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Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Failure to Flag Fiduciaries Who Were Removed Results in Risk to Vulnerable Beneficiaries

Review

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Executive Summary

The purpose of the Veterans Benefits Administration (VBA) Fiduciary Program is to protect beneficiaries who are unable to manage their VA benefits because of injury, disease, infirmities of advanced age, or minor status.¹ In such cases, VA appoints an individual or entity, known as a fiduciary, to manage these beneficiaries' VA benefits. Generally, family members or friends serve as fiduciaries; however, when such an option is not available, VA will look to appoint a qualified individual or organization to serve as a fiduciary. Fiduciaries are authorized to receive and distribute the VA funds on behalf of beneficiaries for their care, support, and welfare and are responsible for monitoring the beneficiaries' well-being.² According to the VBA's *Annual Benefits Report* for fiscal year 2023, the Fiduciary Program served more than 104,000 beneficiaries who received over \$2.7 billion in benefits payments.³

The Fiduciary Program is administered by VBA's Pension and Fiduciary Service. Six fiduciary hubs are responsible for overseeing beneficiaries and conducting program activities for an assigned geographic region.⁴ Fiduciary hub staff use the Fiduciary Program Manual to guide their actions and decisions.⁵ Hub staff are responsible for assessing the personal welfare of beneficiaries and determining whether the assigned fiduciaries meet the requirements of their role, in accordance with the program's manual.

When appointing a fiduciary, VA makes every effort to appoint the person, agency, organization, or institution that will best serve the interest of the beneficiary.⁶ The Fiduciary Program conducts oversight of VA-appointed fiduciaries to ensure they are meeting the needs of the beneficiaries they are appointed to serve.⁷ These oversight responsibilities include protecting beneficiaries' assets from loss or diversion. The Fiduciary Program also investigates allegations or suspicions of misuse of funds.⁸

¹ 38 C.F.R. § 13.10(a) (2024).

² 38 C.F.R. § 13.140(a)(1) (2024).

³ Department of Veterans Affairs, *VBA Annual Benefits Report Fiscal Year 2023*, <https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf>. The Annual Benefits Report summarizes the benefit programs administered by VBA and provides insights into the nature of these programs.

⁴ The six fiduciary hub locations are Columbia, South Carolina; Indianapolis, Indiana; Lincoln, Nebraska; Louisville, Kentucky; Milwaukee, Wisconsin; and Salt Lake City, Utah.

⁵ Fiduciary Program Manual, "Prologue," November 8, 2022. The Fiduciary Program Manual contains fiduciary-related policies, concepts, and procedures but does not dictate workload management or limit the assignment of appropriate work by management that is consistent with job titles and standards.

⁶ 38 C.F.R. § 13.100(d) (2024).

⁷ VA Fiduciary Program Manual, "Fiduciary Program Responsibilities," sec. I.1.B.3, May 6, 2022.

⁸ VA Fiduciary Program Manual, "Fiduciary Program Responsibilities."

Federal regulations bar some individuals and entities from serving as a VA-appointed fiduciary, including if they are found to have misused or misappropriated a beneficiary's benefits while serving in a fiducial capacity or have been convicted of a qualifying felony offense.⁹

Additionally, fiduciaries who knowingly violate or refuse to comply with VA regulations are barred from serving.¹⁰ If a fiduciary is barred from future VA service, fiduciary hub staff are required to flag them in VBA's electronic system to prevent a future reappointment.¹¹ The VA Office of Inspector General (OIG) conducted this review to determine whether VBA has oversight that ensures individuals and entities barred from serving as a VA fiduciary are identified and flagged.

What the Review Found

The OIG found that VBA did not flag fiduciaries in its electronic system when they were barred from future VA service in 68 percent of cases. Based on a review of 129 fiduciaries that were removed from October 1, 2023, through January 31, 2024, 88 were not flagged. This occurred because the Fiduciary Program Manual lacked clear procedures on who should flag fiduciaries and at what point in the process the flag should be placed. Additionally, because of a lack of clear guidance in the manual, training and oversight of fiduciary hub staff were also lacking. If removed fiduciaries who should be barred are not correctly flagged, there is a risk that they could be reappointed after being removed.

The OIG team reviewed cases with removed fiduciaries to determine whether the individual or entity was properly flagged. Fiduciaries can be removed if VBA determines that their services are no longer required, or doing so is in the beneficiary's best interest.¹² To determine whether the removed fiduciaries should have been flagged, the OIG team categorized removed fiduciaries into three areas: misuse, high-risk scores on criminal background inquiries, or knowingly violating or refusing to comply with VA policies. Of 63 cases where VBA staff removed a fiduciary and cited misuse as the reason, the team found that 36 were not flagged as "Do Not Appoint" when they should have been. An example of a case the team reviewed that illustrates the importance of the "Do Not Appoint" flag was when a fiduciary was removed for misusing more than \$100,000 of the beneficiary's funds. The fiduciary spent the beneficiary's funds at casinos and for personal credit card bills while the beneficiary was in the hospital. Although fiduciary hub staff had removed the fiduciary in February 2024, they did not add the "Do Not

⁹ 38 C.F.R. § 13.130(a) (2024). A felony conviction may not be a bar to serving if all of the following conditions are met: (i) the conviction occurred more than 10 years preceding the proposed date of appointment; (ii) the conviction did not involve the offenses of fraud, theft, bribery, embezzlement, identity theft, money laundering, forgery, abuse or neglect of another person, or any other financial crime; (iii) there is no other person or entity who is willing and qualified to serve; and (iv) the hub manager determines that the nature of the conviction is such that appointment of the individual poses no risk to the beneficiary and is in the beneficiary's interest. 38 C.F.R. § 13.130(a)(2).

¹⁰ 38 C.F.R. § 13.130(b).

¹¹ VA Fiduciary Program Manual, "Investigations of Fiduciaries," sec. I.2.C.5, May 4, 2023.

¹² VA Fiduciary Program Manual, "Fiduciary Removal," sec. II.2.C.1, December 22, 2023.

Appoint” flag until after the OIG notified the Pension and Fiduciary Service of the case in August 2024.

A criminal background inquiry is used to determine the risk level of a proposed fiduciary and whether any bars exist to appointment. If fiduciaries have been convicted of a qualifying felony offense, are currently incarcerated in a penal institution or correctional facility, are sentenced to home confinement, are in a halfway house or on house arrest, or if they have felony charges pending, they are barred from serving as VA fiduciaries.¹³ Fiduciaries with a calculated risk result of “red” are considered high risk and cannot be appointed or continue as currently appointed unless acceptable mitigating circumstances exist. Out of the 21 cases where the fiduciary was removed due to a “red” criminal background inquiry reviewed by the OIG team, 13 cases were not flagged.

Finally, federal regulation bars fiduciaries who knowingly violate or refuse to comply with VA regulations.¹⁴ The OIG team analyzed 45 cases involving fiduciaries who were removed with the reason being a failure to follow VA regulations and determined that 39 were not flagged as “Do Not Appoint” although the fiduciaries were removed for a reason that would bar future service.¹⁵ Failure to flag fiduciaries after removal for a reason that would make them ineligible for future service occurred because the manual did not provide sufficient guidance on when to flag fiduciaries and who was responsible. This lack of guidance resulted in minimal training being provided and a lack of quality oversight.

