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VETERANS BENEFITS ADMINISTRATION

Timeliness of Final Competency Determinations

REVIEW

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Executive Summary

Why the OIG Did This Review

The mission of the VA Fiduciary Program is to protect beneficiaries who, as a result of injury, disease, the infirmities of advanced age, or by reason of being less than age 18, are unable to manage their VA benefits. VA has stated individuals served by the Fiduciary Program are its most vulnerable beneficiaries. Fiduciary Program staff, located at six Fiduciary Hubs, are responsible for assessing the competence, adjustment, and personal welfare of beneficiaries to determine whether they need assistance managing their VA benefits.

Delays in completing final competency determinations result in potentially incompetent beneficiaries receiving ongoing benefits payments for extended periods without the protection of a VA-appointed fiduciary, putting these benefits at risk. In addition, these delays cause retroactive benefit payments to be withheld for extended periods. The purpose of this review was to determine whether Veterans Benefits Administration (VBA) staff timely finalized proposed incompetency determinations from March 1 through August 31, 2017.

What the OIG Found

The Office of Inspector General (OIG) found delays in completing final competency determinations for beneficiaries who received proposals of incompetency. Final competency determinations can be completed by Fiduciary Hubs, Veterans Service Centers (VSCs), and Pension Management Centers (PMCs).

When VA receives clear and convincing medical evidence that, due to disability, a beneficiary lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation, the evidence is referred to the VSC or PMC rating activity for a determination of the beneficiary's competency. If VSC or PMC staff determine the beneficiary is incompetent after reviewing the evidence, they complete a decision of proposed incompetency and notify the beneficiary they have 60 days to respond.¹ VBA policy states that staff should not take the proposed action until at least the 65th day after notification of the proposed incompetency to allow time for evidence to arrive.² This 65-day period, which commences when the notice is first sent to the beneficiary, is known as due process.

The End Product (EP) system is the primary workload monitoring tool for VSC and PMC managers. EPs are the work units VBA establishes to properly control pending workloads. EPs

¹ M21-1 Adjudication Procedures Manual, Part I, Chapter 2, Section B, Topic 1, *General Information on the Notice of Proposed Adverse Action*.

² M21-1 Adjudication Procedures Manual, Part I, Chapter 2, Section C, Topic 1, *General Information on the Adverse Action Proposal Period*.

have specific codes to identify types of claims or actions required, and VBA uses this system to monitor and manage its workload. EP 590 applies to the proposed incompetency determinations that fall under the jurisdiction of the Fiduciary Hubs. EP 600 applies to incompetency determinations for all cases in which beneficiaries submit hearing requests or additional evidence in response to the proposed incompetency notification.

If beneficiaries do not submit additional evidence or a request for a hearing within the response period, Fiduciary Hubs finalize the competency determination in the Veterans Benefits Management System (VBMS), VBA's electronic claims processing system. If additional evidence or a request for a hearing is received within the response period, Fiduciary Hub staff change the 590 series EP to a 600 series EP, and the VSC or PMC closest to the beneficiaries' home address is responsible for finalizing the competency determination using VBMS.

Using a statistical sample, the OIG team reviewed a population of 22,615 EP 590 series and a population of 1,735 EP 600 series relating to final competency determinations that VBA staff completed from March 1 through August 31, 2017. The 600 series EPs contained 1,650 with a claim label indicating they were under the jurisdiction of the VSCs, and 85 with a claim label indicating they were under the jurisdiction of the PMCs.³ The OIG adjusted the population of EP 590 series to 20,900 and the population of EP 600 series to 1,600 to account for cases that were out of scope.

Fiduciary Hubs were required to complete final competency determinations within 16 days of the expiration of due process. VBA staff did not timely complete final competency determinations within 16 days of when staff could have taken action in 75 of the 107 cases sampled under the jurisdiction of the Fiduciary Hubs. Based on this sample, the review team estimated that VBA staff did not timely complete final competency determinations in approximately 14,600 of 20,900 cases (70 percent) from March through August 2017. The team also estimated that VBA staff took an average of 64 days from when they could have taken action to complete these cases.

In contrast to the Fiduciary Hubs, VBA did not have a timeliness standard for final competency determinations under the jurisdiction of the VSCs or PMCs. Therefore, the review team could not determine whether the competency determinations were completed timely. However, VBA staff did not complete final competency determinations within 16 days of when they could have taken action in 92 of the 100 cases sampled under the jurisdiction of the VSCs or PMCs. The standard of 16 days was used as a reasonable time period because VBA has a 16-day timeliness standard for final competency determinations under the jurisdiction of the Fiduciary Hubs, and a senior VBA official thought that the same standard should apply to VSCs and PMCs. Based on

³ A claim label is a claim attribute that provides a more specific description of the claim type that a corresponding end product represents. The most accurate claim label must be selected when establishing a claim, and reviewed for any potential updates throughout the life of the claim. M21-4 Manual, Appendix C, Section 1.a, *Purpose of Claim Labels*.

this sample, the review team estimated that VBA staff did not complete these final competency determinations within 16 days in approximately 1,500 of 1,600 cases (92 percent) from March through August 2017.⁴ The review team also estimated that it took an average of 320 days to complete these cases from when VBA staff could have taken action.

Delays in final competency determinations placed recurring monthly VA benefits at risk because these benefits are paid to incompetent beneficiaries without the protection of a VA-appointed fiduciary. The review team estimated that approximately 13,600 of these unprotected beneficiaries received \$62.4 million in monthly ongoing benefits payments in cases that were not processed within 16 days from when VBA could have taken action.

Furthermore, delays in final competency determinations resulted in both competent and incompetent beneficiaries waiting longer for withheld retroactive benefits. The review team estimated that approximately 12,400 beneficiaries had approximately \$77.5 million in VA retroactive benefits payments withheld while awaiting the completion of final competency determinations.

Why this Occurred

The OIG team identified multiple causes, including nonintegrated information technology systems, lack of prioritization of final competency determinations, National Work Queue (NWQ) routing rules not following VBA policy, and limited staff access to the Legacy Content Manager.

Non-Integrated Information Technology Systems

Delays in completing final competency determinations occurred because the Fiduciary Hubs used the Beneficiary Fiduciary Field System (BFFS) to track and monitor incompetency proposals, while VSCs and PMCs used VBMS for the same purpose. These systems do not electronically interface, and VSC and PMC staff were not transferring the cases promptly to the Fiduciary Hubs. As a result, the Fiduciary Hub staff experienced delays entering the cases into BFFS. The Fiduciary Hub cannot track and monitor cases if they are not entered into BFFS, which contributes to the delays in completing the process timely. The cases were not transferred promptly because there was no policy or guidance for VSCs specifying whose responsibility it is to transfer these cases. There was guidance for the PMCs specifying who was responsible for transferring these cases, but an Assistant Pension Management Center Manager provided a list of more than 500 final competency determination cases that staff had not transferred to the appropriate Fiduciary Hub.

⁴ Percentage is based on estimates that are not rounded.

The review team also determined that the use of separate information technology systems resulted in Fiduciary Hubs not being promptly notified when beneficiaries waived the 65-day due process period.

Beneficiaries submit waivers directly to the Fiduciary Hub or through the Centralized Mail Portal. Once the beneficiary provides a waiver of the notice period, VBA staff can take action to complete the final competency determination. However, because the Fiduciary Hubs monitor cases in BFFS, and the waivers were entered into VBMS, and these two systems do not interface, Fiduciary Hub staff did not know that some waivers were received. As Fiduciary Hub staff were not aware that some waivers had been received, this contributed to delays in completing final competency determinations.

Lack of Priority by VBA

VBA did not prioritize final competency determinations under the jurisdiction of the VSCs and PMCs, which are distributed by the NWQ. The NWQ distributes claims daily to each VA Regional Office (VARO) based on factors such as VARO workload capacity, national claims processing priorities, and special missions. VBA mandated that certain cases must receive priority processing. These cases included fully developed claims, as well as those involving homeless veterans, financial hardship, terminally ill veterans, beneficiaries who were more than 85 years old, former prisoners of war and their survivors, seriously and very seriously ill veterans, veterans with amyotrophic lateral sclerosis, and claims from Medal of Honor recipients.⁵ However, despite VBA's recognition of incompetent beneficiaries as its most vulnerable beneficiaries, VBA did not include those cases requiring final competency determinations as part of its recognized national priorities. The Deputy Under Secretary for the Office of Field Operations (OFO) acknowledged that VBA placed emphasis on completing rating claims and did not have the resources to complete the non-rating claims in a timely manner. VBA considers final competency determinations non-rating inventory.

National Work Queue Routing Rules Did Not Follow VBA Policy

On May 23, 2017, VBA changed its policy, directing that staff at the VARO associated with the beneficiary's home address would assume responsibility for completing final competency determinations when VA received additional evidence or hearing requests.⁶ Previously, this policy instructed VSC staff at the six VAROs colocated with Fiduciary Hubs to complete these

⁵ M21-1 Adjudication Procedures Manual, Part III, Subpart ii, Chapter 1, Section D, Topic 1, *General Information About Claims That Require Priority Processing*.

