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The Special Counsel

July 9, 2015

The Honorable Robert A. McDonald
Secretary
Department of Veterans Affairs
810 Vermont Avenue, N.W., Room 1000
Washington, DC 20420

Re: OSC File No. DI-12-4026

Dear Mr. Secretary:

Thank you for the report from the Department of Veterans Affairs (VA) submitted to the Office of Special Counsel by then-Secretary Eric K. Shinseki in response to disclosures of wrongdoing at the wrongdoing at the Veterans Benefits Administration (VBA), Western Area Fiduciary Hub (WAFH), Salt Lake City, Utah. The whistleblower, Robert Krannig, WAFH field examiner, alleged that WAFH failed to properly oversee the VA Fiduciary Program, thus allowing the benefits of legally incompetent veterans to be misused by the fiduciaries entrusted with the management of those funds.

I have enclosed my letter to the President and the whistleblower's comments. As stated in the letter, I have determined that the VA's report meets the statutory requirements and that the findings appear to be reasonable.

Copies of the letter to the President, the whistleblower's comments and redacted copies of the agency report have also been sent to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. The report and attachments were redacted to remove the names of veterans and personal financial information. I have also filed copies of the letter to the President and redacted agency reports in our public file, which is available online at www.osc.gov. This matter is now closed.

Sincerely,

Carolyn N. Lerner

Enclosures

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

July 9, 2015

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-12-4026

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find the report from the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs (VA), based on disclosures of wrongdoing at the Western Area Fiduciary Hub (WAFH), Salt Lake City, Utah, reported to the Office of Special Counsel (OSC). The whistleblower, Robert Krannig, a WAFH field examiner, alleged that WAFH employees were engaged in conduct that may constitute a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; and an abuse of authority. OSC has reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the allegations, agency report, whistleblower's comments and our findings.

The agency investigation did not substantiate the allegation that VA officials were failing to properly manage and oversee VBA's Fiduciary Program. Nevertheless, the investigation identified a need for improved policies, procedures, and forms; field examiner training; and training materials that advise fiduciaries on their obligations and the rights of VA beneficiaries. I have determined that the report contains all of the information required by statute and that the agency's findings are reasonable.

In March 2013, OSC referred the allegations to then-Secretary of Veterans Affairs Eric K. Shinseki for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Shinseki tasked the Under Secretary for Benefits with the agency investigation. Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Krannig commented on the report. In April 2015, the VA provided an update on the revisions and updates to the Fiduciary Program. As required by 5 U.S.C. § 1213(e)(3), I am transmitting the VA's report and Mr. Krannig's comments to you.[1]

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[1]The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and

The Disclosures

Mr. Krannig alleged that WAFH was failing to properly oversee the VA Fiduciary Program, thus allowing the benefits of legally incompetent veterans to be misused by the fiduciaries entrusted with the management of those funds. He alleged that several questionable transactions approved by the WAFH evidenced the failure to properly oversee the Fiduciary Program. The transactions involved significant cash gifts to a fiduciary and fiduciary's spouse, to the beneficiary's adult children and grandchildren, and to non-dependent family members. Mr. Krannig also disclosed that when he replaced a fiduciary due to numerous gifts of funds, William Van Berckelaer, his supervisor, asked him to remove the finding of misuse from the veteran's file. Mr. Krannig reported that in violation of agency procedures the fiduciary was reinstalled without a thorough review of Mr. Krannig's misuse findings or of the fiduciary's management of the beneficiary's VA income. *See* VBA Adjudication Procedures Manual Rewrite, M21-1MR (Manual).

In summary, Mr. Krannig alleged that WAFH officials approved expenditures of beneficiaries' VA income contrary to VA policy and procedures. He identified specific instances where the authorized disbursement of funds as gifts did not appear to be for the use and benefit of the veteran or the veteran's VA-recognized dependents. He alleged that because WAFH officials failed to properly manage the Fiduciary Program, the benefits provided to incompetent veterans continued to be distributed improperly as gifts. Finally, he alleged that WAFH officials failed to follow proper procedures in response to his allegations of fiduciary misuse and failed to ensure VA funds held by beneficiaries were properly insured.

