suggest that in most cases the most effective, least restrictive avenue for achieving what is best for the beneficiary is appointing a family member who is willing to act in that capacity as a fiduciary. In fact, that is what we find in most cases. In a majority of cases, we have family members acting in that capacity.

Unfortunately, in some cases we have seen that family members misuse those funds. So it is not about family member versus professional fiduciary, it is about who is going to discharge that responsibility most effectively. That is what the VA cares about.

Mr. HALL. Regarding some of the testimony before that we heard, what is your opinion about the possibility of providing VA funds to pay for living expenses that are shared by the beneficiary and the caregiver fiduciary and should we consider providing compensation to familial fiduciaries?

Mr. MAYES. Well, Mr. Chairman, I am glad you asked that question. When we pay fees, when we authorize fees to a professional fiduciary, those fees come out of the benefits to the beneficiary. So it is not like there is this extra fee that is paid. We are authorizing an amount that has a cap on it by law for a professional fiduciary to manage the Federal funds to make sure that the beneficiary is taken care of. So when we have a family member that is utilizing the veteran's monies, funds, benefits, based on the disability or disabilities they incurred in the service, it is perfectly reasonable for the family fiduciary to use those funds for taking care of their family member.

I think the question here is the level of oversight. I was listening to the earlier panels. I know that sometimes it may seem intrusive when we come in and we are trying to find out who is going to be the most effective, least restrictive fiduciary, and we ask to sit down with the family member and go through a fund usage agreement.

But the reality is we don't require bonds for spouse. We don't require an annual accounting requirement for a spouse. That typically is a 3-year follow-up followed by another 3-year follow-up. We do require pre-approval for certain expenses that are expenses over a thousand dollars that aren't part of a fund usage agreement, and we do require that those funds be utilized to take care of the beneficiary.

So the requirements are a little less restrictive for the spouse. And I understand how it might be perceived as being onerous, but we have to balance that with the responsibility to ensure that the beneficiary is being taken care of.

Mr. HALL. That is sensible. I am wondering if you think that there is enough consistency from one RO to another in terms of those things you just talked about, the degree of oversight and the degree of questions asked and standards met and going through records. What we have heard is that there seems to be some offices that are more zealous or cautious or questioning or challenging, even, to family members in this position than others. So how can we get everybody on the same page and have the same level of scrutiny?

Mr. MAYES. I think we have some work to do here. No question. I know Ms. Rubens, that is one thing that she presses me on as program manager. We have to have clear guidance and clear policy. I will tell you that we are in the process of revising our procedures. And we are bringing in some very experienced people from the field to do that. We are about 90 percent complete. So we have to have that clear policy out there.

But I think even more importantly, we have to get out there with these field examiners and these legal instruments examiners, and that is why I brought Gary in and Christine Alford, the Assistant Director over this shop, and added staff. We have to get out there and train. We do have legal instruments examiners and field examiners with a couple of years' experience. We have gone to nine stations. We are on tap to go to 20 more. We are going to hit every station.

So clarify the policies and procedures, streamline those where we can, and then we have to train. I agree that we have some work to do.

Ms. Rubens, did you want to add anything to that?

Ms. RUBENS. Yes, I do want to add one thing, Brad. The other thing we are going to do, while you all are going to be going out and hitting the road and training, you are also going to be bringing in folks from across the country to do an overarching training program to ensure that as these new policies have come out over the last year, we have a chance to visit them together, make sure that there is a clear understanding, and work towards that consistency that you address.

Mr. HALL. Thank you. I am sure our families and relatives who are acting as fiduciaries will appreciate that. I think we all agree there needs to be a level of oversight to ensure against abuses. And if there is sort of the same standard that everyone is expected to meet, then no one will feel picked on.

Going back to professional fiduciaries, the compensation is capped at 4 percent, as I understand it, and yet there is no fixed limit to the number of beneficiaries that one fiduciary can manage. In one case, a fiduciary oversees the affairs of over 500 beneficiaries; is this a problem in your opinion? Do you have concerns with the number of beneficiaries one fiduciary can handle; or would you say that it depends on their staff and the circumstances?

Mr. MAYES. I think that certainly some professional organizations are more capable of handling greater volume than others. I think it behooves the VA, and it was mentioned earlier, it behooves us to get out there and recruit more organizations that perform this type of work, get out there and inform them of the fact that this program exists and encourage them to engage us on behalf of our Nation's veterans.

In fact, Gary and I were just talking about that, and I would like for him to share with you some of the things that we have done to make some of our professional organizations aware of this program.

Mr. CHESTERTON. In the previous year, we have started as a staff to go out to conferences such as National Guardianship Association. We are visiting and speaking at conferences for the National Association of Elderly Law Attorneys. We are also trying to work with AARP to go to their national convention. Our general counsel has gone to the national probate court judges conference, all in an effort to provide this outreach, provide this information, and to recruit qualified fiduciaries nationwide.

Mr. HALL. Thank you very much. One more question and then we will submit some more questions for the record. And I want to thank you for your listening skills and all of you for the work that you are doing because I know we all have the same goal here. We are simultaneously dealing with, VA is dealing with, and the Congress is trying to help VA deal with a broad spectrum of problems and come up with solutions all at the same time, and it is affecting people in real-time in their lives as things are happening that matter very much to an individual or their family. And they matter to us as a country, too.

But we realize that this is a big agency with a lot of irons in the fire and changes being asked for and developed at the same time the work is going on day to day. So we are aware of the challenge that you all face. We want to help in any way we can.

I would say to the representatives of the service organizations who spoke before, and to the Inspector General and the GAO, we are all in a chain of oversight helping each other hopefully get to the best possible solution.

With that, my final question to you Mr. Mayes, can fees that are paid to fiduciaries, particularly family members who act as fiduciaries, be bonded, to be deducted from the beneficiary's account, or must a fiduciary pay out of pocket for those fees? And can fiduciaries seek reimbursement from the VA for fees that are paid to secure bonding?

Mr. MAYES. I am going to let Mr. Chesterton answer that question. He is our expert in that area.

Mr. CHESTERTON. Whenever a fiduciary is required to provide a bond, that all comes out of a beneficiary's funds. Any fees generally associated with the maintenance of the beneficiary's estate come from the beneficiary's funds. The fiduciary is not normally required to pay out of pocket at all.

Mr. HALL. Thank you, Mr. Chesterton, and Mr. Mayes and Ms. Rubens for your patience, testimony, and the work you are doing. I will be submitting on behalf of the Subcommittee some further questions. We will allow 5 days as usual for Members or witnesses to revise and extend their remarks.

And just as the Gold Star Wives were largely unaware of the existence of this program, I think much of America is probably unaware of it. But it is very important to those who are in it and who need the services of the Fiduciary Program, and it is part of the contract, part of our honoring our commitment to the men and women who served this country and are in the position of needing this kind of help as a result.

So we are looking forward to working with you to help improve the program and reduce the opportunities or the instances of misuse or abuse of funds to the lowest level possible and at the same time streamline the process for those families who are either doing it themselves or bringing in a professional, we are here to help as well as to do oversight.

Once again, I believe I speak for all of the Members of Congress in expressing gratitude first of all to the veterans for their service; and second, to the families and fiduciaries for their continuing sacrifice, and finally to all of the organizations represented here and you from the VA and from the VBA who are working on this day to day. Thanks for your testimony. Thank you in advance for answering the questions that we are going to send to you in writing, and you are now excused.

This hearing is adjourned.

[Whereupon, at 4:38 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs

Good Afternoon.

Would everyone please rise for the Pledge of Allegiance?

Flags are located at the front and back of the room.

I welcome you all here today, just a day after we passed another comprehensive veterans' health bill aimed at supporting veterans' caregivers as well as enhancing veterans' physical and mental wellbeing. I was honored to support this bill, S. 1963, The Caregivers and Veterans Omnibus Health Services Act of 2009. This legislation combines the recommendations of nearly 20 Members of Congress—Democrats and Republicans alike. Provisions in S. 1963 will provide training, education, and counseling for caregivers of veterans of any era. In addition, the bill allows VA to recruit and retain nurses, home health aides, and specialty care providers. Finally, this measure will help VA better diagnose and treat those who suffer from the invisible wounds of war, the stigma associated with them, and many other factors that make effective treatment difficult. Specifically, S. 1963 expands authority to fund services to treat wounded warriors suffering from post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other combat-related disorders, which lead to homelessness and, in some cases, suicides and criminal acts by veterans.

Our hearing today is entitled "*Examining the VA Fiduciary Program: How Can VA Better Protect Vulnerable Veterans and their Families?*" This hearing is intended to examine VA's fiduciary program and assess how Congress and VA can work together to better protect veterans and dependents that are in need of fiduciary services.

Since 1926 when Congress passed the World War Veterans Act, VA has been providing oversight of its benefits paid to those beneficiaries who were incapable of handling their own affairs due to injury, disease, or infirmities of age. Today, the VA Fiduciary Program operates under authority contained in 38 U.S.C. § 5502(a)(1). The program is administered by VA Regional Offices and their respective Offices of Regional Counsel, which interface directly with VA beneficiaries and State courts in guardianship and commitment matters.

On average, impaired beneficiaries received approximately \$14,400 in fiscal year 2008, about \$4,200 more per year than the average for all VA compensation and pension beneficiaries. In fiscal year 2008, fiduciaries managed approximately \$1.5 billion in VA benefits for more than 103,000 beneficiaries. Thus far, for FY 2010, VA reports \$696 million in benefits have been paid to more than 102,000 beneficiaries with a cumulative estate value of \$3.1 billion.

Recently, both VA's Office of Inspector General (OIG) and the GAO issued reports on VA's fiduciary program. These reports underscored the benefits of this program, but pointed to insufficient staffing, training, and other resources that hamper the effective oversight of the fiduciary program. In the absence of adequate oversight and accountability, some fiduciaries have misused millions of dollars belonging to our veterans and their dependents.

Let me take a moment to highlight some of the concerns about the Fiduciary Program raised by the VA OIG and GAO reports. From October 1998 to March 2010, the VA OIG's Office of Investigations reports that it conducted 315 fiduciary fraud investigations, resulting in 132 arrests and monetary recoveries of \$7.4 million in restitution, fines, penalties, and administrative judgments. One of these cases involved the submission of false financial reports by a fiduciary who attempted to conceal her embezzlement of nearly \$1 million from 33 disabled veterans whose accounts she managed. The funds embezzled by the fiduciary were reportedly used to support her gambling habit.

It should be noted that these problems are not representative of all fiduciaries. However, the fiduciary program is susceptible to abuse as a result of deficiencies noted by both the VA OIG and GAO reports. Specifically, both the VA OIG and GAO

found: (1) VBA was not taking effective action to obtain seriously delinquent accountings; (2) VBA was not consistently verifying questionable expenses reported by fiduciaries; and (3) VBA was not adequately following up and reporting on allegations of misuse of beneficiary funds and estates. The VA OIG pointed out that VBA has also not been diligent in replacing problematic fiduciaries. In one case, a fiduciary was seriously delinquent in submitting multiple reports, ranging from 134 to 215 days late. In addition, during that period, VBA had received numerous complaints concerning that fiduciary's performance. However, the VBA took no action to replace this fiduciary.

On the other end of the spectrum, we will hear from VSOs who complain that family-members who serve as fiduciaries are neither supported financially nor through training by VBA to discharge their duties. Moreover, the VSOs suggest that while it appears that some professional fiduciaries are not subjected to as much VBA oversight, family-member fiduciaries are viewed with suspicion and mistrust by VBA, despite the sacrifices that they make to care for incapacitated veterans and/or beneficiaries. For example, the Wounded Warrior Project reports that VBA required a mother who served as a fiduciary for her mentally disabled veteran son to reimburse funds spent on toilet paper for the home.

This hearing provides a forum to explore these concerns with the VA Fiduciary Program. With that, I look forward to the testimony of our witnesses and insightful comments and questions from my colleagues on the Subcommittee.

**Prepared Statement of Hon. Doug Lamborn, Ranking Republican Member,
Subcommittee on Disability Assistance and Memorial Affairs**

Thank you Mr. Chairman,

And welcome everyone, to this hearing on the Department of Veterans Affairs fiduciary program.

The fiduciary program provides oversight of VA benefits to beneficiaries who are incapable of managing their funds as a result of injury or disease.

When the VA or a court determines that a veteran is incompetent to handle his or her finances, the fiduciary program:

- establishes an appropriate benefits payment method,
- appoints a fiduciary to oversee his or her finances,
- and provides continued oversight services.

Through periodic personal visits to the beneficiary's residence, VA Field Examiners monitor the welfare and needs of the veteran.

My Subcommittee colleagues and I want to ensure that VA's fiduciary program is taking every measure and has the support necessary to fully safeguard beneficiaries' assets.

During the 108th Congress, we passed legislation that President Bush signed into Public Law 108-454 on December 10, 2004.

The provision made improvements to increase fiduciary accountability and strengthen protections for the beneficiary.

This included more thorough investigations of fiduciaries prior to them being appointed and required VA to reissue benefits that were misused in cases where negligence was found.

Today the Subcommittee would like a report on the effectiveness of these provisions and whether further Congressional action is needed to ensure that our most vulnerable veterans are afforded the highest level of protection possible.

I look forward to hearing from our witnesses today, and I thank you all for your participation.

Thank you, I yield back.

**Prepared Statement of Belinda J. Finn, Assistant Inspector General for
Audits and Evaluations, Office of Inspector General,
U.S. Department of Veterans Affairs**

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss how the Department of Veterans Affairs (VA) can better protect beneficiaries needing the care of a fiduciary and specifically, the recent report from the Office of Inspector General (OIG), *Veterans Benefits Administration—Audit of the Fi-*

duciary Programs' Effectiveness in Addressing Potential Misuse of Beneficiary Funds. Accompanying me is Mr. Timothy Crowe, Director of the OIG's Audit Operations Division in St. Petersburg, Florida.

Our 2010 audit showed that many of the program weaknesses persist since we last audited the program in 2006. In fact, some planned actions provided by the Veterans Benefits Administration (VBA) in response to our 2006 report, *Audit of Veterans Benefits Administration Fiduciary Program Operations*, were not completed or did not fully address our concerns about the protection of the estates of incompetent beneficiaries. We continue to be concerned that VA regional offices (VAROs) are not effectively employing some of the primary strategies and tools to uncover and address potential misuse of these beneficiaries' funds.

BACKGROUND

Federal fiduciaries are appointed by VA under authority contained in Title 38, United States Code, Section 5502(a)(1), Payments to and Supervision of Fiduciaries. The fiduciary may be the spouse of a veteran; a chief officer of a VA or non-VA institution in which a veteran is receiving care; a legal custodian; or another responsible person. These beneficiaries are VA's most vulnerable constituencies. In the fiscal year (FY) 2010 budget submission, VA reported approximately \$696 million in benefits payments to more than 102,000 beneficiaries with a cumulative estate value of \$3.1 billion.