⁶ M21-1 Adjudication Procedures Manual, Part III, Subpart v, Chapter 9, Section B, Topic 3, *Due Process Requirements for Incompetency Determinations*.

specific final competency determinations.⁷ However, NWQ case routing rules did not change when the policy changed, and the NWQ continued routing cases requiring additional evidence to the six co-located VAROs instead of the VAROs closest to the beneficiaries' home address. As a result of the NWQ not assigning these cases nationwide in compliance with VBA's policy, the NWQ limited their distribution and this caused further delays in finalizing competency determinations.

Limited Access to Federal Taxpayer Information in the Legacy Content Manager

Some Fiduciary Hub staff did not have access to federal taxpayer information in the Legacy Content Manager, an electronic system used to store documents in beneficiaries' electronic claims folders. VA is required to establish and maintain certain safeguards to prevent unauthorized use of federal taxpayer information; therefore, access to the information in the Legacy Content Manager is limited to individuals who need the information to perform their official duties.⁸ A Fiduciary Hub Manager told the review team that the standard for access to federal taxpayer information documents was two Fiduciary Service Representatives per station. If staff do not have access to the federal taxpayer information documents in the Legacy Content Manager, they cannot review the necessary documents before completing the final competency determination, which contributes to delays.

What the OIG Recommended

The OIG recommended the Under Secretary for Benefits

- Ensure cases requiring final competency determinations are entered into the Beneficiary Fiduciary Field System as soon as the cases are established in the Veterans Benefits Management System;
- Remind VBA staff of their responsibility to notify Fiduciary Hubs when waivers are received of the due process notification period for cases with proposed incompetency, and implement a plan to ensure compliance;
- Implement a plan to ensure Fiduciary Hub staff who complete final competency determinations have access to documents containing federal taxpayer information in the Legacy Content Manager;

⁷ M21-1 Adjudication Procedures Manual, *Due Process Requirements for Incompetency Determinations*.

⁸ Adjudication Procedures Manual, M21-1, Part X, Chapter 9, Section B, *Federal Tax Information (FTI) Match: Safeguarding*.

- Implement a plan to ensure the processing of final competency determinations under the jurisdiction of the Fiduciary Hubs meets the Veterans Benefits Administration's established timeliness standard;
- Implement a plan to prioritize the processing of final competency determinations under the jurisdiction of Veterans Service Centers and Pension Management Centers; and
- Ensure the National Work Queue distributes final competency determinations according to the Veterans Benefits Administration policy for processing these cases.

Management Comments

The Under Secretary for Benefits concurred with Recommendations 1-6. The Under Secretary for Benefits provided acceptable action plans for all six recommendations. The OIG will monitor VBA's progress and follow up on implementation of the recommendations until all proposed actions are completed.



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Abbreviations

BFFS	Beneficiary Fiduciary Field System
EP	End Product
NWQ	National Work Queue
OFO	Office of Field Operations
OIG	Office of Inspector General
PMC	Pension Management Center
VA	Department of Veterans Affairs
VARO	VA Regional Office
VBA	Veterans Benefits Administration
VBMS	Veterans Benefits Management System
VSC	Veterans Service Center
VSR	Veterans Service Representative



Introduction

Objective

When VA receives clear and convincing medical evidence that, due to disability, a beneficiary lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation, the evidence is referred to the Veterans Service Center (VSC) or Pension Management Center (PMC) rating activity for a determination of the beneficiary's competency. Delays in completing final competency determinations result in potentially incompetent beneficiaries receiving ongoing benefits payments for extended periods without the protection of a VA-appointed fiduciary, putting these benefits at risk. In addition, these delays cause retroactive benefits payments to be withheld for extended periods. The purpose of this review was to determine whether Veterans Benefits Administration (VBA) staff finalized proposed incompetency determinations timely.

Fiduciary Program

VA has stated individuals served by the Fiduciary Program are its most vulnerable beneficiaries. The mission of the Fiduciary Program is to protect beneficiaries who, as a result of injury, disease, the infirmities of advanced age, or by reason of being less than age 18, are unable to manage their VA benefits. In 2017, the program served more than 211,000 beneficiaries, up from 122,271 beneficiaries served in 2011, with more than 50 percent of them being age 80 or older. In 2016, fiduciaries received nearly \$3.3 billion in VA benefits payments on behalf of the beneficiaries they serve, and almost 65 percent of beneficiaries served by the Fiduciary Program were in receipt of veteran or survivor pension benefits. Eligibility for pension benefits is based on factors such as limited net worth and income. A veteran's annual income must not exceed \$13,166⁹ in order to qualify for pension benefits; a survivor's annual income cannot exceed \$8,830¹⁰ in order to qualify for pension benefits.^{11,12} Program responsibilities include assessing the competence, adjustment, and personal welfare of beneficiaries, and determining, selecting, and qualifying fiduciaries. Pension and Fiduciary Service reports to the Office of the Deputy Under Secretary of Disability Assistance for VBA.

⁹ This rate applies to a veteran without dependents.

¹⁰ This rate applies to a survivor without dependents.

¹¹ VA Veterans Benefits Administration Pension Rate Tables – Effective December 1, 2017.

¹² The 2017 federal poverty guideline for a one-person household was \$12,060. *See* Federal Register, Vol. 82, No. 19, *Notices*, pg. 8832 (January 31, 2017).

Competency Determinations

When VA receives clear and convincing medical evidence that, due to disability, a beneficiary lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation, the evidence is referred to the VSC or PMC rating activity for a determination of the beneficiary's competency. If after reviewing the evidence, VSC or PMC staff determine the beneficiary is incompetent, they complete a decision of proposed incompetency and notify the beneficiary they have 60 days to respond.¹³ VBA policy states that staff should not take the proposed action until at least the 65th day after notification of the proposed incompetency to allow time for evidence to arrive.¹⁴

VSCs and PMCs use a code called an End Product (EP) to monitor and manage their workload. To track a proposal of incompetency, the Veterans Benefits Management System (VBMS) automatically establishes an EP 590 once VSC or PMC staff send the notice of proposed incompetency to the beneficiary.¹⁵ VSC or PMC staff must then manually transfer the case to the Fiduciary Hub associated with the beneficiary's home address using VBMS. There are six Fiduciary Hubs where staff make competency determinations: Columbia, South Carolina; Indianapolis, Indiana; Lincoln, Nebraska; Louisville, Kentucky; Milwaukee, Wisconsin; and Salt Lake City, Utah.

VBMS is VBA's electronic claims processing system that VSCs and PMCs use to process claims and manage their workload. Once staff transfer the case to the designated Fiduciary Hub, a Fiduciary Hub employee manually creates a record in the Beneficiary Fiduciary Field System (BFFS) to monitor the response period for the proposed incompetency notification. BFFS computes timeliness information for pending and completed work to facilitate effective management of the Fiduciary Hub's workload.¹⁶

Fiduciary Hub staff complete the final competency determination in VBMS. If the beneficiary submits additional evidence or requests a hearing within the response period, Fiduciary Hub staff change the EP 590 series to a 600 series EP, and the VSC or PMC closest to the beneficiaries' home address is responsible for finalizing the competency determinations using VBMS.

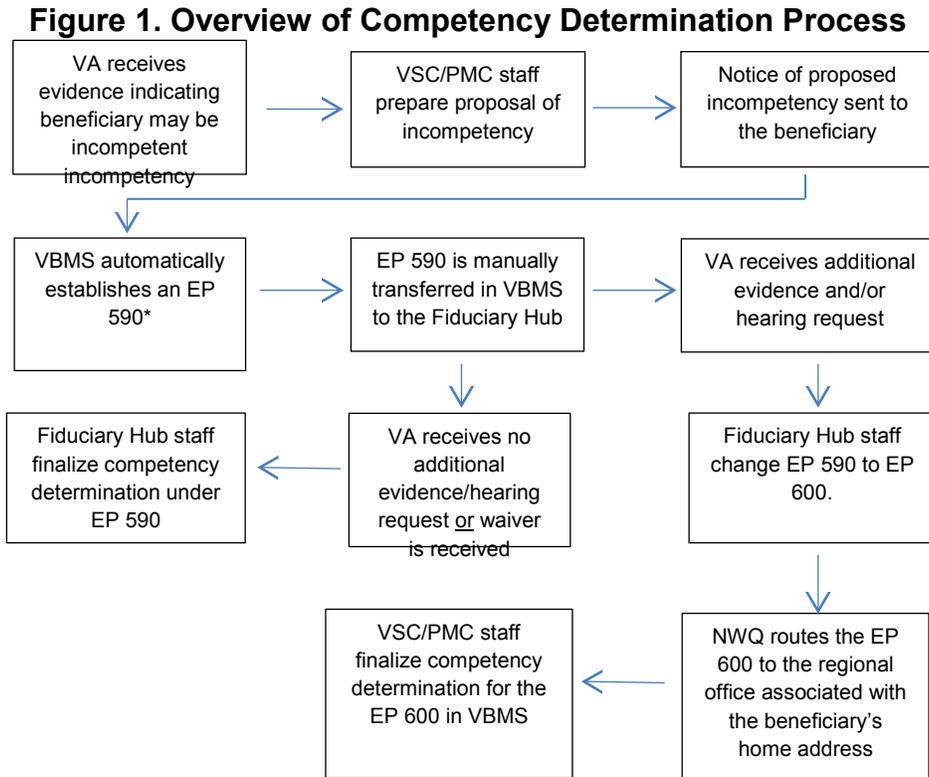
¹³ M21-1 Adjudication Procedures Manual, Part I, Chapter 2, Section B, Topic 1, *General Information on the Notice of Proposed Adverse Action*.

