

## Union Calendar No. 95

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1405

[Report No. 113-130]

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought.

---

### IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2013

Ms. TITUS (for herself and Mr. RUNYAN) introduced the following bill; which was referred to the Committee on Veterans' Affairs

JUNE 25, 2013

Additional sponsors: Mr. TAKANO, Mr. CALVERT, Mr. JOHNSON of Ohio, Mr. LANCE, Mr. O'ROURKE, Mr. LOEBSACK, Mr. RUIZ, and Mr. RAHALL

JUNE 25, 2013

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

# **A BILL**

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INCLUSION OF APPEALS FORMS IN NOTICES OF**  
4 **DECISIONS OF BENEFITS DENIALS ISSUED BY**  
5 **THE SECRETARY OF VETERANS AFFAIRS.**

6 (a) *IN GENERAL.*—Section 5104(b) of title 38,  
7 United States Code, is amended—

8 (1) by striking “and (2)” and inserting “(2)”;  
9 and

10 (2) by inserting before the period at the end the  
11 following: “, and (3) a form that may be used to file  
12 an appeal of the decision”.

13 (b) *EFFECTIVE DATE.*—The amendments made by  
14 subsection (a) shall apply with respect to decisions made  
15 by the Secretary under section 511 of title 38, United  
16 States Code, on or after the date of the enactment of this  
17 Act.

18 **SECTION 1. INCLUSION OF NOTICE OF DISAGREEMENT**  
19 **FORMS IN NOTICES OF DECISIONS OF BENE-**  
20 **FITS DENIALS ISSUED BY SECRETARY OF VET-**  
21 **ERANS AFFAIRS.**

22 (a) *IN GENERAL.*—Section 5104(b) of title 38, United  
23 States Code, is amended—

24 (1) by striking “and (2)” and inserting “(2)”;  
25 and

1           (2) *by inserting before the period at the end the*  
2           *following: “, and (3) a form that may be used to file*  
3           *a notice of disagreement to the decision”.*

4           **(b) EFFECTIVE DATE.**—*The amendments made by sub-*  
5           *section (a) shall apply with respect to decisions made by*  
6           *the Secretary under section 511 of title 38, United States*  
7           *Code, on or after the date of the enactment of this Act.*

8           **SEC. 2. PROVISION OF STATUS UNDER LAW BY HONORING**  
9                               **CERTAIN MEMBERS OF THE RESERVE COMPO-**  
10                              **NENTS AS VETERANS.**

11           **(a) VETERAN STATUS.**—

12                       (1) **IN GENERAL.**—*Chapter 1 of title 38, United*  
13           *States Code, is amended by inserting after section 107*  
14           *the following new section:*

15           **“§ 107A. Honoring as veterans certain persons who**  
16                               **performed service in the reserve compo-**  
17                               **nents**

18           *“Any person who is entitled under chapter 1223 of title*  
19           *10 to retired pay for nonregular service or, but for age,*  
20           *would be entitled under such chapter to retired pay for non-*  
21           *regular service shall be honored as a veteran but shall not*  
22           *be entitled to any benefit by reason of this section.”.*

23                       (2) **CLERICAL AMENDMENT.**—*The table of sec-*  
24           *tions at the beginning of such chapter is amended by*



1           “(i) is provided in a manner that does not  
2           allow such employee to modify the data con-  
3           tained in such system; and

4           “(ii) does not include access to medical  
5           records; and

6           “(B) that each time a covered employee accesses  
7           such system, the employee must certify that such ac-  
8           cess is for official purposes only.

9           “(b) *PRIVACY CERTIFICATION COURSE.*—The Sec-  
10          retary may not provide a covered employee with access to  
11          the case-tracking system under subsection (a)(1) unless the  
12          covered employee has successfully completed a certification  
13          course on privacy issues provided by the Secretary.

14          “(c) *TREATMENT OF DISCLOSURE.*—The access to in-  
15          formation by a covered employee pursuant to subsection  
16          (a)(1) shall be deemed to be—

17                 “(1) a covered disclosure under section 552a(b)  
18                 of title 5; and

19                 “(2) a permitted disclosure under regulations  
20                 promulgated under section 264(c) of the Health Insur-  
21                 ance Portability and Accountability Act of 1996 (42  
22                 U.S.C. 1320d–2 note).