The manual’s prologue generally provides that when hub staff are assigned an oversight action within the fiduciary process, they are expected to take the most full and complete action possible to move cases forward.¹⁶ However, the manual provided little to no guidance on flagging fiduciaries, other than information instructing fiduciary hub staff to flag fiduciaries who are barred, and not to appoint fiduciaries who have a high calculated risk, or “red,” criminal background inquiry score unless that score can be mitigated. There is no information on who should flag removed fiduciaries who are barred from future service or at what point in the process they should be flagged.¹⁷ Hub staff and managers, including quality review specialists, interviewed by the OIG team expressed a general confusion and lack of knowledge on the “Do Not Appoint” flag. A majority of hub staff who were interviewed by the OIG team during this review indicated they found the procedures unclear. On May 7 and October 29, 2024, after the OIG informed VBA that it

¹³ 38 C.F.R. §§ 13.130(a)(2), (b)(4), and (b)(5).

¹⁴ 38 C.F.R. § 13.130(b)(8).

¹⁵ 38 C.F.R. § 13.130(b)(8).

¹⁶ Fiduciary Program Manual, Prologue.”

¹⁷ Although the manual was updated in May 2024 to provide more information on managing the “Do Not Appoint” flag, no additional information was provided on who is responsible or when the fiduciary should be flagged during the process.

was conducting a review on this issue, Pension and Fiduciary Service updated the manual to provide more guidance to hub staff on placing the flag.¹⁸

The OIG team also reviewed the training identified by the Pension and Fiduciary Service related to the “Do Not Appoint” flag and found that, other than a note for the instructor that barred fiduciaries should be flagged, the training does not discuss the “Do Not Appoint” flag. The training did not clearly communicate who is responsible or when fiduciaries should be flagged. Nor did the training convey the importance of placing the “Do Not Appoint” flag for protecting vulnerable beneficiaries from unsuitable fiduciaries. The OIG team spoke to hub staff who generally related that they either did not have any training on the “Do Not Appoint” flag, or that the training was a long time ago (such as when they first started). If training did occur, it was difficult for staff to remember the content of that training. Overall, there was a consensus that more specific training regarding the “Do Not Appoint” flag would be beneficial.

There was also a lack of quality oversight. Despite the Fiduciary Program Manual requiring the “Do Not Appoint” flag to be applied when there is evidence of a bar to service, the OIG team’s review of the checklists used for the quality assurance process revealed that there were no specific questions or error descriptions to document whether the flag was properly applied. This lack of oversight was confirmed during interviews with management and staff at the Salt Lake City and Louisville fiduciary hubs, and by the Pension and Fiduciary Service. Without monitoring of the “Do Not Appoint” flag within the Pension and Fiduciary Service quality assurance program, VBA has little assurance the flag is being properly applied.

What the OIG Recommended

The OIG recommended the under secretary for benefits update the Fiduciary Program Manual to specify when a removed fiduciary should be flagged as “Do Not Appoint,” ensure staff understand if they are responsible for adding the flag, develop and provide training on updated Fiduciary Program Manual procedures on flagging barred individuals and include a mechanism to ensure staff have taken and understand the training, and update the quality review process to include ensuring that fiduciaries are flagged as “Do Not Appoint” when required.¹⁹

¹⁸ VA Fiduciary Program Manual, “Managing Fiduciary Profiles,” sec. II.1.D.4, May 7, 2024; VA Fiduciary Program Manual, “Misuse Determinations,” sec. II.3.A.4, October 29, 2024.

¹⁹ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

VA Management Comments and OIG Response

The acting under secretary for benefits concurred with all three recommendations and provided responsive action plans, which included updating the Fiduciary Program Manual and training to specify when a fiduciary should be flagged as “Do Not Appoint” and taking steps to ensure staff understand this requirement. The acting under secretary reported that VBA also updated and clarified the quality review process by providing guidance on ensuring that fiduciaries are flagged “Do Not Appoint” as required. Based on the actions taken, VBA requested that the OIG close all three recommendations. After reviewing documentation provided by VBA, the OIG concurred with VBA’s request to close recommendations 1 and 3. The OIG will revisit the request to close recommendation 2 once additional information is received.



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Abbreviations

OIG	Office of Inspector General
VBA	Veterans Benefits Administration
VBMS-Fid	Veterans Benefits Management System-Fiduciary



Introduction

The Fiduciary Program within the Veterans Benefits Administration (VBA) protects beneficiaries who cannot manage their VA benefits because of injury, disease, or infirmities of advanced age, or minor status.²⁰ The program ensures the well-being of such individuals by appointing and overseeing fiduciaries to manage their benefits.²¹ According to VBA's *Annual Benefits Report* for fiscal year 2023, the program served more than 104,000 beneficiaries who received over \$2.7 billion in benefits payments.²²

Program staff monitor beneficiaries' well-being and oversee fiduciaries to safeguard benefit funds from fraud, waste, and misuse.²³ In instances where fiduciaries misuse beneficiaries' funds, willfully refuse to comply with VA policies, or are otherwise barred, they are removed from service and flagged in VBA's electronic system to prevent their reappointment.²⁴ The VA Office of Inspector General (OIG) conducted this review to determine whether VBA has oversight that ensures individuals and entities barred from serving as a VA fiduciary are identified and flagged.

VBA Fiduciary Program

The Fiduciary Program is administered by VBA's Pension and Fiduciary Service. Staff within the service are responsible for establishing policies and procedures, providing training, and assessing claims-processing accuracy. Additionally, six fiduciary hubs oversee beneficiaries and conduct program activities for an assigned geographic region.²⁵ Fiduciary hub staff are responsible for assessing the personal welfare of beneficiaries and determining whether the assigned fiduciaries meet the requirements of their role, in accordance with the Fiduciary Program Manual.²⁶ According to the manual's introduction, "[t]he purpose of the [program manual] is to summarize or restate in plain language the applicable law, clarify any ambiguities, and provide a picture of fiduciary-related processes that is reasonably complete and easy to

²⁰ 38 C.F.R. § 13.10(a) (2024).

²¹ 38 C.F.R. § 13.10(a).

²² Department of Veterans Affairs, *VBA Annual Benefits Report Fiscal Year 2023*, <https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf>. The Annual Benefits Report summarizes the benefit programs administered by VBA and provides insights into the nature of these programs.

²³ 38 C.F.R. § 13.10(a); VA Fiduciary Program Manual, "Fiduciary Program Responsibilities," sec. I.1.B.3, May 6, 2022.

²⁴ 38 C.F.R. § 13.130 (2024); VA Fiduciary Program Manual, "Investigations of Fiduciaries," sec. I.2.C.5, May 4, 2023.

²⁵ The six fiduciary hub locations are Columbia, South Carolina; Indianapolis, Indiana; Lincoln, Nebraska; Louisville, Kentucky; Milwaukee, Wisconsin; and Salt Lake City, Utah.