¹⁴ M21-1 Adjudication Procedures Manual, Part I, Chapter 2, Section C, Topic 1, *General Information on the Adverse Action Proposal Period*.

¹⁵ In some rare cases, VBA staff must manually establish the 590 series EP in the Veterans Benefits Management System.

¹⁶ Fiduciary Program Manual, Chapter 9, Section D, Topic 6.a, *Using the BFFS System to Manage Fiduciary Workload*.

Figure 1 describes the relationship and workflow among VSCs or PMCs and Fiduciary Hubs.



Source: VA OIG analysis of M21-1 Adjudication Procedures Manual, Part I, Chapter 2, Section B, Topic 1, General Information on the Notice of Proposed Adverse Action; and Fiduciary Program Manual, Chapter 7, Section B, Topic 3, Procedures for Final Determinations of a Beneficiary’s Inability to Management Financial Affairs

*In some rare cases, staff must manually establish the EP 590.

VBA policy states that staff should not take the proposed action until at least the 65th day after notification of the proposed incompetency to allow time for evidence to arrive.¹⁷ This 65-day period, which commences when the notice of proposed incompetency is sent to the beneficiary, is known as due process. When beneficiaries waive due process, Fiduciary Service Representatives at the Fiduciary Hubs finalize the competency determinations in VBMS.¹⁸

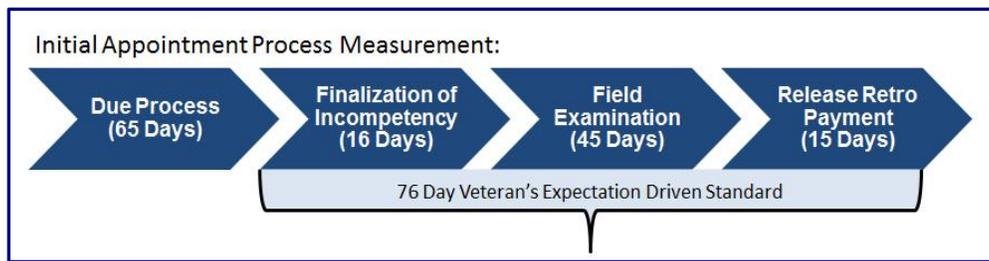
¹⁷ M21-1 Adjudication Procedures Manual, Part I, Chapter 2, Section C, Topic 1, General Information on the Adverse Action Proposal Period

¹⁸ The station of origination immediately notifies the fiduciary hub of jurisdiction that a waiver of due process has been received by sending an email with the subject line “Due Process Waived - Incompetency Proposal.” M21-1 Adjudication Procedures Manual, Part III, subpart v, Chapter 9, Section B, Topic 3, Due Process Requirements for Incompetency Determinations.

Fiduciary Service Representatives are Fiduciary Hub employees who have the authority to finalize competency determinations.¹⁹ Moreover, if the Fiduciary Hub does not receive additional information, a response to the proposed incompetency notification, or a request for a hearing from beneficiaries, Fiduciary Service Representatives also finalize the competency determinations in VBMS.²⁰ Fiduciary Hubs have a standard of 16 days after expiration of the notification period for making these determinations.²¹

In contrast, if a beneficiary submits additional evidence or requests a hearing within the response period, the competency determination is routed to the VA Regional Office (VARO) associated with the beneficiary’s home address for finalization by VSC or PMC staff. Figure 2 illustrates VBA’s timeliness standards for the initial fiduciary appointment process. The entire initial appointment process, consisting of the time from finalization of the incompetency rating to the release of retroactive payment should be 76 days—this includes the 45 days to complete the field examination and 15 days to release the retroactive payment to the beneficiary. The OIG’s review focused on the finalization of incompetency segment of this process.

Figure 2. Fiduciary Appointment Process Timeliness Standards



Source: VA OIG’s Presentation of Information from VA’s Fiscal Year 2018/Fiscal Year 2016 Annual Performance Plan and Report

OIG’s Previous Review

In a previous report, *Systemic Issues Reported During Inspections at VA Regional Offices* (Report No 11-00510-167, May 18, 2011), the OIG determined that staff at seven VAROs unnecessarily delayed making final competency decisions in 54 of 159 cases (34 percent). The delays occurred because VARO workload management plans did not make competency determinations a priority or include measures for oversight of this work.

¹⁹ Fiduciary Program Manual, Chapter 7, Section A, Topic 4.b, *Jurisdiction for Determinations of a Beneficiary’s Inability to Manage VA Benefits and Fiduciary Adjustments*.

²⁰ Fiduciary Program Manual, *Jurisdiction for Determinations of a Beneficiary’s Inability to Manage VA Benefits*.

²¹ Fiduciary Program Manual, Chapter 7, Section A, Topic 3, *General Information on Fiduciary Promulgation Teams*.

Because of these findings, the OIG recommended the Acting Under Secretary for Benefits develop a clear and measurable standard for timely completion of competency determinations. The Acting Under Secretary for Benefits concurred with the OIG's recommendation and implemented a 21-day standard to complete final competency determinations after expiration of the due process period. In July 2011, the 21-day standard became VBA policy and was later added to the Adjudication Procedures Manual. Compensation Service removed this standard from the Manual in July 2015.

Results and Recommendations

Finding 1: VBA Needed to Improve Timeliness for Completing Final Competency Determinations

The OIG estimated that VBA staff did not complete final competency determinations within 16 days of when they could have taken action in 16,100 of 22,500 final competency determinations for beneficiaries (72 percent) during the period March 1 through August 31, 2017. This occurred because

- Fiduciary Hubs use a separate information technology system to monitor and control final competency determinations,
- VBA did not prioritize competency determinations,
- National Work Queue (NWQ) guidelines did not reflect current VBA policy, and
- VBA limited the number of Fiduciary Hub staff who had access to competency documents stored in the Legacy Content Manager.

As a result, the review team estimated that during the extended processing time, VA paid \$62.4 million in monthly ongoing benefits to unprotected beneficiaries determined to be incompetent. Furthermore, because VBA staff delayed finalizing these competency determinations, approximately \$77.5 million in retroactive benefits payments were withheld from beneficiaries for extended periods.

Scope and Methodology

To track the proposal of incompetency, VBMS establishes an EP 590 once VBA staff send the notice of proposed incompetency to the beneficiary. If the beneficiary submits additional evidence or requests a hearing within the response period, Fiduciary Hub staff change the EP 590 series to an EP 600 series. Using a statistical sample, the OIG team reviewed a population of 22,615 EP 590 series and a population of 1,735 EP 600 series relating to final competency determinations that VBA staff completed from March 1 through August 31, 2017. The 600 series EPs contained 1,650 with a claim label indicating they were under the jurisdiction of the VSCs, and 85 with a claim label indicating they were under the jurisdiction of the PMCs.²² The review

²² A claim label is a claim attribute that provides a more specific description of the claim type that a corresponding end product represents. The most accurate claim label must be selected when establishing a claim and reviewed for any potential updates throughout the life of the claim. M21-4 Manual, Appendix C, Section 1.a, *Purpose of Claim Labels*.

team adjusted the population of EP 590 series to 20,900 and the population of EP 600 series to 1,600 to account for cases that were out of scope.

The OIG measured the time between when staff could have completed the final competency determinations after expiration of due process, receipt of a waiver, or completion of development, to when staff actually completed the determinations. The review team used VBA's electronic systems, including VBMS, and required relevant documentation to review the sample beneficiary claims folders to assess the timeliness of final competency determinations. VBA's Fiduciary Program Manual contains a 16-day timeliness standard for final competency determinations completed by Fiduciary Hub staff. However, since July 2015, VBA's Adjudication Procedures Manual has not contained any standards for completion of final competency determinations by VSCs and PMCs.

During the entrance conference with VBA representatives, the review team discussed the planned methodology to assess timeliness for cases under the jurisdiction of VSCs and PMCs, and asked them what timeliness standard would be appropriate. They declined to endorse any timeliness standard. The OIG established 16 days as a reasonable time to measure because VBA has a 16-day timeliness standard for final competency determinations under the jurisdiction of the Fiduciary Hubs. The Director of Pension and Fiduciary stated that cases under the jurisdiction of the VSCs and PMCs should have the same 16-day standard once action can be taken to complete them.