The Report of the Veterans Benefits Administration

The VBA investigative team, which included Fiduciary Hub managers and a field examiner, reviewed documentation and the Virtual VA records[2] regarding the financial transactions Mr. Krannig identified and interviewed Mr. Kranning and other WAFH personnel. The investigation also included interviews of the veterans and fiduciaries involved in the transactions Mr. Krannig identified.

The investigation did not substantiate the allegation of inadequate oversight of the VA Fiduciary Program. VBA concluded that gifts from VA funds are not prohibited, but must be evaluated by the fiduciary in accordance with the Manual. The report explains that while the Manual discourages gifts, it recognizes a beneficiary's right to gift funds and provides procedures for the evaluation of such gifts. The Manual instructs the fiduciary to evaluate the gift and consider what a VA beneficiary who is not in the Fiduciary Program might do in similar circumstances.[3] The fiduciary is to consider whether the proposed gift is from surplus

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conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

[2]Virtual VA is an agency electronic document storage system for these records.

[3]Under the Fiduciary Program, a determination of incompetence applies only to a veteran's ability to manage his or her VA benefits. It does not constitute a determination of incompetence for any other purpose.

funds and is reasonable given the beneficiary's financial resources. A fiduciary may authorize a beneficiary's gift request if the gift would not deplete the funds needed for the maintenance, reasonable expenses, or improvements needed for the standard of living of the beneficiary or the beneficiary's dependents.

The report notes that the fiduciaries in the cases discussed herein were operating under the language of fiduciary agreements in VA Form 27-4703, executed in 1996, and VA Form 21-4703, executed in 2001. These forms state that the fiduciary agrees to use the funds paid by the VA for the benefit of the beneficiary, but do not prohibit the fiduciary from making a best-interest determination concerning a beneficiary's request to disburse funds as a gift. Thus, if the beneficiary requests that funds be disbursed as a gift, the fiduciary must consider the guidance from the Manual and determine whether there are sufficient funds available for the gift. The report states there is no requirement that the fiduciary's evaluation or assessment of the gift be memorialized in writing and included in the file.

According to the report, VA Form 21P-4703, which the VA presently uses and which Mr. Krannig identified as a VA Fiduciary Agreement that proscribes a fiduciary from borrowing, loaning, or gifting funds belonging to a beneficiary, was not in use by the fiduciaries at issue in this case. Nevertheless, all three versions of the VA Fiduciary Agreement contain the same language. This instruction, included in the Statement of Understanding that the fiduciary executed, is intended to advise the fiduciary that he or she may not take those actions with respect to the beneficiary's funds. The statement does not, however, prohibit the beneficiary from requesting that his or her funds be gifted.

As outlined in the report, the standards for the review of requests from beneficiaries to gift funds have varied. Prior to October 2009, the Manual instructed fiduciaries to seek approval from the VA before disbursing funds as a gift but did not indicate a threshold dollar amount that triggered the approval requirement. VA employees generally applied a $500 threshold. In October 2009, Fast Letter 09-42[4] instructed employees to evaluate proposed expenditures that exceeded $1,000 prior to disbursing funds. In April 2012, the VA rescinded Fast Letter 09-42 and issued Fast Letter 12-13. Under this latest guidance, VBA articulated a different approach stating that by virtue of their relationship of trust with the beneficiary, fiduciaries have an obligation to determine which expenditures are in the best interests of the beneficiary. Fiduciaries no longer were required to seek prior approval for any single expenditure made on behalf of a beneficiary regardless of the amount or purpose of the expenditure. However, Fast Letter 12-13 provides that legal instrument examiners (LIEs) must review expenditures over $1,000 when auditing a fiduciary's annual accounting. If more information on expenditures is necessary, an LIE may request that a field examiner obtain additional information during a field examination. Thus, VBA continues to oversee and verify expenditures through its annual account audits.

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[4]Fast Letters are issued by the director of the Pension and Fiduciary Service to Veterans Service Centers and Fiduciary HUB personnel to provide instruction and guidance on fiduciary matters.