23          “(d) *DEFINITIONS.*—In this section:

24                 “(1) The term ‘case-tracking system’ means the  
25                 system of the Department of Veterans Affairs that

1        *provides information regarding the status of a claim*  
2        *submitted by a veteran.*

3            *“(2) The term ‘covered employee’ means an em-*  
4        *ployee of a State or local governmental agency (in-*  
5        *cluding a veterans service officer) who, in the course*  
6        *of carrying out the responsibilities of such employ-*  
7        *ment, assists veterans with claims for any benefit*  
8        *under the laws administered by the Secretary.”.*

9        *(b) CLERICAL AMENDMENT.—The table of sections at*  
10       *the beginning of such chapter is amended by adding at the*  
11       *end the following new item:*

*“5906. Provision of access to case-tracking information.”.*

12       **SEC. 4. IMPROVEMENT OF FIDUCIARIES FOR VETERANS.**

13       *(a) APPOINTMENT AND SUPERVISION.—*

14            *(1) Section 5502 of title 38, United States Code,*  
15        *is amended to read as follows:*

16       **“§ 5502. Appointment of fiduciaries**

17            *“(a) APPOINTMENT.—(1) Where it appears to the Sec-*  
18        *retary that the interest of the beneficiary would be served*  
19        *thereby, payment of benefits under any law administered*  
20        *by the Secretary may be made directly to the beneficiary*  
21        *or to a relative or some other fiduciary for the use and ben-*  
22        *efit of the beneficiary, regardless of any legal disability on*  
23        *the part of the beneficiary.*

24            *“(2) When in the opinion of the Secretary, a tem-*  
25        *porary fiduciary is needed in order to protect the benefits*

1 *provided to the beneficiary under any law administered by*  
2 *the Secretary while a determination of incompetency is*  
3 *being made or appealed or a fiduciary is appealing a deter-*  
4 *mination of misuse, the Secretary may appoint one or more*  
5 *temporary fiduciaries for a period not to exceed 120 days.*  
6 *If a final decision has not been made within 120 days, the*  
7 *Secretary may not continue the appointment of the fidu-*  
8 *ciary without obtaining a court order for appointment of*  
9 *a guardian, conservator, or other fiduciary under the au-*  
10 *thority provided in section 5502(b) of this title.*

11       “(b) *APPEALS.—(1) If the Secretary determines a ben-*  
12 *eficiary to be mentally incompetent for purposes of appoint-*  
13 *ing a fiduciary under this chapter, the Secretary shall pro-*  
14 *vide such beneficiary with a written statement detailing the*  
15 *reasons for such determination.*

16       “(2) *A beneficiary whom the Secretary has determined*  
17 *to be mentally incompetent for purposes of appointing a*  
18 *fiduciary under this chapter may appeal such determina-*  
19 *tion.*

20       “(c) *MODIFICATION.—(1) A beneficiary for whom the*  
21 *Secretary appoints a fiduciary under this chapter may, at*  
22 *any time, request the Secretary to—*

23               “(A) *remove the fiduciary so appointed; and*

24               “(B) *have a new fiduciary appointed.*

1       “(2) *The Secretary shall comply with a request under*  
2 *paragraph (1) if the Secretary determines that the request*  
3 *is made in good faith and—*

4               “(A) *the fiduciary requested to be removed re-*  
5 *ceives a fee from the beneficiary and a suitable volun-*  
6 *teer fiduciary is available to assist the beneficiary; or*

7               “(B) *the beneficiary provides credible informa-*  
8 *tion that the fiduciary requested to be removed is—*

9                       “(i) *not acting in the interest of the bene-*  
10 *ficiary ;or*

11                      “(ii) *unable to effectively serve the bene-*  
12 *ficiary because of an irreconcilable personality*  
13 *conflict or disagreement.*

