Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide The American Legion’s views on the Department of Veterans Affairs (VA) Fiduciary Program. We testified on April 22, 2010 on this same program and while there have been some improvements; more still needs to be done.

VA oversees appointment and management of fiduciaries who act on the behalf of veterans/surviving spouse or dependent children referred to as “beneficiaries” who are deemed mentally incompetent and unable to manage their finances. Upon notification of incompetency, a VA Field Examiner will investigate the beneficiary’s social, economic and industrial impairment then recommends appointment of a fiduciary. The VA Fiduciary is responsible for managing VA monetary benefits ensuring the beneficiary’s just debts are paid. Other responsibilities include utilizing funds for daily needs such as food, clothing housing, medical expenses, and personal items of the beneficiary and his/her recognized dependents. The veteran should be able to live a lifestyle as any other person who is not within the Fiduciary program. The appointed Fiduciary is allowed to charge a fee of up to 4% of the VA benefits paid to the beneficiary. If the beneficiary is married, the spouse may receive payments on the beneficiary’s behalf. Selection of a Fiduciary involves analysis of current credit report, disclosure of criminal background and consideration of the opinion of character witness(es).

In 2008, the Veterans Benefits Administration, which oversees VA’s Fiduciary Program, established a Western Hub Fiduciary Hub pilot program in Salt Lake City, UT. Prior to the consolidation, VA Regional Offices (RO) were performing poorly in the average number of days to appoint a fiduciary and also with the average number of days for follow up visits. At the time of our testimony in 2010, the Western Hub Fiduciary average for initial days to appoint fiduciaries was 45 days and that number decreased to 38 days in FY 2011. However, the average number of days for follow up visits in 2010 was 120 days but in FY 2011 that number increased to 151 days.

After the Western Hub Fiduciary model became operational in 2010, VA began consolidation of other regions across the United States in Fiscal Year 2012. Those Hubs and locations include: Indianapolis, Milwaukee, WI; Louisville, KY; Lincoln, NE and Columbia, SC. VA is adding an additional 58 Field Examiners to their current number of 310. Unfortunately, these 58 additional personnel are being pulled from other areas of the Veterans Benefits Administration (VBA) such
as Compensation (currently experiencing backlog). A total of 368 Field Examiners will be responsible for approximately 123,000 beneficiaries. Equally disturbing is that new Field Examiners training consists of two weeks formal training, an additional two weeks field training and then they are assigned a mentor for 60 days with 100 percent review for the following 90 days. Field Examiners do not work within the Regional Office or at the Hub but from their homes. Moreover, Field Examiners are not required to provide contact information to beneficiaries. The assigned location of the Field Examiner is determined by population density of beneficiaries. This however, does not take into account the travel time in less populated states with larger geographical areas.

**Previous Recommendations:**

The following recommendations were presented at the time of our last testimony and here is an update on their progress:

1. The American Legion recommended an additional Full Time Employee (FTE) be funded and authorized within each RO and PMC solely dedicated to Fiduciary Program management and oversight.

   Currently: VBA does not feel this is necessary with the implementation of an 800 number currently being tested which will be solely dedicated to Fiduciary issues. This 800 number will direct the caller to the Fiduciary Hub within the callers region or allow the caller to request assistance from another Hub outside the calling area. Until it becomes fully operational, callers are directed to call 1-800-827-1000. VBA changed their claims assistance toll free number (827-1000) from RO access and consolidated them into areas. Unfortunately, this has become an exercise in futility as the call centers are so busy the caller is asked to leave a number to be called back which more often than not does not happen. The American Legion continues to urge Congress to ensure VBA hires a Fiduciary Program Coordinator to work within each Regional Office to improve coordination between Fiduciary Hubs, ROs and Field Examiners.

2. The American Legion recommended Congress appropriate funding to VBA’s Information Technology (IT) budget to set up an IT software package within all of the RO’s Fiduciary Program Units, PMCs, and Salt Lake City Fiduciary Hub to enhance communications between each of these offices.

   Currently: The VBA Fiduciary program is in the progress of creating Fiduciary Screens within the current Veterans Benefits Management System for tracking status of Fiduciary claims. The software program is currently being written with a projected completion date of approximately two years. A target date for implementation of the program is not available at this time.