The report emphasizes that the purpose of the Fiduciary Program is not to preserve funds for the beneficiary or the beneficiary's heirs. Rather, the Fiduciary Program recognizes that beneficiaries are entitled to the same standard of living as other beneficiaries of similar financial means. The VA maintains that the fiduciary's authority to disburse funds as gifts at the request of the beneficiary is consistent with VA policy. VBA acknowledges however, that VA regulations in effect during the investigation in 2013 did not provide clear rules on beneficiary rights and fiduciary responsibilities. The VA is addressing this lack of clarity through a pending rulemaking and revisions to its regulations.

Financial Transactions Investigated

The report reviews each of the transactions Mr. Krannig identified. A brief description of the transactions and the agency's findings regarding those transactions follows.

1. Approval of a $25,000 disbursement for the purchase of a vehicle as a gift for a veteran's non-dependent niece

Veteran A requested that a bank be appointed as the fiduciary for his VA funds. Colorado Bank & Trust (CB&T) was appointed the fiduciary. In July 2009, Veteran A requested that funds from his VA benefits be used to purchase a vehicle for his niece to help her and her daughter. The fiduciary provided Veteran A's handwritten request as well as a letter from the niece's employer indicating that a vehicle was necessary for her employment. The fiduciary also included a letter from Veteran A's social worker conveying the request and stating that the niece needed a car to drive the veteran to Denver for monthly visits with his family. On July 28, 2009, the WAFH approved a one-time expenditure of $25,000 to purchase a Jeep for Veteran A's niece.

When Mr. Krannig reviewed this transaction on September 11, 2009, he believed it was inappropriate because the niece lived more than three hours away from Veteran A, the request reflected the veteran's purpose was to help his niece and grand-niece, and the letter from the niece's employer stated she needed a vehicle to perform her job. Thus, Mr. Krannig determined that the purchase of the vehicle was for the benefit of the niece, not for the benefit of Veteran A. Because Franco Fritz, WAFH manager, preapproved the transaction, Mr. Krannig filed a report of misuse of funds with the VA OIG on September 14, 2009.

On September 30, 2009, Mr. Fritz issued a memorandum to the principal guardianship folder on the allegation of misuse finding that the vehicle was a one-time purchase to permit the niece to take the veteran to and from appointments, and that the purchase was a benefit to the veteran. This memorandum satisfied the OIG's inquiry. Mr. Krannig noted that the veteran's request did not include a statement that his niece would provide transportation assistance. Although Veteran A's social worker provided a letter indicating that the vehicle would be used for travel to and from appointments, Mr. Krannig maintained that given the history of requests from Veteran A's family members, this transaction should not have been approved. Furthermore, while the Memorandum stated that the veteran had a large estate, Mr. Krannig reported that there was no record that the VA considered the factors listed in the

Manual, such as whether the gift was normal and usual, made from surplus income, or otherwise reasonable considering the overall circumstances of the veteran.

The Agency's Findings

The investigation found that CB&T followed the correct process regarding the review of Veteran A's request to gift funds to his niece for the purchase of a car. Noting that gifts are not generally prohibited, the report states that the WAFH also followed the then-applicable procedures and properly reviewed and approved the request.

The report references factors set forth in the Manual to be considered when reviewing requests to disburse funds as gifts, but noted that the fiduciary is not required to memorialize the review in writing. The Manual provides that gifts may be allowed if the beneficiary would have given such a gift if competent and if made from surplus income. Given this guidance, the investigation concluded that the gift of $25,000 from Veteran A's VA benefits with an estimated value of $448,000, was reasonable.

2. Approval of $4,500 for automotive repairs and insurance on the Jeep purchased for Veteran A's niece

In May 6, 2011, Veteran A made several requests for himself and requested a gift of $4,500 for his niece to pay for automobile repairs and insurance. Even though the purchase of the Jeep was approved as a one-time expenditure, the WAFH issued an approval letter for the additional distribution to Veteran A's niece on the day the request was submitted. The approval letter directed that payment of $4,200 be made directly to the auto-body shop for the repairs, and the remainder was for payment of the insurance. Mr. Krannig was troubled by this request because it appeared to have been approved without inquiry into whether the purchase of the vehicle had provided any benefit to the veteran or the niece had assisted the veteran with transportation. Mr. Krannig reported that during a field examination interview in the summer of 2012, Veteran A stated that he had not seen his niece or grand-niece in three years, effectively since the distribution of VA benefits funds for the purchase of the Jeep.