This finding discusses

- Delays in completing final competency determinations that resulted in unprotected incompetent beneficiaries receiving monthly ongoing benefits payments and, in some cases, having retroactive benefits payments withheld while waiting for the final determinations;
- Non-integrated systems that prevented Fiduciary Hubs and VSCs and PMCs from efficiently monitoring and tracking the processing of competency determinations;
- Lack of prioritization of final competency determinations under the jurisdiction of the VSCs and PMCs;
- The NWQ routing cases requiring additional evidence to the VAROs co-located with the six Fiduciary Hubs instead of one of the 56 VAROs closest to the beneficiaries' home address; and
- Limited access to federal tax information in the Legacy Content Manager.

Delayed Competency Determinations

VBA staff took longer than 16 days to finalize 72 percent of final competency determinations. Table 1 describes the cases reviewed, estimated population, projected number and percentage not

completed within 16 days, and average days to complete from when VBA could have taken action.

Table 1. Timeliness of Final Competency Determinations

End Product Series	Cases Reviewed	Estimated Population	Projected Number Not Completed within 16 Days	Percentage of Cases Reviewed Not Completed within 16 Days	Average Days to Complete
EP 590	107	20,900	14,600	70%	64
EP 600	100	1,600	1,500	92%	320
Total	207	22,500	16,100	72%	82

Source: VA OIG data analysis and statisticians' projections. Note: Estimates do not total precisely due to rounding.

Impact to Beneficiaries

Ultimately, the review team estimated that 13,600 of the 16,100 beneficiaries who did not receive a final competency decision within 16 days of when action could have been taken were found incompetent by VBA and received ongoing monthly benefits. During the extended processing time, these 13,600 unprotected beneficiaries determined to be incompetent received \$62.4 million in monthly ongoing benefits payments. The review team estimated that these beneficiaries received an average of approximately \$4,600 each in monthly ongoing benefits payments.

Delays in final competency determinations also resulted in both competent and incompetent beneficiaries waiting longer for withheld retroactive benefits. VBA withholds these payments until completing the final competency determinations. When beneficiaries are determined as competent, VBA releases the retroactive benefits at the time the final competency determination is completed. When the beneficiary is determined to be incompetent, VBA continues to withhold retroactive benefits until a VA fiduciary is appointed. The review team estimated that approximately 12,400 of the 16,100 beneficiaries who received a final competency determination not processed within 16 days from when VBA could have taken action had approximately \$77.5 million in VA retroactive benefits payments withheld. The review team estimated that these beneficiaries had an average of approximately \$6,300 each in retroactive benefits withheld.

Work Related to EP 590 Series Review

Based on a sample, the review team estimated that VBA staff took on average 64 days to complete the competency determination for work related to EP 590s and, overall, they did not timely complete 14,600 of a total of 20,900 final competency determinations (70 percent). The

OIG team reviewed a statistical sample of 107 final competency determinations under the jurisdiction of the Fiduciary Hubs and found 75 took longer than the required 16 days to complete. Of the 75 cases reviewed that were untimely, the days to complete ranged from 18 to 874 days; seven cases took more than 150 days to complete.

The OIG also estimated that approximately 14,000 of these 14,600 beneficiaries were ultimately determined by VBA staff as not competent to handle their VA benefits payments. Of these beneficiaries determined to be incompetent by VBA staff, the review team estimated that 13,100 continued to receive approximately \$50.1 million in monthly benefit payments from the time staff could have completed the competency determinations until they actually completed them.^{23,24}

Following are two examples of delayed completion.

Example 1

PMC staff notified a beneficiary of the proposal of incompetency on March 10, 2017. VA received the beneficiary's response to the notification accepting the proposal of incompetency on March 27, 2017. VBA staff at the Fiduciary Hub should have completed the competency determination within 16 days from March 27, 2017. However, staff did not complete the final determination that the beneficiary was incompetent to manage her VA pension benefits payments until July 13, 2017, or 109 days later. During the 109 days, the incompetent beneficiary received approximately \$4,600 in ongoing monthly pension payments, and had approximately \$1,200 in retroactive benefits withheld.

Example 2

VSC staff notified a veteran of the proposal of incompetency on December 2, 2016. The beneficiary did not respond to the proposal of incompetency, and the due process notification period expired on February 6, 2017. VBA staff at the Fiduciary Hub should have completed the competency determination within 16 days from February 6, 2017. However, staff did not complete the final determination that the veteran was incompetent to manage his VA compensation benefits payments until May 11, 2017, or 95 days later. The beneficiary received approximately \$9,800 in ongoing monthly compensation payments while awaiting the final competency determination.

²³ Fiduciary Program Manual, Chapter 7, Section D.1, *General Information on Fiduciary Adjustments*.

²⁴The OIG found one case in the sample in which a beneficiary was determined to be competent, but the OIG could not estimate the number in the population with precision based on this one case. This beneficiary waited 70 days for completion of a final competency determination.

Work Related to EP 600 Series Review

Based on a sample, the review team estimated that VBA staff took on average 320 days to complete the competency determination for the work related to EP 600s. VBA did not have a timeliness standard for final competency determinations under the jurisdiction of the VSCs and PMCs; therefore, the review team could not determine whether they were completed timely. However, the team estimated that VBA staff did not complete final competency determinations within 16 days of when they could have taken action in approximately 1,500 of 1,600 cases (92 percent) from March through August 2017.²⁵ The OIG team reviewed a statistical sample of 100 final competency determinations under the jurisdiction of the VSCs and PMCs and found that VBA staff did not complete 92 of 100 cases sampled within 16 days of when they could have taken action. Of those 92 cases, the days to complete ranged from 17 to 3,227 days, and 55 cases took more than 150 days to complete.

The review team also estimated that approximately 570 of these beneficiaries were ultimately determined not to be competent to handle their VA benefits payments. Of these beneficiaries determined to be incompetent by VBA staff, 540 continued to receive approximately \$12.3 million in monthly benefits payments from the time staff could have completed the competency determinations until they actually completed the determinations.

Following are two examples of delayed completion.

Example 3

VSC staff notified a beneficiary of the proposal of incompetency on January 26, 2017. VA received the beneficiary's response to the notification accepting the proposal of incompetency on February 1, 2017. However, staff did not complete the final determination that the beneficiary was incompetent to manage his VA compensation benefits payments until August 5, 2017, or 186 days later. The beneficiary received approximately \$22,700 in ongoing monthly compensation payments.

Example 4

VSC staff notified a beneficiary of the proposal of incompetency on February 23, 2016. The beneficiary did not respond to the notification of the proposal of incompetency. The due process notification period expired on April 28, 2016. The beneficiary died on February 8, 2017, or 286 days after due process expired, without staff making a final competency determination. The beneficiary received

²⁵ Percentage is based on estimates that are not rounded. Other estimates are rounded throughout the report and can result in imprecise totals.

approximately \$11,600 in ongoing monthly compensation payments prior to his death while awaiting the final competency determination. The beneficiary also had approximately \$3,500 in retroactive benefits withheld during this period, which he never received prior to his death.

Death of Beneficiaries

The Deputy Director of Pension and Fiduciary Service told the review team that an unacceptable number of beneficiaries die before receiving retroactive benefits. Over half of the Fiduciary Program beneficiaries in 2017 were age 80 or older, and in 2016, almost 65 percent of the beneficiaries in the Fiduciary Program received benefits based on income near the poverty level—which, for a one-person household in 2017, was \$12,060. Delays in completing final competency determinations make it more likely that these elderly, poor beneficiaries could die without receiving their retroactive benefit payments.

The OIG team reviewed a statistical sample of 107 EP 590 series and 100 EP 600 series from the population of cases with final competency determinations. Twelve beneficiaries under the EP 600 series and two beneficiaries under the EP 590 series died and did not receive final competency determinations within 16 days of when action could have been taken to finalize them. Of the 207 cases the OIG team reviewed, 14 beneficiaries died before VBA staff completed the final competency determinations. Of these 14 beneficiaries, eight retroactive benefit payments were withheld that they did not receive prior to their deaths. These beneficiaries never received benefit payments they could have used for care and other daily needs while they were still alive.

Non-Integrated Information Technology Systems

Delays in completing final competency determinations occurred because the Fiduciary Hubs used BFFS to track and monitor them while VSCs and PMCs used VBMS, and these systems did not electronically interface. The Director of Pension and Fiduciary Service told the OIG that Fiduciary Service will be in a better place if they can integrate BFFS.

Manual Transfer to Fiduciary Hubs

As a result of BFFS and VBMS not interfacing, VSC and PMC staff were required to manually transfer cases to the Fiduciary Hubs after they were established in VBMS. Once transferred, Fiduciary Hub staff would then manually enter the cases into BFFS so they could be tracked and monitored. The review team discovered that VSC and PMC staff were not promptly transferring final competency determinations to the Fiduciary Hubs. According to Fiduciary Hub managers, this results in the Fiduciary Hub experiencing delays entering the cases into BFFS. If the cases are not entered into BFFS, the Fiduciary Hub cannot track and monitor them, which contributed to the delays in completing them timely. If there is no record created in BFFS, the Fiduciary Hub

is unable to effectively monitor the final competency determinations to ensure timely completion. For example, in one case, VBA staff established an EP 590 on December 1, 2016. The due process period for this case expired on February 6, 2017, and Fiduciary Hub staff could have taken action to complete the final competency determination. However, the EP 590 was not transferred to the Fiduciary Hub of jurisdiction until May 8, 2017, or 91 days after due process had already expired. Fiduciary Hub staff completed the final competency determination on May 11, 2017, three days after the EP 590 was transferred.