²⁶ VA Fiduciary Program Manual, "Organizational Model," sec. I.1.A.1, May 6, 2022; VA Fiduciary Program Manual, "Introduction," November 8, 2022.

understand and apply.”²⁷ The manual serves as a general guide for activities and decisions inherent to providing fiduciary assistance to VA beneficiaries.²⁸

Fiduciary Hubs

Each fiduciary hub is structured to support the program with basic fiduciary oversight functions including field examinations, accountings, and misuse investigations. Field examinations are inquiries or investigations conducted to determine an individual’s fitness to serve as a fiduciary. Accountings are a fiduciary’s written report regarding the income and funds under management for the beneficiary. These documents are subject to analyses by the accounting activity of the hub. Misuse occurs when a fiduciary receives benefits payments for a beneficiary and uses all or part of those funds for purposes other than the beneficiary’s well-being. Each hub has a misuse team that handles credible allegations of misuse by completing certain protocols. These protocols include reviewing the misuse allegation and, if warranted, conducting an investigation. To provide staff oversight, each hub also has a quality review team consisting of program specialists who are responsible for evaluating individual employee accuracy and performing reviews to eliminate errors at the earliest possible stage in the claims process.²⁹

Fiduciary Hub Staff

Specialized staff at the hubs who support the program include field examiners, fiduciary accounting representatives, fiduciary service representatives, and legal instrument examiners. Field examiners are responsible for appointing fiduciaries, instructing them on their duties, authorizing the use of VA benefit payments, and negotiating a fee with the fiduciary if applicable. They are also responsible for taking immediate independent corrective action to ensure the well-being of the beneficiary and the proper use of funds. They conduct periodic on-site reviews of fiduciaries who are serving multiple beneficiaries, investigate allegations of misuse against the fiduciary, and gather and document evidence to facilitate a determination of possible misuse.³⁰

Fiduciary accounting representatives are responsible for making determinations involving the administration of all types of beneficiary estates, the protection of their benefits, the routine handling of legal matters, and the identification of legal questions. This includes reviewing records to ensure that all beneficiaries and any dependents are accounted for in award actions; identifying and auditing records for possible fraud, embezzlement, misappropriation, or misuse

²⁷ VA Fiduciary Program Manual, “Introduction.”

²⁸ “The Fiduciary Program Manual is based on the statutes and regulations set forth in Title 38 of the United States Code and Title 38 of the Code of Federal Regulations, the legal authority governing VA benefits.” VA Fiduciary Program Manual, “Introduction.”

²⁹ VA Manual M21-4, “QRT Overview,” chap. 8.8.a, February 8, 2024.

³⁰ “The misuse determination is the official decision document in response to an allegation of misuse. The misuse determination serves to summarize the facts and circumstances upon which the determination was made.” VA Fiduciary Program Manual, “Misuse Determinations,” sec. II.3.A.4, December 5, 2022.

by fiduciaries; and maintaining system databases and records to include establishing and updating beneficiary and fiduciary profiles, changes of fiduciaries, changes of name, address, or direct deposit information.

Fiduciary service representatives are responsible for maintaining data accuracy in VA claims-processing systems; finalizing incompetency determinations; approving fiduciary fees and appointment of fiduciaries; and suspending, resuming, and discontinuing benefit payments when necessary.

Legal instruments examiners are responsible for acting promptly when there are indications of misuse of funds; having payments adjusted, suspended, resumed, or recovered as needed; and ensuring data within the VA claims-processing system are accurate and updated.

Appointing Fiduciaries

Every beneficiary has the right to manage their own VA benefits. However, if medical evidence indicates they cannot, VA will appoint a fiduciary—an individual or legal entity charged with managing the benefits—to assist the beneficiary.³¹ A fiduciary will also be appointed if a court declares a beneficiary unable to manage financial affairs.³² In addition to managing beneficiaries' VA funds, fiduciaries are responsible for monitoring beneficiaries' well-being; are authorized to receive direct payment of beneficiaries' VA benefits; and distribute those funds on behalf of beneficiaries for their care, support, and welfare.³³ When appointing a fiduciary, VA makes every effort to appoint the person, agency, organization, or institution that will best serve the interest of the beneficiary.³⁴

When appointing a fiduciary, VA considers several factors, including the beneficiary's preference. VA will consider individuals or entities, such as the beneficiary's spouse, a relative, any friend or other person who is willing to serve without a fee, the officer of an institution where the beneficiary receives care or that has custody of the beneficiary, or a court-appointed individual or entity. When one of these is not available, VA will appoint a paid fiduciary. Before appointing a fiduciary, a field examiner will assess the well-being and needs of each beneficiary and their dependents (if any). The fiduciaries will also be assessed via an interview, a credit history check, and a criminal background check.³⁵

³¹ 38 C.F.R. § 13.100(a)(1) (2024).

³² 38 C.F.R. § 13.100(a)(2).

³³ 38 C.F.R. § 13.140(a)(1) (2024).

³⁴ 38 C.F.R. § 13.100(d).

³⁵ VA Fiduciary Program Manual, "Fiduciary Program Responsibilities."

Program Oversight of Fiduciaries

The Fiduciary Program oversees VA-appointed fiduciaries to ensure they are meeting the needs of the VA beneficiaries they are appointed to serve.³⁶ After the initial appointment of a fiduciary, VA conducts oversight to monitor beneficiary well-being as well as fiduciary performance. Program staff also conduct periodic field examinations to continually assess both parties.³⁷ As part of assessing a fiduciary's performance, program staff perform oversight functions intended to protect beneficiaries' assets from loss or diversion. This is accomplished, in some cases, by requiring the appointed fiduciary to submit annual accountings, or obtain a corporate surety bond, or both.³⁸ Program staff also investigate allegations or suspicions of misused funds.³⁹

Removal of VA Fiduciaries

A fiduciary may be removed if VBA determines that a fiduciary's services are no longer required for a beneficiary or removal is in the beneficiary's best interest.⁴⁰ There are a variety of reasons that a fiduciary may be removed, these range from the beneficiary is able to manage their VA benefits without VA supervision or fiduciary appointment, a more suitable fiduciary is requested, the fiduciary fails to maintain qualifications or perform their responsibilities, or the fiduciary's service is barred.⁴¹

Bars to Serving as VA Fiduciaries

Federal regulations bar some individuals or entities from serving as a VA fiduciary. This includes individuals who are known to have misused or misappropriated a beneficiary's benefits while serving as a VA fiduciary, or who have been convicted of a qualifying felony offense that is punishable by imprisonment for at least one year (regardless of actual time served by the individual).⁴² Additionally, regulations bar individuals from serving as a VA-appointed fiduciary if they

³⁶ VA Fiduciary Program Manual, "Fiduciary Program Responsibilities."

³⁷ VA Fiduciary Program Manual, "Authority and Purpose of Field Examinations," sec. I.2.A.1, November 9, 2020.

³⁸ VA Fiduciary Program Manual, "Fiduciary Program Responsibilities." There are exceptions to this accounting requirement, such as when the fiduciary is the beneficiary's spouse. 38 C.F.R. § 13.280(d) (2024). A corporate surety bond is issued by an insurance bonding agency that protects the beneficiary's VA funds by making the insurance agency liable up to a specified amount if the fiduciary does not fulfill their responsibilities. VA Fiduciary Program Manual, "General Information on Corporate Surety Bonds," sec. II.2.B.1, May 17, 2023.

³⁹ VA Fiduciary Program Manual, "Fiduciary Program Responsibilities."

⁴⁰ VA Fiduciary Program Manual, "Fiduciary Removal," sec. II.2.C.1, December 22, 2023.

⁴¹ VA Fiduciary Program Manual, "Fiduciary Removal."