14       “(3) *The Secretary shall ensure that any removal or*  
15 *new appointment of a fiduciary under paragraph (1) does*  
16 *not delay or interrupt the beneficiary’s receipt of benefits*  
17 *administered by the Secretary.*

18       “(d) *INDEPENDENCE.—A fiduciary appointed by the*  
19 *Secretary shall operate independently of the Department to*  
20 *determine the actions that are in the interest of the bene-*  
21 *ficiary.*

22       “(e) *PREDESIGNATION.—A veteran may predesignate*  
23 *a fiduciary by—*

24               “(1) *submitting written notice to the Secretary*  
25 *of the predesignated fiduciary; or*

1           “(2) submitting a form provided by the Sec-  
2           retary for such purpose.

3           “(f) *APPOINTMENT OF NON-PREDESIGNATED FIDU-*  
4           *CIARY.*—If a beneficiary designates an individual to serve  
5           as a fiduciary under subsection (e) and the Secretary ap-  
6           points an individual not so designated as the fiduciary for  
7           such beneficiary, the Secretary shall notify such beneficiary  
8           of—

9           “(1) the reason why such designated individual  
10          was not appointed; and

11          “(2) the ability of the beneficiary to modify the  
12          appointed fiduciary under subsection (c).

13          “(g) *PRIORITY OF APPOINTMENT.*—In appointing a fi-  
14          duciary under this chapter, if a beneficiary does not des-  
15          ignate a fiduciary pursuant to subsection (e), to the extent  
16          possible the Secretary shall appoint a person who is—

17                 “(1) a relative of the beneficiary;

18                 “(2) appointed as guardian of the beneficiary by  
19                 a court of competent jurisdiction; or

20                 “(3) authorized to act on behalf of the bene-  
21                 ficiary under a durable power of attorney.”.

22                 (2) *CLERICAL AMENDMENT.*—The table of sec-  
23                 tions at the beginning of chapter 55 of title 38,  
24                 United States Code, is amended by striking the item  
25                 relating to section 5502 and inserting the following:

“5502. Appointment of fiduciaries.”.

1       (b) *SUPERVISION.*—

2               (1) *IN GENERAL.*—Chapter 55 of title 38, United  
3       States Code, is amended by inserting after section  
4       5502, as amended by subsection (a)(1), the following  
5       new section:

6       **“§ 5502A. Supervision of fiduciaries**

7               “(a) *COMMISSION.*—(1)(A) *In a case in which the Sec-*  
8       *retary determines that a commission is necessary in order*  
9       *to obtain the services of a fiduciary in the best interests*  
10       *of a beneficiary, the Secretary may authorize a fiduciary*  
11       *appointed by the Secretary to obtain from the monthly ben-*  
12       *efits provided to the beneficiary a reasonable commission*  
13       *for fiduciary services rendered, but the commission for any*  
14       *month may not exceed the lesser of the following amounts:*

15               “(i) *The amount that equals three percent of the*  
16       *monthly monetary benefits under laws administered*  
17       *by the Secretary paid on behalf of the beneficiary to*  
18       *the fiduciary.*

19               “(ii) \$35.

20               “(B) *A commission paid under this paragraph may*  
21       *not be derived from any award to a beneficiary regarding*  
22       *back pay or retroactive benefits payments.*

23               “(C) *A commission may not be authorized for a fidu-*  
24       *ciary who receives any other form of remuneration or pay-*

1 *ment in connection with rendering fiduciary services for*  
2 *benefits under this title on behalf of the beneficiary.*

3       “(D) *In accordance with section 6106 of this title, a*  
4 *commission may not be paid to a fiduciary if the Secretary*  
5 *determines that the fiduciary misused any benefit payments*  
6 *of a beneficiary.*

7       “(E) *If the Secretary determines that the fiduciary has*  
8 *misused any benefit or payments of a beneficiary, the Sec-*  
9 *retary may revoke the fiduciary status of the fiduciary.*

10       “(2) *Where, in the opinion of the Secretary, any fidu-*  
11 *ciary receiving funds on behalf of a Department beneficiary*  
12 *is acting in such a number of cases as to make it impracti-*  
13 *cable to conserve properly the estates or to supervise the per-*  
14 *sons of the beneficiaries, the Secretary may refuse to make*  
15 *future payments in such cases as the Secretary may deem*  
16 *proper.*