A State court can appoint a fiduciary whose duties and authority are established by Federal statute. In all cases, VA is responsible for ensuring that the VA-derived income and estates of incompetent beneficiaries are used solely for the care, support, welfare, and needs of those beneficiaries. The VBA administers this program at VAROs and the respective Regional Counsel offices.

VBA Field Examiners and Legal Instruments Examiners (LIEs) are charged with monitoring the needs of Fiduciary Program beneficiaries and the protection of VBA-derived funds. VBA Field Examiners determine and appoint fiduciaries for incompetent and/or legally disabled VA beneficiaries, establish and authorize the use of VA benefits and assets, and provide ongoing case management services through scheduled and unscheduled follow-up visits. During visits to the beneficiaries, Field Examiners assess the competence, adjustment, and personal welfare of the beneficiary; review fund usage, method of payment, and the performance of the fiduciary; develop information affecting entitlement to current or additional benefits; and ensure that the beneficiary's dependents, if any, are adequately provided for with the funds available.

LIEs share the responsibility with supervisors and Field Examiners for making administrative and quasi-legal determinations involving the overall supervision of beneficiary estates and the protection of rights to benefits. LIEs oversee the management of the financial affairs of an incompetent beneficiary through activities such as securing and analyzing annual accountings filed by fiduciaries. Accountings are the fiduciary's written report on the management of a beneficiary's income and estate and must include a beginning balance, itemization of income and expenses, and a statement of funds remaining at the end of the accounting period. The LIEs analysis of accountings is a critical component in monitoring fiduciary performance because it is where questionable expenses can be detected at the earliest stage. In addition, LIEs are to ensure that a required Surety Bond is in place in an amount adequate to protect the existing VA estate as well as anticipated VA income for the ensuing accounting period. Accounting periods are normally 1 year but can be lengthened up to 3 years in certain circumstances.

When the Fiduciary Program does not adequately supervise appointed fiduciaries, incompetent beneficiary estates are subject to misuse. For example, a joint Federal and State investigation in Minnesota disclosed that a fiduciary submitted false accountings in an effort to conceal the embezzlement of nearly \$1 million from 33 disabled veterans while acting as their appointed fiduciary. The defendant admitted to taking funds from the veterans' bank accounts to support a gambling habit and to submitting false accountings to VA and agreed to make restitution to VA, the Social Security Administration, and a bonding company that reimbursed the veterans for their losses. Earlier this year, the fiduciary was sentenced to 55 months' incarceration after pleading guilty to making a false statement to VA.

Historically, incompetent beneficiary estates have been at risk of misappropriation by fiduciaries. The OIG reviews program performance through investigations, audits of the program, and inspections of fiduciary program operations and individual VAROs. From October 1998 to March 2010, the OIG's Office of Investigations conducted 315 fiduciary fraud investigations, resulting in 132 arrests and monetary recoveries of \$7.4 million in restitution, fines, penalties, and administrative judgments. Our oversight efforts have shown that Fiduciary staff have not always fol-

lowed VBA policy when processing fiduciary claims or providing oversight of fiduciary activities.

OIG Audit Results

In 2006 and 2010, we issued audit reports on the Fiduciary Program. The 2006 report contained seven recommendations to improve Fiduciary Program operations. Suggested improvements included ensuring staff challenge fiduciary accountings and focus on key fraud indicators; determining appropriate case load levels and staffing requirements; developing a training program to enhance skills needed to effectively conduct fiduciary oversight; and ensuring the accuracy of data reported in the Fiduciary-Beneficiary System (FBS), VBA's case management system used by the Program to support an array of functions necessary for day-to-day operations.

Our 2010 audit found that VBA still needs to improve its management infrastructure in the areas of information systems, staffing models, and management oversight to support the Fiduciary Program.

Ineffective Support of Operations

FBS has functional and data limitations that have severely affected management's ability to use the system as a tool to support program operations effectively. VBA has not implemented upgrades to FBS to address system weaknesses identified both internally and by the OIG in previous reports. However, in October 2009, VBA initiated a study to analyze FBS functionality and to determine whether the system should be modified or replaced to meet the Program's needs. VBA needs a system that can:

- Capture data necessary to target funds at risk of misuse by fiduciaries. FBS does not maintain a list of fiduciaries replaced due to misuse and does not record accounting information such as VA and non-VA benefits, fiduciary expenditures on behalf of beneficiaries, financial institutions account balances, and Surety Bond values.
- Contain reliable and accurate data for decision-making and external reporting. For example, FBS currently limits the user to a single entry for the estate value, which according to VA policy, should include both VA and non-VA funds. Since VA and non-VA assets are not recorded separately in FBS, Fiduciary Program management cannot use FBS data to identify VA estates that may require protection. In addition, FBS tracks fiduciaries by name, not a unique identifier, such as Social Security number or tax identification number. This makes it difficult to match a fiduciary to all their beneficiaries since the fiduciary's name is not always entered into the system in a consistent manner.
- Interface with other Compensation and Pension Information Technology systems, such as the Veterans Service Network (VETSNET), an application used to support VBA claims processing. Consequently, FBS cannot automatically notify Fiduciary Program staff of competency determinations or an impending large retroactive payment caused by a change in a beneficiary's service connected status.
- Provide an automated interface for external entities, such as fiduciaries, beneficiaries, or financial institutions. This system shortcoming precludes electronic submission of key data. Therefore, FBS cannot accept or process electronically submitted accounting information from fiduciaries or access financial institutions to secure account balance and transaction information. Instead, fiduciaries must manually prepare and mail accountings to VBA annually and staff must manually review the data provided, check for math errors, and reconcile income, expense, and estate balances to financial institution data.

Lack of Staffing and Workload Models

Our recent report also noted that VBA lacks a staffing and workload model for use by VAROs and Fiduciary Program management. Instead, decisions regarding Fiduciary Program staffing are left to the judgment of individual VARO Directors. As a result, a wide variation exists in the number of beneficiaries managed by individual LIEs, ranging from 188 to 1,576 beneficiaries per LIE. We found that the active involvement of local Fiduciary Program management in supervising the program was a decisive factor of whether the Fiduciary Program staff took timely and appropriate action to secure delinquent accountings. The Fiduciary Program Headquarters component also indicated that it lacks sufficient resources to address some program deficiencies.

We previously identified this issue in our 2006 audit. In response to that report, VBA said it would complete a work measurement study and convene a work group to examine Fiduciary Program staffing at the regional office level and make recommendations regarding caseloads. However, VBA's 2007 Fiduciary and Field Examination Pilot Implementation Team Report indicated that historical guidelines relating fiduciary activity resources to beneficiaries were long ago abandoned and considered obsolete by program staff and field management.

Insufficient Guidance to Fiduciaries

VBA does not provide online information related to fiduciary matters such as guides for best practices, frequently asked questions, training, or other tools to assist fiduciaries. Some coaches and LIEs believe the majority of VARO follow-up for additional information and clarification is due to new fiduciaries not being fully knowledgeable of their duties, responsibilities, and program requirements. The availability of online resources to assist fiduciaries could potentially reduce requests to VBA for assistance and increase compliance with Fiduciary Program requirements.

Inconsistent Quality Assessment

VBA is not consistently conducting activities that could potentially increase the effectiveness of the Fiduciary Program. VBA's Systematic Technical Accuracy Review (STAR) and Site Visit programs both review fiduciary program activities to ensure fiduciary staff comply with VBA policies and procedures in areas such as timeliness, payee designation, fund usage, and FBS accuracy. The Fiduciary Program does not analyze or trend STAR errors and Site Visit Program findings nor identify and disseminate best practices employed in the field. For example, some VAROs provide newly appointed fiduciaries with locally developed guidance. The literature discusses topics ranging from fund usage to reporting requirements and includes local VARO contact for the fiduciary activity.

Lack of Staff Training

Finally, training staff in this complex program is a continuing problem. Centralized training for Fiduciary Program managers has only occurred three times since 1987 and not at all since 2004. Centralized training for LIEs has only occurred twice for LIEs since 1991. According to VBA, Field Examiners and LIEs must complete a total of 80 hours of training each year. Of the 80 hours, 60 should be related to VBA-suggested topics while the remaining 20 are at the discretion of the VAROs. In response to our 2006 audit, VBA said it was developing a new training curriculum for LIEs, but has yet to develop a standardized curriculum for new LIEs. During the recent audit, program management indicated that, during FY 2010, VBA would implement standardized training for LIEs, conduct the first of recurring managers training conferences, and deploy training teams to provide 40 hours of standardized training to Field Examiners, LIEs, and managers at each VARO.

In 2006, we reported that suspected misuse of incompetent beneficiary estates went undetected because VARO staff did not follow up on questionable or incomplete data in fiduciary annual accounting statements and did not require documentation to support claimed expenses. The following examples from our 2010 audit show that many of the program weaknesses persist today.

VBA was not taking effective action to obtain seriously delinquent accountings. Seriously delinquent accountings refers to those which are at least 120 days past due. Under specified circumstances, VBA policy requires fiduciaries to submit periodic accountings listing beneficiary assets, income, and expenses. We found that LIEs did not consistently pursue receipt of seriously delinquent accountings from fiduciaries. At 5 of 6 VAROs visited, 44 percent of the accountings drawn from a random sample became delinquent up to 710 days. Further, at 3 of these 5 VAROs, timely and appropriate actions were not taken to secure 63 percent of the sampled delinquent accountings. As a result, we concluded that VBA was not managing the financial risks associated with the aggregate estate value of 17 beneficiaries totaling over \$1.5 million nor were appropriate procedures followed to minimize the potential risks related to untimely accountings.

VBA was not consistently verifying questionable expenses reported by fiduciaries. We identified qualitative weaknesses in the LIE review of expenditures of beneficiary funds by fiduciaries. LIEs consistently failed to take effective action to verify questionable expenses totaling \$166,787 for 33 of the 137 accountings reviewed. For example, an LIE approved an accounting statement related to one

beneficiary's estate that showed house and automobile expenses totaling \$17,364 without supporting documents or receipts, and did not challenge the expense. Based on our statistical sample of accountings reviewed, we projected that LIEs may not have adequately verified approximately \$2.9 million in expenditures for 551 (29 percent) of 1,906 accountings completed between April 1, 2009, and May 22, 2009. Recent policy changes implemented by VBA have strengthened fiduciary accounting requirements. However, VBA lacks an agency-wide policy requiring receipts or other documentation to substantiate unbudgeted and budgeted expenditures that exceed a pre-designated threshold. This has resulted in VAROs and individual staff applying different standards when verifying questionable expenses submitted by fiduciaries. Until VBA standardizes the accounting review process to the extent practical and minimizes the subjectivity in determining what constitutes a questionable expense, it lacks reasonable assurance that unusual or inappropriate expenditures are identified and verified to ensure funds were expended appropriately.

VBA was not consistently replacing fiduciaries when appropriate. At two VAROs visited, we found a fiduciary with numerous late accountings while managing multiple beneficiary estates. Actions were not in process to replace these fiduciaries, in spite of these performance deficiencies. For example, at one VARO, a fiduciary was seriously delinquent in submitting four accountings ranging from 134 to 215 days late during the period 2004–2009. In addition, the VARO received multiple complaints from veterans regarding the fiduciary's performance during this same period. However, the VARO had not taken any actions to replace this fiduciary. When VBA fails to take appropriate actions in a timely manner to replace fiduciaries that are responsible for multiple delinquent accountings, the potential for misuse or inappropriate diversion of beneficiary funds is increased.

VBA was not adequately following up and reporting on allegations of misuse of beneficiary funds and estates. Misuse allegations of beneficiary funds may come to VBA as complaints from the beneficiary, their friends and relatives, or other interested parties. VBA policy requires staff to review, and if necessary, investigate allegations of misuse of benefits against a fiduciary within specified time frames. We found that 4 of 6 VAROs did not consistently process misuse actions timely or appropriately in 22 (96 percent) of 23 cases reviewed. Two VAROs did not report any misuse activity during the period January 2008–March 2009. However, our audit identified four cases of suspected misuse of funds at one VARO and one case at the other VARO that should have been processed and recorded according to VBA policy. Furthermore, for FYs 2005 through 2008, VBA did not include statistical information pertaining to misuse of funds by fiduciaries in the *Annual Benefits Report to Congress* as required by Title 38, United States Code, Section 5510. The required information includes:

- The number of cases in which the fiduciary was changed because of a finding that benefits had been misused and how such cases of misuse of benefits were addressed by the Secretary.
- The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits reissued to beneficiaries.
- The number of fiduciary cases referred to the Office of Inspector General and their disposition.
- The total amount of money recovered by the Government in cases arising from the misuse of benefits by a fiduciary.

In our 2010 report, we recommended that VBA provide a robust database to support program operations and develop a staffing workload model to guide resource allocation decisions. We also recommended that VBA develop and disseminate policies and procedures to improve the analysis of annual accountings filed by fiduciaries that can result in investigating and reporting allegations of misuse; provide more guidance to fiduciaries; ensure regular periodic accountings of the financial activities administered by fiduciaries; and ensure VAROs conduct local quality assessments of fiduciary operations. The Acting Under Secretary for Benefits agreed with our findings and provided target dates to complete planned actions that address our recommendations. We consider VBA's planned actions responsive to our concerns and will follow up on their implementation.

OIG Inspection of VARO Fiduciary Program Operations

Our ongoing Benefits Inspection Program is an initiative to ensure our Nation's veterans receive timely and accurate benefits and services. Since April 2009, the

OIG's Benefits Inspection Division inspected fiduciary procedures to ensure staff provided proper oversight of incompetent beneficiaries at four VAROs. We found Fiduciary staff did not consistently follow VBA policy when processing fiduciary claims or providing oversight of fiduciary activities. Our analysis of 115 Personal Guardianship Folders found that 42 (37 percent) contained errors that affected or had the potential to affect beneficiaries benefits.

Some examples of steps Fiduciary Program staff did not always perform include:

- Complete credit checks for potential fiduciaries.
- Document the verification of beneficiaries' funds controlled by the fiduciary.
- Complete agreements with Fiduciaries to ensure how beneficiaries' funds are to be spent.
- Verify annual Fiduciary accountings for accuracy. For example, a beneficiary's estate should have been increased by \$200,000 as the result of a property sale. Staff noted the beneficiary had assets of \$66.82 after the sale of this property and did not question the disposition of funds resulting from the sale of the property. Consequently, VBA staff lacked assurance that these funds were spent appropriately and solely for the welfare of the beneficiary.

We will continue to review and report on VARO performance in managing the fiduciary and field examination activity in future OIG benefit inspections.

CONCLUSION

VBA needs an effective Fiduciary Program in place to ensure consistent and effective monitoring of fiduciaries and beneficiary funds and estates. Effective oversight is necessary to the stewardship of beneficiaries' financial affairs. During the course of our audit, Fiduciary Program management at VBA Headquarters made positive changes to the program such as requiring fiduciaries to submit monthly bank statements with annual accountings. We believe that more improvements are necessary to ensure the integrity of this program and the services it provides to vulnerable veterans and their families.

Mr. Chairman, thank you for the opportunity to discuss these important issues. We would be pleased to answer any questions that you or other Members of the Subcommittee may have.

Prepared Statement of Daniel Bertoni, Director, Education, Workforce, and Income Security Issues, U.S. Government Accountability Office

VA'S FIDUCIARY PROGRAM: VA Plans to Improve Program Compliance and Policies, but Sustained Management Attention is Needed

GAO Highlights

Why GAO Did This Study

The Department of Veterans Affairs (VA) pays billions of dollars in compensation and pension benefits to disabled veterans and their dependents. For those beneficiaries who are unable to manage their own affairs, VA appoints a third party, called a fiduciary, to manage their VA funds. Congress, VA's Office of Inspector General (OIG) and GAO have noted that VA does not always have, or adhere to, effective policies for selecting and monitoring fiduciaries and therefore, does not fully safeguard the assets of beneficiaries in the Fiduciary Program.

GAO was asked to discuss the Fiduciary Program and possible ways that it could be improved to better serve veterans, their families, and survivors. This statement is based on GAO's February 2010 report (GAO-10-241), which examined (1) VA policies and procedures for monitoring fiduciaries and safeguarding beneficiary assets and (2) challenges VA faces in improving program performance and oversight. To conduct that work, GAO reviewed program policies and relevant federal laws and regulations, analyzed a nationally representative random sample of case files, interviewed Central Office managers and staff, and conducted three site visits to Fiduciary Program offices, which accounted for 25 percent of program beneficiaries.

What GAO Found

Inconsistent staff compliance with some Fiduciary Program policies and weaknesses in others hinder VA's ability to effectively safeguard beneficiary assets; however, per GAO's recommendations, VA plans to take steps to improve the program. GAO found that VA did not always take required actions to monitor fiduciaries

within established time frames or document in the beneficiary's case file that these actions were taken. Inconsistent staff compliance occurred in four areas: (1) initial visits to beneficiaries and fiduciaries, (2) follow-up visits to beneficiaries and fiduciaries, (3) follow up to obtain annual financial reports, and (4) oversight of surety bonds. For example, in about 18 percent of the cases GAO reviewed, VA was late in conducting required follow-up visits to monitor fiduciaries or did not provide sufficient documentation to show whether these visits were conducted. Similarly, while GAO estimated that about 39 percent of fiduciaries did not submit required annual financial reports on time, VA staff did not consistently follow-up with fiduciaries or failed to document actions that were taken. In addition to compliance issues, VA's policies for conducting on-site reviews of professional fiduciaries who manage funds for multiple beneficiaries do not ensure that these fiduciaries are effectively identified and monitored. For example, the agency's case management system uses the fiduciary's name—which may be entered inconsistently—to match them to beneficiaries, rather than requiring a unique identifier, such as a Social Security number. As a result, VA cannot always identify the fiduciaries that need to be reviewed. Moreover, VA does not have a nationwide quality review process to ensure that on-site reviews are conducted properly and consistently. Per GAO's February 2010 report recommendations, VA agreed to revise its Fiduciary Program policies in an effort to enhance its oversight role, increase staff understanding and staff compliance, and better safeguard beneficiary assets.

Two key challenges hinder VA's ability to improve Fiduciary Program performance and oversight, but VA has plans to address these challenges. First, managers and staff said that limitations with VA's electronic fiduciary case management system hinder their ability to capture key information. Per GAO's recommendation, VA has established a work group to evaluate alternative system modifications to meet the program's case management needs. Second, managers and staff indicated that training may not be sufficient to ensure that they have the expertise to properly carry out program responsibilities, as many of them had less than 2 years of program experience. In its response to GAO's recommendations, VA stated that it would begin providing additional standardized training for managers and staff this year. VA is also piloting a consolidated Fiduciary Program unit covering 14 VA regional offices to improve program performance and oversight. VA encountered a number of challenges during the pilot's implementation and has not yet evaluated it, but per our recommendation, plans to do so by September of this year.

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to comment on how the Department of Veterans Affairs (VA) Fiduciary Program can better protect vulnerable veterans and their families. Each year, the VA pays billions of dollars in compensation and pension benefits to disabled veterans and their dependents. For those who are unable to manage their own affairs,¹ VA appoints a third party, called a fiduciary, to help manage and protect the beneficiary's funds. A fiduciary can be a spouse or other family member, or an entity such as a law firm, hospital, or nursing home. In fiscal year 2008, fiduciaries provided services for more than 103,000 beneficiaries, and managed nearly 4 percent of the \$38.6 billion in compensation and pension benefits VA paid out in that year. Moreover, the average annual benefit amount for beneficiaries in this program was approximately \$14,400 in fiscal year 2008, which is about \$4,200 more per year than the average for all VA compensation and pension beneficiaries.

Over the years, both Congress and VA's Office of Inspector General (OIG) have expressed concern that VA's Fiduciary Program is not fully safeguarding beneficiaries' assets. Areas of concern included delays in conducting visits to select fiduciaries and insufficient monitoring of VA fund usage by fiduciaries on behalf of beneficiaries. You asked us to discuss such issues and possible ways that the Fiduciary Program could be improved to better serve veterans, their families, and survivors. My statement draws on our recent report which examined (1) VA policies

¹VA regulations state that the agency may appoint fiduciaries for beneficiaries and beneficiaries' dependents who are mentally ill (incompetent) or under legal disability by reason of minority or court action. 38 CFR § 13.55.

and procedures for monitoring fiduciaries and safeguarding beneficiary assets and (2) challenges VA faces in improving program performance and oversight.²

Our work included reviewing program policies and relevant federal laws and regulations, analyzing a nationally representative random sample of 205 case files³ and visiting three Fiduciary Program units located in VA regional offices—St. Petersburg, Florida; Cleveland, Ohio; and Salt Lake City, Utah—where we interviewed managers and staff about program policies, procedures, and internal controls.⁴ These units accounted for 25 percent of the program's beneficiaries. During these visits, we also conducted file reviews of cases where either VA suspected that fiduciaries were inappropriately using beneficiary funds or fiduciaries were seriously late in submitting annual financial reports documenting how beneficiary funds were spent. We also reviewed 12 VA on-site reviews which are examinations of financial records of fiduciaries who oversee multiple beneficiaries, whom we refer to as professional fiduciaries. Finally, we interviewed Central Office officials and staff as well as Veterans' Service Organizations about the performance of the program. We conducted this performance audit from December 2008 to February 2010, in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Many individuals receiving monthly compensation and pension benefits from the VA have mental impairments that can prevent them from managing their finances. These conditions may result from injury, disease, or infirmities of age. The VA Fiduciary Program matches beneficiaries who are unable to manage their financial affairs with a fiduciary, giving preference to spouses. If VA is unable to locate a qualified spouse who is willing to serve in this capacity, an individual or other entity, such as a lawyer or nursing home, will be appointed. VA appointed fiduciaries who are not dependents or close family members can collect a fee for their services (generally up to 4 percent of a beneficiary's annual benefit amount) and can oversee multiple beneficiaries. Whether a fiduciary is a family member or a professional, the responsibilities are generally the same and may include receiving the beneficiary's VA benefits, paying the beneficiary's expenses, maintaining the beneficiary's budget, and generally seeing to the financial well-being—and, in some cases, the physical well-being—of the beneficiary. Finally, if a court has determined that a beneficiary is unable to handle his or her own affairs and appoints its own fiduciary, VA must assess the performance of that fiduciary to determine if he or she is suitable for managing VA benefits given the needs and welfare of the beneficiary. If VA decides to use the court-appointed fiduciary, the agency generally defers to certain rules set by the court, such as those pertaining to the fee amount that the fiduciary can charge for his or her services.

Fiduciary Program policies and procedures are developed by Fiduciary Program Central Office staff under the Office of Policy and Program Management within the Veterans Benefits Administration (VBA). Individual Fiduciary Program units are generally collocated in VA regional offices that also oversee other VBA programs. One major exception to this is the Western Area Fiduciary Hub, where Fiduciary Program units and files from 14 western VA regional offices were merged into a single unit collocated in the VA regional office in Salt Lake City, Utah, beginning in January 2008.

Inconsistent Compliance with Some Policies and Weaknesses in Others Hinder VA's Ability to Safeguard Beneficiary Assets

Our February 2010 report noted that VA Fiduciary Program staff did not always take required actions within established time frames or document in the case files

²GAO, *VA's Fiduciary Program: Improved Compliance and Policies Could Better Safeguard Veterans' Benefits*, GAO-10-241 (Washington, D.C.: Feb. 26, 2010).

³We analyzed a sample of case files from a population of about 103,700 adult beneficiaries. This excluded beneficiaries whom VA monitored with alternate methods (such as those who managed their own funds for a probationary period and those who VA monitored through letters or phone calls in lieu of some personal visits), as well as those who had negative estate values. All percentage estimates in this testimony have a margin of error of plus or minus 10 percentage points or less, unless otherwise noted. For additional information on our stratified random sample of cases, file review methodology and the reliability of data from the Fiduciary Beneficiary System (FBS), please see Appendix 1 in GAO-10-241.

⁴GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

that the required actions were taken. Below are four areas where program staff did not always comply with program policies and, per our recommendations, how VA plans to address them.

Initial Visits to Beneficiaries and Fiduciaries. VA policy states that initial visits to appoint fiduciaries are to be conducted within 45 days of a request for a fiduciary, and VA's performance goal is to conduct at least 90 percent of these visits on time. Conducting timely initial visits is important because beneficiaries cannot begin receiving VA benefits until they are completed.

We sampled and reviewed 67 case files in which initial visits were supposed to be conducted between July 1, 2006, and June 9, 2009,⁵ and found that 37 visits were conducted within the 45-day time frame, and 10 were from 3 to 39 days late.⁶ For one case, the file lacked documentation that an initial visit was made at all.⁷ Managers and staff in some offices we visited said compliance with the timeliness policy for initial visits was improving, but was still a concern. They attributed some compliance issues to a continued lack of staff and resources.

Follow-Up Visits to Beneficiaries and Fiduciaries. Once the fiduciary is selected, staff conduct periodic follow-up visits to re-evaluate the beneficiary's condition and to determine if funds have been properly used and protected. The first routine follow-up visit generally takes place 1 year after a fiduciary is selected, and subsequent visits typically take place every 1 to 3 years thereafter.⁸ According to VA managers, it is VA's policy that follow-up visits to fiduciaries are to be conducted within 120 days of the scheduled date, and the on-time goal for these visits is also 90 percent. Timely follow-up visits are important to determine the continued suitability of the fiduciary and to protect beneficiaries from potential misuse of their funds.

Based on a nationwide sample of VA beneficiaries that had been assigned a fiduciary, we estimated that approximately 61,000 adult beneficiaries were supposed to have had at least one follow-up visit between July 1, 2006, and June 9, 2009. We estimated that 76 percent of these visits occurred within the 120-day time frame. In about 18 percent of the cases, however, VA did not conduct these required follow-up visits on time or provided insufficient documentation to show whether these visits were conducted at all. For the cases that were untimely (12 percent), they were between 1 to 216 days late. In the most extreme example among the cases with insufficient documentation to show whether visits were conducted (6 percent), the follow-up visit was overdue by 16 months.⁹ Similar to initial visits, program managers and staff noted that compliance with the 120-day time frame for follow-up visits can be challenging due in part to a lack of staff and time. Program managers said that conducting visits in a timely manner may be especially challenging in regional offices with only one or two Fiduciary Program staff who may also have responsibilities outside of the Fiduciary Program. In addition, managers and staff noted that conducting timely visits can be challenging in areas where staff must drive long distances to see beneficiaries and fiduciaries.

Annual Financial Reports. VA policy generally requires staff to obtain yearly financial reports and bank statements from some fiduciaries to determine how beneficiary funds were used. When fiduciaries do not submit their financial reports on time, staff are required to follow-up with them and document such actions in the beneficiaries' files. Staff can follow-up with letters, telephone calls, or face-to-face contacts. VA policy requires staff to conduct the first of such follow-up actions when fiduciary financial reports are 35 to 65 days late and again when they are 90 days late. At that time, they may inform the fiduciary of the possible repercussions of

⁵VA implemented recommendations from the VA OIG's June 2006 report on the Fiduciary Program (Report No. 05-01931-158) by July 1, 2006. Recommendations involved VA's efforts to conduct visits, obtain and review fiduciary financial reports, and obtain fiduciary bonds. As such, we chose this as the start date of our analysis. The concluding date of June 9, 2009, is the date by which we requested all files be sent to us.

⁶We could not determine if VA met its nationwide performance goal of conducting at least 90 percent of initial visits on time because the number of cases in our sample for which we could assess initial visit timeliness between July 1, 2006 and June 9, 2009 was too small to project our results to the population.

⁷In the remaining 19 cases, the files included documentation that an initial visit occurred; however, we were unable to assess the timeliness of these visits because documents lacked the date stamps needed to determine when the visits were requested and/or completed. Lack of date stamps could indicate that the photocopies of the files that VA provided us were of poor quality or that the documents in the original files were never stamped with one or both of the necessary dates needed to assess timeliness.

⁸In some cases, such as when the fiduciary is a spouse or when the beneficiary is institutionalized, some of the subsequent visits may be substituted by letters or phone calls.

⁹An additional estimated 6 percent of case files contained the report documenting that the visit had occurred, but lacked the date stamp necessary to assess timeliness.

a failure to comply, which may include legal actions, a referral to the OIG, or other actions. After 120 days, the financial reports are considered “seriously delinquent,” and appropriate action is to be taken. Failure to take aggressive action to secure timely financial reports may result in a finding of negligence, which will require VA to re-issue any misused benefits.

Based on our nationwide sample, we estimate that fiduciaries for about 33,000 beneficiaries were required to submit such reports between July 1, 2006, and June 9, 2009. Of these, 39 percent¹⁰ were submitted between 1 and 140 days late and 47 percent¹¹ were submitted on time.¹² In addition our sample and site visit file reviews showed that follow-up contact was frequently not done or not documented by program staff. Of the 30 case files in our sample where financial reports were submitted more than 65 days late, 19 case files either lacked documentation of any follow-up actions or showed that such actions were not taken within required time frames.¹³

Moreover, we found additional instances of inadequate staff follow-up on seriously delinquent financial reports during file reviews conducted at the three regional offices we visited. We reviewed 20 such cases, and found only 1 where the initial follow-up contact was taken within the required 65 days. For the other 19 cases, contact was either between 3 days and 11 months late or there was not adequate documentation to determine if or when such contact had occurred. In one case, a fiduciary’s financial report was submitted more than 2 years later than the original due date, and only after VA initiated action to suspend payment. In another case, a financial report due in June 2006 was not submitted until nearly 2 years later. The file did not indicate that any follow-up actions had occurred, although the case is now being investigated for possible misuse of funds. Staff in all regional offices we visited said that they sometimes did not take follow-up actions or failed to document actions they did take, in part, because they lacked the time or believed that some actions did not warrant documentation.

Surety Bonds. VA generally requires staff to obtain a surety bond from fiduciaries overseeing estates with a value of \$20,000 or more that is attributable to VA funds. A bond ensures that the beneficiary’s estate will be reimbursed in the event of fiduciary mismanagement or abuse of beneficiary funds. Our nationwide sample showed that program staff sometimes failed to obtain proof that a fiduciary purchased a bond, when required, or did not adequately document in the beneficiary case files that the bond requirement was waived.¹⁴ Of the 52 case files in our sample for which fiduciaries were required to purchase a bond, 8 case files lacked adequate documentation to indicate whether a bond was purchased or that the bond requirement was waived because the fiduciary met conditions for an exception. Some of the 8 cases involved substantial benefit amounts. For example, 2 cases which contained no documentation that bonds were purchased had VA estate values of approximately \$82,000 and \$62,000—leaving these beneficiaries and VA vulnerable to a substantial loss if funds were misused. Some staff in regional offices we visited said that they were often uncertain about what types of bonds are required for certain types of fiduciaries, and this was confirmed by our site visit file reviews. For example, in one case, a Fiduciary Program staff member was told by a fiduciary who was an attorney that an individual bond was unnecessary because the fiduciary had a “blanket” bond that covered all VA responsibilities. Although this staff member documented in the case file that he was unsure if this was correct, he took the fiduciary’s word that an additional bond was not required. However, we were told by managers and staff that a blanket bond was most likely not acceptable in this case, and the staff person should have required the fiduciary to obtain an individual bond.¹⁵

In regard to the above findings, we recommended that VA ensure that staff understand and carry out policies regarding file documentation, follow-up with fiduciaries for late financial reports, and bond acquisition. VA concurred and, in its comments to our report, outlined several planned actions. For example, VA stated that it

¹⁰The margin of error was approximately plus or minus 12 percent.

¹¹The margin of error was approximately plus or minus 13 percent.

¹²It was not possible to determine if or when the remaining 14 percent of the financial reports were submitted, due to poor file documentation, including lack of date stamps. The margin of error was approximately plus or minus 11 percent.

¹³The number of cases in our sample where financial reports were submitted more than 65 days late was too small to project our results to the population.

¹⁴The number of cases in our sample requiring a bond was too small to project our results to the population.

¹⁵Central Office managers explained that fiduciaries need a bond for each individual beneficiary unless the fiduciary is a government or nonprofit entity, in which case a blanket bond covering all of their beneficiaries would be acceptable.

would roll out additional training for staff in March of this year and expects to hold a manager's training conference later in the year. The agency also intends to revise the program's policy manual this year to clarify existing guidance, establish new policies and procedures, and enhance oversight of fiduciary activities.

In addition to compliance issues, we identified weaknesses in VA's policy for conducting periodic on-site reviews of professional fiduciaries who manage funds for multiple beneficiaries. Cumulatively, such benefits can be a substantial amount of money. On-site reviews examine the financial records across all beneficiaries that a professional fiduciary manages to detect discrepancies among accounts, which may not be detected by examining annual financial reports for a single beneficiary. We found two weaknesses associated with the on-site review policy VA developed.¹⁶ First, while VA is required to conduct periodic on-site reviews for professional fiduciaries who oversee more than 20 beneficiaries with combined benefits totaling \$50,000 or more, the agency can not ensure that all fiduciaries who need these reviews are identified. To generate a list of fiduciaries meeting these criteria, each Fiduciary Program unit uses VA's electronic case management system to link or match a fiduciary to all of their beneficiaries. This computer match is based on a fiduciary's name, rather than a unique identifier, such as the fiduciary's Social Security number (SSN) or tax identification number (TIN). However, if fiduciary names are entered inconsistently into the system, a fiduciary for which an on-site review is required may not be identified. While VA's case management system includes a field for unique fiduciary identifiers, VA policy does not require this information for all fiduciaries. Central Office staff acknowledged that requiring a unique identifier would decrease VA's chances of making mistakes in identifying fiduciaries with multiple beneficiaries who require reviews. In response to our recommendation, VA plans to begin requiring that all fiduciaries supply unique identifiers (such as SSNs or TINs) to better track fiduciaries who manage multiple beneficiaries.

We also found that VA lacks a nationwide quality review process to ensure that on-site reviews are conducted properly and consistently. While VA has quality review processes to ensure that actions—such as conducting initial visits and obtaining financial reports and bonds—are carried out in accordance with VA policies, Central Office managers acknowledged that VA lacks a similar process for on-site reviews.¹⁷ Having such a process is not only a key internal control, but it is also important for ensuring that on-site reviews are conducted properly and consistently across all Fiduciary Program units nationwide.¹⁸ Our examination of 12 files from the three regional offices we visited revealed deficiencies in these exams which could be detected through a national quality review process. Four of the files we examined lacked key case selection information, preventing managers from determining whether they were selected according to VA policy—which states that cases associated with beneficiary complaints or a history of late or questionable financial reports should receive priority. In addition, although VA policy requires that at least 25 percent of a fiduciary's beneficiary case files (or up to 25 case files) be examined during the on-site reviews, we found that this threshold was not met in four instances. At the time of our review, Central Office staff tracked whether on-site reviews were completed; but, not whether they were conducted in accordance with policy. In response to our recommendation, VA noted that they recently began reviewing all completed on-site reviews to ensure that they conform to program policy and procedures.

System Limitations and Insufficient Training Hamper Program Performance and Oversight; However, VA Is Taking Steps That May Help

We identified two key challenges that limit VA's ability to improve Fiduciary Program performance and oversight. First, VA's electronic fiduciary case management system does not provide sufficient information to managers and staff about their cases, and it is cumbersome to use. Second, some managers and staff may not have received sufficient training to ensure that they have the necessary expertise to effectively monitor individual fiduciaries and oversee the program. VA is taking steps to build expertise about the case management system and the program itself by developing additional standardized training and piloting a consolidated Fiduciary Program unit covering 14 western VA regional offices.

¹⁶ On-site reviews were required by the Veterans' Benefits Improvement Act of 2004; VA developed its on-site review policy in 2005, and began conducting these reviews in 2006.

¹⁷ Both regional office managers and Central Office managers and staff regularly review a set number of beneficiary case files on either a monthly or yearly basis.

¹⁸ Internal controls should generally be designed to ensure that ongoing monitoring occurs in the course of normal operations, including regular management and supervisory activities, comparisons, reconciliations, and other actions people take in performing their duties. See GAO/AIMD-00-21.3.1.

VA's Electronic Fiduciary Case Management System. The Fiduciary Beneficiary System (FBS), VA's electronic fiduciary case management system, does not provide sufficient data to effectively manage the Fiduciary Program. Although it does provide some useful information on individual case files, pending workloads, and program performance, several system limitations hamper its ability to maintain accurate and timely data and provide management with quality information about the program.

FBS data fields are configured to track a fixed number of pending activities, which can limit the accuracy and completeness of information in the system. Staff and managers in the three regional offices we visited said they often need to track more upcoming actions than FBS permits. For example, staff noted that FBS accepts only one due date for upcoming financial reports, even though multiple financial reports may be due simultaneously if one or more is late. In such cases, the due date for the most recent overdue report overrides the older due date, even if the older financial report has not yet been submitted. To compensate for this FBS limitation, staff may track pending actions manually outside of the system or keep personal notes as reminder.

In addition, some managers find that FBS management reports are not always easy to generate or helpful in overseeing the program. For example, one manager told us that monitoring staff performance was difficult because the system does not generate a single report that shows all upcoming work that staff need to conduct over a certain period of time. Instead, several reports need to be generated and cross-referenced, which can be cumbersome. In addition, FBS does not store historical information beyond 30 days which would allow managers to examine past issues with fiduciaries or staff performance. For example, managers in two regional offices said that in order to look at historical information on seriously delinquent financial reports, they would have to manually examine monthly paper printouts generated in prior months by FBS, which can be time consuming. A 2007 internal VA report also stated that FBS requires extensive knowledge to use, which inhibits effective oversight and management at all levels of the program.¹⁹ Central Office managers acknowledged the shortcomings of FBS and in response to our recommendations said that they would create a work group to determine the feasibility of enhancing FBS or developing a new case management system.

VA's Fiduciary Program Training. Managers and staff in all three regional offices we visited said the Fiduciary Program is complex and requires a great deal of specialized knowledge to effectively monitor fiduciaries and provide program oversight. Although the Fiduciary Program has a policy manual to guide staff in carrying out their responsibilities, managers and staff said there are many nuances and exceptions that take time to master, particularly since each fiduciary and beneficiary situation may be different. In addition to these program complexities, managers in all of the regional offices we visited said that high staff turnover has contributed to a large number of inexperienced managers and staff in their Fiduciary Program units who need training.²⁰ For example, in two of the three regional offices we visited, only about one-third of staff (15 out of 47) had more than 2 years of experience in the program.²¹ During our site visits we were told that limited training for managers and staff may have contributed to various program problems, including failures to properly monitor fiduciaries or document certain actions in beneficiary case files.

VA has provided some training to ensure that Fiduciary Program managers and staff are proficient in carrying out their responsibilities, and some regional offices have developed their own training. VA provides a standardized computer-based training program for new staff who conduct visits to beneficiaries and fiduciaries and for those needing a refresher. Central Office managers and staff also said that they hold monthly teleconferences and conduct periodic visits to individual Fiduciary Program units to discuss selected topics. In addition, managers and staff in all three regional offices we visited said that they conduct their own weekly or bi-weekly training sessions on selected topics, such as how to determine whether bonds are required, and what kinds of situations constitute misuse. However, they noted that individual training occurs primarily on the job, and the effectiveness and con-

¹⁹VA, Fiduciary and Field Examination Pilot Implementation Team Report, (Washington, D.C. Nov. 5, 2007).

²⁰One common reason managers gave for high staff turnover was that Fiduciary Program positions tend to have low pay grade ceilings, so if staff want to advance beyond these ceilings, they must leave the Fiduciary Program. We attempted to obtain VA data on staff turnover to determine both the Fiduciary Program turnover rate and how it compares to other programs, but we were told that such data was not readily available.

²¹The third office, discussed in the next section, was the office which consolidated staff from the fiduciary units in 14 western regional offices.

sistency of such training depends on the expertise of staff conducting the training. Central Office managers acknowledged that standardized training would be beneficial and stated that they are increasing training for managers and staff beginning this year.

VA's Consolidation of Western Fiduciary Program Units. From January to September 2008, VA consolidated Fiduciary Program unit managers, staff, and files from 14 western VA regional offices into a single location in Salt Lake City, Utah—referred to as the Western Area Fiduciary Hub—to improve program performance and oversight. VA officials expect the hub to result in increased staff expertise, more consistent training, better leveraging of staff resources, and increased program efficiencies. For example, the hub created specific management positions for the Fiduciary Program and divided staff into teams to focus on specific actions and responsibilities in an effort to build program expertise, including expertise with FBS. In addition, the hub provides opportunities to train more staff at once, which could help to further build staff expertise and potentially increase the consistency of training. The hub also eliminated jurisdictional boundaries that prevented staff from conducting visits that were geographically close, but outside of their assigned area of responsibility, which VA expects will help balance workloads among staff and reduce travel time. Additionally, the hub moved from a paper based to an electronic case file system, called Virtual VA, in an attempt to more efficiently transfer information between Salt Lake City hub staff and the staff conducting visits in other offices.

While some VA managers and staff in the hub believe consolidation can help improve Fiduciary Program performance, they described some challenges that have impeded effective implementation of the pilot project. The hub's managers explained that there had been multiple changes in management and that implementation began before appropriate planning and resources were in place. For these reasons, hub managers did not consider the hub to be fully functional until January 2009, which was approximately 1 year after it opened. During our July 2009 visit to the hub, managers and staff mentioned such unforeseen difficulties as: (1) inconsistent access was granted into Virtual VA; (2) paper documents were being scanned into the wrong electronic beneficiary case file and (3) substantial amounts of time were being spent updating old cases that had been improperly maintained by the previous Fiduciary Program units. For some improperly maintained cases, staff had not taken required actions to address seriously delinquent financial reporting and potential misuse of funds had gone unidentified for significant periods of time. This required hub staff to perform necessary follow-up actions, in addition to completing incoming new work. Managers and staff noted that they have gained valuable insight and knowledge in implementing the hub that could help inform future office consolidations.

At the time of our review, the hub was still undergoing multiple changes and had not yet been evaluated, thus it was unclear whether consolidation of Fiduciary Program units has improved program performance and oversight. In response to our recommendation that the Central Office evaluate the performance of the hub, VA responded that it anticipates completing such an evaluation by September 2010.

Conclusions

One of VA's most vulnerable populations—beneficiaries who are unable to manage their own financial affairs—rely on VA's Fiduciary Program to ensure that their benefits are safeguarded. To better serve beneficiaries and protect their benefits, VA has taken or plans to take a number of actions intended to increase staff understanding and compliance with policies as well as enhance program oversight. Revising program policies and procedures, increasing training, evaluating alternatives to the program's case management system, and evaluating the Western Area Fiduciary Hub are important steps. However, in order for these actions to successfully address the longstanding shortcomings we and others have identified, VA management must pay sufficient attention to this program, including exercising adequate oversight of its staff. Absent sustained management guidance and staff compliance, beneficiaries may remain vulnerable to the consequences of fiduciaries misusing their funds.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or other Members of the Subcommittee may have.

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**Prepared Statement of Richard F. Weidman, Executive Director for
Policy and Government Affairs, Vietnam Veterans of America**

Good afternoon, Mr. Chairman. Thank you for the opportunity to appear here today to share our concerns and thoughts regarding concerns as to how the Veterans Benefits Administration is managing the Fiduciary program. This program is designed to protect some of our most vulnerable veterans. Unfortunately it appears that the program as currently operated falls far short of accomplishing that goal.

The basis of our comments today are based on the Inspector General's Report (IG) 09-1999-120, dated March 31, 2010, and on the General Accountability Office Report GAO-10-241, dated February of 2010, as well as anecdotal evidence gleaned from our local leaders and service representatives around the Nation.

First and foremost it is clear that there is no coherent plan for getting a handle on the parameters of this problem. VA simply does not know who is responsible for each veteran involved. Many of these veterans have major impairments because of schizophrenia or other condition that means that they are unable to properly care for themselves to the point that someone else needs to take charge of their financial affairs for their protection and well being. Seen from this perspective, they are the protectors of these veterans. Yet VA apparently does not know exactly who is responsible for each veteran, and is not doing even a reasonable job of monitoring to ensure that each and every veteran is properly cared for in regard to their safety and general well being. The first step is getting a handle on who is the fiduciary for each and every veteran involved in the program.

Second, it would appear that there are not clear guidelines on who should be a fiduciary, i.e., meaningful minimum standards and determination of eligibility for same. It is clear that such standards and certification are needed, hopefully without creating a needlessly bureaucratic mass of red tape. It also appears that there is a need for training and quality assurance mechanisms that would be appropriate.

Third, what is perhaps most distressing about the IG report referred to above is the lack of follow through and implementation of many (most?) of the recommendations in the IG Report from 2006 had not been actually implemented as pledged by the Veterans Benefits Administration in their Agency response to that 2006 report.

Fourth, because the majority of the more than 100,000 veterans who have fiduciary agents are in poor mental and/or physiological health, there should be regular communication between Veterans Health Administration (VHA) personnel and whoever is acting as fiduciary agent/guardian. Unless we missed it, monitoring of health condition does not even appear to be one of the key factors in any evaluation of this program. Is the living situation for the veteran appropriate or not, given his/her disabilities? Is he/she getting to regular appointments at VHA?

Fifth, the aggregate amount of monthly income is very significant for the veterans in this program. The size of the aggregate estate of these veterans combined is at least several billion dollars. Any time there is that kind of money there had better be accountability mechanisms to ensure that it is being used for the intended purpose(s). To not have clear guidelines and consistent monitoring only invites misuse and misappropriation of these funds. There appears to be so little in the way of effective tracking and oversight of this program that VA does not have any idea if the funds are being used correctly. This is akin to shipping \$10 billion in cash into the war zone in Iraq and then acting surprised that they could only account for less than a third of the money. It is not a prudent or wise thing to do.

Sixth, the GAO report is much more complete and thoughtful than the IG report, and is clearer as to the problems, although both overlooked one key thing that may in fact be widespread. We hear anecdotal cases about attorneys or others who are acting as agents/guardians for many veterans whom they have never met except over the telephone. It seems pretty clear to us that these people are getting more than the 4 percent of funds being handled in the name of the veteran. In fact the record keeping at the VBA does not appear to even be to the level where this can even be monitored or detected. Looked at from both a fiscal point of view as well as a human point of view, this must change.

To not make a significant effort to put such a system in place as quickly as possible (in real time, not traditional VA time) would be irresponsible, and leave many of our most vulnerable veterans subject to abuse and theft of resources that is rightfully theirs.

To essentially almost start over is the theme of much of what this Committee has heard in testimony the last few years about the Compensation & Pension system for adjudication of claims. VVA suggests that this is essentially the case with this program. There is finally progress toward straightening out the C&P system because VA has admitted that they have a problem, and is now recognizing that the VBA must treat the Veterans Service Organizations (VSO) as well as state and local

partners as true equal partners in this process of reform. We suggest that the same holds true for the fiduciary program at VA.

Rightly or wrongly the VA has received much criticism for the problems in the C&P system, to the point that many consider it a scandal that we have come to the sorry situation we all find ourselves with that system. I would suggest that this program is a major scandal just waiting to happen.

The welfare of the individual veterans who are least able to fend for him/herself should be enough to drive immediate reform. Added to that primary responsibility is the need to properly account for taxpayer dollars, and the VA and Congressional responsibility to ensure those funds are being used correctly for the welfare of the intended recipients.

Thank you for this opportunity to present our views here today. I will be happy to answer any questions.

**Prepared Statement of Sarah Wade, Coordinator, Family Issues and
Traumatic Brain Injury, Wounded Warrior Project**

Chairman Hall, Ranking Member Lamborn, and Members of the Subcommittee:

Thank you for inviting Wounded Warrior Project to testify on VA's Fiduciary Program. Through our long work with severely-wounded veterans and their family caregivers, many of whom are fiduciaries, Wounded Warrior Project brings a unique understanding to the operation, and shortcomings, of VA's Fiduciary Program. As a caregiver myself of a severely wounded veteran of Operation Iraqi Freedom who sustained severe traumatic brain injury, and as one who has worked with many other caregivers of severely wounded warriors, I believe I can offer a helpful perspective.

WWP appreciates the important responsibility vested in VA's Fiduciary Program to safeguard the benefits of veterans who are unable to manage their own affairs. That program unquestionably has a critical mission and performs vital work. But we are gravely concerned that in managing the program, VA does not take account of, or even recognize, the unique circumstances of family members who have devoted themselves to the full-time care of severely wounded veterans, and who also serve as their fiduciaries. Parents and spouses who have made great sacrifices—often giving up careers and depleting savings—to care for their loved ones hardly pose a risk of misusing the veteran's benefits, and in fact should be free to apply part of their loved one's benefits to help maintain a household that they share. We welcome this opportunity to document the critical need for VA to revise its policy and practice with respect to caregiver-fiduciaries who have demonstrated their dedication to the veteran's well-being. Adoption of the recommendations we will be discussing would end the often shameful and arbitrary treatment that too many families have endured.

Let me reiterate. WWP recognizes that the risks the VA fiduciary program is designed to counter are certainly real, and appropriate oversight is needed. In that regard, we appreciate the Government Accountability Office's (GAO) emphasis in its February report on the importance of improving VBA compliance with Fiduciary Program policies.

Importantly, those policies recognize that all fiduciary cases do not require the same degree of attention and supervision, and that field examiners should consider the unique circumstances of each case. Unfortunately, there appears to be wide variability in examiners' exercise of that judgment with respect to many of the fiduciaries with whom WWP works— family members who are not only fiduciaries for severely wounded veterans, but also their full-time caregivers.

GAO makes an important observation in stating that VA's fiduciary case management system does not provide sufficient information to managers and staff about their cases. That statement highlights that VA is not sufficiently aware of, and not sufficiently attuned to, the unique circumstances of these caregiver-fiduciaries.

The many, many caregivers of wounded warriors whom I've known and with whom I've worked over the years have made great personal sacrifices to provide daily care to their loved ones. They've chosen to give up, or indefinitely suspend, careers or career plans. These family members have put their own lives "on hold" to be caregivers. Many have been appointed fiduciaries. I can assure you that their love and dedication to their wounded spouses and children did not change in any way by virtue of taking on new responsibilities as a fiduciary.

Yet, in dealing with caregivers who serve as fiduciaries, the Veterans Benefits Administration (VBA) too often fails to recognize their sacrifice. Instead, parents and spouses who over time have surely proven their dedication to their loved one, too often encounter a VBA system marked by its rigidity, intrusiveness, and

unreasonableness when it conducts oversight of those caregivers in their role as the veteran's fiduciary.

Let me illustrate my point by way of examples:

- A VBA field examiner imposing a summer-vacation expenditure limit for a profoundly wounded warrior, his wife and two children;
- A mother/caregiver having to explain to a VBA examiner why she allowed her wounded-warrior son to spend "too much" money on Christmas gifts;
- The spouse/caregiver of a traumatically brain-injured veteran having to get permission from a VBA field examiner to purchase a couch;
- A devoted mother-caregiver to her minimally-conscious son being required to pay back money for toilet paper purchased for the home with the veteran's funds;
- A family's being questioned about expenditures for gasoline when the wounded warrior does not drive or own a car, but the fuel was used to transport the veteran;
- Several instances of mothers, who are full-time caregivers to wounded veterans, being required to pay rent to the veteran rather than residing in the home for "free;"
- A field examiner denying a mother-caregiver's request to replace the (now-wheelchair bound) veteran's 8 year-old high-mileage truck that she uses to transport him in a rural, snowy part of the country; and
- A mother-caregiver having to relinquish her role as a fiduciary because she had had to declare bankruptcy after leaving her job to care for her wounded warrior son.

Let me assure you—from personal knowledge—that these families do not deserve to be treated in the demeaning, petty and hurtful manner reflected in these examples. At the same time, we would acknowledge that VBA examiners have not universally been as unreasonable as these examples suggest. Yet these specific illustrations are not isolated problems, or remote outliers. Further compounding these problems is that as these caregivers have looked to one another for clarity in understanding the often-inexplicable workings of VA programs, what becomes apparent is the stark variability in VA oversight across the system. The impression, frankly, is of a program marked by arbitrary and capricious decision-making.

It should be recognized that a family member or members residing with the veteran may have no income—and may well have depleted some of their own assets—to become the veteran's caregiver. We see no basis whatsoever for precluding such families from drawing on the veteran's benefits to pay for the family's living expenses! VA Fiduciary Program policy should make that abundantly clear. But even more fundamentally, a devoted family member who provides daily care for a severely wounded veteran should not be treated as an object of VA suspicion—either in terms of rigid management of their budgeting or intrusive home visits—simply because the individual serves as the veteran's fiduciary. We believe these families are owed a presumption of honesty, and should be treated with dignity.

Over the past year we have discussed these concerns with officials in the Veterans Benefits Administration, offered to work with them on these issues, and arranged for them to meet with a family caregiver-fiduciary to appreciate better these families' experiences under the program with the hope that necessary modifications could be made. But more than half a year since first raising these concerns with VA, it remains unclear whether promised remedial revisions to Fiduciary Program policies will ever come to fruition.

Separate from the issues of inconsistent oversight and arbitrary requirements, VA has acknowledged a need for more training, consistent with GAO's findings. WWP strongly agrees. But VA must not only provide more training for its fiduciary program staff, it should better inform family members of their responsibilities in agreeing to serve as fiduciaries. These steps would be helpful, but certainly would not go far enough. VBA must substantially revise its policy and practice to reflect far greater balance and understanding as it relates to caregiver-fiduciaries whose sacrifices have surely demonstrated that they do not pose significant risk.

Given the resource and staffing problems GAO described in reporting on the Fiduciary Program, it is particularly difficult to understand devoting resources to close scrutiny of family caregiver-fiduciaries who have proven themselves over time.

Indeed, the caregivers are well known to VA. Each has worked closely with a Federal Recovery Coordinator and/or case-managers in connection with their veteran's care. In the isolated instance in which there is some indication of a problem concerning a caregiver, caseworkers in the Veterans Health Administration, and often care-coordinators in other VA offices, become aware of it. From the caregivers' perspective, "VA" is a single entity, and they have every reason to believe VA knows

they are reliable and have integrity. So imagine how confusing it is for a caregiver who has worked closely, and developed relationships of trust, with other VA staff to encounter VBA personnel whose fiduciary-requirements convey fundamental mistrust. It does not seem too much to ask that VBA and other arms of the Department work more closely together to share information relating to caregiver-fiduciaries, rather than requiring these dedicated individuals to prove themselves yet again.

In short, Mr. Chairman, devoted family members who have clearly made great sacrifices to care for their loved ones hardly pose a risk of misusing the veteran's benefits. VA Fiduciary Program policies and practices must be revised to draw distinctions among categories of fiduciaries. A devoted family member who provides consistent, high-quality daily care for a severely wounded veteran should not be treated as an object of VA suspicion simply because the individual serves as the veteran's fiduciary. We believe these families are owed a presumption of honesty, and should not be subjected to rigid budgeting and ongoing intrusive scrutiny without substantial cause. Finally, VA must work to achieve more uniform standards and greater consistency in its application of fiduciary oversight policy.

Mr. Chairman, we look forward to working with the Subcommittee staff in addressing these concerns regarding the VA's Fiduciary Program.

That concludes our testimony. I'd be pleased to address any questions you may have.

**Prepared Statement of Jacob B. Gadd, Assistant Director for
Program Management, Veterans Affairs and Rehabilitation
Commission, American Legion**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide The American Legion's views on the Department of Veterans Affairs (VA) Fiduciary Program and improvements VA can make in providing quality health care and benefits for those veterans with mental health injuries or disease. As a majority of World War II and Korea veterans are aging, improvements to the VA's Fiduciary Program is needed to ensure they receive their benefits in a timely manner. Additionally, veterans that are filing claims for Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) as well as other geriatric illnesses such as Alzheimer's or Dementia may require use of a Fiduciary and without effective oversight, coordination and management, these veterans will continue to experience delays and/or financial hardship in accessing their earned benefits.

Title 38, Code of Federal Regulations (CFR), Sections 13.1 to 13.111 provides the guidance for VA to manage the Fiduciary Program. VA defines a fiduciary as a person or an institution responsible for managing money or property for another and exercising a standard of care imposed by law or contract in such management activity. VA is charged with appointing a fiduciary to manage and handle the veteran's VA Compensation and Pension (C&P) benefits, if a veteran is deemed mentally incompetent.

A recent VA Office of the Inspector General (OIG) report, Audit of the Fiduciary Program's Effectiveness in Addressing Potential Misuse of Beneficiary Funds, found that the "Veterans Benefits Administration (VBA) lacks elements of an effective management infrastructure to monitor program performance, effectively utilize staff, and oversee fiduciary activities." In addition, in VA's Fiscal Year (FY) 2009 Performance and Accountability Report, VA achieved an 82 percent result out of an 88 percent goal, due to challenges with reorganization of workflow and the training of 20 new Legal Instruments Examiners. FY 2009 was the first year that all fiduciary activities for regional offices in the Western Area were consolidated to the Western Area Pilot Fiduciary Hub in Salt Lake City. Additionally, VA transitioned all fiduciary activities to paperless processing in an effort to increase its targeted goal for the next fiscal year.

The Government Accountability Office (GAO) also released a report in February 2010, "Improved Compliance and Policies Could Better Safeguard Veterans' Benefits," which recommended VA "strengthen Fiduciary Program policies for monitoring fiduciaries, improve staff compliance with program policies, evaluate alternative approaches to meet electronic case management system needs and evaluate the effectiveness of consolidating 14 western Fiduciary Program units." VA has consolidated the Fiduciary Program to ensure that these policies are streamlined and have better centralization of management.

While VA is moving forward with the Fiduciary Hub in Salt Lake City and is taking actions to rectify their Fiduciary Program problems, based on the recommenda-

tions from OIG and GAO. The American Legion, however, continues to have several concerns. These concerns include the difficulty and delay in processing the appointed fiduciary, VA's national centralization model and feedback from American Legion Department (State) Service Officers and Pension Management Center staff.

In researching fiduciary forms required by VA Regional Offices, the number of forms, the accompanying delay in processing and the stress it places on veterans and their family members is monumental. In fact, as noted in the chart below from VA Pamphlet 21-05-1: Federal Fiduciary Program Pocket Folder, 21 different VA forms are required to appoint a fiduciary.

1.	VA Form 21-0509: Notice of Fiduciary Commission
2.	VA Form 21-0520: Certificate of Commissions Approval
3.	VA Form 21-555a: Designation of Payee
4.	VA Form 21-555: Certificate of Legal Capacity to Receive and Disburse Benefits
5.	VA Form 21-592: Request for Appointment of a Fiduciary, Custodian or Guardian
6.	VA Form 21-0792: Fiduciary Statement in Support of Appointment
7.	VA Form 21-3045: Estate Action Record
8.	VA Form 21-3190: Minor Beneficiary Field Examination Request and Report
9.	VA Form 21-3537a: Field Examination Request
10.	VA Form 21-3537b: Field Examination Report
11.	VA Form 21-4703: Fiduciary Agreement
12.	VA Form 21-4706: Court Appointed Fiduciary's Accounting
13.	VA Form 21-4706b: Federal Fiduciary Account
14.	VA Form 21-4706c: Court Appointed Fiduciary's Accounting
15.	VA Form 21-4707: Estate Summary
16.	VA Form 21-4709: Certificate as to Assets
17.	VA Form 21-4716a: Adult Beneficiary Field Examination Request and Report
18.	VA Form 21-4718: Account Book
19.	VA Form 21-4718a: Certificate of Balance on Deposit and Authorization to Disclose Financial Records
20.	VA Form 21-8473: Withdrawal Agreement
21.	VA Pamphlet 21-05-1: Federal Fiduciary Program Pocket Folder

Second, The American Legion has been concerned about VA's centralization policies and that Veterans' Service Organizations (VSOs) are not included in these processes. For example, when VBA consolidated general inquiry telephone calls from individual regional offices to eight national call centers (NCCs), claimants, beneficiaries and VSOs, who had general questions concerning VA benefits programs, were routed to one of the eight call centers, rather than being able to call the local Regional Office (RO). The American Legion continues to urge VA to provide internal access phone numbers for accredited VSO representatives, so the representative could bypass the consolidated call centers and contact the RO directly in order to access information in a timelier manner to provide better service to their clients. VA commented on this recommendation stating, "providing direct internal telephone access to VSO representatives at each Regional Office (RO) would require the redirection of resources currently dedicated to disability claims processing."

Mr. Chairman and Members of the Subcommittee, The American Legion recommends authorizing personnel solely to administer the Fiduciary Program to ensure this program remains their priority and expertise.

VA has successfully demonstrated that the Consolidated Patient Account Centers (CPACs) model has helped mitigate problems with veterans' third-party insurances being improperly billed. The American Legion understands the importance of collecting data at VA's national level so that trends can be analyzed in order to develop best practices. The only recommendation The American Legion has is that this Subcommittee is to exercise oversight over VA's centralization plans. We urge this Subcommittee to monitor the progress to ensure that VSOs are given internal access phone numbers to better represent their clients.

The American Legion has approximately 2,000 accredited Department (State) Service Officers and County Veterans' Service Officers (CVSO) nationwide that help veterans file claims for VA benefits. Several of these service officers have witnessed firsthand some of the difficulties experienced with the Fiduciary Program. For example, a service officer reiterated the concern that, *"it's difficult for veterans to contact anyone in the Fiduciary Hub because they do not have a 'public contact' number dedicated solely to fiduciary issues and the general VA public contact line can only provide limited information."* Other service officers commented that the ROs and Pension Centers are not always notifying the Hub by way of the VA Form 21-592 (Request for Appointment of a Fiduciary, Custodian or Guardian) that an appointment of a fiduciary is required until someone such as a VSO makes an inquiry.

The third problem American Legion Service officers have encountered with the Salt Lake City Hub was that the center inherited a huge backlog when they consolidated 14 Western Fiduciary Program units in January, 2008. In most cases, the center has improved, to 45 days, the backlog of initial visits to appoint fiduciaries. However, the large backlog of follow-up visits (over 120 days) remains. The Salt Lake City Hub currently is authorized 112 positions, 56 of which are field examiners. Although the center is considered to be fully staffed, the current staffing level does not appear to be sufficient in light of the backlog that still needs to be addressed.

Additionally, The American Legion has national representatives at the three Pension Management Centers (PMCs) in Minneapolis, Philadelphia and Milwaukee. American Legion representatives at these locations have unanimously voiced their concerns in one area—improving the coordination between the Regional Offices of jurisdiction, Pension Centers and Fiduciary Hubs. For example, one of our service officers helped a veteran file for benefits in August 2009 and the rating decision was completed on February 2010 proposing incompetency. On March 2010, a letter was sent to the veteran in regards to incompetency. The veteran waived due process later in March 2010, which enabled VA to act on the claim prior to waiting the 65 days. Waiving the due process helped speed up the process. The award letter was sent in early April stating the first payment was sent in May, but the retroactive benefits will be withheld until the Guardianship Unit can make their visit. After all this process is complete, the Pension Management Center sends VA Form 21-592 (Request for Appointment of a Fiduciary, Custodian or Guardian) to the Hub in Salt Lake City. The Hub then notifies the Guardianship unit in the particular RO which can take months. Once the field exam is completed, the VA Form 21-555 (Certificate of Legal Capacity to Receive and Disburse Benefits) is sent back to the PMC for authorization of the retro benefits.

In another case, the Fiduciary process took 4 years which made the family bear the cost of this delay. The American Legion service officers also reiterated that there is not a dedicated phone number for the Fiduciary Hub that a family member or VSO representative can contact to check on the status of claim. The American Legion is concerned that other veterans are experiencing the same delays, financial hardships and inability to reach the Fiduciary Hubs because of the lack of seamless coordination between ROs, PMCs, Guardianship Units and Field Exams.

Prior to October 2009, it was VA's policy to withhold benefits payable to a beneficiary while competency is considered, and during the period required to appoint a fiduciary. VA issued Fast Letter 09-41 in October 2009 providing revised procedures for VA to pay all monthly and recurring benefits, then withhold only retroactive benefits pending appointment of a fiduciary. However, many beneficiaries continue to suffer hardships as a result of the delays. The American Legion Service Officers have stated that VA workers receive credit for processing the case within the 45-day period. If a case is not completed during the 45-day period, there are not any work credits or staff initiative to get the case finalized. In one office, there are over 100 cases over 3 months to 1 year. Additionally, a service officer in a Pension Management Center helped schedule a fiduciary field exam because the veteran had been waiting for over 4 years.

Mr. Chairman, this is unconscionable that a veteran's claim can be delayed for this period of time and that the veteran's family member or appointed VSO representative cannot access the system through VA's computer system or an internal phone number. Our Nation's veterans and their beneficiaries deserve better.

In closing, The American Legion has six recommendations:

1. The American Legion recommends an additional Full Time Employee (FTE) be funded and authorized within each RO and PMC solely dedicated to Fiduciary Program management and oversight.
2. The American Legion recommends Congress appropriate funding to VBA's Information Technology (IT) budget to set up an IT software package within all of the RO's Fiduciary Program Units, PMCs, and Salt Lake City Fiduciary Hub to enhance communications between each of these offices.
3. The American Legion recommends that part of the software package include reminders or alerts throughout the process to ensure that no paperwork is lost or falls through the cracks.
4. The American Legion recommends that Congress assure VSO representatives are given an internal access phone number for each of the facility's Fiduciary Program Units to improve the timeliness, quality and full coordination of the program.
5. The American Legion recommends that Congress assure VA creates a Fiduciary national toll-free number for family members and the general public. The American Legion recommends that Congress direct VA to establish a VA Voluntary Service (VAVS) Pilot Program to train volunteers on how to become VA Fiduciary Volunteers.

Mr. Chairman, The American Legion has over 6,000 volunteers that serve veterans every day in the community that help veterans in VA Medical Centers, Community-Based Outpatient Clinics, Vet Centers, Fisher Houses, Domiciliaries and State Veterans Homes. Each year, Legionnaires serve over 916,000 hours of service to help veterans. The VAVS Program is the largest volunteer program in the Federal Government, providing over 64 years of voluntary service to the Nation's veterans. In 2008, the VAVS Program developed a pilot program for Caregivers and The American Legion is assured that if given the necessary training and supervision by the Voluntary Service Program Managers at each VA Facility, a program could be similarly developed for these volunteers. Additionally, the current Fiduciaries for these veterans within the program would receive standardized training and evaluation.

As the Nation's veterans experience mental health trauma or diseases, they or their family members should not have to worry about receiving their earned benefits. Mr. Chairman and Members of the Subcommittee, The American Legion sincerely appreciates the opportunity to submit testimony. Thank you.

**Prepared Statement of Vivianne Cisneros Wersel, Au.D., Chair,
Government Relations Committee, Gold Star Wives of America, Inc.**

"With malice toward none; with charity for all; with firmness in the right, as God gives us to see right, let us strive to finish the work we are in; to bind up the Nation's wounds, to care for him who has borne the battle, his widow and his orphan."

. . . *President Abraham Lincoln, Second Inaugural Address,
March 4, 1865*

Chairman Hall, Ranking Member Lamborn and Members of the Disability Assistance and Memorial Affairs Subcommittee, I am pleased to be here today to testify on behalf of Gold Star Wives of America. My name is Vivianne Wersel, Chair of the Gold Star Wives' Government Relations Committee. I am the widow of Lt. Col. Richard Wersel, Jr., USMC, who died suddenly on February 4, 2005, one week after returning from his second tour of duty in Iraq.

Gold Star Wives of America, Incorporated (GSW), founded in 1945, is a Congressionally Chartered organization of spouses of military members who died while serving on active duty or as a result of a service-connected disability. GSW is an all-volunteer organization. We could begin with no better advocate than Mrs. Eleanor Roosevelt, at the time newly widowed, who helped make Gold Star Wives a truly "national" organization. Mrs. Roosevelt was an original signer of our Certificate of Incorporation as a member of our Board of Directors. Our current members are widows and widowers of military members who served during World War II, the Korean War, the Vietnam War, the Gulf War, the conflicts in both Iraq and Afghanistan, and every period in between.

We begin by thanking this Committee and our Government for providing essential services necessary to help us through our loss, many services being done well, in a caring and helpful way. But I also want to stress the importance of staying vigilant so that no one who is grieving the loss of a loved one will have to endure indignities or a lack of benefits because of the lack of knowledge. Therefore, we need consistent and relevant assistance before and at the time of the death, and for some period of time thereafter. While there have been huge strides made over the last several years in alleviating problems with benefit and eligibility misinformation coming to those who are grieving, confusion about the complete benefits available will be a normal beginning, with the best of information provided. We owe information to those in the throes of grief about the all the benefits available with the best information provided. We owe it to these families to help secure their futures with the most accurate information possible at an appropriate time—when it is ready to be received—because the confusing array of decisions that must be made have consequences for the rest of that their lives.

VA Fiduciary Program

Gold Star Wives was unaware of VA's Fiduciary Program until we were asked to testify at this hearing. As we delved into the subject matter, the research became a game of 20 questions. It's difficult to critique or make suggestions for a program of which we were unaware. There have been several hearings about the Fiduciary Program over the last 7 years; today is our first exposure to this VA Fiduciary Program. Therefore, Gold Star Wives' main concern about the Fiduciary Program is the lack of information provided to eligible surviving spouses. Other concerns are the hardships surviving spouses encounter as well as the limitations of the VA fiduciary program.

Lack of Information

From the perspective of Gold Star Wives, the major problem is a lack of publicity and available information. There is no mention of the Fiduciary Program in the *VA Handbook for Veterans, Dependents and Survivors*. The surviving spouse needs prior knowledge of this existing program in order to obtain information on the VA Web site. Yet, according to VBA, there are 35,000 surviving spouses who are beneficiaries in the VA Fiduciary Program. This is a third of the total of the approximate 109,000 participating in this program. Furthermore, this subject has neither been discussed in prior testimonies that included Gold Star Wives nor has it been a topic discussed in the VA/DoD Survivor Forum quarterly meetings. Lack of information and participation does not promote optimal care for the surviving families. How can we improve a program if we have no knowledge of the existing program? We have many questions that we hope will be answered as the result of this meaningful hearing today.

Hardships

Many Gold Star Wives were their spouse's fiduciary before their military spouse died. Some were young and required an annual bonding fee because their credit score was not sufficient. Why do spouses have to pay significant fees to be bonded?

In 2002, Petty Officer 2nd Class Anthony Palmer collapsed while playing basketball. He was kept alive via medical devices. When the respirator was removed, he unexpectedly continued living; however, he was totally incapacitated. He was then medically retired, but when he died 2 years later, his VA disability compensation suddenly stopped. His wife and two toddlers were left without support. What role did the VA Fiduciary Program play for this new Gold Star Wife with young children? Mrs. Palmer sought assistance from the Navy Marine Corps Relief Society when the disability compensation ceased. At that time, the Navy Marine Corps Relief Society referred her to Gold Star Wives.

Limitations

When the SGLI was assigned by name to Mrs. Palmer's two small children, she had to pay several thousand dollars for a civilian court guardianship. Why is this required when she is the biological parent of the small children? She is one of the many young widows with children who are experiencing this problem. Why is the Fiduciary Program not used for SGLI, which is administered by the VA?

Mrs. Dora Aja married her college sweetheart in 1953. His heart attack in 1976 eventually left him totally incapacitated. She has to be bonded to be a fiduciary at a cost of \$250.00 annually. When purchasing a home to be closer to family she had

to receive permission from VA and the Defense Finance and Accounting System to purchase a home. She must submit a spreadsheet of all her expenses. Accountability is important; however, why does she have to pay to be bonded? Also, are the spouses provided with the tools they need to monitor the administration required from them annually? Mrs. Aja stated, "I have cared for him and loved him for over 50 years and the Government treats me like a juvenile. It is a good thing that my husband is not aware of what is happening because he would be angry." She is not a widow or a veteran, and she is not treated as the dedicated military spouse that she is even though she is soon to be a Gold Star Wife.

There are approximately 35,000 surviving spouses who are incapacitated and have fiduciaries. Who takes the lead when the surviving spouse becomes incapacitated? If the surviving spouse wasn't a fiduciary for the veteran spouse, they may well not know anything about the program and, by extension, neither would their children. How many spouses (current and surviving) are also fiduciaries for the nearly 18,800 adult disabled children in the program?

Concerns

What I can report to you today is that our number one concern with the VA Fiduciary Program is our lack of information. It is imperative that we are provided more information on the Fiduciary Program, so it provides meaningful support to surviving spouses as well as the soon-to-be surviving spouses who find themselves in this position. As the result of today's hearing we hope our questions will be answered.

Gold Star Wives of America has the following questions:

1. Are there ongoing problems with the program that have yet to be fixed?
2. Where and how is this program publicized?
3. What is the protocol for the information to be provided in a timely fashion?
4. Is it only provided to those for whom the program is necessary?
5. What training is available for the challenged spouse who is caring for an incapacitated, perhaps dying veteran, who does not have the accounting and clerical skills to manage the tedious, demanding paperwork required by the annual audit?
6. Some may find it necessary to hire a professional to do the reports for the audit at additional expense to them. Is there funding for this assistance?
7. At what point is a fiduciary necessary? Who makes the determination?
8. Could the VA select someone other than the spouse?

Thank you for this opportunity to testify. The families of the Nation's fallen have already suffered the greatest loss; there is no need to make these families struggle financially unnecessarily. Gold Star Wives appreciates the compassionate work which Members of this Subcommittee and the staff do on our behalf. We always stand at the ready to provide this Subcommittee with any additional needed information.

**Prepared Statement of Katherine R. Pflanz, Field Examiner,
Winston-Salem Veterans Affairs Regional Office, on behalf of
American Federation of Government Employees, AFL-CIO, and
AFGE National Veterans Affairs Council**

Dear Chairman and Members of the Subcommittee:

The American Federation of Government Employees, AFL-CIO (AFGE) and the AFGE National Veterans Affairs Council (NVAC), the exclusive representatives of VBA employees working in the Fiduciary Program, appreciate the opportunity to present the views of front line employees on how to better protect vulnerable veterans and their families.

RECOMMENDATION: PROVIDE NATIONALLY UNIFORM, FORMALIZED TRAINING ON FIDUCIARY ISSUES

AFGE and NVAC agree with the Government Accountability Office (GAO) recommendation for a national training program for the Fiduciary Program. Field Examiners (FE) and Legal Instrument Examiners (LIE) need formal training prior to assuming their responsibilities and refresher training at least every 2 years.

Standardized formal training is also an invaluable tool to form bonds with co-workers across the Nation and share lessons learned and best practices. A national Q&A mailbox or employee-only Web site could facilitate ongoing sharing of information. This teaching tool would be a timesaver and improve quality for the employees trying to protect beneficiaries in receipt of VA benefits.

New employee training should be centralized, as it is for Rating Specialists and Veterans Service Representatives (VSR). Currently, the initial training for new FEs is woefully inadequate, consisting only of online course, without being able to ask questions of an instructor or supervisor. This online curriculum is only designed to explain how fiduciary process works, e.g. conducting field exams, and does not address other critical issues, such as entitlement to pensions and other benefits. Only those FEs who have previously worked as VSRs received formal training on benefits, which is important to ensuring the beneficiary is receiving all the funds to which they are entitled.

On-the-job training needs to be standardized. New FEs are sent out to the field to observe other FEs conducting interviews. While this is helpful, there is no standardization to ensure that all new FEs have sufficient exposure to different types of cases.

Inadequate new employee training slows production, increases errors, and causes undue duplication of work. Often times more experienced FEs and LIEs must interrupt their own work to answer questions or correct errors.

Training for experienced employees is minimal and haphazard. VBA no longer provides centralized training that bring FEs into one location, e.g. RO, regional or national sites, for face-to-face instruction. Ongoing training often consists of conference calls where management merely points out common errors, local policy changes, and the newest hot topic. This limited time does not provide for proper guidance on correcting errors. Also, significant changes in policies and procedures are implemented without proper training or input from front line employees.

RECOMMENDATION: DISCONTINUE THE HUB PILOT PROGRAM

AFGE and NVAC have serious concerns about the Hub Pilot Program. This model has had serious ramifications; it has adversely affected training, case management, case tracking, and the proper application of different state rules.

The Fiduciary Program works with a special population and it is critical that the employees oversee all their needs, not just their money. The RO model facilitates that oversight far better than the Hub model. At the RO, staff has tighter control over the accounting process, and is able to work much more closely with both the veteran and the payee to ensure the beneficiary lives the best life possible.

RECOMMENDATION: INCREASE STAFFING AND REVISE THE WORK CREDIT SYSTEM AND PERFORMANCE STANDARDS

The Fiduciary Program is facing increased demand for its services, especially among OIF/OEF veterans returning from two wars and an aging veteran population from earlier conflicts. In addition, due to our mobile society and current economic difficulties, many families are less able to assist disabled beneficiaries physically or financially than they were in the past. Families look more and more to VBA to protect disabled beneficiaries.

Additional FE hiring has begun but more is needed. FEs are always working frantically to meet their production standards, ensure quality, maintain personal safety, and keep apprised of all the new changes. The expectation is that this can be accomplished with inadequate training, experience, and within an 8 hour day. The current performance standards are unrealistic for the tools currently provided to the Fiduciary staff. When overtime is offered, it frequently raises the production expectation which is already unobtainable to the less experienced.

Managers also need training on the workings of the Fiduciary program, as well as employee issues such as personal safety and workers compensation claims for injuries incurred in the field.

As a result of inadequate management, understaffing, unrealistic performance standards, and lack of training, the Fiduciary Unit is less able to properly serve and protect those who need our protection the most in today's environment.

RECOMMENDATION: IMPROVE ACCESS TO IT TOOLS AND OTHER NEEDED EQUIPMENT

AFGE and NVAC agree with GAO's recommendation for more efficient automated tools, including more informative reports from the Fiduciary Beneficiary System. In addition, there are a number of problems with National Field Examiner Report Generator Program. Although this system was intended to increase uniformity in the process of typing field exams, in practice, it is a difficult system to use and dramatically increases the time required to type reports. For example, FEs spend substan-

tial time deleting information from the Initial Appointment Report for follow up reports, and the system lacks separate templates for reports for Adult Helpless Children, Insurance Cases and Minors. If FEs on the front lines had been involved in the design and testing of this system *before* it was rolled out, it would function more effectively.

FEs are not provided with other needed equipment on a sufficient or timely basis. There are frequent delays in issuing Government vehicles, thus requiring some FEs to share vehicles. As a result, both the well being of the beneficiary and FE timeliness suffer.

Phone access is an essential part of the FE's job each and every day, all day long. They have to schedule appointments, find beneficiaries, get information over the phone from legal custodians, and in some cases, the entire field exam is conducted by phone. Currently, the cell phones that are provided to FEs often lack adequate geographic coverage. FEs should have a long distance phone card as back up.

In addition, travel funds that FEs need to manage their casework are often difficult to obtain due to budget constraints.

RECOMMENDATION: PROVIDE MORE EXPERIENCED LEADERSHIP

The Fiduciary Program is facing a serious lack of experienced coaches to mentor employees. Front line employees are being trained and supervised by managers who do not fully understand the fiduciary rules and regulations. Coaching is only effective if done by someone with extensive hands-on experience and subject matter expertise.

Too often, the message from management is "get it done" to make production without an understanding of the mechanics. This approach hurts both beneficiaries and the Fiduciary Unit. If managers had more direct experience on the front lines, they would have more realistic expectations of what is required and how long it takes to do the job correctly.

RECOMMENDATION: REVISE REVIEW EXAMINATION SCHEDULES

FEs are unnecessarily burdened with conducting annual field review of claims in cases that already demonstrate accurate discharging of the fiduciary responsibilities, thus preventing them from completing work needed for other claims. AFGE and NVAC do not advocate complete elimination of the field review, but rather, many can be done less frequently or on a random basis. The current limitation on review examinations that are input in 2 or 5 year increments should be lifted; less frequent exams are recommended where there are no questions of impropriety or uncertainty about the fiduciary's conduct.

For example, currently, FEs are required to visit beneficiaries in Adult Living Facilities every 3 years. These beneficiaries should be reclassified as "institutionalized", which would reduce the requirement to a phone call every 6 years. This would suffice because the VA benefits are totally consumed by cost of care and all their housing and medical needs are being met in a safe manner. Also, these facilities are monitored by other Federal, state and local agencies.

More infrequent visits to beneficiaries with dementia who are in the locked section of the facility would also suffice. More generally, in cases like these, it would be more effective to make unannounced visits on a random schedule in addition to scheduled audits.

VBA could also eliminate field exams for beneficiaries receiving small amounts of funds, e.g. the old law pension rate of \$61, or anyone receiving less than the 30 percent compensation rate. When beneficiaries are given the entire VA benefit for person spending, they are in effect managing their own funds. Visits for spouse payees receiving less than the 30 percent rate could be replaced by an occasional call or letter.

Annual follow-up exams for accounting cases should be conducted on a 14-15 month basis to allow for accountings to be reviewed and problems to be addressed. Follow up field exams should be limited to problem cases.

RECOMMENDATION: IMPROVE COMMUNICATION WITH OTHER AGENCIES

Although FEs are only responsible for ensuring the proper use of VA funds, they are also expected to detect misuse of other benefits such as Social Security and military retirement pay. We urge Congress to improve the lines of communication between the Fiduciary Program and other agencies to enable FEs to alert them to problems. National dissemination of reports from Field Examiners at other agencies would help VBA understand the proper use of those benefits.

Currently, Social Security and VBA have a joint program for incarcerated beneficiaries; a joint program based on this model for Field Examiner fiduciary selection and monitoring should be considered.

In contrast, we believe that FEs should *not* be held accountable for informing beneficiaries about non-VA rules or benefits such as park passes and fishing and hunting licenses; this should be carried out by local Veterans Service Organizations.

RECOMMENDATION: INCREASE EMPLOYEE INPUT INTO NEW POLICIES AND PRACTICES

Frontline Fiduciary Program employees are rarely given the opportunity to make suggestions, and when given that opportunity, their suggestions are often not seriously considered. Some employees feel that they have been chastised or ostracized for making suggestions.

This program will be greatly improved by input from the people who actually know the job—the ones on the front lines who go into beneficiaries' homes and nursing facilities on a daily basis. Currently, management is making all the decisions based on what *they* feel is best. The front line employees are forced to simply follow their lead. Managers make many significant decisions during conference calls without considering the effect on FEs and LIEs. Decisions that change nationwide directives should not be made without input from the field. FEs and LIEs should be included in these conference calls. It is too difficult for the managers to communicate all the changes and directives after the call takes place.

Minutes of a meeting should not be policy. Rather, the Fiduciary Program should adopt the approach used for Rating Specialists and VSRs to issue Fast Letters accompanied by explanations, directives, and guidelines.

OTHER RECOMMENDATIONS

Workforce Recruitment and Retention: The current senior FE career ladder—that tops out at a GS-11—is not aligned with recently added FE responsibilities. The decisions made by FEs are more consistent with the complexity and impact of decisions made by IRS Officers and INS agents whose career ladders top out at a GS-12. LIEs should also receive have a career ladder that is aligned with that of a VSR. Finally, the agency should pay the full cost of FE liability protection against civil suits; currently, FEs have to pay half the cost.

Guidance to Fiduciaries: A subject matter expert should teach a structured course on an initial or quarterly basis to inform fiduciaries of applicable requirements and their responsibilities. The course should include a hands-on component. Their travel costs and lost time from work should be reimbursed.

Quality Assurance: AFGE and NVAC commend VBA for centralizing Quality Reviews to increase their consistency, but better training is also needed to reduce errors. STAR reviews have become punitive in recent years; they are now part of Directors Dashboard, and therefore can make or break a performance rating. This also requires employees to focus on quantity far more than quality.

Time Frames for Selection of Fiduciaries: Current time frames for completion of initial appointments of fiduciary are not sufficient. Given new parameters that apply (with more stringent accounting and oversight), it takes more than 45 calendar days to select proper fiduciaries who will serve the veteran's best interests. This 45 day time frame fails to take into account logistics, and the fact that compliance with our requests (including scheduling of appointments and returning paper-work) is largely voluntary.

Case Files: Since there is no need to see the fiduciary after the initial appointment, the Principal Guardianship File (PGF) should be kept where the beneficiary is, especially because the FE at that regional office completes the exam. It is difficult to compare finances and accountings without the file. In the alternative, the file could be accessed electronically as part of the Virtual VA, which would be especially helpful if the fiduciary resides in a different state than the beneficiary.

Improve coordination with state courts. Frequently, state courts appoint a fiduciary before VBA gets involved in the case. Problems sometimes arise when VBA appoints its own fiduciary, and the court dispenses funds in violation of VBA's restrictions that apply to the VA-derived portion. Better coordination between the courts and the Fiduciary Unit is needed to reduce the incidence of this problem.

Thank you for the opportunity to testify on this important matter.



**Prepared Statement of Bradley G. Mayes, Director,
Compensation and Pension Service, Veterans Benefits Administration,
U.S. Department of Veterans Affairs**

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to speak of the initiatives underway to enhance the Department of Veterans Affairs (VA) Fiduciary Program. I am accompanied by Ms. Diana Rubens, Associate Deputy Under Secretary for Field Operations; and Mr. Gary Chesterton, Chief, Fiduciary Staff, Compensation and Pension (C&P) Service.

The Fiduciary Program oversees VA benefits paid to those Veterans and beneficiaries who, because of injury, disease, or the infirmities of age, are unable to manage their financial affairs. VA currently supervises more than 108,000 VA beneficiaries with cumulative estates exceeding \$3 billion. These Veterans, and their widows and children, are among our most vulnerable clients.

VA takes very seriously the recommendations made by the Government Accountability Office (GAO) and VA's Office of Inspector General (VAOIG) and is working to implement recommendations made in those reports as well as other important measures we believe will further strengthen the program.

I would like to highlight some of the strides VA has made within the last 18 months, which are contributing to improved service delivery and oversight of benefits to this group of Veterans and beneficiaries. In September 2008, a new Chief of the Fiduciary Staff was recruited to spearhead reform efforts for our Fiduciary Program. Shortly thereafter, we selected a new Assistant Compensation and Pension Service Director for Veterans Services, who has responsibility for this Program area. These individuals bring many years of technical and management experience to bear on our efforts to strengthen the Fiduciary Program. In addition to these leadership changes, we have increased the staff responsible for fiduciary policies and procedures and reassigned a portion of the work previously assigned to this staff to VA's National Quality Assurance Staff in Nashville, Tennessee. The result is significantly more resources dedicated to oversight and policy changes aimed at strengthening protections for these Veterans and beneficiaries.

VA is taking steps to clarify existing procedural guidance. The operations manual for fiduciary activities, *M21-1 MR, Part XI*, is undergoing a complete revision. Several policy changes are already in place to increase protections. Guidance was disseminated to all VA regional offices implementing new requirements to obtain documentation of any unbudgeted expenses in excess of thresholds agreed to between VA and an approved fiduciary in their fund usage agreement. Fund usage agreements document recurring expenses that are allowed to be paid out of VA benefits to support an incompetent Veteran, beneficiary or dependent. Additional requirements are in place for documentation of budgeted expenses that exceed pre-approved limits by more than 15 percent and cannot be verified by bank statements submitted as part of the annual accounting requirement. This guidance was issued in C&P Service Fast Letter 10-12 dated April 19, 2010.

Periodic or onsite reviews at a fiduciary's place of business are required for those fiduciaries that manage the benefits of 20 or more beneficiaries. Increased oversight was established in October 2009 to review compliance with this policy. VA's site survey protocol related to fiduciary activities now includes an assessment of these onsite reviews. Further, policy guidance was released in Fast Letter 10-12, which requires the collection of a taxpayer identification number or Social Security number for every corporate and individual fiduciary. This will assist in identifying those fiduciaries subject to the onsite review requirement. The fast letter also requires all onsite review reports be submitted to VA Central Office Fiduciary Staff for review and analysis. Finally, VA is considering a third-party audit process, which could potentially assist with conducting onsite reviews and investigations relating to misuse, as well as provide independent audits of local fiduciary activities nationwide.

VA has deployed several measures to improve oversight of investigations into allegations of misuse of beneficiary funds. Beginning in fiscal year (FY) 2010, the Fiduciary Staff will complete a systematic analysis of operations related to VA's misuse determination process. This annual review will be incorporated as a standard business process for continuous process improvement. The goal of the analysis will be to identify areas in which VA fiduciary activities could improve in compliance and oversight, and areas in which VA's Fiduciary Program could be enhanced to eliminate the potential for misuse of Veterans' and beneficiaries' benefits.

In October 2009, VA's site survey protocol for reviewing fiduciary activities at VA regional offices was amended to include a review of all documentation pertaining to any misuse allegation. Additionally, in cases where a misuse allegation has occurred, policy is now in place that requires VA regional office fiduciary activities to forward all documentation pertaining to the investigation of these allegations. Pre-

viously, VA fiduciary activities were required to forward only the final misuse determination; however, some allegations had been determined to be without merit at the local level and did not warrant a formal misuse determination. This policy allows for centralized oversight of all allegations, regardless of whether a formal misuse determination is determined necessary.

A major initiative is also underway to develop and deploy standardized training for all VA fiduciary activities. The training, which is being deployed this month, is an intense, 40-hour session for all fiduciary employees nationwide. The training focuses on the specific responsibilities of fiduciary managers, field examiners, and legal instruments examiners. The prepared course material includes instruction on vulnerabilities of the Fiduciary Program, file documentation, account audits, estate protection, and fiduciary appointments. Additionally, the Fiduciary Staff will conduct a National Fiduciary Managers Training Conference in June 2010, to provide in-depth training on a myriad of fiduciary matters.

To improve operational efficiencies, VA consolidated the management of 14 fiduciary activities within the Western Area under the Fiduciary Hub Pilot Program. The Western Area Fiduciary Hub, located at the VA Regional Office in Salt Lake City, Utah, is responsible for all fiduciary work including field examinations, account audits, fiduciary appointments and oversight, and related program responsibilities. VA is conducting a full analysis of the Western Area Fiduciary Hub Pilot. The analysis with recommendations will be completed by September 30, 2010. The analysis will address program strengths, weaknesses, and lessons learned, and make recommendations on the feasibility of expansion of the hub concept.

To date, the Western Area Hub has demonstrated improvement in processing fiduciary accountings. The standard requires account audits to be completed within 14 days of receipt. The Hub has processed ninety-four percent of its accountings within the prescribed timeliness standard, which is higher than the national average of ninety-three percent.

The Hub is the only fiduciary activity operating in a paperless environment, which has served its unique configuration well. Electronic forms, field examination packets, and other important information are available to every employee of the Hub regardless of the employee's location. The Hub also created a Misuse Team, which specializes in misuse investigations. The Hub is unique in that it has integrated Microsoft MapPoint software in the scheduling of field exams within the Western Area Hub's jurisdiction. Utilizing this technology has reduced overall travel times and increased the effectiveness of field examiners. These are examples of improvements realized with the consolidation.

VA also recognizes the need to improve the information technology systems available to its field fiduciary personnel in the administration of this program. The current fiduciary electronic case management system, the Fiduciary Beneficiary System (FBS), poses some limitations with historical data, interfacing with other systems currently employed by VA, workload management, and fiduciary oversight. We have initiated steps to replace FBS. A project team was established in October 2009, to assess the functional requirements for a replacement fiduciary case management system. The project team will present its findings and recommendations in June 2010. Concurrently, we are preparing a request for information to solicit interest from the private sector in an alternative electronic case management system.

Recently, VA had the opportunity to participate in audits of the Fiduciary Program conducted by GAO and VAOIG. These audits confirmed the validity of our current efforts to eliminate vulnerabilities in this important program.

Finally, VA is taking steps to collaborate with other agencies that perform similar functions. We intend to host a round table forum with other Federal agencies to share best practices and explore ways to strengthen our program.

In conclusion, I want to affirm the commitment of VA to serve and protect our most vulnerable population of Veterans and beneficiaries. The interest expressed in our program from VAOIG, GAO, and this Committee is a testament to the very important task at hand. VA is committed to take every step necessary to ensure we fulfill our obligations to protect this special segment of Veterans and beneficiaries whom we serve.

Mr. Chairman, this concludes my prepared remarks. I would be happy to address any questions or comments regarding my testimony here today.

MATERIAL SUBMITTED FOR THE RECORD

Committee on Veterans' Affairs
 Subcommittee on Disability Assistance and Memorial Affairs
 Washington, DC
 May 13, 2010

Honorable Eric K. Shinseki
 Secretary
 U.S. Department of Veterans Affairs
 810 Vermont Avenue, NW
 Washington, DC 20420

Dear Secretary Shinseki:

On Thursday, April 22, 2010, the House Committee on Veterans' Affairs' Subcommittee on Disability Assistance and Memorial Affairs' convened an oversight hearing entitled "Examining VA's Fiduciary Program: How Can VA Better Protect Vulnerable Veterans and their Families?" Through its Fiduciary Program the Department of Veterans Affairs currently supervises more than 108,000 of our most vulnerable veterans and their widows and children with cumulative estates of more than \$3 billion. In FY 2010 VA paid more than \$696 million in benefits payments to these beneficiaries.

In 2010, both VA's Office of Inspector General (VA OIG) and the Government Accountability Office issued reports criticizing the VA's Fiduciary Program for lacking the proper staffing, training, and other resources needed for effective oversight of this program and delivery of benefits. What is also disturbing is that the issues identified in these reports seem to be longstanding because they are almost identical to those identified in a 2006 VA OIG Report. In the absence of adequate supervision and accountability by VBA, some fiduciaries have misused millions of dollars belonging to our veterans and their dependents. This is an unacceptable outcome that can be avoided with better internal controls.

In light of the importance of this program, I would like to bring to your attention a number of issues that were raised during last month's oversight hearing:

- The Veterans Benefit Administration (VBA) has failed to (1) obtain seriously delinquent accountings; (2) consistently verify questionable expenses reported by fiduciaries; and (3) adequately follow up and report on allegations of misuse of beneficiary funds and estates.
- VBA's data tracking and case management system, the Fiduciary Beneficiary System, does not store data needed to allow the agency to effectively manage the Fiduciary Program or accurately target vulnerable beneficiary estates.
- The VBA lacks the number of trained staff to fully oversee fiduciary-managed estates. Additionally, training for fiduciaries may assist VBA in preventing misuse of funds reserved for VA beneficiaries.
- The VA OIG noted deficiencies in staffing and workload models for the Fiduciary Program. For example, VA OIG observed that there was no national fixed maximum number of cases assigned to each Field Examiner and Legal Instrument Examiner, nor a fixed limit on the number of beneficiaries that any single fiduciary can manage.
- Outreach regarding the Fiduciary Program could be improved by updating the material on VA's Web site about the Fiduciary Program and including information on the program in the *VA Handbook for Veterans, Dependents and Survivors* and including statistical information pertaining to the misuse of funds by VA fiduciaries in the *Annual Benefits Report* to Congress as required by title 38, United States Code, section 5510.

This is an area of serious concern that warrants immediate attention. While I appreciate your recent efforts to improve service delivery and oversight of benefits, clearly more is needed to improve the efficiency and effective of this program. I would appreciate your response to these issues by Friday, June 11, 2010. Due to the processing delays with Congressional postal mail, please also send your re-

sponses to Ms. Megan Williams by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

John J. Hall
Chairman

Enclosure
KR/tk

The Secretary of Veterans Affairs
Washington, DC.
July 23, 2010

The Honorable John J. Hall Chairman
Subcommittee on Disability Assistance and Memorial Affairs
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am responding to your letter in which you listed several significant issues raised during your Subcommittee's oversight hearing conducted on April 22, 2010, entitled "Examining the U.S. Department of Veterans Affairs' Fiduciary Program: How Can the VA Better Protect Vulnerable Veterans and Their Families?"

I assure you that I share your concerns regarding VA's duty to protect our most vulnerable beneficiaries. I agree that the issues raised in your letter are vulnerabilities within our Fiduciary Program. VA's Chief of Staff, Acting Under Secretary of Benefits, Associate Deputy Under Secretary for Field Operations, and Director of the Compensation and Pension Service have all been personally involved in addressing the deficiencies of the fiduciary program. The process to enhance VA's Fiduciary Program began in September 2008 when a new Chief was hired to reengineer the program. The enclosure provides the most current update on each of your issues of concerns.

Thank you for your support of VA's efforts to safeguard the assets of our most vulnerable Veterans and beneficiaries.

Sincerely,

Eric K. Shinseki

Enclosure

**Response to Inquiry from the Honorable John J. Hall
Department of Veterans Affairs Fiduciary Program**

Issue #1: The Veterans Benefits Administration (VBA) has failed to obtain seriously delinquent accountings.

Response: Seriously delinquent accountings are defined as accountings that have not been received within 120 days of the due date. VBA continues to take all steps necessary to obtain seriously delinquent accountings. VA does not simply conduct an accounting on a sampling of cases; accountings are required from every fiduciary who meets certain criteria (i.e. VA estate exceeds \$10,000, the fiduciary receives a fee, 100 percent service-connected veteran, court-appointed, etc.). Currently, VBA requires 30,444 accountings annually which equate to approximately 28 percent of all beneficiaries in the program. To eliminate instances of seriously delinquent accountings, VBA developed and deployed a national training program that includes methods for addressing overdue accountings. The methods include aggressive follow-up and initiating misuse investigations. In June 2010, VBA hosted a National Fiduciary Managers Training Conference, attended by 82 managers from every regional office, pension management center and area office, as well as the Western Area Fiduciary Hub. The training conference included comprehensive focus on delinquent accountings and methods to obtain them. Since February 2010, VBA reduced the se-

riously delinquent accounting rate from 5.7 percent to 5.2 percent, and anticipates making greater progress by the end of the fiscal year.

Issue 2: VBA has failed to consistently verify questionable expenses reported by fiduciaries.

Response: On April 20, 2010, VBA released Fast Letter 10-12, *Revised Fiduciary Policies and Procedures* (enclosed), which significantly heightens the requirements for addressing questionable expenditures. This guidance mandates that all non-recurring expenditures over \$1,000 must have receipts for verification and all expenditures exceeding the Fund Usage Agreement by more than 15 percent that cannot be verified with financial institution documents must also be confirmed by receipts. VBA's Quality Assurance Staff reviews completed accountings on a monthly basis for compliance with this requirement. Additionally, VBA's Quality Assurance Staff provides a quarterly analysis of errors found during the quality reviews.

Issue 3: VBA has failed to adequately follow up and report on allegations of misuse of beneficiary funds and estates.

Response: VBA's adjudication manual mandates that allegations of misuse of beneficiary funds and estates must be addressed by VBA within 14 days of receipt. In October 2009, the Compensation and Pension Service revised the site-visit protocol for VA regional office fiduciary activities to include a review of misuse allegations. With the release of FL 10-12 on April 20, 2010 (enclosed); every RO Fiduciary Activity is now required to submit findings in every instance of an allegation of misuse. C&P Service Fiduciary Staff is collecting and reviewing these reports. C&P Service will complete an annual analysis of misuse processes and procedures to identify areas that may be improved.

Issue 4: VBA's data tracking and case management system, the Fiduciary Beneficiary System (FBS), does not store data needed to allow the agency to effectively manage the Fiduciary Program or accurately target vulnerable beneficiary estates.

Response: VBA recognizes the need to replace FBS and prepared a Request for Information (RFI) seeking private companies with the capabilities to provide a replacement product for FBS. The RFI is scheduled to be released by the end of fiscal year 2010 and will require responses by November 30, 2010. Upon review of the RFI responses, VBA will determine the necessary budgetary requirements for a replacement program. The proposed timeline calls for a replacement FBS program by the end of fiscal year 2011. Additionally, the business requirements for the Veterans Benefits Management System (VBMS) include a fiduciary component that will allow for greater integration of fiduciary functionality.

Issue 5: VBA lacks the number of trained staff to fully oversee fiduciary-managed estates. Additionally, training for fiduciaries may further assist VBA in preventing misuse of funds reserved for VA beneficiaries.

Response: Because of a lack of standardized training for VA fiduciary activity personnel, VBA deployed a program of standardized training in April 2010, which includes a 40-hour classroom-training course. Through the end of fiscal year 2011, the training will be delivered to approximately 500 VBA employees who staff fiduciary activities within the regional offices. Headquarters staff members are delivering the training onsite to increase the interactive participation and establish a greater level of communication and collaboration between Headquarters and the regional offices.

VBA is also in the process of developing an Internet site for private individuals or entities that serve as fiduciaries for our veterans and beneficiaries. The proposed site will detail the duties and responsibilities of a private fiduciary and provide responses to frequently asked questions, links to forms, and links to other sites with important information to fiduciaries, e.g. the Social Security Administration. The new Web site will be launched by September 30, 2010.

Issue 6: The VA OIG noted deficiencies in staffing and workload models for the Fiduciary Program. For example, VA OIG observed that there was no fixed maximum number of cases assigned to each Field Examiner and Legal Instruments Examiner, nor a fixed limit on the number of beneficiaries that any single fiduciary can manage.

Response: The Compensation and Pension Service is currently developing staffing and workload models for fiduciary activities nationwide. The models will include variations for density of population, remoteness of beneficiaries (number of miles traveled), and a ratio of field examiners and legal instruments examiners based on

the number of beneficiaries in the fiduciary program. The models will be completed by September 30, 2010.

VBA does not place a fixed limit on the number of beneficiaries assigned to any private fiduciary since each beneficiary's case is unique and fiduciary capabilities vary. Fiduciaries with substantial experience may be capable of managing a larger number of cases. Ultimately, if it is determined that a fiduciary is not performing satisfactorily for any or all beneficiaries he or she manages, VBA will relieve the fiduciary of cases. Fiduciaries are not VA employees, and they are unable to appeal the decision to remove them as fiduciary.

Issue 7: Outreach and information regarding the Fiduciary Program could be improved by updating the material on VA's Web site about the Fiduciary Program and including information on the program in the VA Handbook for Veterans, Dependents, and Survivors and including statistical information pertaining to the misuse of funds by VA fiduciaries in the Annual Benefits Report to Congress as required by title 38, United States Code, section 5510.

Response: VBA has significantly broadened outreach efforts to the National Guardianship Association, the National Association for Elder Law Attorneys, the National College of Probate Court Judges, and various State conventions for fiduciaries and guardians. Additionally, VBA will provide representation at the American Association of Retired Persons (AARP) national convention which is expected to draw 25,000 attendees. VBA has accepted an invitation to be a plenary speaker at the 2010 National Guardianship Association national convention.

The actions being taken to update VA's Web site regarding the Fiduciary Program are addressed in the response to Issue 5. VBA will provide information for inclusion in the annual *Federal Benefits for Veterans, Dependents and Survivors* reference guide. VBA anticipates the 2010 online version will be updated by August 31, 2010, and the 2011 print version will include the additional fiduciary information.

VBA is in the process of gathering the data required for the Annual Benefits Report (ABR). The ABR is posted on VA's Web site. The next ABR will include statistical information, and VBA will amend fiscal year 2009 ABR to include the data as well.