The Agency's Findings

The report noted that there is no requirement that a gift directly benefit the beneficiary making the gift, and the investigation concluded that the fiduciary CB&T followed the correct procedure seeking approval from the state court and the VA. Further, the investigation found that WAFH's approval complied with VA policies and procedures and noted again that there are no agency requirements to memorialize in writing an analysis of the request or why the gift request was approved. Based on the nature of the request and the substantial surplus funds Veteran A had at the time, the VA determined that the gift was reasonable.

Both Veteran A and the CB&T representative maintained in their interviews that the funds were intended to be a gift to his niece. Veteran A's niece did provide transportation to

and from Denver for a short time; however, his visits to Denver were curtailed by his VA social worker. The report noted that other than these two requests, Veteran A has not requested disbursement of funds as gifts for any other family member or individual.

3. Approval of the distribution of VA benefit income in excess of $100,000 from a retroactive lump-sum payment for a series of cash gifts

At Veteran B's request, his brother was appointed as the fiduciary for his VA benefits. In early 2012, Veteran B received a retroactive lump-sum payment from the VA in the amount of $631,639.30. Mr. Krannig reported that on February 8, 2012, Veteran B's fiduciary sent a three-page request for gift expenditures from this payment. The fiduciary requested that the following gifts be approved: $13,000 each to Veteran B's children, $13,000 to his granddaughter, $13,000 to Veteran B's brother who was the fiduciary, and $13,000 to the fiduciary's wife. The request included the approval of $3,000 for Veteran B's nephew, $20,000 to the Apostolic Church in Trinidad, and a request for $4,083 to repay a loan for which there was no record. Mr. Krannig was troubled that the request came from the fiduciary and asserted that the gifts were the maximum tax-free gift amounts from Veteran B's assets to non-dependent family members, but were not expenditures that provided any use or benefit for the veteran. He also alleged that the payments to Veteran B's fiduciary violated federal regulation prohibiting the payment of commissions to family members for providing fiduciary services.

Mr. Krannig reported that the WAFH approved the gift payments eight days after the request was received citing the family's longstanding support for the veteran. He alleged that WAFH did not consider whether these expenditures benefited the veteran, were a potential misuse of Veteran B's benefits, or constituted improper conduct by the fiduciary. Moreover, it appears there was no assessment of the beneficiary's future needs. Finally, Mr. Krannig stated that no information was provided to the fiduciary when the request was approved to remind him of the VA's prohibition of gifts, or caution against the distribution of VA funds as gifts. Within 30 days of the original gift, the fiduciary distributed additional gifts of $1,000 to each of the above-listed family members.

The Agency's Findings

The report explains that Veteran B has been incompetent to manage his VA benefits since November 1990. In December 2011, the VA determined that Veteran B was entitled to a retroactive payment of $631,639.30 for a 100%-service connected disability assessed in 1976, and for aid and attendance benefits effective February 2008. After receipt of the funds, the fiduciary, Veteran B's brother, sent a request to the VA seeking approval for the series of gifts as described above. Investigators reviewed the documents submitted by the fiduciary and Veteran B in support of the request. The report states that the fiduciary submitted the request in accordance with VA policies and procedures applicable at the time. Nevertheless, investigators confirmed that Veteran B requested that the funds be distributed as gifts to the family members. Veteran B maintained that he wanted to gift the funds to his family members so that they may enjoy the money while he was still alive. These were financial

gifts for family members who had cared for him for years, incurred expenses on his behalf, and loaned him money. Veteran B also believed that the money was a blessing and, as such, should be shared with his church. To this end, he requested the approval of funds to be paid to the church.

During his interview, the fiduciary stated that Veteran B has been unable to work since his discharge from the Army in 1968. The fiduciary explained that for the past 13 years, Veteran B has lived with the fiduciary's family and they have provided for his needs including meals, laundry, medical management, transportation, and shopping. The fiduciary also stated that the guidance he received from the VA on his fiduciary duties and obligations was inconsistent. Prior to the receipt of the retroactive payment, the fiduciary received a document produced by the WAFH entitled, *Federal Fiduciary Guidelines*. After he received the retroactive payment, a field examiner advised him of his obligations. The fiduciary reported that the field examiner's advice was later contradicted by other WAFH representatives.

The report again states that there is no prohibition on beneficiary gifts. Investigators concluded that the WAFH properly reviewed and approved the gift expenditures. The report also states that under VA Fast Letter 09-42 the fiduciary was not required to seek approval for the additional smaller gifts of $1,000 to family members as fiduciaries were required to seek VA approval for expenditures exceeding $1,000. The investigation also found that the gifts to the fiduciary did not violate federal regulation because the funds were not payment for fiduciary services, but rather, were gifts and partial reimbursement for care and expenses rendered by the fiduciary and his wife to Veteran B for the past 13 years. The fiduciary was obligated to ensure that the veteran had the surplus funds available and that the gifts were in his best interest. In summary, the investigation found that the WAFH properly approved the gifts because Veteran B had sufficient funds to cover his monthly expenses, had substantial surplus funds at the time of the request, had no immediate need for the surplus funds and the gifts were comparable to gifts a beneficiary competent to manage his or her VA benefits might make.

4. Failure to follow VBA policy and procedure in response to allegations of misuse of beneficiary funds and fiduciary wrongdoing.

Mr. Krannig alleged that WAFH did not follow the proper review and approval procedures with respect to Veteran A's request to gift funds to his niece. In addition Mr. Krannig concluded that the pattern of gift giving described with respect to Veteran B constituted a misuse of funds.

Due to his belief that there was a pattern of misuse, Mr. Krannig removed Veteran B's brother as fiduciary and substituted an institutional fiduciary. Mr. Krannig communicated his finding to WAFH in order to start the process for the review of a fiduciary as set forth in the Manual. He documented statements from the veteran's brother acknowledging that the funds were gifts and that he would have gifted additional funds if he had correctly understood the VA process. Mr. Krannig alleged that the repeated gifts were an inappropriate use of Veteran

B's funds and violated the requirement that fiduciaries seek pre-approval of expenditures over $1,000. Mr. Krannig also reported that he denied the fiduciary's request to include a monthly tithe in the beneficiary's monthly usage budget on the basis that the tithe was a recurring gift and not an appropriate expenditure of the beneficiary's VA income.

Mr. Van Berckelaer disagreed with Mr. Krannig and asked him to remove his field examination from the file. Mr. Krannig reported that when he refused, Mr. Van Berckelaer assigned another field examiner to the matter. On August 1, 2012, the second examiner, reinstalled the beneficiary's brother as fiduciary and approved the monthly tithe of $350 for Veteran B's budget without addressing the issuance of the funds as gifts or the fiduciary's statements evincing an intent to gift additional funds. Mr. Krannig maintained the review of the misuse allegation did not follow the required procedures, including a face-to-face interview with the fiduciary. Instead, he contended, the WAFH adopted the conclusion of the second field examination that no misuse had occurred and that the family's contribution to the beneficiary's caretaking justified the gift without regard to the VA's prohibition on gifting.

Moreover, Mr. Krannig contended that the WAFH did not review the propriety of the $20,000 gift to the church or the monthly tithe, which would disburse additional funds to the church over the next five years. In addition, Mr. Krannig alleged that the majority of Veteran B's estate, approximately $382,000, appeared to be held in a MetLife interest bearing account that is not guaranteed by the FDIC or similar federal guarantee to secure the funds. Finally, while the VA reinstated the fiduciary to Veteran B's accounts, Mr. Krannig alleged that the fiduciary was reinstalled without executing a binding fiduciary agreement.