The cases were not promptly transferred because there was no policy or guidance for VSCs specifying who is responsible for transferring these cases. The Acting Assistant Director of Policy and Procedures at the time of the OIG review stated that VBA's Adjudication Procedure Manual does not indicate which employee at the VSCs should transfer the EP 590 to the Fiduciary Hub. Furthermore, he told the review team that he could not locate, and was not aware of, any guidance directing which employee at the VSCs are responsible for transferring EP 590s to the Fiduciary Hubs.

Although there was guidance for the PMCs specifying who is responsible for transferring these cases, an Assistant Pension Management Center Manager provided a list of more than 500 final competency determination cases that staff had not transferred to the appropriate Fiduciary Hub. He noted that there was no process in place to transfer the cases at the time of establishment in VBMS because these cases were handled by the Fiduciary Hubs, not the PMC. Fiduciary Hub managers pointed out that if the cases are not transferred promptly, the Fiduciary Hub does not know a BFFS record must be created.

If BFFS and VBMS communicated electronically, the manual entry of cases in BFFS would not be necessary. One Fiduciary Hub Manager noted that BFFS not interfacing with other programs is problematic because of the great amount of time spent on entering and tracking records. Another Fiduciary Hub Manager noted that if the cases are not transferred, the Fiduciary Hub is not aware of them, delaying the creation of the record in BFFS. She also agreed that a delay in transferring the cases creates a delay in controlling them in BFFS. She provided the review team with an October 2017 proposal that she and others prepared and presented to the Deputy Under Secretary for the Office of Field Operations (OFO). The proposal noted that cases were not being timely referred to the Fiduciary Program, which resulted "in delayed payment and protection to our most vulnerable claimants." The proposal called for automatically establishing a BFFS work item when an EP 590 is established in VBMS. At the time of the site visit in January 2018, VBA was preparing to schedule a system update that would implement this proposal.

Notification of Waivers

The review team also determined that the use of separate information technology systems resulted in Fiduciary Hubs not being promptly notified of some waivers of due process received through the Centralized Mail Portal. A beneficiary may submit a waiver of the 65-day due

process period directly to the Fiduciary Hub, or through the Centralized Mail Portal. Once the beneficiary provides a waiver, VBA staff can take action to complete the final competency determination. Action can be taken on a proposed adverse action when the beneficiary submits a written statement or otherwise contacts VA confirming the validity of the evidence and specifically asking the proposed adverse action to be implemented.

However, because the Fiduciary Hubs monitor cases in BFFS and waivers were entered into VBMS, and these two systems do not interface, Fiduciary Hubs were not aware that some waivers were received.²⁶ As Fiduciary Hub staff were unaware that some waivers had been received, this contributed to delays in completing final competency determinations. For example, in one case, an EP 590 was established on April 4, 2017, and transferred to the Fiduciary Hub of jurisdiction on the same day. Fiduciary Hub staff created a BFFS work item to track the final competency determination on April 17, 2017. VBA received a waiver from the beneficiary through the Centralized Mail Portal on April 19, 2017, and, on that date, Fiduciary Hub staff could have taken steps to finalize the competency determination. However, the EP 590 wasn't completed until June 13, 2017, 56 days after the waiver was received.

A Fiduciary Hub Manager stated that when waivers go to the national mail-scanning site, the Fiduciary Hub will not know about them until they are uploaded in VBMS. Fiduciary Hub staff confirmed they did not receive notification of receipt of waivers in VBMS. Another Fiduciary Hub Manager noted there is no easy mechanism in place to show when waivers are received. She noted that many waivers get forwarded to the PMC or VSC and the Fiduciary Hub never gets notified. In addition, a Program Support Assistant interviewed at one Fiduciary Hub stated that once they receive a waiver, they upload it to VBMS and take no further action.

Lack of Priority by VBA

VBA did not prioritize final competency determinations under the jurisdiction of the VSCs and PMCs, which are distributed by the National Work Queue (NWQ). The NWQ distributes claims daily to each VARO based on factors such as VARO workload capacity, national claims processing priorities, and special missions. This lack of prioritization contributed to delays in completing these cases. VBA mandated that certain cases must receive priority processing. These cases included fully developed claims, homeless veterans, financial hardship, terminally ill veterans, beneficiaries who were more than 85 years old, former prisoners of war and their survivors, seriously and very seriously ill veterans, veterans with amyotrophic lateral sclerosis, and claims from Medal of Honor recipients.²⁷ However, despite VBA's recognition of

²⁶ This discussion involves waivers that are submitted through the Centralized Mail Portal. For more information regarding Centralized Mail, see Appendix A.

²⁷ M21-1 Adjudication Procedures Manual, Part III, Subpart ii, Chapter 1, Section D, Topic 1, *General Information About Claims That Require Priority Processing*.

incompetent beneficiaries as its most vulnerable beneficiaries, and the relatively small number of competency determinations under the jurisdiction of the PMCs and VSCs, VBA did not include those cases as part of its recognized national priorities. The Deputy Under Secretary for the Office of Field Operations informed the review team that sometimes the VA Secretary makes the determination what cases receive priority processing—however, such a decision is often made among himself, VBA’s Compensation Service, and the VA Under Secretary for Benefits. Moreover, final competency determinations are classified as a non-rating inventory and, as the Deputy Under Secretary for the OFO stated, VBA placed emphasis on completing the rating claims and did not have the resources to complete the non-rating claims in a timely manner.

The review team also spoke to the Deputy Director of the NWQ who explained that VBA has two general categories for its NWQ claims workload. She added there is more resource capacity to work the rating workload than the non-rating workload. Delays in completing final competency determinations in the NWQ occurred because final competency determinations were placed into the non-rating category with fewer employee resources and, therefore, were not prioritized for timely completion. The Deputy Under Secretary for VBA’s OFO confirmed that VBA does not have the resources to complete both categories of claims in a timely manner. He stated that the Executive in Charge of VBA may be aware of this issue, but only on a macro scale.

The Deputy Director of VBA’s OFO stated that she did not know why final competency determinations were not prioritized and that she was not familiar with how VBA isolates these cases from other non-rating inventory. She also noted that delays in completing final competency determinations have not been a subject in any conversations she has been involved in; however, now that OFO was aware of the delays, she would advocate for internal discussions about what steps to take to address them.

Staff and management at the facilities visited generally agreed that cases with final competency determinations have not been a top VBA workload priority, and this led to delays in completing these determinations. The Assistant Director of Pension and Fiduciary Service also agreed that VBA does not currently prioritize these cases. He further stated, and a Program Analyst with OFO confirmed, that Fiduciary Service and OFO are discussing how to make final incompetency determinations a higher priority.

NWQ Routing Rules Did Not Follow VBA Policy

VBA changed its policy effective May 23, 2017, directing that staff at the VARO associated with the beneficiary’s home address assume responsibility for completing final competency determinations when VA received additional evidence or hearing requests.²⁸ Previously, this

²⁸ M21-1 Adjudication Procedures Manual, Part III, Subpart v, Chapter 9, Section B, Topic 3, *Due Process Requirements for Incompetency Determinations*.

policy directed that staff at VSCs at the six VAROs co-located with Fiduciary Hubs complete these specific final competency determinations.²⁹ However, NWQ case routing rules did not change when the policy changed, and the NWQ continued routing cases requiring additional evidence to the six co-located VAROs instead of one of the 56 VAROs closest to the beneficiaries' home address. As a result of the NWQ not assigning these cases nationwide in compliance with VBA policy, the NWQ limited their distribution and caused further delays in finalizing competency determinations.

Both the Deputy Director and the Supervisory Lead Management Analyst of the NWQ informed the review team that they were aware the NWQ routing rules were not consistent with VBA policy. The Deputy Director told the team that the NWQ staff had contacted Compensation Service regarding the inconsistencies between the routing rules and policy, but had not received any guidance at the time of the interview. The Director of Compensation Service stated that she was not aware the NWQ routing rules did not reflect the May 23, 2017, changes to VBA's policy regarding cases that required additional evidence. She also informed the review team in March 2018 that routing problems have been identified as a source of delay in final competency determinations in which additional evidence is provided, and resolution is currently in progress to update procedures and routing rules accordingly.

Limited Access to Federal Taxpayer Information in the Legacy Content Manager

Some Fiduciary Hub staff did not have access to federal taxpayer information in the Legacy Content Manager, an electronic system used to store documents in beneficiaries' electronic claims folders.³⁰ VA is required to establish and maintain certain safeguards to prevent unauthorized use of federal taxpayer information; therefore, access to the information in the Legacy Content Manager is limited to individuals who need the information to perform their official duties.³¹ The Deputy Director of the Office of Business Process Integration told the review team that VBA's Office of Field Operations limited the number of staff allowed access to federal taxpayer information documents in the Legacy Content Manager on an as-needed basis. However, the Deputy Director of OFO was not aware of her office's involvement in determining the number of employees who are able to access the documents containing restricted information in the Legacy Content Manager.

²⁹ Adjudication Procedures Manual, Due Process Requirements for Incompetency Determinations.

³⁰ Federal taxpayer information is obtained by VA through a data sharing agreement with the Internal Revenue Service.

³¹ Adjudication Procedures Manual, M21-1, Part X, Chapter 9, Section B, *Federal Tax Information (FTI) Match: Safeguarding*.

A Fiduciary Hub Manager provided an email from OFO noting that each Fiduciary Hub is allowed to have two employees with federal taxpayer information access. Prior to making a final competency determination, the staff must review the notice of proposal of incompetency to ensure beneficiaries were properly notified. However, if they do not have access to the federal taxpayer information documents in the Legacy Content Manager they cannot review the necessary documents, which contributed to delays in completing final competency determinations. In an email to OFO, the Director of the Indianapolis VARO stated that 65 percent of their workload is generated from the PMC, and the notification letters sent to beneficiaries are restricted due to federal taxpayer information. The Director stated that limiting access to two employees caused the Fiduciary Hub to experience delays in completing final competency determinations and releasing retroactive payments.

Another Fiduciary Hub Manager stated that, generally, only two employees per Fiduciary Hub had access to documents with federal taxpayer information in Legacy Content Manager, but she received a waiver from this requirement and obtained access for all her staff. She also noted that if Legacy Content Manager access was limited to two employees, this would create a bottleneck.

Conclusion

Based on a sample, the review team estimated that VBA staff took on average 64 days to complete the competency determination for work related to EP 590s, whereas work related to EP 600s with no timeliness standard took on average 320 days to complete. Overall, VBA staff needed to improve timeliness for completing final competency determinations to decrease the amount of benefits paid to incompetent beneficiaries without an appointed fiduciary, and to minimize the extended periods of withholding retroactive benefits for beneficiaries. If VBA staff enter cases requiring final competency determinations into BFFS as soon as their establishment in VBMS, VBA can improve the timeliness of final competency determinations. In addition, if VSC and PMC staff notify Fiduciary Hubs when they receive waivers of the due process notification period, and Fiduciary staff have access to federal taxpayer information in Legacy Content Manager, then they can process final competency determinations in a more timely manner. Finally, if VBA ensures established timeliness standards for processing final competency determinations are met, prioritizes processing of final competency determinations under the jurisdiction of the VSCs and PMCs, and the NWQ distributes these cases according to VBA policy, the timeliness of these decisions can improve.³²

³² M21-1 Adjudication Procedures Manual, Part III, Subpart v, Chapter 9, Section B, Topic 3, *Due Process Requirements for Incompetency Determinations*.

Recommendations 1–6

1. The Under Secretary for Benefits ensures cases requiring final competency determinations are entered into the Beneficiary Fiduciary Field System as soon as the cases are established in the Veterans Benefits Management System.
2. The Under Secretary for Benefits reminds Veterans Benefits Administration staff of their responsibility to notify Fiduciary Hubs when waivers are received of the due process notification period for cases with proposed incompetency, and implements a plan to ensure compliance.
3. The Under Secretary for Benefits implements a plan to ensure the processing of final competency determinations under the jurisdiction of the Fiduciary Hubs meet Veterans Benefits Administration's established timeliness standard.
4. The Under Secretary for Benefits implements a plan to prioritize the processing of final competency determinations under the jurisdiction of Veterans Service Centers and Pension Management Centers.
5. The Under Secretary for Benefits ensures the National Work Queue distributes final competency determinations according to the Veterans Benefits Administration policy for processing these cases.
6. The Under Secretary for Benefits implements a plan to ensure Fiduciary Hub staff who complete final competency determinations have access to documents containing federal taxpayer information in the Legacy Content Manager.

Management Comments and OIG Response

The Under Secretary for Benefits concurred with Recommendations 1–6. The Under Secretary provided acceptable action plans for all six recommendations.

To address Recommendation 1, the Under Secretary for Benefits stated VBA is developing an information technology system requirements document. This will provide an automatic creation of a work item in the Beneficiary Fiduciary Field System (BFFS) when a final competency is established in the Veterans Benefits Management System (VBMS) and eliminate the need for manual entries in BFFS. The target completion date is June 30, 2019.

To address Recommendation 2, VBA stated it is creating a new reporting tool to identify cases when mail has been received. The report will be available daily, allowing employees to review mail for waivers, will allow managers to hold employees accountable, and will ensure appropriate action is taken on all cases. The target completion date is November 30, 2018.

To address Recommendation 3, VBA reported it does not establish standards for timeliness by specific cycle. However, VBA stated for March 31, 2017, to August 26, 2018, this cycle has improved by 41.5 days, from 76.4 days to 34.9 average days pending (ADP). VBA reported it is

implementing several actions to ensure more timely processing of final competency determinations under the jurisdiction of the Fiduciary Hubs, with daily routing of EP 590s in the National Work Queue in August 2018. Finally, an additional 225 Fiduciary employees will be added in fiscal year (FY) 2019 to assist in managing this workload and improve timeliness. The target completion date is June 30, 2019.

To address Recommendation 4, the Under Secretary for Benefits stated VBA has prioritized the processing of final competency determinations under the jurisdiction of Veterans Service Centers and Pension Management Centers. VBA has reduced the ADP of these cases. However, VBA expects the ADP for these cases to remain higher than the ADP for competency determinations under the jurisdiction of the Fiduciary Hubs due to the additional time required for development and the hearing process. VBA requested closure of this recommendation.

To address Recommendation 5, VBA stated the conflict in policy regarding routing of these cases has been resolved in May 2018 when the NWQ began routing EP 600 competency determinations to regional offices based on capacity, in accordance with both Compensation Service and Fiduciary Service policy. VBA requested closure of this recommendation.

To address Recommendation 6, VBA stated it will identify all employees who complete final competency determinations and require Federal Taxpayer Information (FTI) access and assign required FTI training. Once the required training is completed, VBA will submit required documentation to the appropriate officials to grant system access. The target completion date is June 30, 2019.

The Under Secretary for Benefits' comments and actions are responsive to the recommendations. The OIG will consider closing Recommendations 4 and 5 after receiving and reviewing additional supporting documentation. The OIG will monitor VBA's progress and follow up on implementation of the recommendations until all proposed actions are completed.

Appendix A: Background

Veterans Service Centers

VSC staff administer the Compensation Program for veterans and their dependents at 56 VAROs nationwide. VSC staff also determine eligibility for benefits and services provided by other business lines such as Insurance and Loan Guaranty.

Pension Management Centers

PMC staff are responsible for processing claims for veterans' pension and survivor benefits. There are three PMCs whose staff process these claims: Milwaukee, Wisconsin; Philadelphia, Pennsylvania; and St. Paul, Minnesota.

VBA's Fiduciary Program

The Fiduciary Program provides oversight of VA's most vulnerable beneficiaries. One responsibility of Fiduciary staff is to assess the competence, adjustment, and personal welfare of beneficiaries to determine whether they need assistance managing their VA benefits. Almost 65 percent of beneficiaries in the Fiduciary Program are in receipt of veteran or survivor pension benefits, and over 50 percent are 80 years old or older. VBA reported the Fiduciary Program has experienced significant growth since 2011. In 2016, the program served 233,500 beneficiaries, up from 122,271 beneficiaries served in 2011. During 2016, fiduciaries received almost \$3.3 billion in VA benefit payments on behalf of the beneficiaries they serve. There are six Fiduciary Hubs where staff make competency determinations: Columbia, South Carolina; Indianapolis, Indiana; Lincoln, Nebraska; Louisville, Kentucky; Milwaukee, Wisconsin; and Salt Lake City, Utah.

Centralized Mail

VBA implemented Centralized Mail to improve the timeliness of the scanning process. VBA's implementation of VBMS resulted in the need to obtain digital files to electronically process compensation claims. Incoming material to VBA is electronically uploaded into VBMS by document-scanning vendors. Under the Centralized Mail procedures, beneficiaries send mail directly to the scanning vendor, who then uploads the digital images to the Centralized Mail Portal for processing in VBMS.

End Products

The EP system is the primary workload-monitoring tool for VSC and PMC management. EPs are the work units VBA establishes to properly control pending workloads. EPs have specific codes to identify types of claims or actions required, and VBA uses this system to monitor and manage its workload. The EP system also determines appropriate work credit to substantiate proper

staffing requirements, determine productive capacity, and formulate the annual budget submission. As such, VBA staff are required to promptly establish an EP for each claim, which should generally remain pending until all required actions on that claim have been completed.³³

EP 590 applies to the proposed incompetency determinations that fall under the jurisdiction of the fiduciary hubs. EP 600 applies to incompetency determinations for all cases in which beneficiaries submit hearing requests or additional evidence in response to the proposed incompetency notification. Prior to May 23, 2017, staff at VSCs or PMCs co-located with fiduciary hubs had jurisdiction of EP 600s for incompetency determinations. At the time of the OIG's review, staff located at the VSC or PMC closest to the beneficiary's home address had jurisdiction to finalize the competency determination.