⁴² 38 C.F.R. § 13.130(a). A felony conviction may not be a bar to serving if all of the following conditions are met: (i) the conviction occurred more than 10 years preceding the proposed date of appointment; (ii) the conviction did not involve the offenses of fraud, theft, bribery, embezzlement, identity theft, money laundering, forgery, abuse or neglect of another person, or any other financial crime; (iii) there is no other person or entity who is willing and qualified to serve; and (iv) the hub manager determines that the nature of the conviction is such that appointment of the individual poses no risk to the beneficiary and is in the beneficiary's interest. 38 C.F.R. § 13.130(a)(2).

- refuse or neglect to provide the authorization for VA disclosure of information;⁴³
- are unable to manage their own federal or state benefits and are in a federal or state agency's fiduciary, representative payment, or similar program;
- have been adjudicated by a court with jurisdiction as being unable to manage their own financial affairs;
- are incarcerated in a federal, state, local, or other penal institution or correctional facility, sentenced to home confinement, released from incarceration to a halfway house, or on house arrest or in custody in any facility awaiting trial on pending criminal charges;
- have felony charges pending;
- have been removed as legal guardian by a state court for misconduct;
- are under the age of majority; or
- knowingly violate or refuse to comply with VA policies.⁴⁴

The fiduciary hub manager may also remove a fiduciary if they determine the removal is in the beneficiary's best interest.⁴⁵

The Fiduciary Program Manual requires that staff select a "Do Not Appoint" flag within the Veterans Benefits Management System-Fiduciary (VBMS-Fid) system when individuals are barred from fiduciary service under 38 CFR § 13.130.⁴⁶

The Fiduciary Program Manual largely mirrors the bars to fiduciary service found in the Code of Federal Regulations, except that it does not list a felony conviction as a bar to service.⁴⁷ The manual outlines that an individual previously convicted of a felony offense can be certified as a fiduciary only if it is determined that the person is appropriate based on the circumstances.⁴⁸ The Fiduciary Program Manual requires that staff select a "Do Not Appoint" flag when individuals

⁴³ Authorization for VA disclosure of information allows VA to disclose to the beneficiary information about the fiduciary's including the fiduciary's qualifications for appointment, or misuse of benefits. 38 C.F.R. § 13.100(i)(1) (2024).

⁴⁴ 38 C.F.R. § 13.130(b).

⁴⁵ 38 C.F.R. § 13.500(a) (2024).

⁴⁶ VBMS-Fid is a web-based electronic case management platform.

⁴⁷ 38 C.F.R. § 13.130; VA Fiduciary Program Manual, "Investigations of Fiduciaries." While the Fiduciary Program Manual does not include all of the categories listed in the Code of Federal Regulations, it neither contradicts the Code of Federal Regulations nor overrides its application.

⁴⁸ VA Fiduciary Program Manual, "Investigations of Fiduciaries." An appointment may be appropriate in circumstances where the conviction was more than 10 years ago and did not involve fraud, theft, bribery, embezzlement, identity theft, money laundering, forgery, abuse/neglect of another person, or any other financial crime.

are barred from fiduciary service under 38 CFR § 13.130.⁴⁹ The manual does not provide any additional guidance on who should flag fiduciaries or when they should be flagged.

⁴⁹ VA Fiduciary Program Manual, “Fiduciary Removal.”

Results and Recommendations

Finding: Fiduciary Hub Staff Did Not Always Flag Barred VA Fiduciaries as “Do Not Appoint” in the VBMS-Fid System to Prevent Reappointment

The Pension and Fiduciary Service served about 104,000 vulnerable beneficiaries in fiscal year 2023, each under the supervision of an appointed fiduciary or, in very limited circumstances, the fiduciary hub manager.⁵⁰ As part of its responsibilities, the Pension and Fiduciary Service oversees fiduciaries to ensure that their benefits are being managed appropriately. Sometimes, this oversight includes removing fiduciaries and, depending on the reason for the removal, those fiduciaries may be barred from future service as a VA fiduciary.⁵¹ According to the Fiduciary Program Manual, barred individuals or entities should be flagged as “Do Not Appoint.”

However, based on the OIG team’s review of 129 fiduciary removals from October 1, 2023, through January 31, 2024, 88 fiduciaries were not flagged (68 percent). This occurred because the Fiduciary Program Manual lacked clear guidance on who should flag fiduciaries and at what point in the process the flag should be placed. Additionally, because of a lack of clear guidance in the manual, training and oversight of fiduciary hub staff was also lacking. The absence of a flag presents a risk that unsuitable individuals or entities could be subsequently reappointed to a fiduciary role.

The finding is based on the following determinations:

- VBA did not flag 88 fiduciaries as required.
- The Fiduciary Program Manual does not provide sufficient guidance for flagging fiduciaries.

What the OIG Did

The OIG team reviewed applicable laws, regulations, policies, and procedures related to the removal of VA fiduciaries and properly flagging them as “Do Not Appoint.” Using VBA’s electronic systems, the team identified 129 fiduciaries who were removed between October 1, 2023, and January 31, 2024, for a cause that would disqualify them for future

⁵⁰ A small number of beneficiaries in the Fiduciary Program are under Supervised Direct Pay, which is when an adult beneficiary is paid directly because the facts indicate they can handle their financial affairs under the continuing supervision of the fiduciary hub manager. According to the *Veterans Benefits Administration Annual Benefits Report*, there were 74 Supervised Direct Pay beneficiaries during fiscal year 2023. VA Fiduciary Program Manual, “Supervised Direct Pay,” sec. I.5.A, July 29, 2024.

⁵¹ 38 C.F.R. § 13.130; VA Fiduciary Program Manual, “Fiduciary Removal.”

service.⁵² These 129 fiduciaries were identified as having been initially removed by fiduciary hub staff for misuse, adverse information on their criminal background inquiries, or knowingly violating or refusing to comply with VA policies. As part the OIG team’s review, the removals were categorized based on the actual reason the fiduciary may be barred: misuse, a “red” or high-risk criminal background inquiry, or knowingly violating or refusing to comply with VA policies. The team determined that 88 of the removed fiduciaries should have been flagged but were not.⁵³ On September 12, 2024, the Pension and Fiduciary Service concurred with all 88 of the cases identified by the OIG team.

Appendix A provides additional details about the scope of work and the methodology used.

VBA Did Not Flag 88 Removed Fiduciaries as Required

The OIG team found that when fiduciaries were removed for a reason that would constitute a bar to future service, staff did not do so in 88 of 129 cases, or 68 percent of the time. The team reviewed cases with removed fiduciaries to determine whether the fiduciary was properly flagged as “Do Not Appoint.” These removed fiduciaries fell under three categories:

- Misuse
- High-risk score on criminal background inquiries
- Knowingly violating or refusing to comply with VA policies

Of the 88 removed fiduciaries who were not flagged as required, the team found that 15 should have been flagged because they misused or misappropriated the beneficiaries’ VA funds.⁵⁴ Additionally, 13 fiduciaries should have been flagged because of a high-risk score on their criminal background inquiries, and an additional 60 should have been flagged because they knowingly violated or refused to comply with VA policies. In some instances, the OIG identified that hub staff cited an incorrect removal reason in the system. For example, staff may have initially noted that a removal occurred due to misuse even though a subsequent misuse investigation determined there was no wrongdoing, yet the fiduciary may still have knowingly violated or refused to comply with VA policies. For this reason, the OIG’s reported totals for each removal category do not align with those in VBA’s system (as discussed below).

