



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit

Arizona Department of Veterans' Services— Fiduciary Program

June • 2011
REPORT NO. 11-03



Debra K. Davenport
Auditor General

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June 6, 2011

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Col. Joey Strickland, Director
Arizona Department of Veterans' Services

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Department of Veterans' Services—Fiduciary Program. This report is in response to a November 3, 2009, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Department of Veterans' Services agrees with all of the findings and plans to implement all of the recommendations directed to it.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on June 7, 2011.

Sincerely,

Debbie Davenport
Auditor General

Attachment

REPORT HIGHLIGHTS PERFORMANCE AUDIT

Our Conclusion

The Arizona Department of Veterans' Services (Department) should consider either phasing out its fiduciary program or increasing fees to cover costs. In addition, the Department needs to address operational deficiencies in its fiduciary program that affect its ability to appropriately manage clients' affairs.



2011

Department should consider phasing out program or increasing fees

The Department is authorized but not required to accept appointments from state courts and federal agencies to manage the affairs of veterans who can no longer take care of themselves. Such appointments include conservatorships, through which the Department handles veterans' financial affairs, or guardianships, through which personal decisions are made, such as decisions regarding medical care. As of March 2011, the Department had 256 active cases.

Three factors suggest program could be phased out—Because this program is not required and has had problems, and there are alternative service providers for veterans, the Department should consider phasing out its fiduciary program. If it chooses to no longer provide such services, the Department could transfer clients to family or other qualified adults, or to private or public fiduciaries, or gradually phase out the current fiduciary appointments through attrition.

State statute does not require the Department to provide fiduciary services, but the Department has chosen to provide this optional service. Further, the Department has had significant operational issues in providing fiduciary services, resulting in penalties imposed by the Maricopa County Superior Court and the Supreme Court's Fiduciary Board. Finally, there are about 50 other entities in the State that are licensed to provide fiduciary services, including public fiduciaries in every county and private fiduciary businesses.

If Department chooses to continue program, it should increase fees—Clients pay for about 60 percent of the

cost for fiduciary services, with the State picking up the remaining 40 percent, or about \$508,000 annually.

Some of the Department's fees do not promote cost recovery and differ in structure from the fees charged by other public and private fiduciaries. These fiduciaries have established flat and hourly fees for their services. As an example, the Maricopa public fiduciary charges the following:

- **Guardianship**—\$900 flat fee to set up case; \$55 to \$145 per hour for guardianship services.
- **Conservatorship**—\$55 to \$145 per hour.
- **Personal representative of a decedent's estate**—\$1,200 flat fee to set up case; \$400 final accounting fee; \$95 hourly fee.

In contrast, the Department charges \$750 to set up a guardianship and then charges \$75 to \$100 per month for guardianship services. According to statute, the maximum the Department can charge for a conservatorship is up to 5 percent of the client's income, and according to the Department, it charges 5 percent. Personal representative fees depend on the case.

Recommendations:

The Department should:

- Consider phasing out the fiduciary services program.
- Consider increasing fees if it does not phase out the program.

Fiduciary program's operational deficiencies need to be addressed

Two court reviews identified operational concerns with the Department's fiduciary program. The Arizona Supreme Court reviewed 15 client files and, in January 2010, found noncompliance in 14 key areas, including personal property inventory records lacking reasonable detail, inadequate case file documentation, and inaccurate reports. The Maricopa County Superior Court conducted a county-specific review in January 2010 and found that the Department had a consistent pattern of failing to discharge its fiduciary duties. In March 2010, the Superior Court ordered that the Department not take on any more cases for 6 months. An October 2010 review resulted in the Court's continuing the restriction. In January 2011, the Superior Court found improvement and modified its order, limiting the Department to accepting no more than 20 new clients until the next hearing in September 2011.

Additionally, three complaints filed with the Supreme Court's Fiduciary Board resulted in disciplinary actions against the Department. One complaint alleged that the Department failed to monitor the client's living conditions, resulting in losses to the estate; one client received an eviction notice because the Department failed to pay the client's nursing home bills; and the third complaint was because the Department failed to supervise its attorney. As a result of these complaints, the Department incurred attorneys' fees to defend itself and had to pay the Board's attorneys' fees and investigation costs. These costs totaled more than \$65,000.

Although the Department has taken some steps to improve, auditors found continuing problems. The Department should take the following additional steps:

- **Improve inventory and client records**—In all the client cases the Supreme Court reviewed, personal property was not listed in detail and no fair market value was assigned. Client records also need to be improved. For example, one client file had no proof of a home sale and another

had no documents appointing the Department as guardian.

- **Ensure accuracy of court reports**—The accuracy of required court reports is another area needing improvement. One accounting report's ending balance for one year differed from the beginning balance for the next year, and another accounting report failed to show the deposit of a \$46,700 check the Department had credited to the client's account a year earlier.
- **Ensure timely filings**—The Department needs to ensure that filings are timely. Death notices must be filed within 10 days of learning of the death and final accountings must be filed within 90 days of death. In one case, the death notice was a year late and the file was closed 8 years later.
- **Improve bank reconciliations**—The Department can also improve bank reconciliation procedures. The Department pools client money in two accounts—one to pay bills and one for investment. Although reconciling these accounts is crucial to protect clients' money, a department fiduciary official reported they were reconciled in April 2009 after almost 2 years without reconciliation. However, auditors' reconciliation of the November 2009 and January 2010 statements revealed several transactions that were overlooked and variances of \$34 and \$1,589, respectively.

Recommendations:

The Department should:

- Ensure records are complete and accurate, and assets have market values assigned.
- Ensure court reports are timely and accurate.
- Ensure filings are timely.
- Improve bank reconciliation procedures.

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INTRODUCTION

Scope and Objectives

The Office of the Auditor General has conducted a performance audit of the Arizona Department of Veterans' Services' (Department) fiduciary program, pursuant to a November 3, 2009, resolution of the Joint Legislative Audit Committee. This is the first in a series of four reports to be issued as part of the sunset review of the Department and the Arizona Veterans' Services Advisory Commission (Commission) and was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq. This audit addresses (1) options the Department should consider for either phasing out its fiduciary program or for revising program fees, and (2) operational deficiencies within the Department's fiduciary program that have affected its ability to properly discharge its fiduciary duties. The other reports will focus on the State Veteran Home, the Military Family Relief Fund and the Veterans' Donations Fund, and the statutory sunset factors for the Department and the Commission.

Fiduciary program manages affairs for incapacitated veterans

The Department's fiduciary program accepts appointments from state courts and federal agencies to manage the affairs of veterans who can no longer take care of themselves.¹ State courts may appoint fiduciaries as a "guardian of a person" (guardian), a "guardian of an estate" (conservator), or both. A guardian of a person makes nonfinancial decisions while conservators make financial decisions. For example, a guardian may make medical decisions and a conservator may make decisions about investments (see textbox for key fiduciary terms used in this report). Although the Department has provided fiduciary services since 1951, statute does not require it to provide these types of services to veterans.

Fiduciary terms

- **Guardian**—A court-appointed person who makes personal decisions, and when no conservator is appointed, property decisions for a legally incapacitated person (a "ward").
- **Conservator**—A court-appointed person who manages property and financial affairs for a minor or legally incapacitated adult (a "protected person").
- **Custodian/Payee**—A person appointed by a federal agency to accept and manage an incompetent person's federal benefits.
- **Personal representative**—A court-appointed person who administers a deceased person's estate and distributes assets to heirs.
- **Public guardian/Fiduciary**—A publicly funded entity that acts as a last-resort guardian when no one else is willing or appropriate to help an incapacitated person.
- **Trustee**—A person or entity who holds the assets of a trust for the benefit of the beneficiaries and manages them under the terms stated in the document that created the trust.

Source: Auditor General staff analysis of Arizona Revised Statutes §§14-1201, 14-3706, 14-5101, 14-5424, 14-5425, and 14-5602; Arizona Code of Judicial Administration §7-202; United States Government Accountability Office. (2010). *Guardianships: Cases of financial exploitation, neglect, and abuse of seniors* [GAO-10-1046]. Washington, DC: Author; 38 C.F.R. §13-58; Teaster, P., Wood, E., Karp, N., Lawrence, S., Schmidt, W., et al. (2005). *Wards of the state: A national study of public guardianship*. Lexington, KY: University of Kentucky.

¹ In this report, state court refers to any of the 15 county superior courts in Arizona.

Table 1: Fiduciary Cases
As of September 24, 2010
(Unaudited)

State Court Appointments	252
Maricopa	191
Pima	34
Yavapai	14
Other ¹	13
Total	252
Federal Appointments	4
Decedent Estates ²	27
Total	283

¹ Cochise, Gila, Graham, Mohave, Navajo, Pinal, and Yuma Counties (no cases in Apache, Coconino, Greenlee, La Paz, or Santa Cruz Counties).

² A decedent estate is a case in which the client has died and the Department has not yet petitioned the court to be appointed as personal representative for the estate.

Source: Auditor General staff analysis of client demographic data for the Arizona Department of Veterans' Services active cases as of September 24, 2010.

As shown in Table 1, as of September 24, 2010, the Department had 283 cases consisting of 252 state court appointments, 4 federal appointments, and 27 decedent estates. Among the 252 court-appointed cases, the Department served as both guardian and conservator in 147 cases, conservator only in 86 cases, personal representative in 18 cases, and trustee in 1 case. As of September 2010, most of the Department's court appointments were from Maricopa County. As of March 2011, the Department's caseload had declined by 27 cases to 256 active cases.¹

Arizona Supreme Court and federal agencies oversee fiduciaries—Oversight of fiduciaries occurs in several ways. The Arizona Supreme Court oversees state court-appointed fiduciaries through its Fiduciary Licensing Program and its Fiduciary Board, which licenses, regulates, and audits both public and private fiduciaries—including individuals, businesses, and government entities such as the Department—and investigates complaints.² State courts also oversee individual fiduciary cases they appoint by reviewing statutorily required client reports. These include estate inventory reports that are submitted at the start of a court appointment, annual guardianship reports that describe a guardian's activities on a ward's behalf, and annual accounting reports that present a client's annual income sources and expenses. These expenses can include fiduciary and attorney's fees and housing, medical, and personal expenses. Finally, the federal Department of Veterans Affairs (VA) and Social Security Administration oversee the Department's custodian and payee appointments. As discussed in Finding 1 (see pages 5 through 16) and Finding 2 (see pages 17 through 25), both the Fiduciary Board and the Maricopa County Superior Court have identified deficiencies with the Department's fiduciary program and taken action against the Department in response to these deficiencies.

Department fiduciary program staffing and budget—To manage its caseload, as of January 2011, the Department reported it had 17 out of 25 authorized full-time equivalent (FTE) positions filled to work as human services, accounting, and assets managers; human services specialists; accounting specialists; and other administrative support staff.³ As of January 2011, 4 of the Department's 17 fiduciary employees were individually licensed by the Arizona Supreme Court's Fiduciary Board.

¹ The Department does not prepare reports showing the number of clients by county. Table 1 information for September 24, 2010, is based on auditors' analysis of data obtained and validated during the audit. The March 2011 information on caseloads and types of clients comes from department reports.

² The Fiduciary Board is a component of the Arizona Supreme Court's Fiduciary Licensing Program.

³ For fiscal year 2011, the Department's budget request included a request for funding to fill only 20 of its authorized positions.

The Department pays for its staff and fiduciary program operations through a combination of client fee income and State General Fund monies. As shown in Figure 1 on page 9, the Department spent nearly \$750,000 from its Veterans' Conservatorship Fund, which consists of client fees, in both fiscal years 2009 and 2010, and \$484,600 and \$546,600 from State General Fund revenues in fiscal years 2009 and 2010, respectively.¹ In addition, during these two fiscal years, the Department supplemented the fiduciary program's operational budget with \$76,700 in Veterans' Donations Fund monies.² For fiscal year 2011, the Legislature authorized the Department to spend \$757,300 in client fee income from the Veterans' Conservatorship Fund, and the Department also designated \$494,500 from its \$5.4 million State General Fund appropriation to pay for fiduciary operations.

¹ State law allows the Department to charge fees for its guardianship, conservatorship, and personal representative services. These fees are deposited in the State's Veterans' Conservatorship Fund. The Legislature appropriates a portion of this fund's monies annually to the Department for fiduciary program operations.

² The Department used Veterans' Donations Fund monies to pay for unanticipated professional and outside services costs, such as paying for investigation and legal costs associated with disciplinary sanctions imposed by the Fiduciary Board. The Office of the Auditor General will be issuing a separate report by October 1, 2011, that discusses the Department's use of Veterans' Donations Fund monies.

FINDING 1

The Arizona Department of Veterans' Services (Department) should consider two options for its fiduciary program—either gradually phasing out the program or increasing program fees. As of March 2011, the Department provided fiduciary services to 256 veterans who could no longer manage their own affairs. However, the Department is not statutorily required to provide fiduciary services and has struggled to effectively do so, and other public and private options exist for providing these services in Arizona. Therefore, the Department should consider gradually phasing out the program. Conversely, if the Department decides to retain the program, it should consider increasing its fees to more fully cover the program's costs. The Department has relied on client fees to pay for between 55 and 60 percent of the program's costs for fiscal years 2009 through 2011, but has needed an average of more than \$508,000 annually in State General Fund monies for these fiscal years to fully cover the program's costs.

Department should consider two options for fiduciary program—gradually phasing out program or increasing fees

Three factors suggest Department could phase out program

Although the Department has the option of providing fiduciary services to veterans, three factors suggest that the Department could consider phasing out its program. First, statute does not require the Department to provide fiduciary services to veterans. Second, the Department has experienced several operational problems with its program, which has affected its ability to meet its fiduciary responsibilities to its clients. Therefore, its clients might be better served by other fiduciaries. Third, numerous other private and public options exist in the State for providing fiduciary services to veterans, including many that already provide these services to veterans. Specifically:

- **Department not mandated to provide fiduciary services**—State statute does not require the Department to provide fiduciary services. Although the Department has been providing fiduciary services since 1951, providing the service is optional. The Department operates the program at its own discretion.
- **Department has ineffectively operated its fiduciary program**—Separate court reviews conducted in 2010, one by the Arizona Supreme Court and the other by the Maricopa County Superior Court, and this audit have identified several operational deficiencies in the Department's fiduciary program.^{1,2} These deficiencies have affected the Department's ability to meet its responsibilities for managing client's affairs and included inaccurate and incomplete inventory records of client assets, incomplete and inappropriate client records, inaccurate accounting and court reports, untimely court filings and monitoring of deceased wards' cases, and inadequate reconciliation procedures.

¹ Arizona Supreme Court, Administrative Office of the Courts. (2010). *Compliance audit: Arizona Department of Veterans' Services—Fiduciary*. Phoenix, AZ: Author.

² On January 13, 2010, the Maricopa County Superior Court officially opened a probate case entitled *In the Matter of Arizona Department of Veterans' Services, PB2010-00055*. The case will remain open until the judge closes the case.

Public and private fiduciaries serve clients state-wide.

Although the Department has taken steps to address these deficiencies, they have resulted in various court actions. For example, the Maricopa County Superior Court (Court) found that the Department had demonstrated a pattern and practice of failing to consistently discharge its fiduciary duties and issued an order in March 2010 restricting the Department from accepting new clients for 6 months. The Court continued the order in October 2010, but in a January 2011 status hearing, lifted the restriction but capped the number of new clients the Department could accept. Additionally, in calendar years 2009 and 2010, the Arizona Supreme Court's Fiduciary Board (Board), took disciplinary actions against the Department in response to one complaint filed in October 2007 and two complaints filed in January 2009 that alleged that the Department failed to properly manage client's affairs. In addition to disciplinary actions that included censure and probation, the Department paid approximately \$65,400 in legal fees and investigation costs associated with the three complaints (See Finding 2, pages 17 through 25, for more information on the Department's fiduciary program's operational problems).¹

- **Other professional fiduciary service options exist**—In addition to the Department, nearly 50 other entities are licensed to provide fiduciary services in Arizona. These entities include public fiduciary offices in each of the State's 15 counties and 33 private fiduciary businesses located in various parts of the State. County public fiduciaries act as a fiduciary of last resort, and private fiduciaries that accept state court and federal appointments perform the same duties and must meet the same probate code standards as their public counterparts.

Some public and private fiduciaries that auditors contacted reported already having some veterans in their caseloads. Specifically, the four county public fiduciaries contacted—Maricopa, Pima, Yavapai, and Coconino—reported serving approximately 60 veterans in a total combined caseload of approximately 1,650 guardianships, conservatorships, and decedent estates as of September 30, 2010. Additionally, three of five private fiduciaries contacted reported having some veterans in their caseloads, and one reported that he would be willing to accept veterans' cases.

One other consideration is whether other states' veterans' departments provide a similar service. As of January 2011, Arizona was one of only two states whose veterans' departments provided veterans' fiduciary services. The other state—Oregon, which does not have a public fiduciary system—limits its scope to conservatorships. As a result, veterans in most states would need to obtain fiduciary services from other public or private fiduciaries. Additionally, since 2005, two states—Minnesota and Nevada—have discontinued their veterans' guardianship and

¹ A censure is a written formal disciplinary sanction that finds a licensee has violated statutes or rules. The Board can also issue a letter of concern, which is a written informal disciplinary sanction, or an advisory letter, which is nondisciplinary but notifies the licensee that the conduct is inappropriate.

conservatorship programs. Minnesota officials reported that it decided to discontinue its program in 2005 because its clients needed more personalized services than it could provide with its budget. Nevada discontinued its program beginning in 2008 after a 2007 audit report recommended eliminating the program to reduce the agency's legal liability risks identified by Nevada's Attorney General staff. Minnesota transferred its clients to other fiduciaries over a period of approximately 13 months, while Nevada still had one case open as of March 2011, according to program officials.

If it decides to do so, Department should gradually phase out program

If it decides to do so, the Department should gradually phase out its veterans' fiduciary program. Phasing out the program completely could take several years because, for each client, the Department would need to resign its court appointment and have the court accept its resignation, and to ensure continued service to the client, the court would have to appoint a replacement fiduciary.

The Department's clients can continue to receive fiduciary services in one of four ways:

- **Transfer clients to family or other qualified adults**—The Department could attempt to identify a capable relative or other adult who could assume the role of guardian or conservator for a department client. Although statute requires courts to first consider appointing a spouse or other relative before making an appointment to the Department, circumstances may have changed since the Department received its court appointment, and a relative or other adult may now be able and willing to accept this role.
- **Transfer clients to private fiduciaries**—If no relative or other adult is willing or appropriate to become a guardian or conservator, state courts could potentially transfer some department clients to private fiduciaries. As business owners, private fiduciaries decide whether or not to accept clients based on many factors, including ability to pay, and many of the Department's clients have income and assets and are already paying fees to the Department. Auditors' analysis of fiscal year 2010 client income data for 233 living, state-court-appointed clients showed incomes ranging from \$367 to \$149,359 per year, with a median income of \$37,981 per year. The median cash asset balances for the Department's living, state-court-appointed clients was approximately \$29,761 as of September 27, 2010. Department clients also have noncash assets such as real estate, vehicles, and personal property.¹ Although four attorneys who

¹ Auditors could not determine the value of the clients' noncash assets because of the Department's missing valuation data.

represent some department fiduciary program clients stated that the Department's program is more affordable compared to private fiduciaries, it appears that some of the Department's clients would have the ability to pay the fees charged by private fiduciaries.

- **Transfer clients to public fiduciaries**—If relatives, other adults, and private fiduciaries do not express an interest in accepting the Department's clients, they could potentially be transferred to county public fiduciary offices, which are considered by law to be a fiduciary of last resort. However, nearly all of the Department's caseload is in Maricopa and Pima Counties, and the public fiduciaries in those counties expressed reservations about taking on additional cases due to their high caseloads. For example, Maricopa County and Pima County public fiduciary officials reported staff-to-client ratios of 1:80 and 1:70, respectively. The Department reported that it had a staff-to-client ratio of 1:40 as of April 2011. Maricopa County officials indicated that they would be reluctant to take on new appointments without additional resources.
- **Phase out remaining appointments through attrition**—Finally, for clients who cannot be transferred to family, other adults, or to private and public fiduciaries, the Department could gradually close down the program through attrition. The Department's caseload has already decreased due in part to closing out decedent estates and a Maricopa County Superior Court order issued in March 2010 that has restricted the Department from accepting new court appointments from the County (see pages 17 through 18 for additional information).¹ In addition, according to a department official, although the order applies only to Maricopa County, it has generally not accepted any new clients from any state court in response to this order. For example, between May 2010 and March 2011, the Department's state court-appointed caseload decreased from 265 to 236 clients. The Department could continue to not take any new court-appointed clients as a means to reduce the size of its program and eventually phase it out.

From May 2010 to March 2011, the Department's state-court-appointed caseload decreased from 265 to 236 clients.

Department's fiduciary fees do not cover program costs

Fees the Department charges for the various fiduciary services it provides do not cover the costs of its fiduciary program.² Because client fees have covered only up to 60 percent of the Department's fiduciary program costs, the Department has designated an average of more than \$508,000 annually in State General Fund

¹ On March 16, 2010, the Maricopa County Superior Court restricted the Department from taking any new court appointments in that county. However, following a status hearing held on January 27, 2011, the court issued a new order that allows the Department to accept no more than 20 new appointments until a new status hearing is held in September 2011. *In the Matter of the Arizona Department of Veterans' Services, PB2010-000055*.

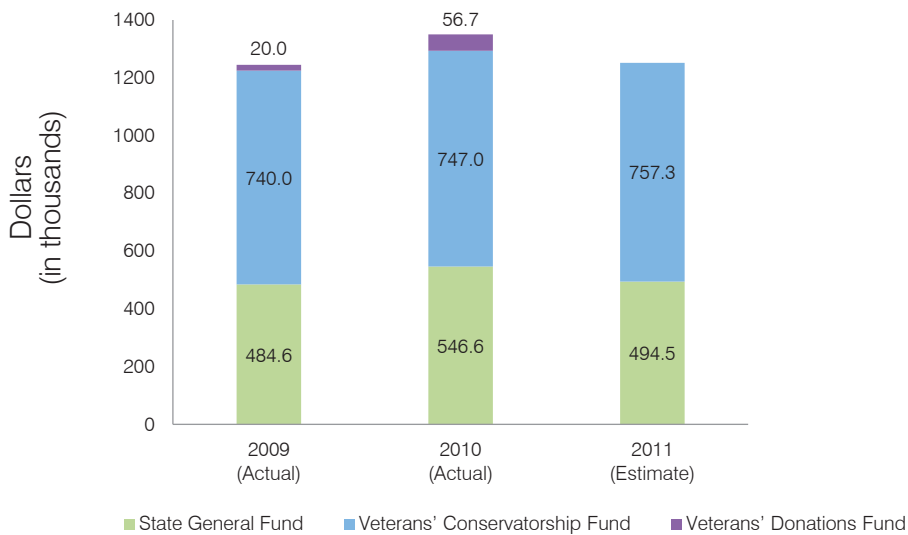
² The Department assesses two types of charges to clients: fiduciary fees and reimbursable administration charges. For example, fiduciary fees include monthly conservatorship fees and guardianship fees allowed by Arizona Revised Statutes, while administration charges include pre-appointment investigation, court appearance, postage, and photocopy charges. The fees discussed in this report include both types of charges.

monies for fiscal years 2009 through 2011 to help pay for program costs. Additionally, contrary to the hourly fees that some other public and private fiduciaries charge, the Department charges a monthly fee for guardianship cases and a flat percentage rate for conservatorship cases, and determines the fee for personal representative cases on a case-by-case basis. These fees may not reflect the time that its fiduciary staff spend on client cases. Finally, the fees the Department charges by have not been updated for several years and do not reflect the costs of providing various fiduciary services.

Fiduciary program fees covered up to 60 percent of program costs—Client fees have covered between 55 and 60 percent of the Department’s fiduciary program costs annually for fiscal years 2009 through 2011, while the Department has relied on State General Fund monies to cover the remaining costs. Specifically, as shown in Figure 1, the Department spent nearly \$750,000 from its Veterans Conservatorship Fund, which consists of client fees, in both fiscal years 2009 and 2010, and \$484,600 and \$546,600 from State General Fund monies in fiscal years 2009 and 2010, respectively, to pay for fiduciary program operations.¹ For fiscal year 2011, the Legislature authorized the Department to

The Department has relied on State General Fund monies to help pay for fiduciary program costs.

Figure 1: Fiduciary Division Expenditures by Revenue Source Fiscal Years 2009 through 2011



¹ The Department used Veterans’ Donations Fund monies to pay for unanticipated professional and outside services costs, such as paying for investigation and legal costs associated with disciplinary sanctions imposed by the Fiduciary Board. The Office of the Auditor General will be issuing a separate report by October 1, 2011, that discusses the Department’s use of Veterans’ Donations Fund monies.

Source: Auditor General staff analysis of the Department’s *State of Arizona Budget Request for FY2011* and *State of Arizona Budget Request for FY2012-FY2013*.

¹ State law allows the Department to charge fees for its guardianship, conservatorship, and personal representative services. These fees are deposited in the State’s Veterans Conservatorship Fund. The Legislature appropriates a portion of this fund’s monies annually to the Department for fiduciary program operations.

spend \$757,300 from the Veterans' Conservatorship Fund, and the Department also designated \$494,500 from its \$5.4 million State General Fund appropriation to pay for fiduciary program operations.

Department fees do not promote cost recovery—Although the Department has established various fees for the fiduciary services it provides, some of these fees do not promote cost recovery and differ in structure from the fiduciary fees charged by some other public and private fiduciaries.¹ For example, the Department has established a flat percentage rate for its conservatorship cases, determines fees for personal representative services on a case-by-case basis, and charges a monthly fee for its guardianship services. However, although other public and private fiduciaries have also established some flat fees for certain services, they have also established ranges of hourly fees that they charge. This allows these fiduciaries to charge fees either based on the qualifications of the staff person providing the service or the type of service and the time that staff spend providing the service. Specifically:

- **Guardianship fees**—Arizona Revised Statutes (A.R.S.) §14-5314 allows the Department to receive reasonable compensation for providing guardianship services. As such, department policy establishes a set-up fee of \$750 for guardianship cases and a monthly fee of \$75 to \$100 to administer these cases. According to a department official, as of October 1, 2010, the Department was charging guardianship fees of \$85 per month. Although the Maricopa and Yuma County Public Fiduciaries charge similar case setup fees, these fiduciaries charge hourly fees instead of a monthly fee. Specifically, according to their fee schedules, the Maricopa County Public Fiduciary charges a flat fee of \$900 for the referral, investigation, petition, and setup of guardianship cases, while the Yuma County Public Fiduciary charges a fee of \$650 for this service. However, both Maricopa and Yuma County Public Fiduciaries charge hourly rates ranging from \$55 to \$145 and \$60 to \$100, respectively, for various guardianship services.²
- **Personal representative fees**—A.R.S. §14-3719 allows the Department to also receive reasonable compensation for acting in the capacity of a personal representative. When acting as a personal representative of a decedent's estate, the Department's fee schedule indicates that the Department will determine its fee on a case-by-case basis. According to the Department, fees charged to individual estates for personal representative services in calendar year 2010 ranged from approximately \$700 to \$48,000. According to the

¹ The fees charged by the Department pertain to its state court appointed clients and are allowed by Arizona Revised Statutes. For its federally appointed clients, according to the Department, the respective appointing federal agency sets the fees. As of September 2010, the Department had 4 such appointments out of its total caseload of 283 clients. The Department also reported that federal agencies do not pay fees for clients who are appointed by state courts, even though most of these clients are also appointed by federal agencies to manage their VA and social security benefits. For these clients, the Department charges clients the fees it has established.

² Maricopa and Yuma County Public Fiduciary officials indicated that their offices would not take fees from clients if doing so would harm the client or interfere with their care and welfare.

The Department's fees differ in structure from the fiduciary fees charged by some other public and private fiduciaries.

Maricopa County Public Fiduciary fee schedule, it charges a flat fee of \$1,200 for the referral, investigation, petition, and setup of decedent estates, a \$400 final accounting fee, and an hourly rate of \$95 to work on these cases.

- **Conservatorship fees**—According to A.R.S. §14-5414(F), when the Department acts as a conservator, it can charge only up to 5 percent of a client's income. According to a department official, it charges 5 percent of a client's income to provide conservatorship services. Fees charged by the Maricopa County and Yuma County Public Fiduciaries are the same as their guardianship fees, which range from \$55 to \$145 and \$60 to \$100 hourly for Maricopa and Yuma County Public Fiduciaries, respectively.

Additionally, a July 2010 Arizona Supreme Court survey of private and public fiduciaries suggests that many fiduciaries charge hourly instead of monthly fees. According to this survey, approximately 15 percent of respondents stated that principal fiduciaries in their organizations charged hourly rates of \$80 to \$99.99 for their services and 49 percent of respondents stated they charged hourly rates of \$100 to \$125.¹ Although the survey did not provide fee information in the general categories of guardianship, personal representative, or conservatorship services, it provided fee information for various types of services. For example, some respondents indicated they charged nothing for various ancillary services such as processing mail, shopping, and writing checks, but most reported charging hourly fees ranging from \$20 to \$90 per hour for these services.

Public and private fiduciaries reported charging varying rates for providing services such as processing mail, shopping, and writing checks.

Department fiduciary fees not based on costs, and one fee has not changed since 1979—The Department's fiduciary fees do not reflect the factors that can influence the costs of providing various fiduciary services. For example, service costs may vary depending on the type of service needed and the frequency with which department fiduciary staff may need to interact with their clients. Depending on the type of appointment, fiduciary staff may need to visit a client more frequently, attend court hearings, interact with various medical and financial professionals on behalf of a client, and/or perform tasks such as shopping, processing mail, and writing checks. However, the Department charges a monthly fee regardless of the types of services provided and the time spent providing the services.

Further, statute caps the amount that the Department can charge for conservatorship services, and this cap has not changed since 1979. The Legislature increased the amount that the Department can charge for conservatorship services from 3 percent of a client's income to 5 percent of a client's income in 1979, but has not further revised this amount since that time.

¹ Arizona Supreme Court rules for fiduciary professionals require private fiduciary businesses and public fiduciaries to have a "designated principal fiduciary." The principal fiduciary is responsible for direct oversight of other licensed fiduciaries and unlicensed staff in the organization.

Department should consider increasing fiduciary fees to more fully cover program's costs

If the Department retains its fiduciary program, it should consider taking steps to develop, propose, and revise its fees to more closely reflect its costs for providing fiduciary services. The Department can take these steps when reviewing its guardianship and personal representative fees because statute allows guardians and personal representatives to charge reasonable fees for their services. Establishing fees to reflect the costs of providing fiduciary services would meet the statutory requirement of reasonable fees. However, for its conservatorship fees, since statute caps the amount that the Department can charge, it would need to propose fee changes to the Legislature for its consideration.

Regardless of the authority for actually revising fiduciary fees, the Department should develop or adopt a structured approach to evaluate its fiduciary fees and propose new fees that more fully cover its fiduciary program costs. Mississippi's Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) developed an approach for evaluating and setting fees that may assist the Department.¹ PEER's approach consists of a decision model for establishing or increasing government fees, called the Theory of Fee Setting in Government, as well as guidance on implementing new fees.² Figure 2 (see page 13) summarizes key concepts from PEER's approach. The approach taken by the Department should include the following:

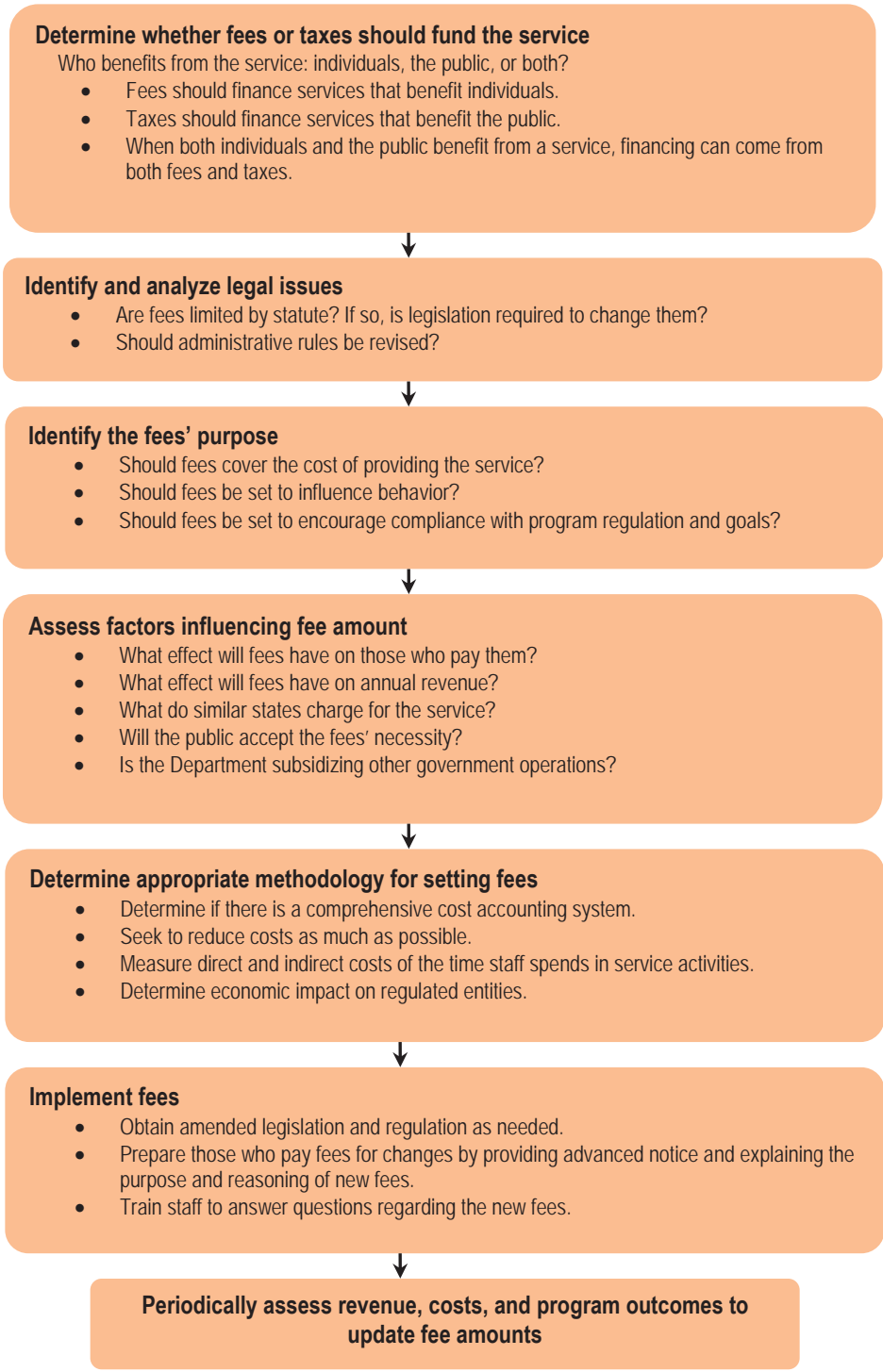
- **Assessing efficiency of operations**—The Department should assess the efficiency of its operations to ensure costs are as low as possible and document the results of the assessment. The Department should seek to minimize costs where possible.
- **Developing fees based on relevant costs**—To help ensure fees are appropriate and equitable, the Department should consider charging fees based on the type of fiduciary service provided. The Department should also consider developing and proposing hourly fees to help account for the time that each of its fiduciary staff spends with clients.
- **Assessing adequacy of current information systems**—The Department should assess the adequacy of its current systems for tracking cost data related to its provision of fiduciary services. It should also track the time that its fiduciary staff spend on providing fiduciary services, including both direct and indirect time. Although the Department tracks the time its staff spend on fiduciary cases

¹ Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS: Author.

² According to PEER, the approach was based on a review of academic literature, economics theory, and policies and procedures from various states and the United States and Canadian governments.

The Department should develop or adopt a structured approach to evaluate its fiduciary fees.

Figure 2: Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review Structured Fee-Setting Process Developed for State Government



Source: Auditor General staff analysis of fee-setting model included in *State agency fees: FY 2001 collections and potential new fee revenues* report prepared by the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review.

from Pima County at the request of the Pima County Superior Court, according to the Department it does not track the time that its staff spend on its other cases. Additionally, the Department may need to enhance its systems and processes for capturing its costs, both direct and indirect, for providing fiduciary services.

- **Considering the effect of fee changes on clients**—The Department should determine the effect of fee changes on its clients, particularly clients who may not be able to pay higher fees. If proposed fees are significantly higher, the Department might recommend increasing fees gradually.

Once developed or adopted, the Department should use this approach to assess its fees and, if necessary, propose new conservatorship services fees to the Legislature. In addition, the Department should develop and implement policies and procedures for using this method to periodically reassess revenues, costs, and program outcomes to update fees as needed.

In its proposal to the Legislature, the Department should also consider and incorporate changes resulting from statutory changes that become effective on January 1, 2012, and from the Arizona Supreme Court's review of fiduciary fees. Specifically:

- In April 2011, the Legislature passed and the Governor signed a bill requiring several changes to the statutes governing fiduciary services. For example, Laws 2011, Ch. 354, will require fiduciaries to prudently manage costs and protect against incurring any costs that exceed probable benefits to the client.
- In April 2010, the Arizona Supreme Court convened a state-wide committee to address several topics related to judicial oversight of state probate courts, including reviewing the fees charged for fiduciary services. In an interim report released in October 2010, the committee recommended a number of possible reforms, including adopting state-wide fee guidelines for fiduciaries and attorneys. The committee plans to release a final report in June 2011.

Legislative action needed to revise conservatorship fees

Because the Department's conservatorship fee is set in statute, the Legislature would need to approve any fee increases or new fees the Department proposed. In considering any proposed fee changes, the Legislature may also wish to consider removing the fee amounts from statute and giving the Department authority to set fees by rule. This would allow the Department to increase fees to cover more or all of its costs to provide conservator services and periodically adjust fees as needed while maintaining some legislative control over the fee amounts.

Recommendations:

- 1.1 The Department should consider phasing out its fiduciary services program. If it decides to do so, it should:
 - a. Not accept any new clients;
 - b. Identify possible successor appointees for its existing clients; and
 - c. Begin the process of submitting resignations to the courts.
- 1.2 If the Department decides to retain its fiduciary services program, it should consider revising its fees to more fully cover its program costs.
- 1.3 If the Department decides to revise its fiduciary services program fees, it should develop or adopt a structured approach for evaluating these fees. As part of its approach, the Department should develop a cost-based method for calculating fees that includes all direct and indirect costs. In developing this method, the Department should do the following:
 - a. Assess the efficiency of its operations to ensure costs are as low as possible and document the results of its assessment. The Department should seek to minimize costs where possible.
 - b. Develop fees that address factors that influence cost, including the types and amounts of services provided and the time it takes to provide those services.
 - c. Assess the adequacy of current systems for tracking the costs associated with each client. It should also track the time that its fiduciary staff spend on providing fiduciary services, including both direct and indirect time. The Department may need to enhance its systems and processes for capturing its costs, both direct and indirect, for providing fiduciary services.
 - d. Consider the effect of fee changes on its clients, particularly clients who may not be able to pay higher fees. If proposed fees are significantly higher, the Department might recommend increasing fees gradually.
 - e. Consider and incorporate any changes resulting from statutory changes and the Arizona Supreme Court's review of fiduciary fees.

- 1.4 Once the Department has developed its approach, it should evaluate its fiduciary fees, propose new fees, and revise the fiduciary fees for which it has authority to revise. For conservatorship fees, if necessary, it should consider proposing new fees to the Legislature that would more fully cover the costs of providing conservatorship services.
- 1.5 After receiving the Department's proposal, the Legislature should consider modifying conservator fees through revising the statutory caps or authorizing the Department to set fees in rule.
- 1.6 The Department should develop and implement policies and procedures for using the approach to periodically reassess revenues, costs, and program outcomes to update fees as needed.

FINDING 2

The Arizona Department of Veterans' Services' (Department) fiduciary program is experiencing several operational problems that need to be addressed, regardless of whether the Department continues to operate or phases out the program. These problems have affected the Department's ability to meet fiduciary responsibilities for managing clients' affairs. In addition, complaints about the handling of cases cost the Department more than \$65,400 in cost reimbursements and private attorneys' fees in calendar years 2009 and 2010. Matters needing improvement include making reports of clients' resources more complete and accurate, and meeting deadlines for issuing death notifications and other required court reports.

Department needs to address operational deficiencies in its fiduciary program

Court reviews identified deficiencies

Two court reviews conducted in 2010 identified operational concerns in the Department's fiduciary program. Specifically:

- In a January 2010 compliance audit, the Arizona Supreme Court reviewed 15 client files and found noncompliance in 14 key areas, including personal property inventory records lacking reasonable detail, client case file documentation and records requirements not being met, and inaccuracies in required reports.¹
- In a county-specific compliance review that opened in January 2010 and continues as of April 2011, the Maricopa County Superior Court (Court) found that the Department had demonstrated a pattern and practice of failing to consistently discharge its fiduciary duties by not complying with statutory reporting requirements, court orders, and/or court rules. The review identified numerous instances of noncompliance with statutory reporting requirements, court orders, and/or court rules, such as requirements regarding death notifications and annual guardian, accounting, and inventory reports.² The Court expressed concern about the suitability of the Department to continue serving in a fiduciary capacity.

According to a court official, the Court reviewed 264 active department cases as of November 2009, and in March 2010, the Court issued a ruling stating that it had found untimeliness issues in the required death notifications and annual accounting, inventory, and other reports for 27 cases. As a result, the Court issued an order that restricted the Department from accepting new appointments for 6 months. At a status hearing held in October 2010 to determine whether the Court would continue or vacate its March 2010 order to restrict the Department from accepting new court-appointed clients, the Court decided to continue the restriction. The Court

¹ Arizona Supreme Court, Administrative Office of the Courts. (2010). *Compliance audit: Arizona Department of Veterans' Services—Fiduciary*. Phoenix, AZ: Author.

² On January 13, 2010, the Maricopa County Superior Court officially opened a probate case entitled *In the Matter of Arizona Department of Veterans' Services, PB2010-00055*. The case will remain open until the judge closes the case. As part of the case, the Court initiated a records review after learning that the Department had entered into a consent decree with the Arizona Supreme Court's Fiduciary Board on November 16, 2009. The Department negotiated the consent decree in response to a disciplinary order associated with a complaint that an outside party filed in 2007.

conducted another status hearing on January 27, 2011, during which it lifted the restriction but capped the number of new clients that the Department could accept to no more than 20 until the next status hearing, scheduled for September 1, 2011.

The operational problems the courts identified are serious because they involve the Department's fiduciary responsibility to undertake for another person a special obligation of trust and confidence, and to act in its clients' best interests. Left uncorrected, issues such as incomplete inventory records, report inaccuracies, inappropriate client records and documentation, and untimely court reporting mean that the Department cannot ensure that it is properly serving and protecting its clients. In addition, by filing reports that are incomplete, inaccurate, and untimely, the Department cannot attest that it is managing client affairs and resources prudently, as required by professional fiduciary standards.

Additional department action needed to address operational deficiencies

Although the Department has taken steps to improve its procedures in response to findings by the courts, auditors found that it continues to experience operational problems and should take additional steps to ensure it properly and accurately fulfills its fiduciary responsibilities. Steps the Department has taken include adopting a revised fiduciary program procedural manual in May 2010. The manual includes procedures and instructions for many key deficiencies identified in the January 2010 Arizona Supreme Court compliance audit and the Maricopa County Superior Court's on-going disciplinary case. For example, the revised manual includes detailed instructions for inventorying client assets, case management, client records management and retention, and numerous checklists for procedures to follow regarding decedent estates. However, auditors determined that several of the deficient areas identified by the courts continue and the Department should take additional steps to address these areas. Specifically:

- **Ensure inventory reports and records are complete and accurate**—Arizona statutes require conservators and personal representatives to list the personal property items on the inventory reports they submit to the courts in reasonable detail and to include the fair market value of each item (see textbox, page 19, for this requirement and others discussed separately below). However, the January 2010 Arizona Supreme Court audit found that in all 15 cases reviewed, the Department had not listed personal property in detail, nor included its fair market value on these required documents. Additionally, in a court compliance ruling issued after the January 27, 2011, status hearing in the Court's ongoing review of the Department, two of four cases highlighted as noncompliant related to the submission of insufficiently detailed inventory reports.

The Department's revised fiduciary program manual addresses deficiencies identified by court reviews.

Key fiduciary compliance audit standards

- **Inventory reports**—Arizona Revised Statutes (A.R.S.) §§14-5418 and 14-3706 require conservators to prepare and file within 90 days of a court appointment an estate inventory report that lists in reasonable detail the property the protected person owns and each item's fair market value as of the court appointment date. Personal representatives are required to submit similar inventory reports within 90 days of their court appointments.
- **Records and documentation**—A.R.S. §14-5418(B) requires conservators to keep suitable records of the conservator's administration of a protected person's estate.
- **Report completeness and accuracy**—The Arizona Code of Judicial Administration's Code of Conduct §§7-202(J)(4)(j) and (J)(5)(h) require fiduciaries acting as conservators to prepare complete, accurate, and understandable accountings and inventories, and those acting as personal representatives to prepare complete and understandable court documents, petitions for determination of heirs, inventories, accountings, and closing statements.

Source: Auditor General staff analysis of the Arizona Supreme Court's Compliance Audit of Arizona Department of Veterans' Services, January 21, 2010; Arizona Revised Statutes; and the Arizona Code of Judicial Administration.

Auditors also identified incomplete inventory information in the Department's case management system database for numerous client cases. Specifically, the database identified client personal property such as investments, homes, cars, and other assets, but many database records lacked a corresponding fair market value. For example, out of 209 clients who had investment assets identified in the database, such as insurance and investment securities, the database lacked corresponding investment values for 130 of these clients as of September 27, 2010. Similarly, for 135 clients who had personal property and other assets identified in the database, such as real estate and cars, the database lacked corresponding values for 54 clients. As a result, the Department should determine the fair market value for all client assets, including investment assets and personal property, and review and correct its client records and case management database. In addition, it should ensure that staff are trained on the assets valuation instructions contained in its revised procedures manual to ensure that staff to periodically review and update the fair market value of client assets.

- **Improve appropriateness of client records and documentation**—Arizona statute requires conservators to keep suitable or appropriate records and to exhibit them when requested. However, the Arizona Supreme Court audit found inappropriate documentation in 10 of the 15 cases it reviewed.¹ For example,

The Department's case management system lacked complete inventory information for numerous client cases.

¹ The Court also criticized the Department for missing information—specifically, for lack of pre-2000 client records in all 15 cases. However, the Department responded that its former principal fiduciary had directed the staff to destroy pre-2000 client records pursuant to training provided by the Arizona Supreme Court's Administrative Office of the Courts.

one file did not have a bill of sale for a home that was sold during an accounting period, and one did not have Letters of Appointment verifying the Department's court appointment. Similarly, auditors identified a decedent case that lacked appropriate records. Specifically, the file for a veteran who died in New Mexico in November 2009 lacked documentation of the Department's communications with an ex-spouse who informed the Department about the veteran's death, and documentation to explain payments made after his death for personal and rent expenses. Therefore, the Department should ensure that staff are trained on the client documentation instructions contained in its revised procedures manual. In addition, the Department should develop and implement supervisory review practices—such as periodic review of a sample of client files—to prevent, detect, and correct documentation problems.

- **Adopt controls to ensure the accuracy of required court reports**—The Arizona Code of Judicial Administration's fiduciary code of conduct requires fiduciaries to prepare complete, accurate, and understandable accounting reports and court documents. However, the Arizona Supreme Court audit identified inaccurate court reports for 10 of the 15 cases reviewed. Examples of inaccuracies included listing a stolen vehicle on a client's inventory report, reporting a beginning balance on an annual accounting report that differed from the ending balance on the previous year's accounting report, and neglecting to include a client's bankruptcy on an accounting report. Similarly, auditors identified a misstatement in the first annual accounting report for a Yavapai County guardianship and conservatorship case appointed to the Department on November 9, 2009. Specifically, the accounting report that the Department submitted in November 2010 did not reflect the deposit of a \$46,700 check that the Department had credited to the client's account in November 2009. The Department's updated procedural manual does not include instructions for developing these reports and ensuring they are accurate. Therefore, the Department should further update its fiduciary procedural manual to address report accuracy and train staff on the new procedures. The Department should also develop and implement supervisory review practices, such as checking reports against client files, to prevent, detect, and correct accuracy problems.
- **Continue efforts to ensure timely court and federal Veterans Affairs filings, and timely monitor deceased wards' cases**—Complying with court mandates such as timely filing of reports is important not only to satisfy statutory requirements, but also because these reports provide the courts with the information they need to monitor a fiduciary's activities on behalf of a ward, protected person, or decedent estate. For example, the courts rely on annual accounting reports to review the appropriateness of the client's income and expenses during a 1-year period, and they also use the accounting report to review and approve the fees that fiduciaries and attorneys charge to a client's estate. Further, timely death notifications are important because they help the courts oversee and administer cases and ensure that no inappropriate activities occur in a client's estate after the person's death.

Some client accounting and court reports the Department prepared are inaccurate and incomplete.

Many noncompliance issues identified in the Maricopa County Superior Court review involved untimely notices of a ward's death or untimely final accounting reports. The Arizona Rules of Probate Procedure require a fiduciary to notify the court of a ward's or protected person's death within 10 days of learning that the person has died and requires final accountings to be submitted within 90 days of the person's death. However, 12 of the 27 instances of untimeliness the Maricopa County Superior Court review identified involved untimely death notifications or the untimely submission of a deceased ward's final accounting report. In one case, the Department failed to inform the court in writing of a client's death for more than 1 year and did not close out the client's estate for more than 8 years. In another case, the Department did not close out a deceased client's estate valued at more than \$500,000 for more than 3 years and failed to respond to inquiries made by potential heirs. Not monitoring the status of a deceased client can have significant consequences, such as in the case of inappropriate payments that the Department continued to make in a federal Veterans Affairs custodian case on behalf of a veteran who passed away in November 2009 (see textbox).¹ In addition, auditors found that the Department did not file the required annual report to the federal Department of Veterans Affairs for this case in calendar years 2007, 2008, and 2009.

Case example: Department did not monitor federal appointment and issued checks after veteran's death

The Department did not adequately monitor a case and therefore did not find out about a veteran's November 2009 death until 3 months after the death occurred. In the interim, the Department twice paid the veteran's \$800-monthly rent payment to a hotel in New Mexico and also sent five \$200 checks for personal funds to the deceased man. Although the rent payments may have been appropriate if the client's belongings were still in the hotel room, both the rent checks and the personal checks—a total of \$2,600—were cashed by an unidentified person after the client's death. In November 2010, the Department requested the issuing bank to open a fraud investigation regarding the \$1,000 in personal funds checks. As of February 2011, the bank had reimbursed the Department \$1,000 for these personal checks.

Source: Auditor General staff analysis of department case file and other records and interviews with department staff.

Since the March 16, 2010, court order, in addition to updating its procedural manual, the Department has implemented a deadline tracking system that captures all deadlines for all clients in one central location. In addition, the Department and attorneys it hires to file required court reports claim that improved communication regarding court deadlines has occurred. The Court has acknowledged the Department's progress in addressing compliance concerns regarding timely court filings. For example, in a court ruling issued after a January 27, 2011, status hearing, 2 of 4 noncompliant cases were related to untimely filings compared to all 27 noncompliant cases identified in the judge's March 16, 2010, ruling. Although the Court has identified progress, the

The Department has improved court filing timeliness.

¹ The case is under the direct jurisdiction of the federal Department of Veterans' Affairs rather than a state court. It nonetheless illustrates the importance of monitoring clients in a timely manner.

The Department's procedures for reconciling client records to its bank accounts are inadequate.

Department should continue its efforts to meet report deadlines and monitor the status of decedent estates. Specifically, it should update its policies and procedures to include the new deadline tracking system and train its staff on its procedures for the timely administering of deceased wards' estates.

- **Improve bank reconciliation procedures**—The Department's procedures for reconciling its client accounting records to its private bank account are inadequate. Because the Department pools its clients' monies into one private bank account used for bill-paying and one investment account with the Arizona State Treasurer, monthly reconciliation of client accounting records to these two accounts is essential to protect clients' monies and to ensure that the fiduciaries are working with accurate records of client accounts. A department fiduciary official reported that client accounting records had been successfully reconciled to the pooled accounts in April 2009, following a 23-month period in which they had not been reconciled. The official reported that the accounts did not balance during the 23-month time frame because it did not have an accounting manager to perform the reconciliations. The Department hired a new accounting manager in January 2009. However, auditors re-performed the reconciliations for November 2009 and January 2010 and identified several bank transactions that the Department failed to record in its accounting system. In total, auditors calculated variances of approximately \$34 in November 2009 and \$1,589 in January 2010.

The Department's monthly bank reconciliation procedures also lack appropriate segregation of duties because the Department has not assigned another person to review the work of the person who performs the monthly reconciliations. This presents a risk that accounting errors will go unidentified, as well as increasing the risk for fraud and theft. Therefore, the Department should improve its policies and procedures related to bank reconciliation, including developing and implementing instructions for reconciliation, training staff on the procedures, and segregating bank reconciliation duties by requiring supervisory review of the reconciliations by staff that did not perform the reconciliations.

Improved controls could potentially mitigate complaint risks

Addressing deficiencies and improving the fiduciary program's policies and procedures and adherence to those policies and procedures could also potentially reduce the possibility of third parties filing complaints with the Arizona Supreme Court's Fiduciary Board (Board) and mitigate the negative impacts of those complaints, including costs the Department incurs. For example, in calendar years 2009 and 2010, the Board took disciplinary actions against the Department in response to one complaint filed in October 2007 and two complaints filed in January

2009. The 2007 complaint alleged that the Department failed to respond to unsafe conditions at the client's home, used an unlicensed contractor to make repairs at the home, mismanaged the client's bank account and tax returns, and failed to obtain court approval for approximately \$3,100 in attorneys' fees charged to the client's estate. One of the 2009 complaints alleged that the Department failed to pay a client's nursing home bills, resulting in the nursing home issuing an eviction notice to the client, while the other 2009 complaint alleged that the Department did not properly oversee one of its attorneys after the attorney failed to appear at a hearing regarding a decedent's estate.

In response to these complaints and the findings of the Board, the Board took various disciplinary actions against the Department. Specifically, as a result of the October 2007 complaint, the Department negotiated a consent decree with the Board that included a censure and a 2-year probation term that remains in effect through November 16, 2011.¹ Under the terms of the probation, the Department had to provide a list of all its state court appointments within 30 days of the consent decree and submit a quarterly status report on all appointments throughout the probation term.² The Department also had to review the client's accounting records and submit a report to the Board on the review, and submit a request for court approval of the \$3,100 in attorneys' fees.

The Department also accepted the Board's recommended sanctions in the two January 2009 complaints and chose not to exercise its right to a hearing. The Board issued a censure to the Department for one of the 2009 complaints and censured two individually licensed department employees for the other complaint. In addition, for all three complaints, the Board ordered the Department to pay approximately \$4,200 in board investigation costs and more than \$34,400 in attorneys' fees. Arizona Supreme Court rules allow the Board to order licensees to pay for investigation costs and disciplinary proceedings as part of an enforcement action.³ According to the Department, in addition to the Fiduciary Board's investigative costs and attorneys' fees, it also paid a private law firm more than \$26,800 to represent it before the Board.

The Arizona Supreme Court's Fiduciary Board has taken disciplinary actions against the Department.

¹ A censure is a written formal disciplinary sanction that finds a licensee has violated statutes or rules. The Board can also issue a letter of concern, which is a written informal disciplinary sanction, or an advisory letter, which is nondisciplinary but notifies the licensee that the conduct is inappropriate.

² The required reporting elements include due dates for the filing of accounting and inventory reports for each client, and proof of compliance with deadlines, the identification of financial assets for each client, and confirmation of compliance with ward visitation requirements.

³ Other enforcement actions besides censure, probation, and cost assessment include such things as issuing a letter of concern; requiring mandatory training; restricting, suspending, or revoking fiduciary certification; and imposing civil fines.

Recommendations:

To ensure that the Department has an effective control environment to perform key fiduciary functions and monitor its fiduciary appointments, the Department should:

2.1 Ensure inventory records are complete by:

- a. Determining fair market value for all client assets, including property such as investment assets and real estate;
- b. Updating its case management database to reflect all assets and associated fair market values; and
- c. Ensuring that staff are trained to use the instructions in the procedure manual for periodically reviewing and updating the fair market value of client assets.

2.2 Improve the suitability of client records and documentation by:

- a. Ensuring that staff are trained to use the instructions in the procedure manual; and
- b. Developing and implementing supervisory review processes to prevent, detect, and correct documentation problems.

2.3 Ensure the accuracy of court reports by:

- a. Updating its procedure manual to include instructions for developing reports and training staff on these updated procedures; and
- b. Developing and implementing supervisory review processes to prevent, detect, and correct accuracy problems.

2.4 Ensure timely court and VA filings and timely monitor deceased wards' cases by:

- a. Updating its procedure manual to reflect the new deadline tracking system; and
- b. Training staff on procedures for timely administering deceased wards estates.

2.5 Improve bank reconciliation procedures by:

- a. Developing a bank reconciliation procedure and instructions for reconciliation and training staff on these updated procedures; and
- b. Segregating reconciliation duties by requiring supervisory review by staff that did not perform the reconciliation.

APPENDIX A

This appendix provides information on the methods auditors used to meet the audit objectives.

This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express appreciation to the Arizona Department of Veterans' Services' (Department) Director and staff for their cooperation and assistance throughout the audit.

Methodology

Auditors used a number of methods to study the issues addressed in this report, including conducting interviews with department management and staff, members of the Arizona Veterans' Services Advisory Commission, an official from Unified Arizona Veterans, which is the umbrella organization for Arizona veterans' service organizations, and Arizona Supreme Court Certification and Licensing Division officials and staff. Auditors also reviewed Arizona Revised Statutes (A.R.S.) and Arizona Supreme Court rules pertaining to state probate matters and fiduciary profession regulation, specifically, A.R.S. Title 14 (the Arizona Probate Code), the Arizona Rules of Probate Procedure, and the Arizona Code of Judicial Administration §§7-201 and 7-202. Auditors also reviewed state and department budget documents, and the Department's fiduciary policies and procedures.

Auditors also used the following data and data validation methods:

- **Data Sources**—Auditors obtained the following data downloads from the Department's automated case management and accounting system CompuTrust:
 - Client profile data as of September 24, 2010;
 - Client accounting transaction data for the time frame data July 1, 2009, through October 13, 2010; and
 - Client cash asset and personal property assets as of September 27, 2010.
- **Data Validation**—To validate the CompuTrust data, auditors conducted a variety of tasks, including evaluating the Department's internal data controls over transaction reporting in CompuTrust, performing bank reconciliations, and vouching specific client records to database records. To assess the accuracy of specific client profile fields used in auditors' analyses, auditors verified a random sample of five client records in the client profile dataset against clients' hardcopy files. To assess the completeness and reasonableness of bank account balances, auditors performed bank reconciliations for the months of November 2009 and January 2010 and reviewed supporting documentation for transactions. Auditors found some differences between CompuTrust and the bank, but determined these differences were not material. Auditors also reviewed clients' asset balance information for different asset classes and found some anomalies in the cash assets and some missing information for noncash asset classes. However, auditors concluded that these omissions and

anomalies were limited enough that they did not prevent auditors from reliably characterizing overall assets. In general, auditors concluded that the CompuTrust client profile, transaction data, and cash asset balance data was sufficiently reliable for audit purposes.

- **Data analysis**—Auditors analyzed the CompuTrust data to provide demographic and appointment case type information on 283 active clients as of September 24, 2010, income information on 233 active living state court cases, and asset information for 234 active living state court clients. The additional case in the assets analysis is associated with the Department's single trustee appointment.

Further, auditors used the following specific methods:

- To evaluate options the Department should consider for either phasing out its fiduciary program or revising program fees, auditors interviewed other states' veterans' services department officials and various stakeholders, including private fiduciaries, public fiduciaries, and attorneys who were familiar with the Department's fiduciary program.¹ Auditors also analyzed data for active clients as of September 24, 2010, client asset data as of September 27, 2010, and client income data from fiscal year 2010. In addition, auditors reviewed investigation and attorneys' costs that the Department incurred as part of Arizona Supreme Court Fiduciary Board disciplinary actions and reviewed documentation of efforts in 2010 by the Arizona Supreme Court's Committee on Improving Judicial Oversight and the Processing of Probate Court Matters to reform the state probate court system, including the regulation of professional fiduciary and attorneys' fees. Further, auditors reviewed fiduciary fee schedules for the Maricopa and Yuma County Public Fiduciaries, and a report by Mississippi's Joint Legislative Committee on Performance Evaluation and Expenditure Review entitled *State agency fees: FY 2001 collections and potential new fee revenues*.² Finally, auditors analyzed a July 2010 Arizona Supreme Court survey of public and private fiduciaries.
- To assess the adequacy of the internal controls the Department has in place to ensure it effectively discharges its fiduciary duties and complies with A.R.S. Title 14 (the Arizona Probate Code), Arizona Supreme Court rules such as the Arizona Rules of Probate Procedure, and the Arizona Code of Judicial Administration, auditors analyzed complaints filed against the Department with the Arizona Supreme Court's Fiduciary Board between 2007 and 2009 and the disciplinary orders and sanctions associated with those complaints; reviewed findings of the January 2010 Arizona Supreme Court's Fiduciary Certification Program's Compliance Audit, and court minute entries and court orders issued between January 2010 and January 2011 associated with the Maricopa County

¹ Auditors interviewed state veterans' officials in Minnesota and Nevada regarding those states' decisions to discontinue their veterans' fiduciary programs, and also interviewed an Oregon state veterans' officials regarding its conservatorship program.

• ² Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS: Author.

Superior Court's statutory compliance review of the Department's Maricopa County cases; and observed an October 7, 2010, hearing on the status of the Department's compliance with Maricopa County Superior Court orders.¹ Auditors also interviewed the Department's fiduciary program management and staff regarding the impact of the complaints and court reviews, and actions taken in response to those reviews. In addition, auditors conducted an in-depth review of two case files: (1) a guardianship/conservatorship appointment the Department received in November 2009 from the Yavapai County Superior Court, and (2) a custodian case appointed by the federal Department of Veterans' Affairs. Auditors also reviewed applicable literature pertaining to the certification, licensing, and oversight of fiduciaries generally, including a 2005 University of Kentucky study of state public guardianship programs, a 2007 Executive Summary of an American Bar Association report on public guardians, a 2007 study about probate court oversight practices published by the AARP Policy Institute, and 2007 national guardianship standards.²⁻⁵

- To develop information for the Introduction section, auditors performed analysis on client profile information from CompuTrust to compile the client statistics for active clients as of September 24, 2010, and reviewed the 2011 monthly fiduciary services reports to update the number of active clients served. Auditors also used information from the Web site <http://dictionary.law.com/>, a 2005 University of Kentucky study of state public guardianship, and a 2010 a nationwide review of guardianship oversight completed by the federal Government Accountability Office to define fiduciary terms.⁶ Auditors also analyzed the Department's budget request documents *State of Arizona Budget Request for FY2011 and State of Arizona Budget Request for FY2012-FY2013* for the Department's budget and staffing information.

¹ *In the Matter of the Arizona Department of Veterans' Services, PB2010-00055.*

² Teaster, P., Wood, E., Karp, N., Lawrence, S., Schmidt, W., et al. (2005). *Wards of the state: A national study of public guardianship*. Lexington, KY: University of Kentucky.


³ Teaster, P., Wood, E., Schmidt, W., & Lawrence, S. & the American Bar Association. (n.d.). *Public guardianship after 25 years: In the best interest of incapacitated people?* [Executive Summary, National Study of Public Guardianship, Phase II Report]. Retrieved February 8, 2011, from http://www.americanbar.org/content/dam/aba/migrated/aging/docs/Guard_report_Exec_Summ.authcheckdam.pdf

⁴ Karp, N., & Wood, E. (2007). *Guarding the guardians: Promising practices for court monitoring* [#2007-21]. Washington, DC: AARP Public Policy Institute.

⁵ National Guardianship Association, Inc. (2007). *Standards of practice, National Guardianship Association* (3rd ed.). Bellefont, PA: Author.

⁶ United States Government Accountability Office. (2010). *Guardianships: Cases of financial exploitation, neglect, and abuse of seniors* [GAO-10-1046]. Washington, DC: Author.

AGENCY RESPONSE

<p>JANICE K. BREWER GOVERNOR</p>	<p> ARIZONA DEPARTMENT OF VETERANS' SERVICES 3839 NORTH 3RD STREET, SUITE 200 PHOENIX, ARIZONA 85012 PHONE (602) 255-3373 FAX (602) 255-1038</p>	<p>JOEY STRICKLAND DIRECTOR</p>
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May 31, 2011

Debra K. Davenport, CPA
Auditor General
State of Arizona Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Re: Final Response to the Performance Audit of Arizona Department of Veterans' Services
Fiduciary Program, Office of the Auditor General, on April 28, 2011

Dear Ms. Davenport:

I have reviewed the Audit Report of the Arizona Department of Veterans' Services
Fiduciary Program. Please accept this writing of six pages as the Department's final response to
the Audit. Enclosed are the Department's written comments on the report.

Respectfully,

Joey Strickland
Director

Finding 1	Department should consider two options for fiduciary program – Gradually phasing out program or increasing fees
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Recommendation 1.1

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

The purpose of the Fiduciary Program is to provide, or have provided, lawful protective services to meet reasonably and prudently the needs of the Department's Fiduciary Clients within the bounds of its appointments. The Department will consider phasing out the Fiduciary Program should the Department determine the Fiduciary Program does not so meet those needs.

Should the Department decide to phase out the Fiduciary Program, the Department would not accept new Fiduciary Clients, identify possible successor appointees for existing Fiduciary Clients, and begin the process of submitting requests for resignations of fiduciary appointments to the Superior Court for the Court's consideration.

Recommendation 1.2

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

If the Department decides to retain the Fiduciary Program, the Department will consider revising its fees ("Fiduciary Fees") and cost and expense recovery ("Charges") to more fully cover its program costs.

Recommendation 1.3

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

If the Department decides to revise its Fiduciary Fees, the Department will develop or adopt a structured approach for evaluating Fiduciary Fees and a cost-based method for calculating the Fiduciary Fees and Charges that includes all direct and indirect costs ("Structured Fees and Costs Approach"). In developing and adopting a Structured Fees and Costs Approach, the Department will:

- A.
 - a. Assess the efficiency of its Fiduciary Program operations to keep costs as low as possible and document the results of its assessment of such costs. The Department will continue to minimize Fiduciary Program costs where possible.

Auditor General

Re: Preliminary Report, Performance Audit of ADVS Fiduciary Program

May 31, 2011

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- b. Develop Fiduciary Program Fiduciary Fees and Charges that address factors that influence cost, including the types and amounts of services provided and the time it takes to provide those services.
 - c. Assess the adequacy of current systems for tracking the costs associated with each Fiduciary Client. The Fiduciary Program will also track the time that the Fiduciary Division ("FID") staff spends on providing fiduciary services, including both direct and indirect time. The Department will continue to enhance its systems and processes for capturing its costs, both direct and indirect, for providing fiduciary services.
 - d. Consider the effect of Fiduciary Fee changes and Charges on its Fiduciary Clients, particularly clients who may not be able to pay higher Fiduciary Fees and Charges. If proposed Fiduciary Fees are significantly higher, the Department would consider increasing fees gradually.
 - e. Consider and incorporate any changes resulting from statutory changes and the Arizona Supreme Court's review of fiduciary fees.
- B. FID staff will begin training and using the timekeeping feature of CompuTrust to record and account for the time spent on each of our Fiduciary Clients.

Recommendation 1.4

ADVS Response:

The finding of the Auditor General and recommendation is agreed to.

Comments:

A. By the Arizona Revised Statutes ("A.R.S."), the Department may act in Superior Court appointments as guardian, conservator, and personal representative of decedent estates; and in other fiduciary matters as power of attorney, trustee, and federal government appointments as custodian and representative payee*.

*A.R.S. § 41-603(A), Title 41 – State Government, Ch. 3 *Administrative Boards and Commissions*, Art. 7 *Department of Veterans' Services*

In personal representation of decedent estates, guardianships, and trusteeships, the Department may receive reasonable compensation for its fiduciary services*. Reasonableness of fees is determined by the Superior Court having jurisdiction over the given fiduciary appointment.

*A.R.S. §§ 14-3719, 14-5314, 14-10708 respectively, Title 14 – *Trusts, Estates and Protective Proceedings*, Ch. 3 *Probate of Wills and Administration*, Art. 7 *Duties and Powers of Personal Representatives*; and Ch. 5 *Protection of Person under Disability and Their Property*, Art. 3 *Guardians of Incapacitated Persons* and Art. 4 *Protection of Property of Persons under Disability and Minors*

Compensation payable to the Department, as conservator, "shall not be more than five per cent of the amount of monies received during the period covered by the conservatorship."*

* A.R.S. § 14-5414(F)

In federal government appointments as custodian and representative payee, the respective appointing federal agency sets the fees payable for those appointments.

B. The Department will evaluate its Fiduciary Fees for personal representation of decedent estates, guardianships, and trusteeships.

In conservatorships, the Department will consider approaching the Legislature to amend 14-5414(F) to allow a compensation range, which "shall not be less than five per cent and not more than ten per percent of the amount of monies received during the period covered by the conservatorship."

In federal government appointments as custodian and representative payee, the Department will continue to seek fiduciary compensation authorized under State of Arizona law and fiduciary compensation from the appointing federal agency. The practice of the federal government is not to pay federal fiduciary compensation fees if the fiduciary also receives fiduciary compensation under state appointments. The Department's position for receiving state and federal fiduciary compensation fees for dual appointments is that the Department is answerable to two separate sovereigns through their separate audit processes.

Recommendation 1.5

ADVS Response:

The finding of the Auditor General and recommendation is agreed to.

Comments:

A. The Department will consider approaching the Legislature to amend 14-5414(F) to allow a conservatorship compensation range, which "shall not be less than five per cent and not more than ten per percent of the amount of monies received during the period covered by the conservatorship."

B. The Department will consider approaching the Legislature to request authorization to set Charges in rule. The A.R.S. requires ADVS to, "Adopt rules deemed necessary to administer this article."

*A.R.S § 14-5414(F), Title 41 – State Government, Ch. 3 *Administrative Boards and Commissions*, Art. 7 *Department of Veterans' Services*

C. The Department is in the process of revising the Fiduciary Division's ("FID") *Operating Procedures*, effective April 1, 2010. The ADVS Principal Fiduciary expects to have the revision (the "Operating Procedures Revision") completed for printing by July 1, 2011. The Operating Procedures Revision will contain changes developed from implementation of the April 1, 2010 version.

Recommendation 1.6

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

The Department will develop procedures for using the Structured Fees and Costs Approach to periodically reassess Fiduciary Program revenues and costs to update Fiduciary Fees and Charges as needed.

Finding 2 Department needs to address operational deficiencies in its fiduciary program

Recommendation 2.1

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

A. The term "fair market value" is used in several sections throughout the A.R.S. and Arizona Code of Judicial Administration ("ACJA") §§ 7-201 and 7-202. From the Department's review of the A.R.S. and ACJA, the Department finds only one definition of the term*, which states:

In this article, unless the context otherwise requires: 1. "Fair market value" means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable.

*A.R.S. § 12-1136 *Definitions*, Title 12 – *Courts and Civil Proceedings*, Ch. 8 *Special Actions and Proceedings Relating to Property*, Art. 2.1 *Private Property Rights Protection Act*

The A.R.S. requires the "fair market value" determination of trusts*. At 14-11014(D) in part,

The fair market value of the trust shall be determined at least annually, using a valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are deemed reasonable and appropriate.

*A.R.S. § 14-11014 Title 14, Ch. 11 *Arizona Trust Code*, Art. 10 *Liability of Trustees and Rights of Persons Dealing with Trustees*

B. The Department is in the process of revising the Fiduciary Division's ("FID") *Operating Procedures*, effective April 1, 2010. The ADVS Principal Fiduciary expects to have the revision (the "Operating Procedures Revision") completed for printing by July 1, 2011. The Operating Procedures Revision will contain changes developed from implementation of the April 1, 2010 version.

Recommendation 2.2

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

The upcoming Operating Procedures Revision will be used to train the FID staff in the revised procedures and instructions developed since the *Operating Procedures*, effective April 1, 2010, and develop and implement therein supervisory review processes to reasonably and diligently prevent, detect and correct problems in documenting Fiduciary Client records.

Recommendation 2.3

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

The Operating Procedures Revision will update the FID's operating procedures and instructions for developing required reports and training FID staff in the Operating Procedures Revision.

Recommendation 2.4

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

The Operating Procedures Revision will update the FID's operating procedures and instructions to include FID's new system for tracking reports of guardian, inventories and appraisements, and accounting filing deadlines, and training FID staff in timely administering deceased wards' estates.

Recommendation 2.5

ADVS Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Comments:

The Department will improve procedures for reconciliation of fiduciary bank accounting, train FID staff in the improved procedures, and segregate reconciliation duties by requiring supervisory review by staff that did not perform the reconciliation.

Performance Audit Division reports issued within the last 24 months

09-06	Gila County Transportation Excise Tax	10-04	Department of Agriculture—Food Safety and Quality Assurance Inspection Programs
09-07	Department of Health Services, Division of Behavioral Health Services—Substance Abuse Treatment Programs	10-05	Arizona Department of Housing
09-08	Arizona Department of Liquor Licenses and Control	10-06	Board of Chiropractic Examiners
09-09	Arizona Department of Juvenile Corrections—Suicide Prevention and Violence and Abuse Reduction Efforts	10-07	Arizona Department of Agriculture—Sunset Factors
09-10	Arizona Department of Juvenile Corrections—Sunset Factors	10-08	Department of Corrections—Prison Population Growth
09-11	Department of Health Services—Sunset Factors	10-L1	Office of Pest Management—Regulation
10-01	Office of Pest Management—Restructuring	10-09	Arizona Sports and Tourism Authority
10-02	Department of Public Safety—Photo Enforcement Program	11-01	Department of Public Safety—Followup on Specific Recommendations from Previous Audits and Sunset Factors
10-03	Arizona State Lottery Commission and Arizona State Lottery	11-02	Arizona State Board of Nursing

Future Performance Audit Division reports

Pinal County Transportation Excise Tax

Arizona Medical Board