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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.

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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
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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.