⁵² The OIG team used the Veterans Benefits Management System, a web-based application designed to support end-to-end claims processing through a consolidated portal, to analyze removed fiduciaries.

⁵³ Four cases did not warrant a flag according to VBA policy, and VBA staff appropriately flagged the remaining 37 cases.

⁵⁴ Of the 15 misuse cases, one included a fiduciary who was removed due to a court order because of misappropriation.

Misuse

Federal regulation explains that misuse occurs whenever a fiduciary uses funds intended for the use and benefit of the beneficiary and any dependents for any other purpose.⁵⁵ If allegations or suspicions of misuse arise, then the hub manager may investigate and issue a misuse determination.⁵⁶ If misuse is found, federal regulations require that the fiduciary be removed and barred from further service.⁵⁷

Of 63 cases where VBA staff removed a fiduciary and cited misuse as the reason, the team found that 36 were not flagged as “Do Not Appoint” when they should have been. For 15 of the 36 cases missing a flag, the OIG team confirmed that VBA staff correctly listed misuse or misappropriation as the removal reason.⁵⁸ The remaining 21 fiduciaries were barred due to knowingly violating or refusing to comply with VA policies and are further discussed in that section of the report.

Example 1 is an instance where misuse was found, but the fiduciary was not flagged as “Do Not Appoint.”

Example 1

On November 28, 2023, VBA received a misuse allegation. The allegation included an admission by the fiduciary that they spent the beneficiary’s funds at casinos and to pay the fiduciary’s credit card bills while the beneficiary had been hospitalized. On February 29, 2024, Lincoln fiduciary hub staff issued an official misuse determination confirming the allegation and removed the fiduciary. The total amount of misused VA funds was more than \$100,000, with almost \$85,000 being cash and fee withdrawals at ATMs or casinos. Despite this finding, the fiduciary was not flagged in VA’s electronic system until September 9, 2024, after the OIG team notified Pension and Fiduciary Service staff of this case on August 16, 2024.

High-Risk Score on Criminal Background Inquiries

Federal law requires that before an individual can serve as a fiduciary for a VA beneficiary, there must be an inquiry or investigation to determine the fitness of that person to serve, and the inquiry should include information on whether the person has been convicted of any offense that could result in imprisonment of more than one year.⁵⁹ If fiduciaries have been convicted of a

⁵⁵ 38 C.F.R. § 13.400(a) (2024). As used in that section, the term “use and benefit” means “any expenditure reasonably intended for the care, support, or maintenance of the beneficiary or the beneficiary’s dependents.” 38 C.F.R. § 13.400(a).

⁵⁶ 38 C.F.R. § 13.400(b).

⁵⁷ 38 C.F.R. § 13.130; 38 C.F.R. § 13.500(a)(2)(i) (2024).

⁵⁸ 38 C.F.R. § 13.130(a)(1).

⁵⁹ 38 U.S.C § 5507 (2024).

felony offense, are currently incarcerated in a penal institution or correctional facility, are sentenced to home confinement, are in a halfway house or on house arrest, or if they have felony charges pending, they are barred from serving as VA fiduciaries.⁶⁰

According to emails forwarded to the OIG team by fiduciary hub staff, the Pension and Fiduciary Service completes annual criminal background inquiries for fiduciaries and provides results for high-risk fiduciaries to the hubs for further review. This process was initiated in 2020 to provide ongoing oversight to ensure the protection of beneficiaries in the Fiduciary Program. A criminal background inquiry is used to determine the risk level of a proposed fiduciary and whether any bars to appointment exist. Before appointing an individual as a fiduciary, a field examiner obtains a criminal background inquiry. The criminal background inquiry provides a risk score of green, yellow, or red. A “green” score is low risk with no further investigation needed. A “yellow” score represents a moderate risk. Staff are then required to investigate further to determine whether the individual is eligible to be appointed as a fiduciary. Fiduciaries with a “red” calculated risk result are considered high risk and cannot be appointed or continue as currently appointed unless acceptable mitigating circumstances exist.⁶¹

The team reviewed 21 cases involving a fiduciary who was removed due to a high calculated risk or “red” criminal background inquiry result. Thirteen cases were not flagged, although either regulatory or procedural guidance required flagging. In 10 of the cases, the red risk score was the result of a regulatory bar to VA fiduciary service. For the final three, the OIG team was not able to determine whether there was a regulatory bar, but the Fiduciary Program Manual requires that those persons not be appointed unless one of the specific exceptions applies.⁶²

Example 2 is an instance where a fiduciary received a high-risk score from a criminal background inquiry, but was not flagged as “Do Not Appoint.”

Example 2

A criminal background inquiry for a VA fiduciary had a high calculated risk or “red” score. The inquiry returned a record for forgery/fraud and a sex offender registration violation, both of which contributed to the high-risk score. The fiduciary was properly removed and replaced, however, the removed fiduciary was not flagged as “Do Not Appoint.”

Knowingly Violating or Refusing to Comply with VA Policies

When fiduciaries are evasive in the accounting review process, avoid answering direct questions regarding funds usage, or submit documents that fail to provide requested information, the hub must conduct a field examination. The examination attempts to obtain the required documents

⁶⁰ 38 C.F.R. §§ 13.130(a)(2), (b)(4), and (b)(5).

⁶¹ VA Fiduciary Program Manual, “Investigations of Fiduciaries.”

⁶² VA Fiduciary Program Manual, “Investigations of Fiduciaries.”

and determines if an allegation of misuse is warranted or if the fiduciary should remain in place.⁶³ VA does not treat missing information or unresolved corrections alone as willful neglect or refusal requiring a misuse allegation.⁶⁴ However, a fiduciary who “knowingly violates or refuses to comply” with VA regulations is barred from serving.⁶⁵ This bar is listed in the Fiduciary Program Manual, which uses similar language as the regulation.⁶⁶

The OIG team analyzed 45 cases involving fiduciaries who were removed for failure to follow VA regulations to determine whether they were also barred from reappointment. The OIG team determined that 39 were not flagged as “Do Not Appoint” although the fiduciaries were removed for a reason that would bar future service.

Example 3 is an instance where the fiduciary was removed because they knowingly violated or refused to comply with VA policies, but the fiduciary was not flagged as “Do Not Appoint.”

Example 3

On January 10, 2024, VBA removed a fiduciary due to the individual's noncompliance with the policies and procedures of the Fiduciary Program. This included failure to submit a required accounting for the beneficiary's expenses for the prior year, and failure to comply timely with VA's multiple requests to increase the amount of the beneficiary's surety bond. A field examination request to replace the fiduciary noted continuous issues and concerns regarding program compliance. Although VBA determined the individual failed to follow VA regulations and removed them, they did not flag the individual in VA's electronic system until August 20, 2024, after the OIG team had notified the Pension and Fiduciary Service staff of this case on August 16, 2024.

The team also found 21 cases, separate from those above, where the fiduciary was initially removed due to a suspicion of misuse, but no misuse was ultimately found. However, these fiduciaries knowingly violated or refused to comply with regulations, yet fiduciary hub staff failed to flag them as “Do Not Appoint.”

⁶³ VA Fiduciary Program Manual, “Red Flag Indicators of Misuse, Fraud, or Improper Use,” sec. I.3.C.6, June 15, 2022.