3. The American Legion recommends that part of the software package include reminders or alerts throughout the process to ensure that no paperwork is lost or falls through the cracks. This recommendation and current status is addressed above.

4. The American Legion recommends that appointed Fiduciaries must be co-located within the at least a 300 mile radius of the beneficiary.
Veteran Personal Stories:

The importance of solving the issues associated with VA’s Fiduciary programs can best be illustrated with the personal stories of some affected veterans. All too often, by simply looking at numbers, program projections and reports, we forget the human face of this problem. Because of the nature of the competency challenges involved for veterans requiring a Fiduciary, these are among our nation’s most vulnerable veterans.

In August of 2011, the Western Area Fiduciary Hub was notified that a veteran was rated incompetent and a field examination for a fiduciary was required. The son of this veteran, already the court appointed Power of Attorney for this veteran, requested to be appointed fiduciary for this veteran, but this family request was not granted.

By late September, a Field Examiner completed an examination, and appointed an outside fiduciary for the veteran. However, two months later, in November, the veteran’s local Regional Office released to the fiduciary in question a check for $385,966. As there had been no previous notification of any back payment, the fiduciary contacted VA for information about how to process this overlarge payment, and was informed she would need to obtain a surety bond to protect the funds and that the Field Examiner would have to contact her to complete a new budget for the veteran.

This situation is still being investigated, including the possibility that the veteran’s son, who had initially sought to be appointed fiduciary as the veteran’s Power of Attorney, may well wind up being finally designated as such. However, months have gone by and the veteran is unable to gain access to money that is rightfully his.

In another matter, a veteran applied for Pension benefits in 2009. In 2010, with a diagnosis of ischemic cardiomyopathy from private medical records, the veteran’s claim was upgraded to a straight benefits claim under the presumptions inherent for Agent Orange related illness. Further medical evidence established, over the course of 2010, multiple related conditions dating back as far as 2007, as well as the need for specially adaptive housing amongst other concerns.

In a VA letter dated March 23, 2011 the entire estimated back pay was found to be $163,256 the entirety of which was withheld. Fully seven months later, in late October, the veteran received a decision letter stating:

“Review of your claims file shows the rating decision of March 22, 2011, proposed a finding of incompetency. It was noted in that decision there was a Delegation of Rights and responsibilities signed by you and your physician that you are not able of understanding your rights due to dementia due to Parkinson’s disease, dated August 25, 2010. You were sent a VA letter dated March 23, 2011, informing you of our right to submit any evidence, information, or statement that will present your side of the case. To date, no response has been received from you. Since there is a definitive finding if incompetency by a physician in this case and you are not shown to be able to manage personal affairs to include disbursement of funds, we have determined you are incompetent for purposes of managing VA payments.”
Ultimately, the veteran passed away awaiting appointment of his sister as fiduciary. During the entire process, his sister had been providing for his nursing care and doing so out of her own pocket.

These two examples provide insight into cases where close family members are already providing close care to these veterans, in some cases with court appointed POA authority, yet these veterans still must wait months and even years to receive hundreds of thousands of dollars in benefits. These benefits belong to these veterans, yet they can derive no use from them as they are held back beyond yards of red tape and miles of obstacles and delays. We cannot keep veterans from benefits belonging to them, and sadly these cases are not unique. American Legion service officers come across stories like these on a regular basis and have been all too eager to share these stories in the hopes that some good will come towards reforming this system.

**Conclusions:**

It is worth reiterating that these are among our most vulnerable veterans. As the nation’s veterans experience mental health trauma or diseases, they or their family members should not have to worry about receiving their earned benefits. While The American Legion recognizes VA’s attempts to improve the situation, clearly there is still much work to be done. The Fiduciary Hubs may have shown some improvement in reduced timelines for a portion of the process, the phone banks for these centers still lack direct access for veterans’ service officers, and the remote nature of these facilities adds an additional layer of remove from these increasingly vulnerable veterans. Furthermore the improvements to manpower for this task cannot come at the expense of manpower in the regular claims processing, as all are aware of the backlog struggles in that arena. The American Legion, through our network of service officers, is working hard to gain justice for these veterans as these difficult scenarios present themselves, but clearly this problem will not be solved overnight.