Final Determination of the Beneficiary's Ability to Manage VA Benefits

When clear and convincing medical evidence is received that, due to disability, a beneficiary lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation, the evidence is referred to the VSC or PMC rating activity for a determination of the beneficiary's competency. If after reviewing the evidence the rating activity determines the beneficiary is incompetent, the rating activity completes a decision of proposed incompetency. VBA sends the beneficiary written notification of the proposal with an explanation of the effect on the payment of VA benefits, and a statement of the beneficiary's right to submit evidence to show why VBA should not take the proposed action. The notice also includes instructions for requesting a personal hearing to present evidence, explains the right of representation during the hearing; and informs the beneficiary that she or he has 60 days to respond to the notice. After the EP associated with the proposal is cleared, an EP 590 is established to track the proposal. Staff transfer the EP 590 to the Fiduciary Hub of jurisdiction, which then monitors the 65-day due process period. There are six Fiduciary Hubs: Salt Lake City, Utah, Lincoln, Nebraska, Milwaukee, Wisconsin, Columbia, South Carolina, Louisville, Kentucky, and Indianapolis, Indiana.

If at any point during the incompetency process the beneficiary is entitled to an original award of benefits, a reinstatement of benefits, or increased benefits, payment at the new or increased rate of benefits generally begins immediately from the current month forward without waiting for resolution of the competency issue. However, VBA is required to withhold retroactive benefits due the beneficiary until a fiduciary can be appointed. Once the fiduciary is appointed, the retroactive benefits are released. A fiduciary is a person or legal entity, such as a bank, charged with managing the estate of an incompetent beneficiary.

³³ M21-4 Manual, Appendix B, Section I, *End Products – General Principles*.

Appendix B: Scope and Methodology

Scope

The review team conducted its work from October 2017 through August 2018. The review covered a population of approximately 22,600 EP 590 series and a population of approximately 1,700 EP 600 series relating to final competency determinations that VBA staff completed from March 1 through August 31, 2017. The OIG adjusted the population of EP 590 series to 20,900 and the population of EP 600 series to 1,600 to account for cases that were out of scope.

Methodology

To accomplish the review objective, the OIG team identified and reviewed applicable laws, regulations, VA policies, operating procedures, and guidelines related to completion of final competency determinations. The review team interviewed and obtained testimonial information associated with completion of final competency determinations from management and staff at VBA's Central Office and the VSCs, PMCs, and Fiduciary Hubs visited. The review team performed site visits at the Atlanta, Georgia VSC; Philadelphia, PA VSC; Indianapolis, Indiana Fiduciary Hub and co-located VSC; and Milwaukee, Wisconsin Fiduciary Hub and co-located PMC in December 2017 and January 2018.

In coordination with the VA OIG statisticians, the OIG team reviewed a random sample of 107 EP 590 series and 100 EP 600 series that VBA staff completed from March 1 through August 31, 2017, and determined whether the final competency determinations were completed within 16 days of when VBA could have taken action. The review team measured the time between when staff could have completed the final competency determinations to when staff actually completed the determinations. Since the Fiduciary Hubs have a 16-day timeliness standard to complete final competency determinations, the review team considered the cases under the jurisdiction of the Fiduciary Hubs untimely if the number of days calculated was more than 16 days. As the final competency determinations under the jurisdiction of the VSCs and PMCs did not have a timeliness standard, the review team identified the number of cases that were not completed within 16 days of when VBA could have taken action. The review team established 16 days was a reasonable time to measure because VBA has a 16-day timeliness standard for final competency determinations under the jurisdiction of the Fiduciary Hubs, and the Director of Pension and Fiduciary stated that cases under the jurisdiction of the VSCs/PMCs should have the same 16-day standard once action can be taken to complete them. Appendix C provides more details on the statistical sampling methodology.

The review team used VBA's electronic systems, including VBMS, to review the sample beneficiary claims folders and relevant documentation required to assess the timeliness of final

competency determinations. The team discussed the findings with VBA officials and included their comments where appropriate.

Fraud Assessment

The OIG assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this review. The OIG exercised due diligence in staying alert to any fraud indicators by taking actions such as:

- Soliciting the OIG's Office of Investigations for indicators
- Reviewing OIG hotline complaints and concerns for indicators
- Completing the Fraud Indicators and Assessment checklist

The OIG did not identify any instances of fraud during this review.

Data Reliability

The OIG used computer-processed data from VBA's Corporate Data Warehouse. To test for reliability, the team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The OIG also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the OIG compared beneficiaries' names, file numbers, Social Security numbers, dates of claims, and EP closed dates as provided in the data received to the 207 claims folders reviewed.

Testing of the data disclosed that they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the beneficiaries' claims folders reviewed did not disclose any problems with data reliability.

Government Standards

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

Appendix C: Statistical Sampling Methodology

Approach

To accomplish the objective, the review team reviewed a statistical sample of beneficiaries' cases with final competency determinations. The team used statistical sampling to quantify the extent of the cases in which VBA staff did not timely process final competency determinations.

Population

The review population included 24,350 beneficiaries' cases with final competency determinations completed from March 1 through August 31, 2017. This included cases completed using both EP 590 and EP 600 series. For the purposes of the review, the OIG team adjusted the population to approximately 22,482 beneficiaries' cases after excluding cases determined to be outside the scope of review.

Sampling Design

The review team selected a statistical sample of 107 EP 590 series and 100 EP 600 series from the population of cases with final competency determinations.

Weights

The review team calculated estimates in this report using weighted sample data. Sampling weights are computed by taking the product of the inverse of the probabilities of selection at each stage of sampling.

Projections and Margins of Error

The review team used WesVar software to calculate the weighted universe estimates and associated sampling errors. WesVar employs replication methodology to calculate margins of error and confidence intervals that correctly account for the complexity of the sample design. The margins of error and confidence intervals are indicators of the precision of the estimates. If the OIG repeated this review with multiple samples, the confidence intervals would differ for each sample, but would include the true population value 90 percent of the time. The following tables detail our analysis and projected results.

Table 2 shows the projections of the estimated average days to complete final competency determinations from March 1 through August 31, 2017.

Table 2. Summary of Projections and Confidence Intervals for Estimated Average Days to Complete

Result	Average Days to Complete	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
EP 590 Series with Final Competency Determinations	64	17	47	81	107
EP 600 Series with Final Competency Determinations	320	71	250	390	100
Combined EP 590 and 600 Series with Final Competency Determinations	82	17	65	99	207

Source: VA OIG statistician’s projection of estimated population. Data was obtained from VBA’s Corporate Database

Table 3 shows the projections of the estimated adjusted universes for beneficiaries’ cases with final competency determinations from March 1 through August 31, 2017.

Table 3. Summary of Projections and Confidence Intervals for Estimated Adjusted Universes for Beneficiaries’ Cases with Final Competency Determinations

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Universe of EP 590 Series with Final Competency Determinations	20,860	932	19,929	21,792	107
Universe of EP 600 Series with Final Competency Determinations	1,622	69	1,553	1,690	100
Universe of Cases with Final Competency Determinations	22,482	934	21,547	23,416	207

Source: VA OIG statistician’s projection of estimated population. Data were obtained from VBA’s Corporate Database

Table 4 shows the projections of the estimated beneficiaries' cases with final competency determinations not completed within 16 days of when action could have been taken by EP series.

Table 4. Summary of Projections and Confidence Intervals for Final Competency Determinations Not Completed within 16 Days of When Action Could Have Been Taken by EP Series

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
EP 590 Series	14,622 (70.1%)	1,665 (7.3%)	12,957 (62.8%)	16,287 (77.4%)	75
EP 600 Series	1,492 (92%)	97 (4.5%)	1,395 (87.5%)	1,588 (96.5%)	92
Total Cases with Final Competency Determinations Not Completed Within 16 Days	16,114 (71.7%)	1,668 (6.8%)	14,446 (64.9%)	17,782 (78.5%)	167

Source: VA OIG statistician's projection of estimated cases with final competency determinations not completed within 16 days. Data were obtained from VBA's Corporate Database.

Table 5 shows the projections of the estimated beneficiaries' cases with final competency determinations not completed within 16 days of when action could have been taken by EP series with incompetent beneficiaries.

Table 5. Summary of Projections and Confidence Intervals for Final Competency Determinations Not Completed within 16 Days of When Action Could Have Been Taken by EP Series with Incompetent Beneficiaries

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
EP 590 Series Incompetent Beneficiaries	14,037	1,690	12,347	15,727	72
EP 600 Series Incompetent Beneficiaries	568	131	437	698	35
EP 600 Series Competent Beneficiaries	730	137	592	867	45

Source: VA OIG statistician's projection of estimated cases with final competency determinations not completed within 16 days and whether beneficiary was incompetent or competent. Data were obtained from VBA's Corporate Database.

Table 6 shows the projections of the estimated beneficiaries who died before completion of their final competency determinations.

Table 6. Summary of Projections and Confidence Intervals for Beneficiaries Who Died before Completion of Final Competency Determinations

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Total Cases Where Beneficiary Died Before Completion of Final Competency Determination	584	462	123	1,046	14

Source: VA OIG statistician's projection of estimated cases in which beneficiaries died before completion of final competency determinations. Data were obtained from VBA's Corporate Database.

Table 7 shows the projections of the estimated incompetent beneficiaries with final competency determinations not completed within 16 days of when action could have been taken who received ongoing monthly benefits payments by EP series.

Table 7. Summary of Projections and Confidence Intervals for Estimated Incompetent Beneficiaries with Final Competency Determinations Not Completed within 16 Days of When Action Could Have Been Taken and Who Received Monthly Ongoing Benefits Payments by EP Series

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
590 Series Estimated Incompetent Beneficiaries	13,062	1,721	11,342	14,783	67
600 Series Estimated Incompetent Beneficiaries	535	129	407	664	33
Total Estimated Incompetent Beneficiaries	13,597	1,725	11,872	15,323	100

Source: VA OIG statisticians' projection of estimated incompetent beneficiaries with final competency determinations not completed within 16 days and ongoing monthly benefits payments. Data were obtained from VBA's Corporate Database.

Table 8 shows the projections for estimated monthly ongoing benefits payments to incompetent beneficiaries with final competency determinations not completed within 16 days of when action could have been taken by EP series.

Table 8. Summary of Projections and Confidence Intervals for Estimated Monthly Ongoing Benefits Payments to Incompetent Beneficiaries with Final Competency Determinations Not Completed within 16 Days of When Action Could Have Been Taken by EP Series

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
EP 590 Series Estimated Ongoing Monthly Benefits Payments	\$50,109,461	\$12,235,297	\$37,874,164	\$62,344,758	67
EP 600 Series Estimated Ongoing Monthly Benefits Payments	\$12,268,757	\$4,915,950	\$7,352,806	\$17,184,707	33
Estimated Total Ongoing Monthly Benefits Payments	\$62,378,218	\$13,185,942	\$49,192,276	\$75,564,159	100
Estimated Average Ongoing Monthly Benefits Payments	\$4,588	\$839	\$3,748	\$5,427	100

Source: VA OIG statisticians' projection of estimated monthly ongoing benefits payments to incompetent beneficiaries. Data were obtained from VBA's Corporate Database.

Table 9 shows the projections for estimated retroactive benefits payments withheld from all beneficiaries while awaiting final competency determinations.

Table 9. Summary of Projections and Confidence Intervals for Estimated Retroactive Benefits Payments Withheld

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
Estimated Payments Withheld	\$77,537,142	\$17,445,733	\$60,091,409	\$94,982,874	113
Estimated Average Payments Withheld	\$6,264	\$1,145	\$5,119	\$7,409	113

Source: VA OIG statisticians' projection of estimated retroactive benefits payments withheld from all beneficiaries. Data were obtained from VBA's Corporate Database.

Table 10 shows the projections of the estimated beneficiaries with final competency determinations not completed within 16 days of when action could have been taken with retroactive benefits payments withheld by EP series.

Table 10. Summary of Projections and Confidence Intervals for Estimated Beneficiaries with Final Competency Determinations Not Completed within 16 Days of When Action Could Have Been Taken with Retroactive Benefits Payments Withheld by EP Series

Result	Projection	Margin of Error	Lower Limit 90% Confidence Interval	Upper Limit 90% Confidence Interval	Sample Size
EP 590 Series	11,502	1,741	9,761	13,244	59
EP 600 Series	876	139	736	1,015	54
Total	12,378	1,747	10,631	14,125	113

Source: VA OIG statisticians' projection of estimated retroactive benefits payments withheld from all beneficiaries. Data were obtained from VBA's Corporate Database.

Appendix D: Management Comments

**Department of
Veterans Affairs**

MEMORANDUM

Date: September 7, 2018

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report – Timeliness of Final Competency Determinations [Project No. 2017-05535-SD-0196]

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

Attached is VBA's response to the OIG Draft Report: Timeliness of Final Competency Determinations.

Questions may be referred to Elisabeth Maher, Program Analyst, at (202) 461-8460.

Paul R. Lawrence, Ph.D.

Attachment

Attachment

Veterans Benefits Administration
Comments on OIG Draft Report
Timeliness of Final Competency Determinations

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

Recommendation 1: The OIG recommended the Under Secretary for Benefits ensure cases requiring final competency determinations are entered into the Beneficiary Fiduciary Field System as soon as the cases are established in the Veterans Benefits Management System.

VBA Response: Concur. VBA is developing an information technology system requirements document for a Web Service Change Request (WSCR). This will provide the automatic creation of a work item in the Beneficiary Fiduciary Field System (BFFS) when a case requiring a final competency determination is established in the Veterans Benefits Management System (VBMS). This will eliminate the need for manual entry in BFFS to establish the work item.

Target Completion Date: June 30, 2019

Recommendation 2: The OIG recommended the Under Secretary for Benefits remind Veterans Benefits Administration staff of their responsibility to notify Fiduciary Hubs when waivers are received of the due process notification period for cases with proposed incompetency, and implement a plan to ensure compliance.

VBA Response: Concur. VBA is creating a new reporting tool that will identify cases in which mail has been received. This report will be made available to the Fiduciary Hubs daily, allowing employees to review mail for waivers. This report will also allow managers to hold employees accountable and ensure appropriate action is taken on all cases.

Target Completion Date: November 30, 2018.

Recommendation 3: The OIG recommended the Under Secretary for Benefits implement a plan to ensure the processing of final competency determinations under the jurisdiction of the Fiduciary Hubs meet Veterans Benefits Administration's established timeliness standard.

VBA Response: Concur. While VBA does not establish standards for timeliness by specific cycle, it has seen significant improvement in the finalization of competency determinations cycle. From March 31,

2017 to August 26, 2018, VBA improved the timeliness of this cycle by 41.5 days; from 76.4 days to 34.9 average days pending (ADP).

VBA is implementing several actions to ensure more timely processing of final competency determinations under the jurisdiction of the Fiduciary Hubs, which are controlled under end product (EP) 590. The National Work Queue (NWQ) routing of EP 590s began in June 2018 with a weekly cadence, and was updated to daily in August 2018. All pending end products in the EP 590 series with the claim label "Due Process for Incompetency" are recalled and transferred to the Fiduciary Hub of jurisdiction daily, ensuring that Fiduciary Hubs receive this work timely.

Furthermore, VBA is adding an additional 225 Fiduciary employees in fiscal year (FY) 2019. This increase in employees is expected to assist in managing this workload and improve timeliness. Additionally, implementation of the WSCR that will provide the automatic creation of a work item in the BFFS, and the waiver report as discussed in Recommendations 1 and 2, are expected to further enable timely action on these claims.

Target Completion Date: June 30, 2019

Recommendation 4: The OIG recommended the Under Secretary for Benefits implement a plan to prioritize the processing of final competency determinations under the jurisdiction of Veterans Service Centers and Pension Management Centers.

VBA Response: Concur. VBA has prioritized the processing of final competency determinations under the jurisdiction of Veterans Service Centers and Pension Management Centers, which are controlled under EP 600 with competency claim labels. The NWQ has prioritized distribution of these claims. From March 31, 2017 to July 31, 2018, VBA reduced the inventory for EP 600 competency determinations by 69 percent, to 777 pending claims. It also reduced the ADP of these claims for the same period by 65 percent, to 157.5 days. VBA expects the ADP for EP 600 competency determinations to remain higher than the ADP for EP 590 determinations, due to the additional time required for development and the hearing process.

VBA requests closure of this recommendation.

Recommendation 5: The OIG recommended the Under Secretary for Benefits ensure the National Work Queue distributes final competency determinations according to the Veterans Benefits Administration policy for processing these cases.

VBA Response: Concur. The conflict in VBA's policy regarding routing of these cases has been resolved. In May 2018, the NWQ began routing EP 600 competency determinations to regional offices based on capacity, in accordance with both Compensation Service and Fiduciary Service policy.

VBA requests closure of this recommendation.

Recommendation 6: The OIG recommended the Under Secretary for Benefits implement a plan to ensure Fiduciary Hub staff that complete final competency determinations have access to documents containing Federal Taxpayer Information in the Legacy Content Manager.

VBA Response: Concur. VBA will identify all employees who complete final competency determinations and require Federal Taxpayer Information (FTI) access and assign required FTI training for their completion. Once the required training is completed, VBA will submit required documentation to the appropriate officials to grant system access.

Target Completion Date: June 30, 2019

OIG Contact and Staff Acknowledgments

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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