⁶⁴ VA Fiduciary Program Manual, “Procedures When Approving an Accounting Is Not Possible,” sec. I.3.E.1, September 14, 2022.

⁶⁵ 38 C.F.R. § 13.130(b)(8).

⁶⁶ VA Fiduciary Program Manual, “Investigations of Fiduciaries.”

The Fiduciary Program Manual Does Not Provide Sufficient Guidance for Flagging Removed Fiduciaries

Hub staff use the Fiduciary Program Manual to guide their actions and decisions.⁶⁷ The manual's prologue generally provides that when staff are assigned an oversight action within the fiduciary process, they are expected to take all necessary steps to ensure that the case moves toward an accurate completion.⁶⁸ The manual discusses when not to appoint individuals or entities as fiduciaries and the use of the "Do Not Appoint" flag in several locations including sections dedicated to investigations of fiduciaries, managing beneficiary and fiduciary records, and fiduciary removal or withdrawal from fiduciary service.⁶⁹ However, the manual does not provide specific guidance on who is responsible for flagging removed fiduciaries who are barred from reappointment or when in the process it should occur. Because training and quality oversight is based on Pension and Fiduciary Service guidelines and directives, such as the manual, inadequate guidance in the manual resulted in a lack of effective training and quality oversight.

The Fiduciary Program Manual

Although the Fiduciary Program Manual was updated on May 7 and October 29, 2024, to provide some additional guidance on the "Do Not Appoint" flag, during the period reviewed by the OIG team, the manual provided little to no guidance on flagging removed fiduciaries.⁷⁰ It did contain information instructing fiduciary hub staff to flag individuals or entities who are barred, and not to appoint fiduciaries who have a high calculated risk, or "red," criminal background inquiry score unless that score can be mitigated. However, there was no information on who should flag removed fiduciaries who are barred or at what point in the process they should be flagged. Additionally, although the section discussing fiduciary removal indicates that barred individuals or entities should have the "Do Not Appoint" flag selected, in at least three other areas of the manual discussing scenarios in which removed fiduciaries are likely barred, there is no mention of the "Do Not Appoint" flag. Those sections discussed fiduciaries who are removed due to misuse or misappropriation, failing to respond to VA requests, or failing to meet appointment requirements, including the criminal background check and compliance with accounting requirements.

To gain more insight into why barred fiduciaries were not flagged, the team interviewed hub staff and managers at the Salt Lake City and Louisville fiduciary hubs, including 10 field

⁶⁷ Fiduciary Program Manual, "Prologue," November 8, 2022. The Fiduciary Program Manual "contains fiduciary-related policies, concepts, and procedures but does not dictate workload management or limit the assignment of appropriate work by management that is consistent with job titles and standards."

⁶⁸ Fiduciary Program Manual, "Prologue."

⁶⁹ VA Fiduciary Program Manual, "Investigations of Fiduciaries"; VA Fiduciary Program Manual, "Managing Fiduciary Profiles," sec. II.1.D.4, May 7, 2024; VA Fiduciary Program Manual, "Fiduciary Removal."

⁷⁰ VA Fiduciary Program Manual, "Managing Fiduciary Profiles"; VA Fiduciary Program Manual, "Misuse Determinations," sec. II.3.A.4, October 29, 2024.

examiners and 10 fiduciary service representatives. These interviews reflected a general confusion and lack of knowledge on the part of hub staff with respect to the “Do Not Appoint” flag. Not all hub staff interviewed were familiar with the flag. For example, five of the fiduciary service representatives related that they were unsure if the procedures were clear because they were not involved with flagging fiduciaries. Of the 15 remaining staff, only two thought the procedures were clear. The remainder explained that the procedures were unclear. For example, one field examiner indicated it would be nice to receive some clear guidance on who is responsible for what and when it is appropriate for field examiners to add the flag.

When the OIG team asked hub staff to identify which staff are responsible for adding the “Do Not Appoint” flag, most interviewees reported that they did not believe it was their own responsibility but indicated that someone else was responsible for adding the flag. For example, one field examiner stated that field examiners would never add the flag. Other field examiners responded that the misuse team adds the flags. One said it is the fiduciary service representatives’ responsibility. Another stated that when there is a determination of misuse, the flag should be added, but field examiners do not make those determinations. Another said they do not know whose responsibility it is. The team received similarly varied answers from other fiduciary hub staff, such as fiduciary service representatives and managers.

The four quality review team staff interviewed by the OIG review team were also confused or unsure about when to flag fiduciaries or who is responsible for doing so. One member of the quality staff stated that the flag only applies to entities, and not individuals, which is not correct.⁷¹ When asked their opinion as to why so many barred fiduciaries might not be flagged when required, one quality review team staff member explained that this was due to a lack of direction, and another stated that the procedures were “somewhat vague.” Fiduciary hub managers also agreed that there was a lack of guidance in the manual. A policy analyst with the Pension and Fiduciary Service, when briefed on the team’s findings, related that including a more detailed description of when it should be added and by which hub staff could be helpful. The deputy director of the Pension and Fiduciary Service also indicated support for including more guidance on the “Do Not Appoint” flag in the manual.

On May 7 and October 29, 2024, after the OIG informed VBA that it was conducting a review on this issue, the Pension and Fiduciary Service updated the manual by adding new sections on managing the “Do Not Appoint” flag.⁷²

The May 2024 update provides guidance outlining how to update the fiduciary profile when a bar to service exists.⁷³ It instructs staff to update the system by selecting the “Do Not Appoint”

⁷¹ VA Fiduciary Program Manual, “Investigations of Fiduciaries.” “An individual *or entity* may not serve as a fiduciary” when listed bars apply (emphasis added).

⁷² VA Fiduciary Program Manual, “Managing Fiduciary Profiles”; VA Fiduciary Program Manual, “Misuse Determinations.”

⁷³ VA Fiduciary Program Manual, “Managing Fiduciary Profiles.”

flag and document the reason why the flag was selected in the “Do Not Appoint” reason field. This new section also explains that the flag should be removed if there is no longer a bar to service with the reason for reinstatement documented. Finally, it states that if a beneficiary will remain associated to a fiduciary with a “Do Not Appoint” flag, then documenting the justification for that in the notes section is necessary. Although this update does reiterate that barred individuals or entities should be flagged “Do Not Appoint” and adds a new requirement that an explanation for the flag needs to be included, there is no additional information as to who should place the flag or at what point it is appropriate to do so. Without this information, uncertainty on flagging fiduciaries for hub staff will remain and failure to flag removed fiduciaries who are barred from reappointment will continue.

The October 29, 2024, update required that fiduciary hub employees add the “Do Not Appoint” flag to the fiduciary profile if misuse is found upon the completion of a misuse determination.⁷⁴ While this does provide direction for flagging those fiduciaries who have been found to have committed misuse, and is a good first step, it does not cover all the situations where fiduciaries are barred by federal regulation.⁷⁵ During its review, the OIG team also found issues with properly flagging fiduciaries with felony convictions as well as flagging those who knowingly violated or refused to comply with VA policies. These bars to serving as a VA fiduciary are not directly related to findings of misuse and, as a result, this update does not encompass all the situations where fiduciary hub staff failed to flag fiduciaries when required.