17       “(b) *COURT.—Whenever it appears that any fiduciary,*  
18 *in the opinion of the Secretary, is not properly executing*  
19 *or has not properly executed the duties of the trust of such*  
20 *fiduciary or has collected or paid, or is attempting to collect*  
21 *or pay, fees, commissions, or allowances that are inequitable*  
22 *or in excess of those allowed by law for the duties performed*  
23 *or expenses incurred, or has failed to make such payments*  
24 *as may be necessary for the benefit of the ward or the de-*  
25 *pendents of the ward, then the Secretary may appear, by*

1 *the Secretary's authorized attorney, in the court which has*  
2 *appointed such fiduciary, or in any court having original,*  
3 *concurrent, or appellate jurisdiction over said cause, and*  
4 *make proper presentation of such matters. The Secretary,*  
5 *in the Secretary's discretion, may suspend payments to any*  
6 *such fiduciary who shall neglect or refuse, after reasonable*  
7 *notice, to render an account to the Secretary from time to*  
8 *time showing the application of such payments for the ben-*  
9 *efit of such incompetent or minor beneficiary, or who shall*  
10 *neglect or refuse to administer the estate according to law.*  
11 *The Secretary may require the fiduciary, as part of such*  
12 *account, to disclose any additional financial information*  
13 *concerning the beneficiary (except for information that is*  
14 *not available to the fiduciary). The Secretary may appear*  
15 *or intervene by the Secretary's duly authorized attorney in*  
16 *any court as an interested party in any litigation insti-*  
17 *tuted by the Secretary or otherwise, directly affecting money*  
18 *paid to such fiduciary under this section.*

19       “(c) *PAYMENT OF CERTAIN EXPENSES.—*Authority is  
20 *hereby granted for the payment of any court or other ex-*  
21 *penses incident to any investigation or court proceeding for*  
22 *the appointment of any fiduciary or other person for the*  
23 *purpose of payment of benefits payable under laws adminis-*  
24 *tered by the Secretary or the removal of such fiduciary and*  
25 *appointment of another, and of expenses in connection with*

1 *the administration of such benefits by such fiduciaries, or*  
2 *in connection with any other court proceeding hereby au-*  
3 *thorized, when such payment is authorized by the Secretary.*

4       “(d) *TEMPORARY PAYMENT OF BENEFITS.—All or any*  
5 *part of any benefits the payment of which is suspended or*  
6 *withheld under this section may, in the discretion of the*  
7 *Secretary, be paid temporarily to the person having custody*  
8 *and control of the incompetent or minor beneficiary, to be*  
9 *used solely for the benefit of such beneficiary, or, in the case*  
10 *of an incompetent veteran, may be apportioned to the de-*  
11 *pendent or dependents, if any, of such veteran. Any part*  
12 *not so paid and any funds of a mentally incompetent or*  
13 *insane veteran not paid to the chief officer of the institution*  
14 *in which such veteran is a patient nor apportioned to the*  
15 *veteran’s dependent or dependents may be ordered held in*  
16 *the Treasury to the credit of such beneficiary. All funds so*  
17 *held shall be disbursed under the order and in the discretion*  
18 *of the Secretary for the benefit of such beneficiary or the*  
19 *beneficiary’s dependents. Any balance remaining in such*  
20 *fund to the credit of any beneficiary may be paid to the*  
21 *beneficiary if the beneficiary recovers and is found com-*  
22 *petent, or if a minor, attains majority, or otherwise to the*  
23 *beneficiary’s fiduciary, or, in the event of the beneficiary’s*  
24 *death, to the beneficiary’s personal representative, except as*  
25 *otherwise provided by law; however, payment will not be*