The Agency's Findings

With respect to Veteran A, investigators reviewed the process followed in response to his request to disburse funds as a gift and the approval of that request. The investigation found that even though the WAFH had reviewed and approved the request, Mr. Krannig's allegation was considered a formal allegation of misuse and referred to the WAFH misuse team. The misuse team concluded that the gift did provide a benefit to the veteran and that the institutional fiduciary and WAFH officials had followed the proper procedures. This determination was evaluated by the WAFH manager who concurred in the finding of no misuse and the recommendation that no further action was needed. Investigators determined that the WAFH followed all applicable procedures regarding this allegation.

In response to Mr. Krannig's allegations concerning Veteran B's funds, the report reiterated that there is no prohibition on gifts. Indeed, the report stated that denying the beneficiary's request to gift funds would have violated VA policy under Fast Letter 12-13 because VA-appointed fiduciaries do not need prior approval for single expenditures made on behalf of beneficiary regardless of the purpose or amount. Additionally, given the revised VA policy, Mr. Krannig's concerns about the fiduciary's comments and his intent to gift additional funds were misplaced.

The report provides that in accordance with VA policy determinations of misuse are made by supervisors with the concurrence of the Hub manager and the VA regional director. Thus, Mr. Krannig did not make a finding of misuse as set forth in OSC's referral letter. Allegations of misuse are referred to a fiduciary supervisor for review and expenditures are to be reviewed by a LIE during the annual auditing of fiduciary's accounting. The investigation found that WAFH interpreted Mr. Krannig's concerns about Veteran B's funds as a formal allegation of misuse. In response, the WAFH misuse team reviewed the gift requests and concluded that Veteran B's gifts were to family members for care and support during many years when Veteran B had very limited funds. Based on this review, the misuse team recommended a finding of no misuse. The WAFH coach and acting WAFH manager concurred in this recommendation. The Manual requires a face-to-face interview only if the allegations of misuse warrant a formal investigation. As the review determined that no formal investigation was necessary, it follows that no face-to-face interview with the fiduciary was necessary; however, the field examiner spoke with the fiduciary by telephone. The VBA investigation concluded that Mr. Krannig's misuse concerns were reviewed in accordance with VA policy and procedures in the Manual.

Investigators reviewed the process for removing a fiduciary in response to a field examiner's request. The process begins when an LIE reviews and evaluates the field examiner's recommendation for removal, which is then forwarded to a supervisor for additional evaluation and approval or denial. If the Hub manager approves the proposed removal, the Hub manager returns the document to the LIE for execution. In this case, there was no record of any supervisory approval in support of Mr. Krannig's recommendation to remove Veteran B's brother as fiduciary. Nevertheless, information on the successor fiduciary was entered into the VA fiduciary system on August 1, 2012, resulting in the removal of Veteran B's brother as fiduciary. The report provides that the unauthorized removal was discovered, and Veteran B's brother was reinstated the same day. Because the removal was not authorized, there was no requirement to reappoint the fiduciary or that he execute a new Fiduciary Agreement. Based on this review, the investigation did not conclude that VA officials failed to follow proper procedures or that the fiduciary was improperly reinstated.

During his interview, Mr. Van Berckelaer explained that he instructed Mr. Krannig to remove the misuse allegations from the field examination and instead submit them in the form required by WAFH's Standard Operating Procedures for Misuse. Mr. Van Berckelaer maintained that he issued the instruction in order to comply with agency procedure.

The report notes that although the WAFH misuse determination did not address the gift to Veteran B's church, WAFH properly reviewed and approved the initial request. Moreover, the approval of the gift to the church is referenced in WAFH correspondence of February 16, 2012, and in the independent field examination report of August 1, 2012, which serves as a basis for the determination that no misuse occurred. The VA form for the itemization of beneficiary's expenses includes a pre-printed line for tithes reflecting that the VA contemplated tithing by veterans. The field examiner included a monthly $350 tithe in the beneficiary's fund usage agreement and an authorization for a tithing out of surplus funds.

Finally, the report states that there was no evidence that Veteran B's accounts are not adequately insured. In an interview during this investigation, a representative of Met Life Financial Services explained that a portion of the funds is ensured by the Federal Deposit Insurance Corporation, while the remaining funds are protected by the Colorado Life and Health Association Protection Act and guaranteed by Met Life. The representative informed investigators that he had several conversations with Veteran B, his fiduciary, the fiduciary's attorney and the WAFH prior to making investment decisions concerning Veteran B's funds.

Action Taken or Planned by the VA

The investigation demonstrated that the agency needs training materials that advise fiduciaries of their obligations, the rights of beneficiaries, and the circumstances under which beneficiary funds can be disbursed as gifts in accordance with the beneficiaries' instructions. The investigative team recommended that the VBA improve its training for field examiners to ensure that they properly advise fiduciaries and are not unduly restrictive in their oversight role. Investigators also found that VBA policies, procedures and forms, including VA Form 21P-4703, need to be revised especially with respect to a beneficiary's right to gift funds.

The report noted that VBA's Pension and Fiduciary (P&F) Service rewrote the fiduciary regulations, which were approved by the VA and submitted to the Office of Management and Budget for review. P&F also developed a new training for field examiners and provided examiners hired during fiscal year 2012 with the new training.

In April 2015, the VA provided an update on its efforts to modernize the Fiduciary Program. The VA reported that through these comprehensive efforts it is working to change the culture of the Fiduciary Program and promote the agency's view that a beneficiary is entitled to the same standard of living as a beneficiary with comparable resources who is not in the program. Decisions regarding disbursement of funds are made by the fiduciary considering the beneficiary's circumstances, needs, values and desires. The goal of the Fiduciary Program is not to preserve the funds for the beneficiaries' heirs or disburse funds according to the fiduciary's beliefs, values and preferences. The VA emphasizes that the agency is not the beneficiary's fiduciary and its function is limited to an oversight role.

In April 2013 the VA put in place an 80-hour training course that provides standardized practices for field examiners with less than one year of experience and a 40-hour course that provides annual refresher training to more experienced field examiners. The agency also created a Knowledge Management portal, an electronic, searchable tool that provides users with access to the Fiduciary Program Manual as well as statutes, regulations, policies, procedures and other guidance relevant to the Fiduciary Program.

The revised regulations marked the first change to these regulations since the 1970s. The proposed new rules update and reorganize the Fiduciary Program to be consistent with current law, policy and VA's reorganization of fiduciary activities. VA issued a proposed rulemaking in 2014 and anticipates completion of the final regulations by the end of 2015.

The forms for the Fiduciary Program are being revised to reflect the updated regulations. Revisions to VA forms will be submitted for review after the publication of the final regulations.

Mr. Krannig's Comments

Mr. Krannig disagreed with the VA's conclusion that funds can be gifted. He noted his considerable years of experience with the Fiduciary Program and as a field examiner. He maintained that the language on the restricted use of VA funds in fiduciary agreements appears on all versions of the forms and highlights that the funds are to be used "exclusively" for the beneficiary and his or her VA-recognized dependents, and as specifically authorized by the VA. Mr. Krannig contended that this language demonstrates that fiduciaries cannot gift VA funds. He also referenced language in the Manual that indicates prior approval is necessary before gifting a beneficiary's funds and stated that the LIEs are not authorized to undertake all the actions described in the report.[5]

The Special Counsel's Findings

I have reviewed the original disclosure, the agency report, and the whistleblower's comments. Based on that review, I have determined that the report contains all of the information required by statute. I have also found reasonable the agency's conclusions. I recognize the whistleblower's cautious and conscientious approach to the stewardship of beneficiary funds. Nevertheless, the VA's policy and the considerable revisions and updates to the Fiduciary Program balance the importance of considering the needs and values of beneficiaries regarding the expenditure of funds with agency oversight through audits and reviews.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report and the whistleblower's comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed the agency report and whistleblower's comments in OSC's public file available online at www.osc.gov.[6] This matter is now closed.

Respectfully,

Carolyn N. Lerner

Enclosures

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[5]The position descriptions Mr. Krannig cited in his comments are available at www.opm.gov.
The agency report included sensitive personally identifiable information; thus, a redacted version of the report and attachments is being transmitted. The VA also redacted the names of the veterans and family pursuant to statute. *See* 38 U.S.C. 5701(a).