Training

The OIG found that, in addition to the procedures lacking any specific guidance on flagging removed fiduciaries barred from future service, only minimal training on this topic is provided and it is offered only to newly hired employees or made available for self-study. Hub staff receive position-specific centralized training when first hired and are required to take 40 hours of annual training each fiscal year.⁷⁶ The OIG team asked the Pension and Fiduciary Service whether there was any additional guidance outside of the Fiduciary Program Manual and whether staff received any training related to the selection of the “Do Not Appoint” flag for barred individuals or entities. The team received a response that the flag was discussed in the successor initial appointment field examinations course and two separate training courses on credit reports and criminal background inquiries.⁷⁷ Additionally, the Pension and Fiduciary Service relayed that hub staff are trained in the process related to the “Do Not Appoint” flag.

⁷⁴ VA Fiduciary Program Manual, “Misuse Determinations.”

⁷⁵ 38 C.F.R. § 13.130.

⁷⁶ Training Program Manual M21-3, “Training Requirements of Specified Audiences,” sec. III.A.3, June 9, 2023. Following the completion of initial training, the fiduciary hubs may assign specific training based on analysis of quality reviews, quality trends, or position requirements. Training Program Manual M21-3, “Training Definitions,” sec. III.A.2, October 1, 2024.

⁷⁷ These are courses that can be assigned to fiduciary hub staff to meet their annual training requirements.

The OIG team reviewed the materials for the successor initial appointment field examinations course that were available within the VBA Learning Catalog.⁷⁸ The team found that the course is offered to fiduciary service representatives, field examiners, and legal administrative specialists during their FOCUS training.⁷⁹ This training must be completed by employees in a trainee status.⁸⁰ However, the audience for this course did not include fiduciary account representatives or legal instrument examiners. There is no mention in the course slides of the requirement to flag removed fiduciaries as “Do Not Appoint” if they are barred. Rather, it limits the guidance to a single sentence provided in the instructor’s notes that states “when a fiduciary is removed due to being barred from service, fiduciary hub personnel must select the DO NOT APPOINT flag...” Other trainings available to other fiduciary hub staff, such as field examiners and fiduciary accounting representatives, are similarly structured and provide very little guidance on flagging removed fiduciaries. None of the training identified by the Pension and Fiduciary Service provides any instruction on

- when and how to remove a fiduciary,
- determining whether such removal is related to a bar from service,
- how to place the “Do Not Appoint” flag when the removed fiduciary is barred, and
- whether “fiduciary hub personnel” means *any* hub personnel or one specific position.

The OIG team determined the training also does not convey the importance of placing the “Do Not Appoint” flag in protecting vulnerable beneficiaries from unsuitable fiduciaries.

The team spoke to hub staff who generally related that they either did not have any training on the “Do Not Appoint” flag, or that the training was a long time ago or only when they first started. If training did occur, it was difficult for staff to remember the content of that training. Overall, there was a consensus that more specific training regarding the “Do Not Appoint” flag would be beneficial.

Quality Oversight

The *Standards for Internal Control in the Federal Government* notes management should establish and operate monitoring activities to oversee the internal control system and evaluate the

⁷⁸ Training Program Manual M21-3, “Training Definitions.” The Veterans Benefits Administration (VBA) Learning Catalog is an online training catalog organized specifically to support VBA training programs. The purpose of the catalog is to aggregate training materials so that employees can easily locate and complete training courses that further competency in Pension and Fiduciary Service target areas.

⁷⁹ Training Program Manual M21-3, “Training Definitions.” FOCUS training is a curriculum created by the Pension and Fiduciary Service and mandated for newly hired hub employees.

⁸⁰ Training Program Manual M21-3, “Training Requirements for Specified Audiences,” secs. III.A.3.a, d, and e.

results.⁸¹ Monitoring is essential to remain aligned with changing objectives, environment, laws, resources, and risks. The Fiduciary Program relies on its quality assurance program to monitor the processing of fiduciaries. To do that, quality review staff record errors if there is a violation of regulations or other directives and use checklists that outline those potential errors made by staff.⁸² There are separate checklists depending on the fiduciary hub activity being reviewed.⁸³

Although the Fiduciary Procedures Manual requires the “Do Not Appoint” flag to be applied when there is evidence of a bar to service, the OIG team’s review of the checklists used for the quality assurance process revealed that there were no specific questions or error descriptions to document whether the flag was properly applied. This was confirmed during interviews at the Salt Lake City and Louisville fiduciary hubs and by the Pension and Fiduciary Service. One of the fiduciary hub managers explained that ensuring removed fiduciaries are flagged when barred is not on the quality review checklists. In September 2024, the Pension and Fiduciary Service informed the OIG team that the quality review process does not check whether removed fiduciaries are appropriately flagged as “Do Not Appoint” when required. The Pension and Fiduciary Service also stated there are no specific monitoring mechanisms addressing the proper use of the “Do Not Appoint” flags.

Subsequently, Pension and Fiduciary Service indicated that the quality assurance checklists allow for the assessment of compliance with fiduciary profile updates, including the “Do Not Appoint” flag. However, the checklists highlighted by the Pension and Fiduciary Service only have sections that concern whether systems were updated properly and are general “noncritical error” sections.⁸⁴ None of the error descriptions included in these sections relate specifically to flagging barred fiduciaries, with the closest description being an error for not properly updating profiles to reflect the most current information. Additionally, quality reviewers must provide a regulation, citation, manual reference, or other appropriate reference to support any errors they find.⁸⁵ However, with additional manual guidance clarifying the responsibility for placing the flag and instructions to quality staff on using this section of the checklist, it could be used to ensure oversight and monitoring on the flagging of barred fiduciaries.

⁸¹ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

⁸² VA Manual M21-4, “QA Purpose, Methods, and Responsibilities,” chap. 8.1.a, February 8, 2024.

⁸³ VA Manual M21-4, “National Quality Review Structure,” chap. 8.3.a, February 8, 2024.

⁸⁴ VA Manual M21-4, “Appendix A. Accounting Quality Checklist,” chap 8, app. A.a, May 16, 2022; VA Manual M21-4, “Appendix B. Field Examination Quality Checklist,” chap 8, app. B.a, May 16, 2022. Noncritical errors are considered nonsubstantive and do not affect national quality. VA Manual M21-4, “National Quality Review Structure,” chap. 8.3.b, November 9, 2020.

⁸⁵ VA Manual M21-4, “Fundamentals of Quality Reviews,” chap. 8.11.a, February 27, 2023.

Conclusion

Fiduciary Program staff did not flag removed fiduciaries barred from future VA service when required in 68 percent of reviewed cases. This occurred because the Fiduciary Program Manual provided only limited guidance as to who is responsible for placing the flag and when in the process it is appropriate to do so. Additionally, training on the use of the “Do Not Appoint” flag was minimal, and only mandatory for new employees. Finally, the Pension and Fiduciary Service lacked sufficient oversight to ensure that fiduciaries are properly flagged as “Do Not Appoint” when it is determined that an individual or entity is barred from serving as a VA fiduciary. Failure to properly use the flag for removed fiduciaries who should be barred increases the risk that those individuals will be reappointed.

Recommendations 1–3

The OIG made the following recommendations to the under secretary for benefits:⁸⁶

1. Update the Fiduciary Program Manual to specify when a removed fiduciary should be flagged as “Do Not Appoint” and ensuring that staff understand if they are responsible for adding the flag.
2. Develop and provide training on updated Fiduciary Program Manual procedures on flagging barred individuals or entities as “Do Not Appoint” and include a mechanism to ensure that fiduciary hub staff have taken and understand the training.
3. Update the quality review process to include ensuring that fiduciaries are flagged “Do Not Appoint” when required.

VA Management Comments

The acting under secretary for benefits concurred with all three recommendations and provided responsive action plans. For recommendation 1, the acting under secretary reported that VBA updated the Fiduciary Program Manual to specify when a fiduciary should be flagged as “Do Not Appoint” and conducted an assessment to ensure staff understood this requirement. For recommendation 2, the acting under secretary related that VBA updated its training pertaining to the use of the “Do Not Appoint” flag and took steps to ensure completion and understanding. For recommendation 3, the acting under secretary explained that VBA updated and clarified the quality review process by providing guidance on ensuring that fiduciaries are flagged “Do Not Appoint” as required. The full text of the acting under secretary’s comments is included in appendix B.

⁸⁶ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

OIG Response

The corrective actions are responsive to the intent of all three recommendations, and the acting under secretary for benefits provided sufficient evidence to support closure for recommendations 1 and 3. The OIG considers those recommendations closed. For recommendation 2, although VBA provided documents showing that training was completed, the content of that training was not provided. Additionally, there was no information on what mechanism was developed to assess the effectiveness of that training or how a determination that the training was understood was made based on this mechanism. The OIG will revisit the request to close recommendation 2 once additional information is received.

Appendix A: Scope and Methodology

Scope

The VA Office of Inspector General (OIG) team conducted its work from March 2024 through March 2025. The team analyzed Veterans Benefits Administration (VBA) data for 129 beneficiaries whose fiduciaries had been removed for cause, either due to misuse, failure to follow VA regulations, or due to adverse information on a criminal background investigation. The team then determined whether the fiduciaries were barred from further service and were appropriately flagged as “Do Not Appoint” in VA’s electronic system. These fiduciaries were removed between October 1, 2023, and January 31, 2024.

Methodology

To accomplish the objective, the OIG team completed the following actions:

- Reviewed applicable laws, regulations, policies, procedures, and guidelines related to replacement of fiduciaries and bars to future service.
- Obtained records from VBA’s corporate database and the Veterans Benefits Management System-Core for 817 beneficiaries whose fiduciary had been removed due to a misuse allegation or poor performance.
- Analyzed records using keywords and derived a population of 134 beneficiaries whose fiduciary was removed due to a misuse investigation, failure to follow VA regulations, or negative criminal background investigation.
- Reviewed records in the Veterans Benefits Management System-Fiduciary for the population of 134 beneficiaries and found five were out of scope.
- Determined 92 of the 129 beneficiaries whose fiduciary was removed due to a misuse investigation, failure to follow VA regulations, or negative criminal background investigation, were not appropriately flagged as “Do Not Appoint” in VA’s electronic system.
- Provided a list of the 92 beneficiaries to the Pension and Fiduciary Service. Subsequent review by the OIG team determined that fiduciaries for four of the 92 beneficiaries did not commit actions that would bar them from future service. The OIG team confirmed with the Pension and Fiduciary Service that the remaining 88 beneficiaries had fiduciaries who had not been flagged as “Do Not Appoint” that should have been.
- Interviewed Pension and Fiduciary Service staff and leaders, including the deputy director.

Internal Controls

The OIG team assessed the internal controls that were significant to the review objective, including the five components related to control: environment, risk assessment, control activities, information and communication, and monitoring.⁸⁷ In addition, the team reviewed the principles of internal controls as associated with the objective and identified the following components and principles as significant to the objective.⁸⁸ The team identified internal control weaknesses during this review and proposed recommendations to address the following deficiencies:

- Component 2: Risk Assessment
 - Principle 11: Identify, Analyze, and Respond to Risk
- Component 3: Control Activities
 - Principle 11: Design Activities for the Information System
 - Principle 12: Implement Control Activities
- Component 4: Information and Communication
 - Principle 14: Communicate Internally
- Component 5: Monitoring Activities
 - Principle 16: Perform Monitoring Activities
 - Principle 17: Remediate Deficiencies

Data Reliability

The OIG team relied on computer-processed data from VBA's corporate database, which the team validated with documents contained in the electronic claims folders. The comparison did not reveal any discrepancies. The data were found to be sufficiently reliable for the purposes of this review.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

⁸⁷ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

⁸⁸ Since the review was limited to the internal control components and underlying principles identified, it may not have disclosed all internal control deficiencies that may have existed at the time of this review.

Appendix B: VA Management Comments

Department of Veterans Affairs Memorandum

Date: March 21, 2025

From: Acting Under Secretary for Benefits (20)

Subj: Office of Inspector General (OIG) Draft Report - Failure to Flag Fiduciaries Who Were Removed Results in Risk to Vulnerable Beneficiaries [Project No. 2024-01322-AE-0055] — [VIEWS 12905954]

To: Assistant Inspector General for Audits and Evaluations (52)

1. Thank you for the opportunity to review and comment on the OIG draft report: Failure to Flag Fiduciaries Who Were Removed Results in Risk to Vulnerable Beneficiaries. The Veterans Benefits Administration (VBA) concurs with the report findings and recommendations and is requesting closure of the recommendations as implemented.
2. VBA is committed to provide oversight to ensure compliance with the flagging of fiduciaries who are barred from service. This report highlights an opportunity for VBA to strengthen its processes on this topic.

<i>The OIG removed point of contact information prior to publication.</i>

(Original Signed by)

Michael J. Frueh

Attachments

The Veterans Benefits Administration (VBA) concurs with the Office of Inspector General's (OIG) draft report findings and provides the following comments in response to the recommendations in the OIG draft report:

Recommendation 1: Update the Fiduciary Program Manual to specify when a removed fiduciary should be flagged as "Do Not Appoint" and ensuring that staff understand if they are responsible for adding the flag.

VBA Response: Concur. VBA updated the Fiduciary Program Manual to specify when a fiduciary should be flagged as "Do Not Appoint." VBA completed an assessment to confirm that field staff understand the responsibility to add the flag.

VBA requests closure of this recommendation based on the evidence provided in Attachment A-C confirming the updates to the fiduciary procedures and Attachments D-I, and L which assessed the fiduciary hubs staff's understanding of the responsibility to add the flag.

Recommendation 2: Develop and provide training on updated Fiduciary Program Manual procedures on flagging barred individuals or entities as "Do Not Appoint" and include a mechanism to ensure that fiduciary hub staff have taken and understand the training.

VBA Response: Concur. VBA updated its training pertaining to the use of the "Do Not Appoint" flag, captured fiduciary hubs staff completions, and understanding of the training.

VBA requests closure of this recommendation based on the evidence provided in Attachments D-N.

Recommendation 3: Update the quality review process to include ensuring that fiduciaries are flagged "Do Not Appoint" when required.

VBA Response: Concur. VBA updated and clarified the quality review process by providing guidance on ensuring fiduciaries are flagged "Do Not Appoint" as required.

VBA requests closure of this recommendation based on the evidence provided in Attachment O that details the updates and clarifications to the quality review process.

<p><i>For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.</i></p>

OIG Contact and Staff Acknowledgments

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