1 *made to the beneficiary's personal representative if, under*  
2 *the law of the beneficiary's last legal residence, the bene-*  
3 *ficiary's estate would escheat to the State. In the event of*  
4 *the death of a mentally incompetent or insane veteran, all*  
5 *gratuitous benefits under laws administered by the Sec-*  
6 *retary deposited before or after August 7, 1959, in the per-*  
7 *sonal funds of patients trust fund on account of such vet-*  
8 *eran shall not be paid to the personal representative of such*  
9 *veteran, but shall be paid to the following persons living*  
10 *at the time of settlement, and in the order named: The sur-*  
11 *living spouse, the children (without regard to age or mar-*  
12 *ital status) in equal parts, and the dependent parents of*  
13 *such veteran, in equal parts. If any balance remains, such*  
14 *balance shall be deposited to the credit of the applicable cur-*  
15 *rent appropriation; except that there may be paid only so*  
16 *much of such balance as may be necessary to reimburse a*  
17 *person (other than a political subdivision of the United*  
18 *States) who bore the expenses of last sickness or burial of*  
19 *the veteran for such expenses. No payment shall be made*  
20 *under the two preceding sentences of this subsection unless*  
21 *claim therefor is filed with the Secretary within five years*  
22 *after the death of the veteran, except that, if any person*  
23 *so entitled under said two sentences is under legal disability*  
24 *at the time of death of the veteran, such five-year period*

1 *of limitation shall run from the termination or removal of*  
2 *the legal disability.*

3       “(e) *ESCHEATMENT.*—*Any funds in the hands of a fi-*  
4 *duciary appointed by a State court or the Secretary derived*  
5 *from benefits payable under laws administered by the Sec-*  
6 *retary, which under the law of the State wherein the bene-*  
7 *ficiary had last legal residence would escheat to the State,*  
8 *shall escheat to the United States and shall be returned by*  
9 *such fiduciary, or by the personal representative of the de-*  
10 *ceased beneficiary, less legal expenses of any administration*  
11 *necessary to determine that an escheat is in order, to the*  
12 *Department, and shall be deposited to the credit of the ap-*  
13 *plicable revolving fund, trust fund, or appropriation.*

14       “(f) *ASSISTANCE.*—*The Secretary shall provide to a fi-*  
15 *duciary appointed under section 5502 of this title materials*  
16 *and tools to assist the fiduciary in carrying out the respon-*  
17 *sibilities of the fiduciary under this chapter, including—*

18               “(1) *handbooks, brochures, or other written mate-*  
19 *rial that explain the responsibilities of a fiduciary*  
20 *under this chapter;*

21               “(2) *tools located on an Internet website, includ-*  
22 *ing forms to submit to the Secretary required infor-*  
23 *mation; and*

24               “(3) *assistance provided by telephone.”.*

1           (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
2           *tions at the beginning of chapter 55 of title 38,*  
3           *United States Code, is amended by inserting after the*  
4           *item relating to section 5502 the following new item:*

*“5502A. Supervision of fiduciaries.”.*

5           (c) *DEFINITION OF FIDUCIARY.*—*Section 5506 of title*  
6           *38, United States Code is amended—*

7           (1) *by striking “For purposes” and inserting*  
8           *“(a) For purposes”; and*

9           (2) *by adding at the end the following new sub-*  
10          *section:*

11          “(b)(1) *For purposes of subsection (a), the term ‘per-*  
12          *son’ includes any—*

13                “(A) *State or local government agency whose*  
14                *mission is to carry out income maintenance, social*  
15                *service, or health care-related activities;*

16                “(B) *any State or local government agency with*  
17                *fiduciary responsibilities; or*

18                “(C) *any nonprofit social service agency that the*  
19                *Secretary determines—*

20                        “(i) *regularly provides services as a fidu-*  
21                        *ciary concurrently to five or more individuals;*  
22                        *and*

23                        “(ii) *is not a creditor of any such indi-*  
24                        *vidual.*



1           “(4) the furnishing of any bond that may be re-  
2           quired by the Secretary in accordance with subsection  
3           (f).

