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BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
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Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you to report on the activities and accomplishments of the Fiduciary Program in the Veterans Benefits Administration. I am accompanied today by Ms. Pat Knapp, Chief, Fiduciary Program, in the Compensation and Pension Service. I will begin my testimony with an overview of the Fiduciary Program and then discuss the implementation of Title V of Public Law 108-454, the Veterans Benefits Act of 2004.

Overview of the Fiduciary Program

The Fiduciary Program oversees VA benefits paid to beneficiaries who are incapable of handling their funds either because they are minors or because of injury, disease, or the infirmities of age. We currently provide supervision to just over 100,000 VA beneficiaries who lack the capacity to manage their VA benefits. These beneficiaries, who are among our most vulnerable constituents, receive more than \$114 million monthly in VA benefits and have estates exceeding \$2.8 billion.

Under the program, payment of VA benefits is made to another individual

or entity recognized as responsible for managing the beneficiary's financial affairs. Payment of VA benefits may be made to a State court-appointed fiduciary, to a fiduciary whose duties and authority are established by Federal statute, or by means of supervised direct payment to an incompetent adult beneficiary. State court-appointed fiduciaries are used when the broad trust powers generally provided by a State court to such a fiduciary are necessary to protect the beneficiary's interests. Federally-authorized fiduciaries (Federal fiduciaries) are used in all other cases. Federal fiduciaries, which are appointed by VA under authority contained in 38 U.S.C. § 5502(a)(1), may be the spouse of a veteran, the chief officer of a VA or non-VA institution in which a veteran is receiving care, a legal custodian who is the person or entity caring for the beneficiary or his or her estate, or another responsible person.

We administer the program through Fiduciary and Field Examination (F&FE) activities at the Veterans Benefits Administration's (VBA) 57 regional offices. There are currently 241 field examiners and 110 legal instruments examiners located in our 57 VA regional offices. They are charged with monitoring the needs of Fiduciary Program beneficiaries and the protection of their VA funds.

To determine the type of fiduciary best suited to each situation, field examiners personally contact minor or incompetent beneficiaries and their families, if any, and observe the living conditions, the financial requirements, and the capacity of adult beneficiaries to manage their payments. The field examiner then determines the best method of payment. If necessary to protect the rights

of the beneficiary and the Government, the field examiner will also recommend appropriate action in State court.

In adult cases, periodic personal follow-up contacts are made to assess the welfare of the beneficiary and to ensure that the fiduciary VA selected, instructed, and appointed is properly using and protecting the VA benefits entrusted to him or her. The field examiner also reviews the competency of the beneficiary and evaluates the need for continuing the fiduciary arrangement.

A court-appointed fiduciary is required to submit an accounting at intervals established by State law to ensure proper estate administration by the fiduciary. Certificates of balance on deposit are furnished with accountings. Many Federal fiduciaries must also file periodic accountings with the F&FE unit at the servicing VA regional office. VA's legal instruments examiners review the accountings and independently verify the information on a certificate of balance if it does not appear to be authentic or when financial information does not agree with other information in the accounting.

The Fiduciary Program has made great strides over the past several years to provide consistent, quality service to these deserving beneficiaries. We have a dedicated, experienced core of employees in our Central Office who have conducted site visits to all stations and have organized three national conferences in the past five years, including a training conference last month exclusively for the legal instruments examiners who analyze fiduciary accountings. The staff also conducts 342 quality reviews of field station work monthly, are responsible for all procedural and manual updates, and conduct

quarterly teleconferences to apprise field stations of issues of program concern. In fiscal year 2005, VA field staff conducted more than 55,000 field examinations where the VA field examiners had personal contact with incompetent beneficiaries and their fiduciaries.

Title V of P. L. 108-454

The passage of Public Law 108-454 in December 2004 tasked VA with additional fiduciary qualification and oversight responsibilities. Title V of the law was the first major change to the Fiduciary Program in more than 25 years. VA welcomed this legislation, and I am pleased to report to you on the provisions that directly affect the way the Fiduciary Program operates and on VBA's progress in implementing those provisions.

Key features of Title V

Title V codified some existing Fiduciary Program operating procedures, including the requirement for face-to-face interviews with a potential fiduciary and the need for a fiduciary to furnish a bond upon VA request. New fiduciary qualification criteria required VA to obtain a credit report issued within one year prior to the appointment of a fiduciary to handle VA funds. The law further required that VA request information regarding whether a proposed fiduciary has ever been convicted of any offense under State or Federal law that resulted in imprisonment for more than one year. A person so convicted can only be certified as fiduciary if VA determined that the appointment is appropriate. The law also authorized appointment of a temporary fiduciary for a beneficiary while a

determination of incompetency is being made or appealed, or when a fiduciary is appealing a determination of misuse of funds.

A major change codified by Title V requires VA to reissue benefits when a fiduciary that is not an individual, or who is an individual who serves ten or more beneficiaries, misuses all or part of the benefits due to a beneficiary. VA must also reissue benefits when its negligent failure to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary. Prior to this Act, there was no remedy to make financially whole beneficiaries whose VA funds were misused by the fiduciaries entrusted to handle them, short of referring cases to VA's Office of Inspector General for possible criminal prosecution by the Office of the U.S. Attorney. In Fiscal Year 2005, no findings of fiduciary misuse involved organizations or fiduciaries serving 10 or more beneficiaries. There were also no findings of VA negligence in the appointment or supervision of fiduciaries, and thus no VA benefits were reissued under either of these provisions that would have triggered such reissuance.

Title V also requires VA to conduct periodic on-site reviews of any person or agency serving as fiduciary for more than 20 beneficiaries where the total amount of such benefits paid annually exceeds \$50,000, as adjusted periodically. Should one of these fiduciaries misuse the VA funds entrusted to him or her, VA reissuance of the misused funds is required.

A final provision of the Act requires VA to report annually on statistical data concerning the Fiduciary Program, to include types and numbers of

fiduciaries and beneficiaries and types and amounts of VA benefits paid to these fiduciaries. The report is also required to address the number of cases of misuse, how these cases were addressed and the final disposition of such cases.

Implementation Actions

We have made great strides in implementing the new requirements of Public Law 108-454. Within one month of passage, VA convened a working group to make policy decisions, develop basic implementation procedures, and assign specific implementation tasks. In January 2005, a nationwide teleconference was conducted with all 57 VA Regional Office Fiduciary Activities to make them aware of the Title V provisions and outline preliminary plans for implementation.

As procedures were developed in the first quarter of 2005, a series of instructional letters was issued. The first concerned procedures for the new fiduciary qualification criteria that require credit reports and inquiries into the criminal background of proposed fiduciaries. That letter also provided instructions for the appointment of temporary fiduciaries for competent beneficiaries. Two subsequent letters provided instructions for the conduct of on-site reviews for fiduciaries handling multiple beneficiaries, and for investigating allegations of fiduciary misuse of funds and the reissuance of benefit payments. All procedural letters were issued prior to July 1, 2005 when most of the requirements of Title V took effect.

As part of the implementation plan, we revised the Fiduciary Program operating manual to incorporate the procedures outlined in the instructional

letters. We also modified the Fiduciary Program database (the Fiduciary Beneficiary System or FBS) to incorporate new workload tracking and statistical data resulting from the legislation. Additionally, to help F&FE staff review the qualifications of potential fiduciaries we developed a new VA form.

VA Form 21-0972, Fiduciary Statement in Support of Appointment, that is now completed by all fiduciary candidates as part of our process of qualifying to become a VA fiduciary.

Each regional office now has procedures in place to obtain credit reports of proposed fiduciaries as required by law. The additional information available to a VA field examiner through review of a proposed fiduciary's credit report gives VA a valuable tool to use in qualifying those individuals entrusted with these funds.

Procedures on the misuse provisions of the law were initially issued to the field stations in a letter of June 10, 2005 and were then subject of a nationwide teleconference on June 27, 2005. This activity was followed by written lesson plans and other training material being sent electronically and posted on a Fiduciary Program intranet site. A second nationwide teleconference to discuss changes to the electronic tracking system and to answer questions on the misuse procedures was held on July 28, 2005.

Fiduciary Program manual changes, incorporating all of the procedures, were released to the field in late October 2005 and a final draft of the required 38 CFR regulation changes is currently under review prior to publication for comment.

Finally, statistical data for the FY 2005 Annual Report of the Veterans Benefits Administration was collected earlier this year for inclusion in the upcoming edition of that report, which is expected to be available in late June or July.

Mr. Chairman, I am confident that we have responded promptly and diligently in implementing the provisions of Title V of the Veterans Benefits Act of 2004, and we will continue to fine tune the operational processes necessary to apply this law as “real life” situations arise. I thank you again for the opportunity to provide this testimony on the Fiduciary Program. I welcome any questions that you and the other members of the Subcommittee may have.