4           “(b) *ELEMENTS OF INVESTIGATION.*—(1) In con-  
5           ducting an inquiry or investigation of a proposed fiduciary  
6           under subsection (a)(1), the Secretary shall conduct—

7           “(A) a face-to-face interview with the proposed  
8           fiduciary by not later than 30 days after the date on  
9           which such inquiry or investigation begins; and

10           “(B) a background check of the proposed fidu-  
11           ciary to—

12           “(i) in accordance with paragraph (2), de-  
13           termine whether the proposed fiduciary has been  
14           convicted of a crime; and

15           “(ii) determine whether the proposed fidu-  
16           ciary will serve the best interest of the bene-  
17           ficiary, including by conducting a credit check of  
18           the proposed fiduciary and checking the records  
19           under paragraph (5).

20           “(2) The Secretary shall request information con-  
21           cerning whether that person has been convicted of any of-  
22           fense under Federal or State law. If that person has been  
23           convicted of such an offense, the Secretary may certify the  
24           person as a fiduciary only if the Secretary finds that the

1 *person is an appropriate person to act as fiduciary for the*  
2 *beneficiary concerned under the circumstances.*

3 “(3) *The Secretary shall conduct the background check*  
4 *described in paragraph (1)(B)—*

5 “(A) *each time a person is proposed to be a fidu-*  
6 *ciary, regardless of whether the person is serving or*  
7 *has served as a fiduciary; and*

8 “(B) *at no expense to the beneficiary.*

9 “(4) *Each proposed fiduciary shall disclose to the Sec-*  
10 *retary the number of beneficiaries that the fiduciary acts*  
11 *on behalf of.*

12 “(5) *The Secretary shall maintain records of any per-*  
13 *son who has—*

14 “(A) *previously served as a fiduciary; and*

15 “(B) *had such fiduciary status revoked by the*  
16 *Secretary.*

17 “(6)(A) *If a fiduciary appointed by the Secretary is*  
18 *convicted of a crime described in subparagraph (B), the*  
19 *Secretary shall notify the beneficiary of such conviction by*  
20 *not later than 14 days after the date on which the Secretary*  
21 *learns of such conviction.*

22 “(B) *A crime described in this subparagraph is a*  
23 *crime—*

24 “(i) *for which the fiduciary is convicted while*  
25 *serving as a fiduciary for any person;*

1           “(ii) that is not included in a report submitted  
2           by the fiduciary under section 5509(a) of this title;  
3           and

4           “(iii) that the Secretary determines could affect  
5           the ability of the fiduciary to act on behalf of the ben-  
6           eficiary.

7           “(c) *INVESTIGATION OF CERTAIN PERSONS.*—(1) *In*  
8           *the case of a proposed fiduciary described in paragraph (2),*  
9           *the Secretary, in conducting an inquiry or investigation*  
10           *under subsection (a)(1), may carry out such inquiry or in-*  
11           *vestigation on an expedited basis that may include giving*  
12           *priority to conducting such inquiry or investigation. Any*  
13           *such inquiry or investigation carried out on such an expe-*  
14           *ditated basis shall be carried out under regulations prescribed*  
15           *for purposes of this section.*

16           “(2) *Paragraph (1) applies with respect to a proposed*  
17           *fiduciary who is—*

18           “(A) *the parent (natural, adopted, or stepparent)*  
19           *of a beneficiary who is a minor;*

20           “(B) *the spouse or parent of an incompetent ben-*  
21           *eficiary;*

22           “(C) *a person who has been appointed a fidu-*  
23           *ciary of the beneficiary by a court of competent juris-*  
24           *diction;*

1           “(D) being appointed to manage an estate where  
2           the annual amount of veterans benefits to be managed  
3           by the proposed fiduciary does not exceed \$3,600, as  
4           adjusted pursuant to section 5312 of this title; or

5           “(E) a person who is authorized to act on behalf  
6           of the beneficiary under a durable power of attorney.

7           “(d) *PROTECTION OF PRIVATE INFORMATION.*—(1) A  
8           fiduciary shall take all reasonable precautions to—

9           “(A) protect the private information of a bene-  
10          ficiary, including personally identifiable information;  
11          and

12          “(B) securely conducts financial transactions.

13          “(2) A fiduciary shall notify the Secretary of any ac-  
14          tion of the fiduciary that compromises or potentially com-  
15          promises the private information of a beneficiary.

16          “(e) *POTENTIAL MISUSE OF FUNDS.*—(1) If the Sec-  
17          retary has reason to believe that a fiduciary may be mis-  
18          using all or part of the benefit of a beneficiary, the Sec-  
19          retary shall—

20          “(A) conduct a thorough investigation to deter-  
21          mine the veracity of such belief; and

22          “(B) if such veracity is established, transmit to  
23          the officials described in paragraph (2) a report of  
24          such investigation.

1       “(2) *The officials described in this paragraph are the*  
2 *following:*

3               “(A) *The Attorney General.*

4               “(B) *Each head of a Federal department or*  
5 *agency that pays to a fiduciary or other person bene-*  
6 *fits under any law administered by such department*  
7 *of agency for the use and benefit of a minor, incom-*  
8 *petent, or other beneficiary.*

9       “(f) *BOND.—In determining whether a proposed fidu-*  
10 *ciary is required to furnish a bond under subsection (a)(4),*  
11 *the Secretary shall consider—*

12               “(1) *the existence of any familial or other per-*  
13 *sonal relationship between the proposed fiduciary and*  
14 *the beneficiary; and*

15               “(2) *the care the proposed fiduciary has taken to*  
16 *protect the interests of the beneficiary.*

17       “(g) *LIST OF FIDUCIARIES.—Each regional office of*  
18 *the Veterans Benefits Administration shall maintain a list*  
19 *of the following:*

20               “(1) *The name and contact information of each*  
21 *fiduciary, including address, telephone number, and*  
22 *email address.*

23               “(2) *With respect to each fiduciary described in*  
24 *paragraph (1)—*

1           “(A) the date of the most recent background  
2 check and credit check performed by the Sec-  
3 retary under this section;

4           “(B) the date that any bond was paid  
5 under this section;

6           “(C) the name, address, and telephone num-  
7 ber of each beneficiary the fiduciary acts on be-  
8 half of; and

9           “(D) the amount that the fiduciary controls  
10 with respect to each beneficiary described in sub-  
11 paragraph (C).”.

12       (e) *ANNUAL RECEIPT OF PAYMENTS.*—

13           (1) *IN GENERAL.*—Section 5509 of title 38,  
14 *United States Code, is amended—*

15           (A) *in subsection (a)—*

16               (i) *by striking “may require a fidu-*  
17 *ciary to file a” and inserting “shall require*  
18 *a fiduciary to file an annual”; and*

19               (ii) *by adding at the end the following*  
20 *new sentence: “The Secretary shall transmit*  
21 *such annual report or accounting to the*  
22 *beneficiary and any legal guardian of such*  
23 *beneficiary.”;*

24           (B) *by adding at the end the following new*  
25 *subsections:*

1       “(c) *MATTERS INCLUDED.*—*Except as provided by*  
2 *subsection (f), an annual report or accounting under sub-*  
3 *section (a) shall include the following:*

4               “(1) *For each beneficiary that a fiduciary acts*  
5 *on behalf of—*

6                       “(A) *the amount of the benefits of the bene-*  
7 *ficiary provided under any law administered by*  
8 *the Secretary accrued during the year, the*  
9 *amount spent, and the amount remaining; and*

10                      “(B) *if the fiduciary serves the beneficiary*  
11 *with respect to benefits not administered by the*  
12 *Secretary, an accounting of all sources of benefits*  
13 *or other income the fiduciary oversees for the*  
14 *beneficiary.*

15               “(2) *A list of events that occurred during the*  
16 *year covered by the report that could affect the ability*  
17 *of the fiduciary to act on behalf of the beneficiary, in-*  
18 *cluding—*

19                      “(A) *the fiduciary being convicted of any*  
20 *crime;*

21                      “(B) *the fiduciary declaring bankruptcy;*  
22 *and*

23                      “(C) *any judgments entered against the fi-*  
24 *duciary.*

1           “(d) *RANDOM AUDITS.*—*The Secretary shall annually*  
2 *conduct random audits of fiduciaries who receive a commis-*  
3 *sion pursuant to subsection 5502A(a)(1) of this title.*

4           “(e) *STATUS OF FIDUCIARY.*—*If a fiduciary includes*  
5 *in the annual report events described in subsection (c)(2),*  
6 *the Secretary may take appropriate action to adjust the sta-*  
7 *tus of the fiduciary as the Secretary determines appro-*  
8 *priate, including by revoking the fiduciary status of the fi-*  
9 *duciary.*

10          “(f) *CAREGIVERS AND CERTAIN OTHER FIDU-*  
11 *CIARIES.*—(1)(A) *In carrying out this section, the Secretary*  
12 *shall ensure that a caregiver fiduciary is required only to*  
13 *file an annual report or accounting under subsection (a)*  
14 *with respect to the amount of the benefits of the beneficiary*  
15 *provided under any law administered by the Secretary—*

16           “(i) *spent on—*

17                   “(I) *food and housing for the beneficiary;*

18                   *and*

19                   “(II) *clothing, health-related expenses, recre-*  
20 *ation, and other personal items for the bene-*  
21 *ficiary; and*

22           “(ii) *saved for the beneficiary.*

23          “(B) *The Secretary shall coordinate with the Under*  
24 *Secretary for Benefits and the Under Secretary for Health*  
25 *to—*

1           “(i) minimize the frequency with which employ-  
2           ees of the Department visit the home of a caregiver fi-  
3           diciary and beneficiary; and

4           “(ii) limit the extent of supervision by such  
5           Under Secretaries with respect to such a fiduciary  
6           and beneficiary.

7           “(C) In this paragraph, the term ‘caregiver fiduciary’  
8           means a fiduciary who—

9           “(i) in addition to acting as a fiduciary for a  
10           beneficiary, is approved by the Secretary to be a pro-  
11           vider of personal care services for the beneficiary  
12           under paragraph (3)(A)(i) of section 1720G(a) of this  
13           title;

14           “(ii) in carrying out such care services to such  
15           beneficiary, has undergone not less than four home  
16           visits under paragraph (9)(A) of such section; and

17           “(iii) has not been required by the Secretary to  
18           take corrective action pursuant to paragraph (9)(C)  
19           of such section.

20           “(2) In carrying out this section, the Secretary may  
21           adjust the matters required under an annual report or ac-  
22           counting under subsection (a) with respect to a fiduciary  
23           whom the Secretary determines to have effectively protected  
24           the interests of the beneficiary over a sustained period.”;  
25           and

1           (C) by striking the section heading and in-  
 2           serting the following: “**Annual reports and**  
 3           **accountings of fiduciaries**”.

4           (2) *CLERICAL AMENDMENT.*—The table of sec-  
 5           tions at the beginning of chapter 55 of title 38,  
 6           United States Code, is amended by striking the item  
 7           relating to section 5509 and inserting the following  
 8           new item:

“5509. Annual reports and accountings of fiduciaries.”.

9           (f) *REPAYMENT OF MISUSED BENEFITS.*—Section  
 10          6107(a)(2)(C) of title 38, United States Code, is amended  
 11          by inserting before the period the following: “, including  
 12          by the Secretary not acting in accordance with section 5507  
 13          of this title”.

14          (g) *ANNUAL REPORTS.*—Section 5510 of title 38,  
 15          United States Code, is amended by striking “The Secretary  
 16          shall include in the Annual Benefits Report of the Veterans  
 17          Benefits Administration or the Secretary’s Annual Per-  
 18          formance and Accountability Report” and inserting “Not  
 19          later than July 1 of each year, the Secretary shall submit  
 20          to the Committees on Veterans’ Affairs of the House of Rep-  
 21          resentatives and the Senate a separate report containing”.

22          (h) *REPORT.*—Not later than one year after the date  
 23          of the enactment of this Act, the Secretary of Veterans Af-  
 24          fairs shall submit to the Committee on Veterans’ Affairs of  
 25          the Senate and the Committee on Veterans’ Affairs of the



Union Calendar No. 95

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1405**

[Report No. 113-130]

---

---

**A BILL**

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought.

---

---

JUNE 25, 2013

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed