

**LEGISLATIVE HEARING ON H.R. 2985, H.R. 3730,  
H.R. 4481, H.R. 5948**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND  
INVESTIGATIONS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
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**LEGISLATIVE HEARING ON H.R. 2985,  
H.R. 3730, H.R. 4481, H.R. 5948**

**WEDNESDAY, JUNE 20, 2012**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 10:02 a.m., in Room 334, Cannon House Office Building, Hon. Bill Johnson [Chairman of the Subcommittee] presiding.

Present: Representatives Johnson, McNerney and Barrow.

**OPENING STATEMENT OF CHAIRMAN BILL JOHNSON**

Mr. JOHNSON. Good morning. This hearing will come to order.

I want to welcome everyone to today's legislative hearing on H.R. 2985, the Veterans' I.D. Card Act; H.R. 3730, the Veterans Data Breach Timely Notification Act; H.R. 4481, The Veterans Affairs Employee Accountability Act; and H.R. 5948, the Veterans Fiduciary Reform Act of 2012.

These bills arrived from several different avenues that fall under the Subcommittee's purview and I want to thank the bill's sponsors for drafting these proposals for our review today.

H.R. 2985, The Veterans' I.D. Card Act, was introduced by Congressman Todd Akin of Missouri. The bill would direct the VA to issue a veteran's I.D. card upon request to any veteran who is not entitled to military retired pay or enrolled in the VA system. We will hear from Congressman Akin on this bill and I want to thank him for his participation today.

H.R. 3730, the Veterans Data Breach Timely Notification Act, was introduced by our Subcommittee's Ranking Member, Congressman Joe Donnelly of Indiana. His bill would require the VA to notify Congress and directly affected officials, individuals, within two business days or less of a data breach and compromises sensitive personal information.

This improved transparency and responsiveness would be a boost to the VA's efforts at improving its information security image. As the system currently works today, the lapse of time between the VA knowing of a data breach and a veteran knowing his or her information has been compromised and maybe floating around is entirely too long.

In discussions with staff, Assistant Secretary Baker acknowledged that the current duration between the VA learning of a data breach and veteran being notified that his or her personally identifiable information or P.I.I. may have been compromised, that that

time period could be shortened and this legislation is a good measure toward that end. I am proud to cosponsor this bill as well and I urge my colleagues to consider adding their support and I look forward to Ranking Member's Donnelly's remarks. I don't know if he is going to be here today. Well, his remarks can be entered into the record later.

H.R. 4481, the Veterans Affairs Employee Accountability Act was introduced by Congressman Roe of Tennessee, another distinguished member of our Subcommittee. His bill would prohibit any VA employee from receiving a bonus if that employee knowingly violated federal acquisition regulations or VA acquisition regulations. We have seen plenty of evidence of the VA's lack of controls over its bonus program which has further been substantiated by the VA's own Office of Inspector General.

Sometimes bonuses go to employees with documented poor performance. Sometimes the VA gives retention incentives to an employee about to retire and sometimes bonuses go to VA employees for no reason at all. However, it's not just the bonus program that is running wild. We have also seen many long term cases of VA employees ignoring acquisition regulations often because it is simply easier for them to do so.

To veterans, the taxpayers and this Committee, that is not a good reason for breaking the law. Furthermore, in many of those cases, the VA has not held many of those employees accountable after learning of the violations.

Last week I introduced H.R. 5948, The Veterans Fiduciary Reform Act of 2012. Based on investigations done by this Subcommittee, as well as a hearing held in February, it is abundantly clear that VA's fiduciary program requires significant improvement. The February hearing discussed fiduciary stealing veterans' benefits, felons being appointed as fiduciary and even fiduciaries withholding needed funds to the point where our veterans' utilities are cut off.

In addition, many veterans have been unable to contact their fiduciaries to get necessary basic funds and family members are frequently shut out of the program despite VA's stated intent to include family members as a preferred choice.

While the VA did take an important step in the right direction after that hearing, when it removed that paragraph from its standard form requiring a fiduciary to get VA approval of any use of a veteran's fund, the same types of problems discussed at that hearing continued to happen today. This Subcommittee brings them to the VA's attention and sometimes they are fixed on an individual basis. However, it is reasonable to expect that the same type of problem will come up again next week. The VA's fiduciary program suffers systemic weaknesses.

VA's fiduciary program is intended to help administer VA benefits for veterans deemed incompetent to handle their financial affairs. As written, the statute defers greatly to the Secretary's discretion in the program's administration, including who can serve as a fiduciary and what obligations fiduciaries owe veteran beneficiaries. As practiced, the VA stretched that flexibility in every direction and the result has been unconscionable treatment of some of our most vulnerable veterans.

The Veterans Fiduciary Reform Act of 2012 is based on problems uncovered before, during and after the February hearing as well as valuable input from Veteran Service Organizations and individual veterans on the ground who have experienced difficulties with the program.

The legislation would require a credit and criminal background check each time a fiduciary is appointed and allow veterans to petition to have their fiduciary removed if problems arise. The bill would also decrease the potential maximum fee a fiduciary can receive to the lesser of 3 percent or \$35, similar to Social Security's fiduciary program. This will help discourage those who enroll as fiduciaries with the VA, with only a profit motive in mind.

In addition, the legislation will enable veterans to appeal their incompetent status at any time, require fiduciaries to submit annual accounting reports and allow veterans to name a preferred fiduciary, such as a family member. These significant changes will heighten VA's standards for administering the fiduciary program and increased protection for the most vulnerable veterans.

Through mandating improved scrutiny during the background investigation process and lowering the fee a fiduciary can charge, the Veterans Fiduciary Reform Act of 2012 will help root out potential predators.

Incorporating the ability for veterans to petition to have their fiduciary removed and replaced will add a layer of protection to veterans requiring fiduciaries. I encourage my colleagues to support this bill and would also direct your attention to several news articles that come out over the last few days documenting many cases of veterans around the country who have suffered from the lack of oversight and control within the fiduciary program.

I want to thank everyone for their participation in today's hearing, and I now yield to Mr. McNerney, for an opening statement.

[The prepared statement of Bill Johnson appears in the Appendix]

#### **OPENING STATEMENT OF HON. JERRY McNERNEY**

Mr. McNERNEY. I want to thank the Chairman for holding this legislative hearing today. It looks like there are four pretty good bills that are deserving our consideration. This Subcommittee is committed to providing transparency and accountability to veterans and taxpayers. I look forward to hearing from the bill's sponsors as well as the stakeholders about the legislation we have before us today.

I am pleased to have Ranking Member Donnelly's bill, H.R. 3730, included in today's hearing. This legislation, the Veterans Data Breach Timely Notification Act, seeks to protect veterans in the event that a data breach involving sensitive information occurs.

In light of VA's monthly IT report detailing data breach incidents, this Subcommittee became aware that the VA can take up to 30 days to notify veterans that a data breach has occurred, potentially exposing a veteran's sensitive personal information. To address this issue, H.R. 3730 requires that the VA to notify potentially affected veterans within ten working days after a data breach has occurred. In an effort to mitigate the effects of identity fraud,

this change would allow individuals to take decisive action to protect their identity.

I believe this legislation will help veterans protect personal information, including their social security number, which can severely affect a veteran's financial stability.

I also want to acknowledge the Chairman's legislation, the Veterans Fiduciary Reform Act, H.R. 5948. I think the ideas are very useful and will be helpful. My understanding is that the legislation could use a little more adjusting so I am going to hold back on endorsing it just now, but I look forward to working with the Chairman on that. With that, I yield back.

[The prepared statement of Jerry McNerney appears in the Appendix]

Mr. JOHNSON. I thank the gentleman for yielding back and I now would like to welcome the panel to the witness table on this panel. We will hear from the Honorable Todd Akin, my colleague representing Missouri's Second Congressional District. Congressman Akin will be testifying specifically about his bill, H.R. 2985, the Veterans' I.D. Card Act. Thank you for joining us here today. Congressman Akin, your complete written statement will remain part of the hearing record and you are now recognized for five minutes, sir.

#### STATEMENT OF THE HON. W. TODD AKIN

Mr. AKIN. Thank you, Mr. Chairman, and thank you, Ranking Member, is it—I don't know if McNerney is going to be Ranking or who is going to be Ranking, but whoever is going to be doing the job. And I am here to present H.R. 2985. It is a Veteran's I.D. Card Act. And there are a couple of reasons what I am proposing. This is my DD-214. It is kind of old and ratty looking. It is hard to read and it has a couple of inherent disadvantages and the first disadvantage is that it contains a Social Security Number. Now, who is it that gets currently a Veteran I.D. Card? Well, it is only two groups of people. They have to have served twenty years or they have to have a service-connected disability. Other people cannot get any kind of military I.D.

Since we are thinking about how do you give just somebody who has served in the military some form of I.D., the first thought is, oh, it is going to cost money and so we will never get a bill through. So we fixed that problem and that is, this bill doesn't cost any money. The people who want the I.D. card simply pay for it.

The next thing that happens on this is that the information on the DD-214, all of this, the Veterans Administration has all of this information in their computers.

So the first benefit of going with a simple I.D. card for people who have served is the fact that you protect their Social Security Number, but just from a convenience point of view, they can pay a couple of bucks and get something instead of being like this which is very easy to forge and take and people use it for illegally getting jobs and misusing the Social Security Number, they will just have a simple card with a photo I.D. on it.

Now, the other thing is there may be reasons why it is helpful for somebody to have that I.D. card. One of them is maybe employers want to favor hiring veterans. You have an immediate way of

being able to show them, look, I am a veteran. And at the same time you don't have something sitting in your wallet where you are about to lose your identification.

And there are also various other kinds of programs and things that people who are veterans might or might not qualify for. Now, from a data security point of view, the Veterans Administration has all of the data that they need. Our bill is supported by a number of different veterans organizations. It is just a convenience for people who have served.

The Fleet Reserve Association supports American Veterans and that's VFW Association of the United States Navy, AUSN; The Retired Enlisted Association, TREA. All of the people think it is a convenient benefit to pass it on. It is not costing the government any. It protects Social Security Numbers. It is a convenience for people who want to pay for it. And so for all of those reasons, it seems to make a whole lot of sense.

The VA doesn't like it. They say that various states should do this. Now, I am a big states' rights guy, but the military is the job of the Federal Government and for different states to come up with some sort of, their own different versions of how to provide some sort of identification for veterans. I think it is just our side stepping a responsibility that is a federal responsibility and so, you know, my sons—I served in the Army. My son served in the Marine Corps. That is not the State of Missouri. That is the Federal Government. So why would we want to try to dump this on states, when it isn't really a state responsibility?

The VA says that the issued cards could pose a potential for confusion. There is no need for that. It would be a different color card. You could stamp on the card that this card does not give you any access to PXes on Army bases or stuff like that. That was one of their concerns. That is not complicated. You have a different color card that just says that you were a veteran in years past, and there are other kinds of excuses. Nothing seems to be, well, yeah, that we won't be able to figure out how much it costs to issue an I.D. card. Obviously, accountants can figure out what it is costing us. We are already—all of the infrastructure in the veterans hospitals and stuff, it is all in place, the databases there, the machines to put ID cards together. We are doing all of that, the photographs. All of that stuff is already being done. We are just simply adding that you are going to allow other people to get a special kind of card, instead of running around with a ratty old DD-214.

It seems to me, like, just a common sense thing. It is a service that we could do to people that served in the military. They are going to pay for it themselves. I can see no reason really why not to go for it. I appreciate your patience and I will leave you three seconds.

[The prepared statement of W. Todd Akin appears in the Appendix]

Mr. JOHNSON. I thank the gentleman for yielding back that remaining time. That is precious.

Congressman Akin, how would this bill's implementation affect veterans' I.D. cards that such states as Virginia and Connecticut have been issuing?

Mr. AKIN. Well, obviously the states could issue a card the way they wanted to, but it would probably preempt the need for each state to do it in a different way. And because the data is like at your veterans' hospitals and things, all of this data is there, the card making facilities are there, the cameras are there, why not just allow people to pay an extra couple of bucks. It would be a break, even from a budget point of view and just handle it because it is a federal issue. As I said, I am a huge state's right guy, but the military is a federal thing and that is why I think it should be there.

Mr. JOHNSON. You have pretty much answered this question, but just in case you have some additional information, how do you see the VA implementing this legislation? Do you think they have the necessary infrastructure in place? You mentioned the card makers and databases and those things.

Mr. AKIN. Yeah, they do have all infrastructure in place and I don't see that once they understood, you have to come up with somebody that is going to do the artwork to design what the card looks like and what color it is, so that it is not confused with the various other cards that they generate, but once you have that down and I think it might make sense to put on a card this does not entitle bearer of this card to, you know, get on military bases or use—whatever, to clarify.

But the color and the type of the color, once people get use to it, I think it won't be any real confusion. And, yeah, the infrastructure is there, so I don't see that should be any problem at all.

Mr. JOHNSON. What about time frame? Do you think the VA could implement something like this in a timely fashion?

Mr. AKIN. Oh, I am not going to pass judgment on how efficient the VA is. We have some difficulties in St. Louis where VA hospitals—I won't go there.

Mr. JOHNSON. And finally, do you have any idea how many veterans this would possibly affect?

Mr. AKIN. I think it could affect quite a few really but I don't actually have a number on how many people have served, you know, through the years. Some served—I was discharged back, I think, the late '70s or something and maybe certain—so it is hard to say. But I do think that because of the fact that to some degree we are giving a little more honor to veterans than we use to and people recognize what it is like to give your life or potentially risk your life for your country.

I think there is a lot more pride than there was 30 or 40 year ago and I think people might more likely want to get a card like this, but I think that, you know, you take a good plasticized card, that thing will last forever and probably the veteran will wear out before the card will, so I don't know that it is going to be an overwhelming number.

Mr. JOHNSON. Sure. Okay. Well, Congressman Akin, thanks to you for your testimony, for your legislation. You are now excused.

Mr. AKIN. Thank you very much, and thank you for the attention of the Committee.

Mr. JOHNSON. I now invite the second panel to the witness table. And this panel, we will hear from Mr. Dave McLenachen, Director of the VA's Pension and Fiduciary Service. Mr. McLenachen, your

complete written testimony statement will be made part of the hearing record and you are now recognized for five minutes.

**STATEMENT OF DAVE MCLENACHEN**

Mr. MCLENACHEN. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the views of the Department of Veterans Affairs on several bills of interest to Veterans and VA.

I would first like to apologize to the Committee for the late submission of my testimony. There are two bills, H.R. 3730 and H.R. 4481 on which we are not able to provide comments or costs today and will provide later for the record.

Mr. Chairman, at the outset, I want to emphasize that VA does recognize the need for better oversight of the fiduciary program and has taken steps to address that need, some of which reflect the purpose of your bill, H.R. 5948, the Veterans Fiduciary Reform Act.

Over the past seven months, VA issued new policies and procedures for the fiduciary program that this bill would codify. These include appeal procedures, criminal background checks, limitations on fiduciary fees, providing copies of accountings to beneficiaries and guidance that ensures fiduciary independence.

VA also completed its proposed fiduciary regulations and started building its new information technology system for the program. Finally, VA completed the consolidation of its fiduciary activities into six regional hubs which include adding more than 150 employees to conduct oversight of fiduciaries. VA would welcome the opportunity to discuss these improvements and the program as well as the intent behind this bill with you and your staff.

While there are provisions of the bill that would codify current VA policy, there are also provisions in the bill that we find problematic and oppose. In the interest of time, I will only mention here a few of those provisions and refer you to my written statement for a detailed account. Section 2A would require VA to consider the role of financial management and the rehabilitation of the individual before determining whether a beneficiary could manage his or her own benefits.

This new requirement would have the effect of complicating and delaying VA's rating decisions and fiduciary appointments. Section 2C would require VA to conduct a face-to-face interview of every fiduciary, which we believe is not necessary in every instance and would cause delays. It would also require training for every fiduciary on the use of encrypted, secure internet connections despite the fact that fiduciaries using online banking services already have the benefit of a secure systems that financial institutions maintain. Finally, Section 2G would require every fiduciary to submit an annual accounting to VA. As detailed in my testimony, VA requires accountings in many cases, but a universal requirement would burden volunteer fiduciaries without, we believe, a real improvement in oversight.

VA is also concerned that the bill would make it very difficult for the Department to find volunteer and paid fiduciaries. Currently, 92 percent of the beneficiaries in the program receive fiduciary services from an unpaid volunteer fiduciary who is generally a family member.

VA appoints paid fiduciaries in some of its most difficult cases, generally when there is no person or entity who is willing to provide fiduciary services for a beneficiary without a fee. The bill's requirements for a surety bond purchased with the fiduciary's own funds, rather than out of the beneficiary's fund, along with some of the other bill's requirements may create a disincentive for individuals to serve these vulnerable veterans and their survivors.

Finally VA's concerned that Section 2D, which would require VA to give preference and appointment to individuals or entities that are court appointed guardians of a beneficiary under State law, would dramatically change the program to what we think may be the detriment of veterans and their survivors. Under State law these guardians are generally authorized to deduct fees and expenses from beneficiary funds that exceed by far the 4 percent fee authorized under Federal law.

The provision would also promote disparate treatment of veterans depending upon the state of residence. VA estimates that implementing this bill would result in GOE costs of \$40,000,000 in the first year, \$200,000,000 over five years and \$444,000,000 over ten years.

In addition, VA estimates that the information and technology costs would be \$1,600,000 in the first year, \$5,000,000 over five years and \$10,000,000 over ten years.

Mr. Chairman, there are other concerns identified in my written statement. I want to emphasize again our wish to work constructively with you and your staff on our common goals to ensure all of the veterans are protected.

H.R. 2985, the Veterans ID Card Act would establish a program under which VA would issue a veteran identification card produced by VA upon request by a veteran. VA understands and appreciates the purpose of this bill, but VA believes there are better ways to achieve that purpose. The same benefit can be best achieved by VA and Department of Defense working with the states to encourage identification card programs. VA is already working with states on these efforts.

We also note in our testimony the potential for confusion because veterans could be led to believe that issuance of the ID card itself may establish eligibility for VA benefits. There is potential for confusion as well because the Veterans Health Administration issues ID cards for the purpose of access to VHA facilities.

Mr. Chairman, this concludes my statement. I would be happy to entertain any questions that you or any other member may have.

[The prepared statement of Dave McLenachen appears in the Appendix]

Mr. JOHNSON. Thank you, Mr. McLenachen, for your testimony. I find it interesting that you used the term "working constructively" together on the fiduciary program because at our hearing on the VA's fiduciary program in February, you said you intended to take a look at the statutes governing the fiduciary program and make recommendations that might improve it outside of the testimony that you have given today. Four months later we haven't heard anything from you or your department.

Currently, our bill addresses a number of issues we brought to your attention and yet you're against these provisions. After the issues raised at the February hearing and the recent media coverage of fiduciary issues, I would think that you would have some ideas on how to improve the program. Can you describe for us improvements in the fiduciary program's oversight that you have made since our February hearing?

Mr. MCLENACHEN. Well, sir, in addition to the policy and procedures that we have issued even since the February hearing, as I mentioned that we have completed our proposed fiduciary regulations. Now, as we were working on those regulations we determined that there was different authority that we needed from Congress, we would certainly develop a legislative proposal for that purpose, but I have to say that having worked on those regulations and looking at the authority that we have, we believe we have the authority we need to correct the program, and all of the things that we do support in the bill are things that we have implemented ourselves, like I said, over the last several months. I believe we are making real progress.

Mr. JOHNSON. Well, you mentioned that you have completed the regs and that you have the authority to improve the program, but you didn't really answer my question. Can you describe specific improvements that you have made in the fiduciary programs since February?

Mr. MCLENACHEN. Yes, sir. One of the concerns of the Committee was the independence of a fiduciary. We had a policy in place that required a fiduciary to check with VA, as you mentioned the form, where it wasn't just the form. We had a policy in place that required a fiduciary to check with VA for any expenditure over \$1,000. I rescinded that policy. That was since the hearing.

In addition to that, there is concern about transparency in the program. We have never provided beneficiaries copies of audited accountings by VA. I changed that policy. Every fiduciary is instructed to provide a copy of an audited approved accounting by VA to the beneficiary.

Criminal background checks, we have contracts in place to do a criminal background check on every fiduciary we appoint. There's a number of other developments, sir, I could go through with you, but we are making progress in this program.

Mr. JOHNSON. That would be great. I mean, we would have liked to have gotten that information before today, but that is good. Based on recent articles about nationwide problems in the fiduciary program, it seems that there has been little improvement other than the things that you mentioned today. Do you have any further response to the media reports of the numerous and horrific stories in those articles?

Mr. MCLENACHEN. Yes, sir. I disagree with the view that the fiduciary program is plagued with fraud. I am aware of those articles and it is our position that any misuse of VA benefits is unacceptable. That's our position. And we work hard to prevent that type of misuse. That is the reason why we do over 30,000 accounting audits every single year. That is the reason why we do 70,000 or more field examinations every year.

So we work hard to prevent misuse and we have been very successful. I testified in February that our misuse rate during Fiscal Year 2011 was less than one-half of one percent.

Looking at the article, sir, I think in reality the articles are about a broader problem and that is general abuse of veterans. We looked at the cases that were mentioned. In the State of Texas 6.5 percent of our beneficiary population in this program live in Texas, yet the misuse rate in Texas was only 4.4 percent compared to all of the cases. So while the articles may have been reporting the broader problem of misuse, I don't think that we have been able to confirm that it points out a specific problem about the fiduciary program and that said, that doesn't mean that we are going to ease up on misuse of benefits.

Mr. JOHNSON. The VA opposes the provision that would authorize the VA to limit the appointment of a fiduciary to management of VA funds. The VA contends that the purpose of this provision was unclear and probably unnecessary because the VA appoints fiduciaries only for the limited purpose of receiving VA benefits on behalf of a beneficiary.

However, I have VA emails that direct a VA representative to take control of non-VA funds. Why the difference between your actions and your comments on the legislation?

Mr. MCLENACHEN. Mr. Chairman, I would be interested to see the information you have about that. Congress has authorized us to appoint fiduciaries for the purpose of VA benefit funds under management. That is what we have authority to do. Now, there may be some disconnect about the accounting process. When we do an accounting, we need to see all incoming expenses in an account and sometimes in those accounts there is other income, such as, for example, Social Security benefits.

Mr. JOHNSON. So you would find it inappropriate for a VA representative to take control of non-VA funds?

Mr. MCLENACHEN. Yes, sir. Without knowing more about the facts of the case, I would say, yes, I would.

Mr. JOHNSON. We will provide you with that information.

Mr. MCLENACHEN. Thank you, sir.

Mr. JOHNSON. Okay. You discussed the provision concerning appeals and removal of fiduciaries as limiting a beneficiary's ability to have his or her competency restored. Can you describe how a veteran currently has his or her competency restored and subsequently can get out of the fiduciary program?

Mr. MCLENACHEN. Yes. Thanks for that question because this is an area that I have really been interested in addressing and we are doing that in our regulations. Just to let you know, that is one thing that we are addressing. Currently, if an individual has been rated as being unable to manage their VA benefits, they can be taken out of the program by having medical evidence, such as a doctor's opinion, that they can, in fact, based upon their disability or regardless of their disability, manage their own VA funds. In addition to that, if there was a legal process where a court held that a person was incompetent to manage their own affairs and a court concludes otherwise, that would be evidence considered.

The area I want to address, however, is a situation where we have a beneficiary in the program and they demonstrate them-

selves that they are able to manage their own VA funds and I want a way for them to get out of the program.

Now, we currently have a supervised direct-pay program. There are about 3,500 beneficiaries that are in that program. We pay our benefits directly to those individuals even though they are in the fiduciary program because we have some evidence that they might be able to manage their own benefits. That specific program within the fiduciary program, to me, seems to be a way where we can get individuals out of the program if they demonstrate that they can actually manage their own benefits. That is one of the things we are addressing.

Mr. JOHNSON. How would reporting to Congress hinder improved transparency of the program?

Mr. MCLENACHEN. Well, sir, I think the message from our testimony was that it appeared that the requirement to report information in our annual benefits report and only report it to Congress would change the transparency. Now, maybe we are misinterpreting what the bill requires. Certainly we could still publish information in our annual benefits report, but that was the intent of that comment was that if the information was only going to be reported to Congress rather than through other means.

Mr. JOHNSON. The fiduciary program stated purpose is to serve beneficiaries who are unable to manage their financial affairs. How does developing determinations of ability to manage financial affairs run contrary to that purpose?

Mr. MCLENACHEN. Mr. Chairman, it is a little bit related to the question that you just asked me where I mentioned our supervised direct-pay program. When an individual is rated as being unable to manage their VA benefits currently, it is when we do a, what you may know as a compensation and pension exam or we receive evidence, medical evidence or otherwise, indicating that somebody cannot manage their affairs.

If we receive that information, we can quickly process the incompetency determination, give the notice that is required and get to the point where we appoint a fiduciary.

Our concern regarding that section of the bill is they will require essentially a rehabilitation determination based on someone's opinion, a professional's opinion that managing somebody's funds would help them be rehabilitated despite their disability.

VA currently doesn't do that, but I think there is a viable alternative to that and that is our supervised direct pay program. It would essentially do the same thing. It would show that somebody is actually managing their own financial affairs and provide a way for a rating, getting them out of the program. That was the intent of our comments on that section.

Mr. JOHNSON. Okay. What is the likelihood that the VA can tailor the proposed reporting requirements so that when field examiners perform home visits, fiduciaries already under close VA supervision are not overly burden or even harassed? For example, how can the VA take into account those in the VA's caregiver program?

Mr. MCLENACHEN. Well, Mr. Chairman, my understanding about the caregiver program is that it is, there are 2,000 or 3,000 beneficiaries in that program. And actually I was just having a con-

versation before the hearing started with a representative of the Wounded Warrior Project and we were discussing how VA might coordinate better between the caregivers in that program and match them up and see how many of them are fiduciaries and how we could coordinate those efforts a little bit better. I think we could do that.

The beneficiary population in the fiduciary program, however, is 125,000 beneficiaries, approximately. But certainly for that subset, there may be ways that we can improve services.

Mr. JOHNSON. Okay. Why does the VA oppose letting a beneficiary know if his or her fiduciary has been convicted of a crime? How does added transparency harm the veteran and the fiduciary program as a whole?

Mr. MCLENACHEN. Mr. Chairman, my concern there is not that we should limit transparency. I think transparency is very important and we are trying to change that, for example, with the accountings that we're requiring beneficiaries to receive. The problem I have though is that many of the individuals in our program are severely disabled or have mental conditions that render them severely disabled and the type of information that they are given may be harmful to them.

So the mere fact that somebody has a, for example, a misdemeanor conviction that does not impact their ability to provide fiduciary services. And for example, if it is a family member, reporting to the beneficiary in every single case that this has happened may not be the best thing for our beneficiaries.

I agree, however, that there should be transparency about individuals who commit crimes that either disqualify them for service as a fiduciary or certainly would allow the beneficiary to request somebody else to be their fiduciary.

Mr. JOHNSON. In your February testimony you stated that the VA, first and foremost, attempts to appoint a fiduciary who will serve without a fee. If this is truly your aim, why can't the VA access the list of non-profits and government agencies that Social Security uses in the administration of its representative payee program.

Mr. MCLENACHEN. We can certainly look into doing that, sir. Our concern with the bill was it would require us to maintain a list of state, local and non-profit organizations nationwide and maintain that list for the purpose of fiduciary appointments. Our concern is that this program, 95,000 fiduciaries, sir, in this program, the overwhelming majority of them are family members or close acquaintances. We very rarely need to appoint an organization that would fall within that group. That does not happen that we do not appoint them. We certainly do appoint those type of organizations. So we would not be opposed to appointing them.

It is just that the cost benefit that we are talking about as a result of the bill, we think the costs would outweigh the benefit that we would receive from it.

Mr. JOHNSON. In your testimony you state that fiduciaries are more than mere bill payers. For those fiduciaries that do not live with the beneficiary, what else do they do besides pay the bills?

Mr. MCLENACHEN. Mr. Chairman, that is a very good question and I think in my testimony you may have seen that I said our

emerging view is that they are not mere bill payers. That is my vision for the program. That is the Secretary's vision for the program. He does not intend that we are appointing mere bill payers, so in our regulations one of the things we are going to address is what are the responsibilities of a fiduciary. And if a fiduciary is of the view that they don't have to have contact with the beneficiary or they don't need to check on the beneficiary's well being periodically, they have no business being a fiduciary. That is our view.

Mr. JOHNSON. I will be very curious to see how that turns out and what recommendations the VA has to modify that because fiduciary by its definition is a financial manager.

Mr. MCLENACHEN. That is correct.

Mr. JOHNSON. So I don't know what, beyond that, we would be, number one, wanting them to do or expecting them to do. I mean, we have got major issues now with just the financial management part of it. Lord only knows what kind of issues we will get into if they have control over other areas of a veteran's life.

Mr. MCLENACHEN. Mr. Chairman, can I explain? Congress gave us authority to appoint fiduciaries to act in the interest of beneficiaries and I agree with you completely that the purpose of the fiduciary appointment is management of VA benefit funds.

However, to act in the interest of a beneficiary where a fiduciary is dispersing funds, paying bills, essentially doing financial management, how do they do it in the best interest of a beneficiary without having contact, without checking on them and without seeing what their needs are. I am not suggesting that they take over custody of the individual or act in any other way, however, I fail to see how somebody can act in the best interest of a beneficiary without having contact and monitoring their progress.

Mr. JOHNSON. That I would agree with you on. I will be curious—you know, the devil is in the details.

Mr. MCLENACHEN. Yes, sir.

Mr. JOHNSON. It is what it is in the policy and how it is interpreted by fiduciaries and those that run the program, but I generally agree with your comment there.

In your testimony you state that the VA opposes transmitting evidence of misuse of benefits to the Attorney General for prosecution because it does not allow for the VA's internal review. Given numerous examples from our investigation, as well as those reported by Hearst Publications recently where little action has been taken by the VA, how does the VA's internal review aid in the prosecution of someone who has preyed on a veteran? I mean, you remember the last time you were here. We had some horror stories.

Mr. MCLENACHEN. Yes, sir. Our position regarding that section is that—and just for your information, the way that we investigate misuse—actually, our program does the investigation regarding misuse of benefits. However, when we complete that investigation, we are required to turn over that information to the VA's Office of Inspector General. And that office has responsibilities under the law to coordinate the prosecution and, you know, a large part of that is evaluating a case for prosecution under the law.

Our comments regarding that section was that it appeared to require us when we determine that there has misuse of benefits, to simply report to a bunch of agencies that may have a use for that

information or not, without the type of evaluation that the Office of Inspector General is required to do by law. That was the basis of that comment in my testimony.

Mr. JOHNSON. Basically, though, you would agree that those who criminally and fraudulently abuse the funds, that they are responsible for manage for our veteran, should be held accountable to the extent of the law, correct?

Mr. McLENACHEN. Absolutely. The best deterrent is criminal prosecution and I absolutely agree with you.

Mr. JOHNSON. In your testimony you talk about the additional burden of an annual report would require. This bill lays out a bare-bones requirement, leaving the VA to determine how much detail to ask for. Why would you not be able to mold a requirement so as not to be overly burdensome?

Mr. McLENACHEN. Mr. Chairman, does your question concern the report to Congress or the annual accounting requirements?

Mr. JOHNSON. It would be both.

Mr. McLENACHEN. Okay. First, with respect to the section in the bill that would require us to submit an annual report to Congress, I believe we indicated we would not oppose that, however, we question the timing which would be one year after the enactment of the bill. We pointed out that rulemaking might be required to the extent some of the things in the bills are not in our current rule-making package, so we thought that the one year requirement might be a little soon.

With respect to the accounting requirement, VA currently does over 30,000 accountings a year. That's how many require and we audit every single accounting. It is a very detailed audit too. We require financial documents to be submitted with each accounting. The bill would require us to do such an accounting for every beneficiary in our program—I am sorry, every fiduciary in our program, which means 95,000 accountings. While it is true that we could do certain things to sample accountings, not audit every one. I am not sure that that would really accomplish what the Committee is interested in.

I think our concern, sir, is that requiring every single fiduciary to submit an accounting doesn't really take into account who these individuals are. As I said, the majority of them are family members. Spouses, already spouses, we do not require accountings from spouses, but other family members would be required to submit an annual accounting. Many cases are a very small amount of benefits that are paid. Again, accounting would be required.

So our real concern is the burden on the individuals who act as fiduciaries. We, over time, based on our experience, figured out who we think we need accountings from and that those 30,000 individuals that have to submit one to us every year. We are just concerned about the scope of the accounting requirement.

Mr. JOHNSON. Well, I want to thank you, Mr. McLenachen, for your testimony and responding to the questions. You are now excused.

Mr. McLENACHEN. Thank you.

Mr. JOHNSON. Mr. McLenachen, one second. Minority Counsel would like to ask a question.

Mr. TUCKER. Thank you. I will be very brief. You stated as referring to the removal of the one year period for convictions, state and federal crimes, that you oppose that because some of that information might be harmful to the fiduciaries?

Mr. MCLENACHEN. No. I believe the question concerned, there is a provision in the bill that requires us to report a conviction, any conviction to a beneficiary within 14 days of learning about it. We are opposed to that provision. With respect to the provision of the bill that would authorize us to consider all convictions in the qualifications of a fiduciaries, we are not opposed to that.

Mr. TUCKER. Okay. Thank you for the clarity. And second of all, do you propose a tracking on what your final answer was to the accounting question. Do foresee, kind of a two-track system of how you handle fiduciaries in that you have close family members that you don't think you need a background check all the time or every time that someone's appointed, that you don't need an accounting for those folks and then for those who are, in a sense, professional fiduciaries?

Mr. MCLENACHEN. Yes, actually, our current procedures essentially do that. One of the provisions of the bill that we are opposed to would eliminate or rescind the waiver provision that is in current law, which allows us to waive some of the investigation requirements for certain individuals such as parents and spouses. So we are opposed to that provision.

But the way that we run, the program already essentially does that. There is much more stringent oversight of individuals who are paid fiduciaries who are corporations or other individuals who are in the business of providing fiduciaries services than there are for, for example, spouses and family members, to include the frequency with which we visit them on a follow-up field examination. It is our policy not to intrude into family members and avoid doing that as much as possible. So for example, with a spouse, we will visit a spouse on a follow-up field examination much less frequently than we do an individual who is a paid fiduciary or doing that type of business.

Mr. TUCKER. Thank you for your indulgence, Mr. Chairman.

Mr. JOHNSON. Absolutely. Thank you. And again, Mr. McLenachen, you are excused.

I would now like to call the third panel to the witness table.

On this panel today we will hear from Mr. Ralph Ibson, National Policy Director for the Wounded Warrior Project; Ms. Lauren Kologe, Deputy Director of the Veterans Benefits Program for Vietnam Veterans of America; Ms. Heather Ansley, Vice President of Veterans Policy for VetsFirst; and Ms. Lori, have I got it right, Perkio—is that correct—Assistant Director of the Veterans Affairs and Rehabilitation Commission at the American Legion.

All of your complete written statements will be made a part of the hearing record. Mr. Ibson, you are now recognized for five minutes, sir.

**STATEMENTS OF RALPH IBSON, NATIONAL POLICY DIRECTOR,  
WOUNDED WARRIOR PROJECT; LAUREN KOLOGE, DEPUTY  
DIRECTOR OF VETERANS BENEFITS PROGRAM, VIETNAM  
VETERANS OF AMERICA; HEATHER ANSLEY, J.D., VICE  
PRESIDENT OF VETERANS POLICY, VETSFIRST; LORI  
PERKIO, ASSISTANT DIRECTOR, VETERANS AFFAIRS AND  
REHABILITATION COMMISSION, THE AMERICAN LEGION**

**STATEMENT OF RALPH IBSON**

Mr. IBSON. Mr. Chairman, Members of the Subcommittee, Thank you for inviting Wounded Warrior Project to testify today, and particularly to provide views on H.R. 5948, the Veterans Fiduciary Reform Act of 2012.

As this Committee's February oversight hearing underscored, the fiduciary program continues to experience serious problems and weaknesses. We appreciate the effort to craft legislation to address those issues.

Our principal concern is the bill falls short of resolving a long-standing problem we have raised at prior oversight hearings. The issue arises from the fundamentally inconsistent manner in which the VA treats family members who are recognized and supported by the Veterans Health Administration as caregivers of their loved ones and yet face rigid scrutiny from the Veterans Benefits Administration in their capacity as fiduciaries for those loved ones' benefits.

Our organization works closely with family members who are both full-time caregivers as well as fiduciaries of those severely wounded warriors. And we note that two years ago Congress established the Comprehensive Caregiver Assistance program to provide needed support to those family caregivers in recognition of their sacrifices and the emotional and financial toll associated with caregiving.

To qualify and win formal approval for this VA assistance, family members undergo a detailed psycho-social assessment to help VA determine that the proposed arrangement is in the veteran's best interest. They must participate in a training program and must undergo a home inspection.

Furthermore VHA subsequently conducts regular quarterly in-home monitoring of the veteran's well being as a condition of the caregiver's receiving continued assistance.

In administering the fiduciary program, VBA does not take account of the unique circumstances of those family members who give up careers, have depleted savings to care for their loved ones, and who have already been screened and monitored under the caregiver program. As we see it, that process and its ongoing oversight truly provide ample evidence that these individuals are trustworthy, and do not pose a risk of misusing the veteran's benefits.

Let me be clear, we are not suggesting that caregiver fiduciaries be exempted from accountability from management of the beneficiary's funds, but we do see a need to make provision in law for more balance and less demanding oversight where the caregiver-fiduciaries have demonstrated that they do not pose significant risk and have earned VA's trust. Dedicated caregiving, in our view, as

evidenced by unblemished participation in the caregiver assistance program, should be recognized in law as establishing that trust.

We have seen all too clearly that VBA's intensely detailed reporting requirements can be overwhelming to an already emotionally drained family member who is shouldering a young veteran's total-care needs and yet is left to feel suspect and distrusted. As one mother put it, "we are probed yearly by a forensic accounting that seemingly investigates for 'murderous' infractions," even requiring fiduciaries to "line-item Walmart receipts."

We greatly appreciate the Committee's work and VA's response in ending the practice of requiring preapproval of expenditures made in the veteran's best interest. But caregivers are still subject to what many experience as inquisitorial audits. And let me offer a few examples:

A caregiver having to explain to a VBA examiner why she allowed her wounded-warrior son to spend "too much money on Christmas gifts;"

An auditor insisting that the caregiver's electric bill was too high and asserting that during the summer in Florida she should not run the air-conditioning at night;

A family being questioned about expenditures for gasoline in transporting the wounded veteran; and

A VBA examiner questioning the caregiver as to why she was buying movies and music for her son given that he has a brain injury.

As one caregiver summed it up, VA fiduciary program staff "don't really help with management of assets but audit every two years every penny I spend for my son's care. There are not many guidelines and auditors question expenses when they know nothing about the care that is needed."

Family caregivers have also emphasized the burden of just trying to comply with the demanding expectations of the program. To quote one, "When the paperwork arrived at the end of the year, there were no instructions or assistance. I had to figure out how to do everything on my own. I asked for software I could use to make it easier to do the accounting, but I was told there was none. I had to create an Excel spreadsheet to enter the amounts in the categories that were requested and sometimes it takes me up to two weeks to complete all the data entry."

In sum, the problems I have outlined are not insoluble and just as this bill aims to solve other problems in the program, we urge that it address this one as well. We would be pleased to offer narrowly crafted language to address the problems we have identified and would welcome the opportunity to work with the Committee prior to a workup. Thank you for consideration of our views.

[The prepared statement of Ralph Ibson appears in the Appendix]

Mr. JOHNSON. Thank you, Mr. Ibson.

Ms. Kologe, you are now recognized for five minutes.

#### STATEMENT OF LAUREN KOLOGE

Ms. KOLOGE. Thank you. Good morning, Mr. Chairman, and other distinguished members of this Subcommittee.

Vietnam Veterans of America is pleased to share our views and concerns regarding the pending legislation. We support all four pieces of legislation that have been discussed today.

In particular, we would like to share our views on H.R. 5948, the Chairman's legislation, the Veterans Fiduciary Reform Act of 2012 and how the Veterans Benefits Administration can improve their Fiduciary program.

I ask that our written testimony be accepted for the record.

Mr. JOHNSON. Without objection, so ordered.

Ms. KOLOGE. Thank you. We have three main points that we would like to share in the fiduciary program and this pending legislation. One, we propose that the title of Exception 5511, "Adjudication of Financial Incompetence," and the language "mentally incapacitated or deemed mentally incompetent" be changed to reflect the purpose of the fiduciary program which is to manage the veteran's financial benefits. There seems to be cross purposes here, some fiduciary members need enhanced services and some do not. Some are able to work. They just cannot manage their financial affairs and I think the role of the fiduciary has been confused and has led to some problems that we have been experiencing. We recognize that many veterans and other beneficiaries in the fiduciary program require support services and, therefore, we urge a change to the examination protocol for determining that an individual is unable to manage his or her benefit payment.

Currently, VA only assesses veterans' ability to manage their benefit payments in certain disability exams. Furthermore, these compensation or pension exams frequently last only 20 minutes. We are unclear as to how VA is able to determine the capacity of a veteran without protocol for consistent questions to be asked of the veteran. It is also unclear how VA assesses a widow's or dependent's ability to manage benefit payments.

VA has said that there are basically two different types of fiduciaries, paid fiduciaries and family, or volunteer fiduciaries who know the veteran well. If the sole purpose of the VA fiduciary program is to manage the veteran's financial payments, we believe that many of these veterans should not even be in the fiduciary program.

There are different protocols that other agencies use for determining this financial incapacity, and again, that is why we believe that it should be clearly the financial incapacity, and then VA does have a duty to care for our veterans that need further services.

Lastly, we encourage that this Subcommittee provide a whistleblower provision or a more definite reporting system for abuses in the fiduciary program, not only with respect to mismanaging veteran's funds which we strongly support the bill's provisions of returning veteran's monies in the cases of misfeasance, but we also think that a clear chain of command and expectations goes a long way toward and fixing problems before they get worse. There should at least be a requirement in the law for the Secretary to report on the steps that VA employees, beneficiaries and third parties can take to report malfeasance and misfeasance, other than reporting to the Inspector General or clear provisions on how to do so, but so that the officials in VA most able to fix the system can make the necessary changes.

So we ask you to consider our comments and we would happy to provide answers to any questions that you may have. Thank you very much.

[The prepared statement of Lauren Kologe appears in the Appendix]

Mr. JOHNSON. Thank you, Ms. Kologe.

Ms. Ansley, you are now recognized for five minutes.

#### **STATEMENT OF HEATHER ANSLEY**

Ms. ANSLEY. Thank you, Chairman Johnson, and distinguished members of the Subcommittee. Thank you for inviting VetsFirst to share our views and recommendations regarding the four bills that are subject of this morning's hearing. VetsFirst is pleased to provide our support and recommendations for each of these important pieces of legislation.

First, we support the Veterans' ID Card Act. We believe that this legislation will provide an easier way for eligible veterans to prove their veteran status without having to present a DD-214. As was stated earlier the DD-214 includes sensitive personal information that veterans may not wish to show in certain situations. To minimize any potential for confusion, the legislation requires that the cards state that issue does not confer eligibility for benefits and we urge swift passage of this legislation.

Second, we support the Veterans Data Breach Timely Notification Act. We believe that this legislation takes important steps toward ensuring that veterans are properly notified of data breaches involving their sensitive personal information. This legislation not only requires VA to make a notification of a breach of this information but also requires VA to provide veterans with important details regarding the breach and how to take precautions to minimize negative impacts.

Although we support this legislation, we do have two specific recommendations. One, we believe that it would be helpful to clarify that VA must notify individuals within five business days of learning of the breach as opposed to basing the time frame on the date of the breach.

Number two, we believe that VA should be required to provide the opportunity to receive notification in large print, brail, audio or electronic formats. For disabled veterans who have visual or other impairments, these options are particularly critical. Otherwise, they will not receive proper notification and will not be able to take proper action to address any concerns.

Third, we support The Veterans Affairs Employee Accountability Act. This legislation will ensure that employees who knowingly violate any civil law covered by the Federal Acquisition Regulation or the Veterans' Affairs Acquisition regulation do not receive bonuses for or during the year of the violation.

It is our hope that using bonuses to reward only those employees who follow these laws will ensure that our veterans receive the highest level of services from VA. Ultimately, VA must ensure that veterans' needs can be clearly and efficiently met within the contracting requirements of federal law.

Lastly, we support the Veterans Fiduciary Reform Act of 2012. This legislation takes important steps toward ensuring that VA's fi-

duciary program is more transparent and focused on the needs of beneficiaries. We believe that VA's fiduciary program must be more veteran-centric or beneficiary-centric and tailored to address the needs of those beneficiaries who truly need this type of assistance. It is important to remember that these VA benefits have been earned by the veteran and that the funds belong to the veteran, even if he or she needs assistance with managing them.

The Veterans Fiduciary Reform Act ensures that the determination of whether or not a beneficiary requires a fiduciary is based on factors such as a determination by a court of competent jurisdiction and an evaluation by a medical professional regarding the role of financial management in the rehabilitation of the individual.

Importantly, it also states the types of evidence that may be considered in an appeal of such a determination and provides a statutory way to terminate any fiduciary relationship.

We support efforts to clarify factors that will be considered to determine if a beneficiary needs a fiduciary and the process for appealing related determinations. We believe that this process will make the fiduciary program more transparent.

We also believe that efforts to strengthen the inquiry and investigation into the qualifications for fiduciaries will ensure a higher level of service for beneficiaries. The hearing held before this Subcommittee earlier this year presented several disturbing stories about the benefits faced in receiving proper service from their beneficiaries. It should be important to note, however, that to ensure that VA exercises appropriate discretion to ensure that family member fiduciaries are not unduly burdened in complying with VA requirements.

This legislation also makes significant changes in the commissions that fiduciaries are able to receive for their services. We believe that a commission should only be authorized where absolutely necessary to ensure that the best possible fiduciary serves a veteran or other beneficiary.

Regardless of whether the percent authorized is the current four percent or the proposed lesser of three percent or \$35, our only concern is that a paid fiduciary be available to a veteran if there are absolutely no other alternatives. As long as highly qualified fiduciaries are available when needed, we support the lower commission.

Again, thank you for the opportunity to share our views on each of these bills before the Subcommittee today. This concludes my testimony, and I will be pleased to answer any questions you may have.

[The prepared statement of Heather Ansley appears in the Appendix]

Mr. JOHNSON. Thank you, Ms. Ansley.

Ms. Perkio, you are now recognized for five minutes.

#### **STATEMENT OF LORI PERKIO**

Ms. PERKIO. Thank you, Mr. Chairman and Members of the Subcommittee for the opportunity to provide The American Legion views on H.R. Bill 2985, Veteran ID Card.

The American Legion feels a Veteran ID Card may be useful, but feels more investigation is needed to determine best course of action. The American Legion has no position on this bill at this time.

In regard to H.R. 3730, Veterans Data Breach Timely Notification Act, on May 3rd, 2006, a laptop and external hard drive containing 26,500,000 veteran and active-duty servicemembers' names, Social Security numbers and dates of birth were stolen during a home burglary of VA employee. The stolen laptop was reported to VA immediately. Three weeks later the theft became public knowledge. With advance in technology and criminal ingenuity, checking and savings accounts can be depleted in a matter of hours.

The ripple effect of identify theft can destroy a veteran's lifetime of hard work. Veterans expect response that is swift and comprehensive. This legislation would help ensure that this is the case. The American Legion supports this legislation.

H.R. 4481, Veterans Affairs Employee Accountability Act: Bonus pays should be awarded to an employee who goes above and beyond the basic performance. Bonus pays should never be considered for anyone who is trying to circumvent the system. VA needs stronger accountability in the bonus system and the American Legion supports this legislation.

In regard to H.R. 5948, Veterans Fiduciary Reform Act of 2012: The VA describes the fiduciary program mission as to protect the benefits paid to veterans and other beneficiaries who are unable to manage their financial affairs by appointing and supervising qualified fiduciaries with continued and diligent oversight as it pertains to VA benefits.

In 2009, VA consolidated 14 western regional office fiduciary activities to create the Western Fiduciary Hub. Then in 2011 initiated consolidate of the remaining 39 fiduciary activities into fiduciary hubs located in Louisville, Columbia, Milwaukee, Lincoln, and Indianapolis. The purpose was to improve timeliness, increase quality, consistency and better utilize resources. The boring of jurisdictional lines would provide field examiners to work within the hub rather than the jurisdiction of the regional office. Fifty-eight additional field examiners were to be added to the fiduciary program, but will be reassigned from the compensation unit. Due to the VA's enormous backlog in claims completion dates, the American Legion recommends VA hiring new employees to staff the fiduciary program as opposed to moving them from an already overburdened area of the VA.

In addition to the VA's hiring of 58 new field examiners, the American Legion recommends hiring an additional VA fiduciary employee in each of the 57 ROs. To better assist and coordinate the fiduciary program between field examiner, beneficiary and fiduciary hubs.

In the 2010 JAO report, the VA fiduciary program stated, "VA managers and staff indicated that training may not be sufficient." In a recent meeting the American Legion was told new field examiner training consists of two weeks formal training with two weeks field training. They are assigned a mentor for 60 days with 100 percent review for only 90 days. The VA states timeliness of appointing a fiduciary has improved to 45 days, yet many bene-

ficiaries wait, in some cases years, to be assigned a fiduciary while others die before a fiduciary is appointed.

VA states the beneficiary will be asked first who they wish to appoint as fiduciary, then look at family members. There are many cases whereupon notification of incompetency, the beneficiary is submitting a written request for a spouse or other family member to be appointed as fiduciary, yet months go by before a field examiner contacts a requested fiduciary and worse, appoints a fiduciary other than the requested family member.

When the beneficiary is in receipt of a non-service connected pension, the full percent paid to the fiduciary is money that would otherwise have stayed within the household budget.

When the beneficiary is a recognized nursing home, the appointment of a nursing home as fiduciary should be much less than the average 45 days, yet this is not the case. The American Legion recommends a 100 percent quality review of field examiners for at the least the first year following formal training.

The American Legion supports legislation requiring VA to notify the beneficiary when a requested fiduciary has been denied and to also allow the opportunity for an appeal of that decision. The American Legion has been notified of many instances where VA denied the beneficiary's requested fiduciary who had been competently caring for the beneficiary for years prior to the VA claim. 38 C.F.R. 3.353(A) states, "A mentally incompetent person is one who, because of injury or disease, lacks the mental capacity to contract or manage his or her own affairs, including disbursement of funds without limitation."

Beneficiaries face physical or economical limitations. The situation has been compounded by a diagnosis of mental incompetency. Our veterans deserve the attention of those entrusted within the VA fiduciary program. Field examiners are not required to provide the beneficiary with their contact information creating added stress to the beneficiary and their family members while awaiting a fiduciary appointment.

The wheels of progress are in motion, yet our veterans and their widows and orphans are dying in pain and poverty while awaiting for the benefits they so rightly deserve. The American Legion supports this legislation.

If there are any questions, I will be available to answer them for you.

[The prepared statement of Lori Perkio appears in the Appendix]

Mr. JOHNSON. I thank each of you for your testimony. We will go straight into questions. First of all, Mr. Ibson, do you know what percentage of those serving as fiduciaries for veterans are also caregivers?

Mr. IBSON. I am sorry, sir, I do not know. I could speculate, but I—

Mr. JOHNSON. The information that we have is that it is approximately three percent of the entire fiduciary program. Does that sound about right to you?

Mr. IBSON. That would seem like a reasonable projection.

Mr. JOHNSON. Also, Mr. Ibson, can you describe for us your own experiences with the VA in getting them to resolve issues once you brought them to the VA's attention?

Mr. IBSON. Yes. We have had several meetings. The earliest, I think, was some three years ago, and in several meetings followed in which we discussed the general issue that I have raised today we were given some assurances that those concerns would be addressed. I am pleased to learn from the testimony this morning that there are regulations moving forward. It is not clear to me that those regulations do, in fact, fully address the issues we have discussed and one could be frustrated by the length of time that has elapsed since those earliest conversations.

Mr. JOHNSON. Mr. Ibson, does VHA's caregiver program monitor the finances of the veterans and their families in the program?

Mr. IBSON. No, it does not, sir. I would not want to represent that that's the case. Our point is simply that the level of oversight and initial screening is such as to assure a level of trust that we believe merits consideration in a more relaxed reporting and auditing standard.

Mr. JOHNSON. Okay. Do you have any thoughts about what the VA can do to ease the burden of overly stringent reporting requirements on fiduciaries?

Mr. IBSON. Well, we would suggest and would be pleased to provide the Committee with language that could both address the point that Mr. McLenachen cited, the importance of better coordination between the two administrations, but also as I indicated, a more balanced and less rigid level of reporting akin perhaps to the kind of more user-friendly reporting that the Social Security Administration requires.

Mr. JOHNSON. Is there any software provided for reporting or anything like that that you are aware of?

Mr. IBSON. Well, not that I am aware of, and certainly the quote that I furnished reflected the frustration of one of the caregivers who when she asked about that availability, was told there was none.

Mr. JOHNSON. Mr. McLenachen, I know you are not at the table, but in your testimony you talked about the fact that most fiduciaries have access to online banking, so much of some of their security issues would be resolved.

It seems to me if fiduciaries are using computers already, some form of standard reporting software would be beneficial. It would make life a heck of a lot easier at the VA and it would make it a lot easier for the fiduciaries as well, to the extent that they have access. Now, not all fiduciaries are going to use a computer. I understand that, but just a thought.

Mr. MCLENACHEN. Yes, sir.

Mr. JOHNSON. Mr. Ibson, in the testimony, the VA opposes the annual reporting requirement to Congress on the grounds that it hinders transparency. From your experience with VA programs, are annual reports to congress a good thing or not?

Mr. IBSON. I think very much so. I think they focus officials' attention, and in the myriad of obligations imposed on the department, it is easy to lose focus. I think a reporting requirement provides that focus.

Mr. JOHNSON. Okay. Let us move to the American Legion. Ms. Perkio, the VA opposes the provision that mandates the VA to limit the appointment of a fiduciary to management of VA funds. Given

that the VA can only direct who is in charge of the benefits it administers, what do you think of this provision?

Ms. PERKIO. Would you repeat the question?

Mr. JOHNSON. Sure. The VA opposes the provision in the legislation that mandates the VA to limit the appointment of fiduciary to management of VA funds. Given that the VA can only direct who is in charge of the benefits it administers, what do you think of this provision? Good, bad?

Ms. PERKIO. I believe that the VA can only, you know, take care of what they have jurisdiction over.

Mr. JOHNSON. So basically you support the idea that they should only be allowed to deal with the VA funds?

Ms. PERKIO. Yes.

Mr. JOHNSON. Ms. Perkio, last year the VA awarded approximately \$400,000,000 in bonuses. Coincidentally, the VA estimates that costs of implementing the Fiduciary Reform Act at that similar cost, given what we know about this program, do you think we should think twice before giving bonuses to those administering this program?

Ms. PERKIO. In light of some of the horror stories that are out there, I think that the VA is trying very hard to make sure that they keep track of them but I do believe that more oversight needs to come into this, but to deny them bonuses based on—until somebody has been actually proven that they violated civil law, then I wouldn't recommend that any bonuses be withheld.

Mr. JOHNSON. What are your thoughts on the VA strengthening the chain of contact between veterans and the fiduciary program, the VA and fiduciaries?

Ms. PERKIO. Absolutely. Right now, I think that because there isn't a continuity of a chain of command, beneficiaries will go to their Service Organizations and say, we were approved for pension, we are waiting for a field examiner to come. Several months will have gone by and they are just left without any contact, without knowing who to go to, and the Service Organizations, because of the fiduciary hubs, don't actually have that continuity of contact. Now, they have created the 1-800 number and I understand that it is working very well at this time, but I do believe that communication does need to be strengthened.

Mr. JOHNSON. Okay. In the VA's testimony, the Department argues that the proposed annual accountings would not improve the VA's oversight of fiduciaries. Do you agree with this?

Ms. PERKIO. No, I do not.

Mr. JOHNSON. Ms. Ansley, why do Veterans' dependency and indemnity compensation need to be specifically designated in the proposed redesignation language?

Ms. ANSLEY. Thank you for the question. We, in looking at the testimony of the predesignation section, wanted to ensure that other types of beneficiaries also had the opportunity to make such a designation. So in looking at the proposed language, it mentions compensation and pension forms, including the form that is—that a veteran would file for compensation pension, but for instance you may have spinal bifida, someone who is a spina bifida applicant which is VA form 21-03.04 and they would receive a monetary allowance, and so we just wanted to make certain that

predesignation, the opportunity to assert a fiduciary would go to any type of beneficiary who may be receiving those and depending on how the language is interpreted, that may or may not happen, so we just wanted to flag that.

Mr. JOHNSON. Okay. Ms. Ansley, in your testimony you stated that a commission should only be authorized when absolutely necessary. The Social Security Administration does not pay individuals to serve in a fiduciary-like capacity. Do you think the VA should consider doing away with paying a commission entirely?

Ms. ANSLEY. As we stated, our main concern is that a fiduciary be available when needed, so our hope is that we would never have to pay a fiduciary, that we would have someone available, but we just didn't want that one veteran who, for whatever reason, there wasn't a family member, there wasn't somebody they were willing to find, you know, just that one person we didn't want them to fall through the cracks.

So that is the, you know, making sure that that is available so that we can take care of all needs, but our hope would be that that would be, like I said, a very last resort.

Mr. JOHNSON. Okay. Ms. Ansley, also in your testimony you mentioned areas of concern that still need to be addressed. Do you think this is best addressed in legislation or through the promulgation of regulations directly with the VA?

Ms. ANSLEY. I think that at this point we do need to continue to see this legislation move forward. That is our hope, that Congress would continue to address this issue. Regulations are promulgated in a lot of different areas. I know of other areas we are watching, that they have been done for months and months and haven't seen them, so we need to make sure that this continues to move forward. It is nice when regulations marry up with what is being required, but there is nothing quite as forceful as having something in statute that makes it so.

Mr. JOHNSON. Ms. Kologe, in your testimony you stated that the VA is failing to monitor the well being of veterans in its care. Do you think this is a result of ineffective statutes or regulations, or just simply not following statutes and regulations, a combination thereof? What do you think?

Ms. KOLOGE. Thank you, Mr. Chairman. I believe that it is the confused role of the fiduciary program in that, as I mentioned the fiduciary payments versus providing some of the support services, making sure veterans have their medical care, that they have a clean home to live in, things like that. I believe that we do need to move forward with legislation on the broad strokes and have VA fill in its regulations where it has the expertise in those areas.

And I think it is a failure of mostly an overburdened system and if we can take out those veterans who do not need to be in a fiduciary program or could be into the supervised direct payment program, it would limit the burdensome reporting requirements for some of these fiduciaries, and allow VA to allocate its resources better.

Mr. JOHNSON. Okay. What would legislation to combat the VA's tendency to become overly paternalistic in the administration of benefits, what would it look like?

Ms. KOLOGE. I believe if there were two separate tracks to people in the fiduciary program, again it references mental incompetence right now and so VA in its mental health exams and other types identifies veterans that may qualify, but there is not a consistent way to do those exams. It is just in the opinion of the examiner is the veteran able to manage their funds. There should be consistent questions that are asked of the individuals and there are veterans who are not in a fiduciary program that perhaps would benefit from it, and the greater oversight of that, so we would be happy to work with the Committee, Subcommittee and other stakeholders to get the best legislation and then leave up to VA what could be a regulation.

Mr. JOHNSON. Okay. In their testimony, the VA opposes the consideration of medical evaluations to determine incompetency. Do you think this is wise?

Ms. KOLOGE. The proposed legislation that you have offered offers medical information that is currently considered in other veterans' benefit claims and VA mentions that a fiduciary assignment is not a claim. Well, I think that we, nevertheless, need to use medical information to determine whether a veteran is financially able to manage their funds and that may not be from a physical standpoint. This may be—I will look to other areas, other agencies that already make determinations of financial incapacity and again make two tracks, one for veterans who actually require more intensive services to support their self care. Thank you.

Mr. JOHNSON. So let me make sure I understood your answer. So are you in favor of considering medical information in determining incompetency?

Ms. KOLOGE. Yes, I believe that some of the people who are in the fiduciary program, this medical information, I believe, it should be used and there should be a standard way of determining which medical information is used, whether it be from a third party that is provided to VA or whether a VA examiner, that they are using the same consistent protocols to identify veterans that need to be in the fiduciary program.

Mr. JOHNSON. I understand. I would like to see if the Minority Counsel has any questions?

Well, our thanks to the panel for being here today and you are now excused. I again want to thank everyone for their participation today. The input and the feedback provided today is an important contribution as this Subcommittee crafts legislation to address the needs of our veterans.

Today's hearing is a step forward, a step toward delivering needed improvements in those veteran's lives, and I look forward to our continued cooperation in that effort.

With that, I ask unanimous consent from me, that all members have five legislative days for revise and extend their remarks and include extraneous material.

Without objection, so ordered.

This hearing is now adjourned. Thank you all for being here.

[Whereupon, at 11:27 a.m., the Subcommittee was adjourned.]

## A P P E N D I X

### Prepared Statement of Hon. Bill Johnson, Chairman

Good morning. This hearing will come to order.

I want to welcome everyone to today's legislative hearing on H.R. 2985, the Veteran's I.D. Card Act; H.R.3730, the Veterans Data Breach Timely Notification Act; H.R. 4481, the Veterans Affairs Employee Accountability Act; and H.R. 5948, the Veterans Fiduciary Reform Act of 2012.

These bills arrive from several different avenues that fall under this Subcommittee's purview, and I want to thank the bill's sponsors for drafting these proposals for our review.

H.R. 2985, the Veteran's I.D. Card Act, was introduced by Congressman Akin of Missouri. The bill would direct the VA to issue a veteran's ID card upon request to any veteran who is not entitled to military retired pay or enrolled in the VA system. We will hear more from Congressman Akin on this bill, and I thank him for his participation.

H.R.3730, the Veterans Data Breach Timely Notification Act, was introduced by our Subcommittee's Ranking Member, Congressman Donnelly of Indiana. His bill would require the VA to notify Congress and directly affected individuals, within 10 business days or less, of a data breach that compromises sensitive personal information. This improved transparency and responsiveness would be a boost to the VA's efforts at improving its information security image.

As the system currently works today, the lapse of time between the VA knowing of a data breach and a veteran knowing his or her information has been compromised and may be floating around is entirely too long. In discussions with staff, Assistant Secretary Baker acknowledged that the current duration between the VA learning of a data breach and a veteran being notified that his or her personally identifiable information, or "PII", may have been compromised could be shortened, and this legislation is a good measure toward that end. I am proud to co-sponsor this bill. I urge my colleagues to consider adding their support, and look forward to Ranking Member Donnelly's further remarks on it.

H.R. 4481, the Veterans Affairs Employee Accountability Act, was introduced by Congressman Roe of Tennessee, another distinguished member of our Subcommittee. His bill would prohibit any VA employee from receiving a bonus if that employee knowingly violated Federal Acquisition Regulations or VA Acquisition Regulations. We have seen plenty of evidence of the VA's lack of controls over its bonus program, which has further been substantiated by the VA's own OIG. Sometimes bonuses go to employees with documented poor performance, sometimes the VA gives retention incentives to an employee about to retire, and sometimes bonuses go to VA employees for no reason at all.

However, it's not just the bonus program that is running wild; we have also seen many long-term cases of VA employees ignoring acquisition regulations, often because it's simply easier for them to do so. To veterans, the taxpayers, and this Committee, that is not a good reason for breaking the law. Furthermore, in many of those cases, the VA has not held many of those employees accountable after learning of the violations.

Last week, I introduced H.R. 5948, the Veterans Fiduciary Reform Act of 2012. Based on investigations done by this Subcommittee, as well as a hearing held in February, it is abundantly clear that VA's Fiduciary Program requires significant improvement. The February hearing discussed fiduciaries stealing veterans' benefits, felons being appointed as fiduciaries, and even fiduciaries withholding needed funds to the point where a veteran's utilities are cut off. In addition, many veterans have been unable to contact their fiduciaries to get necessary basic funds, and family members are frequently shut out of the program despite VA's stated intent to include family members as a preferred choice.

While the VA did take an important step in the right direction after that hearing when it removed a paragraph from its standard form—requiring a fiduciary to get

VA approval of any use of a veteran's funds—the same types of problems discussed at that hearing continue to happen. This Subcommittee brings them to the VA's attention, and sometimes they are fixed on an individual basis. However, it is reasonable to expect that the same type of problem will come up the next week. The VA's Fiduciary Program suffers systemic weaknesses.

VA's Fiduciary Program is intended to help administer VA benefits for veterans deemed incompetent to handle their financial affairs. As written, the statute defers greatly to the Secretary's discretion in the Program's administration, including who can serve as a fiduciary and what obligations fiduciaries owe veteran beneficiaries. As practiced, the VA has stretched that flexibility in every direction, and the result has been unconscionable treatment of some of our most vulnerable veterans.

The Veterans Fiduciary Reform Act of 2012 is based on problems uncovered before, during, and after the February hearing as well as valuable input from veterans' service organizations and individual veterans on the ground who have experienced difficulties with the program. The legislation would require a credit and criminal background check each time a fiduciary is appointed, and allow veterans to petition to have their fiduciary removed if problems arise.

The bill would also decrease the potential maximum fee a fiduciary can receive to the lesser of 3 percent or \$35, similar to Social Security's fiduciary program. This will help discourage those who enroll as fiduciaries with the VA with only a profit motive in mind. In addition, the legislation will enable veterans to appeal their incompetent status at any time, require fiduciaries to submit annual accounting reports; and allow veterans to name a preferred fiduciary, such as a family member.

These significant changes will heighten VA's standards for administering the Fiduciary Program and increase protection for the most vulnerable veterans. Through mandating improved scrutiny during background investigations and lowering the fee a fiduciary can charge, the Veterans Fiduciary Reform Act of 2012 will help root out potential predators. Incorporating the ability for veterans to petition to have their fiduciary removed and replaced will add a layer of protection to veterans with fiduciaries.

I encourage my colleagues to support this bill, and would also direct your attention to several news articles that came out over the last few days documenting many cases of veterans around the country who have suffered from the lack of oversight and control within the Fiduciary Program.

I want to thank everyone for their participation in today's hearing, and now yield to Ranking Member Donnelly for an opening statement.

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#### **Prepared Statement of Hon. Jerry McNerney**

Thank you Mr. Chairman for holding this legislative hearing today.

This Subcommittee is committed to providing transparency and accountability to veterans and taxpayers. I look forward to hearing from the bill's sponsors as well as stakeholders about the legislation we have before us today.

I am pleased to have Ranking Member Donnelly's bill, H.R. 3730, included in today's hearing. This legislation, the *Veterans Data Breach Timely Notification Act*, seeks to protect veterans in the event that a data breach involving sensitive information occurs.

In light of VA's Monthly IT report detailing data breach incidents, this Subcommittee became aware that the VA can take up to 30 days to notify veterans that a data breach occurred, potentially exposing a veteran's sensitive personal information. To address this issue, H.R. 3730, requires the VA to notify potentially affected veterans within five working days after a data breach has occurred.

In an effort to mitigate the effects of identity fraud, this change would allow individuals to take decisive action to protect their identity.

I believe this legislation will help veterans protect personal identifiable information, including their social security number, which can severely affect a veteran's financial stability.

I look forward to working with Members of this Subcommittee as we review this legislation and the other bills before us in the Subcommittee this morning.

Thank you Mr. Chairman and I yield back

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#### **Prepared Statement of Hon. David P. Roe**

On February 12, we held our first hearing on the Pharmaceutical Prime Vendor (PPV), in which this Committee uncovered a serious problem with the VA's con-

tracting procedures. Several instances were identified where VA employees went outside the department's Prime Contract to purchase certain pharmaceuticals, which by the VA's own admission exceeded these officials' authority and cost taxpayers hundreds of millions of dollars.

It's bad enough that employees that are knowingly violating civil contracts have avoided punishment. But it's worse still that some of them are actually receiving annual bonuses.

VA officials downplayed the illegality of these actions, which were in direct violation of the Federal Acquisition Regulation (FAR), by describing them as "improper" or "mistakes." Rather than penalizing or reprimanding these employees, it appears VA senior officials paid these employees some form of a bonus, further highlighting the lack of internal contracting oversight at the VA.

This is inexcusable. To address this situation, I introduced H.R. 4481, the Veterans' Affairs Employee Accountability (VAEA) Act. This bipartisan legislation directs the secretary of Veterans Affairs to ensure that employees that knowingly break civil law covered by the FAR cannot receive a bonus for or during that year.

Financial incentives are a valuable tool to retain employees, but they shouldn't be given to VA employees who break the law. I thank the Committee and Chairman Johnson for holding this important hearing and hope we can stand up for taxpayers and hold the VA accountable with this legislation.

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#### Prepared Statement of Hon. W. Todd Akin

Chairman Johnson, Ranking Member Donnelly, thank you for the opportunity to testify before you today regarding my bill, H.R. 2985, the Veteran's I.D. Card Act. As of today, this bill has over sixty-five bipartisan cosponsors and has been endorsed by a wide range of veterans' organizations.

Over the last several years, identity theft and the need to protect personal information have received heightened national attention. The aggregation of personal information and Social Security numbers (SSN) in large corporate databases and the display of SSNs in public records have provided opportunities for identity thieves.

- Thus, SSNs are a valuable commodity for persons seeking to assume another individual's identity or to commit financial crimes.
- Fraudulent and stolen SSNs can be used by noncitizens to work illegally in the United States.
- Although Congress and the states have passed a number of laws to address this issue, the continued reliance on SSNs by private- and public-sector entities underscores the need to identify additional protections.

Several federal agencies have begun removing SSNs from individual identification cards; including the Department of Veterans Affairs (VA) which replaced VA medical identification cards with ones that no longer display the SSN, and as of June 2011, SSNs are no longer printed on any new the Department of Defense ID cards to protect the privacy and personal identity information of cardholders.

Currently only veterans who served at least 20 years or have a service connected disability are able to get an ID card signifying their service from the Veterans Administration. The only option available for all other veterans is to carry a paper form called a DD-214 that contains various forms of personal data protected by the Privacy Act of 1974, including their social security number, date & place of birth, selective service number, and service details. While this is appropriate information for the DD214, carrying this information is clearly an identity theft risk.

All veterans should be provided the opportunity to obtain an identification card proving their prior military service. The Veteran's ID Card Act will:

- Provide proof of military service for those who currently have no simple means to do so;
- Minimize the potential of identity theft through the potential loss or theft of a form DD-214;
- Provide employers looking to hire veterans a standard way to verify an employee's military service; and
- Provide military veterans the ability to take part in the goods, services or promotional opportunities that are offered to those who are able to provide proof of military service.

In order to ensure that this legislation has minimal impact on the Veterans Administration and can be done in a budget neutral way, this legislation:

- Requires a veteran who seeks to obtain this ID card to pay for the initial and any subsequent replacement cards;

- Requires the VA to determine the cost of such a card and apply a fee to the card appropriately to cover all costs;
- Uses the equipment already in place at VA facilities across the country to issue the card and collect payment;
- Requires the Secretary of the VA to review and assess costs every 5 years and change the fee structure appropriately to cover all ID costs under this bill.

The intent of the bill is to create a standard identification card to designate an individual as a former member of the Armed Services who was not medically retired or retired after 20 years. Currently, veterans who receive medical or retirement benefits have veterans ID cards, but veterans who served honorably for less than 20 years or didn't get injured do not have a similar proof of service. This bill aims to correct that. Additionally, as the President and Congress extend benefits to non-retired veterans, there should be a standard identification card for those individuals.

Veterans need a form of identification other than the antiquated form DD-214 issued by the military upon discharge. By providing veterans this option they will have at their disposal a more rugged and safer form of identification to prove their military service. This bill will have no cost to the U.S. government.

Again, thank you for the opportunity to testify today and I look forward to answering any questions you may have.

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#### **Prepared Statement of Mr. McLenachen**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the views of the Department of Veterans Affairs (VA) on several bills of interest to Veterans and VA. VA has not had time to develop a position or estimate costs on H.R. 3730, the "Veterans Data Breach Timely Notification Act," which would impose on VA various notification requirements in the event of a data breach, or H.R. 4481, the "Veterans Affairs Employee Accountability Act," which would deny bonuses to VA employees who knowingly violate the Federal Acquisition Regulation or the Veterans Affairs Acquisition Regulation. VA will provide its views and costs on H.R. 3730 and H.R. 4481 in a letter for the record.

#### **H.R. 2985**

H.R. 2985, the "Veteran's I.D. Card Act," would establish a program under which VA would issue a Veteran identification card, produced by VA, upon request by a Veteran who was discharged from the Armed Forces under honorable conditions. The Veteran would have to present to VA a copy of his or her DD-214 form or other official document from his or her official military personnel file describing his or her service, as well as pay a fee set by VA to recoup the cost of implementing the program.

The bill makes clear that issuance of a card would not serve as proof of entitlement to any VA benefits, nor would it establish eligibility for benefits in its own right. The purpose of the card, made clear in section 2(a)(3) and (4) of the bill, would be for Veterans to use to secure goods, services, and the benefit of promotional activities offered by public and private institutions to Veterans without having to carry official discharge papers to establish proof of service.

VA understands and appreciates the purpose of this bill, to provide Veterans a practical way to show their status as Veterans to avail themselves of the many special programs or advantages civic-minded businesses and organizations confer upon Veterans. However, VA does not support this bill. The same benefit to Veterans can best be achieved by VA and the Department of Defense (DoD) working with the states, the District of Columbia, and United States territories to encourage programs for them to issue such identification cards. Those entities already have the experience and resources to issue reliable forms of identification.

VA is already working with states on these efforts. For example, VA and the Commonwealth of Virginia just launched a program to allow Veterans to get a Virginia Veteran's ID Card from its Department of Motor Vehicles (DMV). The program will help thousands of Virginia Veterans identify themselves as Veterans and obtain retail and restaurant discounts around the state. On May 30, 2012, the program was launched in Richmond, and a DMV "2 Go" mobile office was present to process Veterans' applications for the cards.

Virginia Veterans may apply for the cards in person at any Virginia DMV customer service center, at a mobile office, or online. Each applicant presents an unexpired Virginia driver's license or DMV-issued ID card, a Veterans ID card application, his or her DoD Form DD-214, DD-256, or WD AGO document, and \$10. The card, which does not expire, is mailed to the Veteran and should arrive within a

week. In the meantime, the temporary Veterans ID card received at the time of the in-person application can be used as proof of Veteran status.

Other jurisdictions can use this model to establish similar programs without creating within VA a new program that may not be cost-efficient. It is not known whether enough Veterans would request the card to make necessary initial investments in information technology and training worthwhile.

Also, a VA-issued card could create confusion about eligibility. Although the bill's drafters took care to provide that a card would not by itself establish eligibility, there could nonetheless be misunderstandings by Veterans that a Government benefit is conferred by the card. As the Subcommittee knows, entitlement to some VA benefits depends on criteria other than Veteran status, such as service connection or level of income. Confusion may also occur because the Veterans Health Administration issues identification cards for Veterans who are eligible for VA health care. Having two VA-issued cards would pose the potential for confusion.

Because it is difficult to predict how many Veterans would apply for such a card, VA cannot provide a reliable cost estimate for H.R. 2985. Although the bill is intended to allow VA to recoup its costs by charging Veterans for the cards, in reality VA could be assured of recouping its costs only if it knew in advance what those costs would be, and those costs cannot be reliably estimated without knowing how many Veterans would request the card.

#### **H.R. 5948**

H.R. 5948, the "Veterans Fiduciary Reform Act of 2012," would make several changes to VA's administration of its fiduciary program for beneficiaries who cannot manage their own VA benefits. VA appreciates the Committee's oversight and interest in improving VA's fiduciary program, but finds provisions of the bill problematic, as set out in detail below. Although VA does not support this bill, VA does recognize the need for better oversight of the fiduciary program. VA would welcome the opportunity to discuss its fiduciary program and the goals of and intent behind this bill with you or your staff.

Section 2(a) of the bill would add to title 38, United States Code, a new section 5511, which would govern VA adjudications of incompetence. Section 5511 would require VA, when adjudicating whether a beneficiary is considered mentally incapacitated or deemed mentally incompetent, to consider a determination made by a state court or other court of competent jurisdiction and an evaluation made by a medical professional, taking into account the role of financial management in the beneficiary's rehabilitation. Section 5511 would permit a beneficiary whom VA has determined to be mentally incapacitated or deemed mentally incompetent to appeal VA's determination and would require VA to consider in such an appeal court determinations and medical and lay evidence offered by the appellant. Section 5511 would also permit certain individuals to file with VA "a claim" to terminate any fiduciary relationship created by VA. Such a claim could be filed by an individual whom VA has determined to be mentally incapacitated or mentally incompetent, for whom VA has appointed a fiduciary, and whom, after such appointment, a State court or other court of competent jurisdiction or a medical professional has determined to be competent.

VA opposes the provisions requiring consideration of medical evaluations because they are unnecessary and would result in delay that could cause undue hardship for affected beneficiaries, the majority of whom are elderly or severely disabled and in immediate need of benefits. VA currently considers determinations made by State courts of competent jurisdiction and evaluations by medical professionals in determining a beneficiary's ability to manage his or her financial affairs. However, new section 5511 would require that a medical evaluation take into account the "role of financial management in the rehabilitation of the individual." This requirement could result in VA having to conduct significant evidentiary development, which is not currently required, for determinations of ability to manage financial affairs and thereby delay fiduciary appointments.

Although the provisions concerning appeals and removal of fiduciaries generally codify current VA policy, VA opposes the removal provision to the extent that it restricts removal to beneficiaries who have a court or medical professional determination of competency. Under current VA policy, VA may also consider a beneficiary's demonstrated ability to manage his or her own VA benefits. A court or medical professional determination of competency is not required. This provision could limit a beneficiary's ability to have his or her competency restored and could unnecessarily require the expense and delay of a court proceeding or a medical examination to certify ability to manage financial affairs.

Section 2(b) of the bill would clarify the statutory definition of “fiduciary” in 38 U.S.C. § 5506. It would clarify that the term “person” in that definition includes a State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities; any State or local government agency with fiduciary responsibilities; or any nonprofit social service agency that VA determines regularly provides fiduciary services concurrently to five or more individuals and is not a creditor of any such individual. It would also require VA to maintain a list of State or local agencies and nonprofit social service agencies that are qualified to act as a fiduciary.

VA opposes this provision because it is unnecessary and could cause confusion regarding the applicability of other statutes. Current 38 U.S.C. § 5507 requires VA to conduct an inquiry or investigation of any “person” to be appointed as a fiduciary to determine the person’s fitness to serve as a fiduciary. Defining the term “person” to include State and local government and nonprofit social service agencies would imply that VA must conduct the inquiry or investigation required by section 5507 to determine such agency’s fitness to serve as a fiduciary. However, some provisions of section 5507, such as those requiring VA to obtain a credit report and to request information concerning criminal convictions, cannot be made applicable to agencies. VA already appoints such agencies under current law if VA determines that it is in a beneficiary’s interest. However, VA does not consider such agencies “persons” for purposes of completing the inquiry and investigation requirements of section 5507.

VA also opposes the provision that would require VA to compile and maintain a list of State or local, and nonprofit agencies qualified to serve as a fiduciary for beneficiaries because it would be too burdensome and divert limited resources away from the primary program mission. There are as many as 3,009 counties, 64 parishes, 16 boroughs, and 41 independent municipalities in the United States. In addition, there are over 19,000 municipal governments and more than 30,000 incorporated cities in the Nation. The resources needed to compile and maintain such a list would exceed by far any benefit for VA beneficiaries in the fiduciary program. VA currently appoints fiduciaries according to an order of preference, which begins with the beneficiary’s preference and otherwise seeks to appoint family members, friends, or other individuals who are willing to serve without a fee. Rarely does VA need to appoint a state, local, or nonprofit agency as a fiduciary for a beneficiary.

Section 2(c) of the bill would revise the statute governing VA qualification of fiduciaries. It would strike the phrase “to the extent practicable” from current statutory language requiring a face-to-face interview with a person before certifying the person as a fiduciary; would add to the list of items required to form the basis of a fiduciary appointment adequate evidence that the person to serve as fiduciary uses a secure, encrypted Internet connection when conducting activity on the Internet relating to the beneficiary’s financial information; and would strike from the statutory language requiring an inquiry into criminal convictions the limitation to offenses under Federal or State law “which resulted in imprisonment for more than one year.”

VA opposes the provision that would require a face-to-face interview with every proposed fiduciary because it does not account for the circumstances actually encountered by VA in the administration of the program, would needlessly delay some initial fiduciary appointments, and thus could harm affected beneficiaries. In some cases, a face-to-face interview of a proposed fiduciary is not practicable and should be waivable. For example, a face-to-face interview would not be practicable for natural parents of minor children or certain persons who already manage funds for multiple beneficiaries. VA also opposes the provision that would require adequate evidence that a proposed fiduciary uses a secure, encrypted Internet connection when conducting online activity related to beneficiary financial information. VA agrees that data security is important, but the purpose of the provision is unclear and the provision is unnecessary. VA-appointed fiduciaries provide services for beneficiaries through use of the banking system. If the bank offers online banking services, it is the bank that provides the secure portal for account access, not the customer. This provision would require significant oversight and staffing to implement and enforce. Further, it would require VA intrusion into the lives of spouses and other family members appointed as fiduciaries, which current VA policy attempts to limit. VA supports the provision that would require inquiry into any criminal conviction regardless of the length of any resulting imprisonment.

Section 2(c) of the bill would also remove the current statutory authority permitting VA to waive any inquiry or investigation requirement with respect to certain classes of proposed fiduciaries and would add to that list of proposed fiduciaries a person who is authorized under to durable power of attorney to act on a beneficiary’s behalf.

VA opposes the waiver provision because it would needlessly delay certain fiduciary appointments, such as appointments of legal guardians and certain parents, for whom one or more of the inquiry or investigation requirements are not needed. In the case of a beneficiary's immediate family members seeking to provide fiduciary services, the proposal would result in greater intrusion into family matters with no real benefit for beneficiaries. VA does not oppose permitting VA to expedite the inquiry or investigation regarding any proposed fiduciary.

Section 2(c) would also require VA to conduct the required face-to-face interview with a proposed fiduciary not later than 30 days after beginning the inquiry or investigation and to conduct a background check in accordance with provisions requiring inquiry into criminal convictions and to determine whether the proposed fiduciary will serve the beneficiary's best interest, including by conducting a credit check. It would require VA to conduct the criminal history and credit history background check at no cost to the beneficiary and each time a person is proposed as a fiduciary, regardless of whether he or she is serving or has served as a fiduciary; to maintain records of any person who has previously served as a fiduciary and had the fiduciary status revoked by VA; to check those records as part of the background check; and if a VA-appointed fiduciary is convicted of any crime while serving as a fiduciary "for any person," to notify the beneficiary not later than 14 days after learning of such conviction. It would also require each proposed fiduciary to disclose to VA the number of beneficiaries on whose behalf the fiduciary acts.

VA has not been able to discern a need for a face-to-face interview to be conducted within 30 days after beginning a fitness inquiry or investigation. Therefore, VA does not support this provision. To the extent that this provision could be interpreted to require VA to appoint a fiduciary within 30 days of receiving a request from a rating authority, VA opposes this provision. VA's current standard is to complete all initial appointment field examinations within 45 days. The face-to-face interview is only one element of the field examination. VA must also meet with the beneficiary, check the proposed fiduciary's criminal background and credit history, and develop additional information as necessary prior to recommending appointment. Other factors that can affect the timeliness of initial appointment field examinations include travel, availability of beneficiaries and proposed fiduciaries, workload, and availability of resources. Mandating the completion of an appointment within 30 days without VA having significant additional resources would jeopardize VA's ability to conduct full and effective examinations. VA also opposes the provision that would, without exception, require VA to report conviction of any crime by a fiduciary to a beneficiary within 14 days, regardless of whether such conviction has any effect on the fiduciary relationship or disqualifies the fiduciary, or whether disclosure of such information would harm the beneficiary.

Section 2(c) of the bill would also require VA to ensure that each fiduciary has adequate training and knowledge to effectively use an encrypted, secure internet connection when conducting activity related to the beneficiary's financial information. It would, if VA has reason to believe that a fiduciary may be misusing all or part of a beneficiary's benefit, require VA to thoroughly investigate the veracity of the belief and, if veracity is established, transmit to certain officials a report of the investigation. The recipient individuals would be the Attorney General and each head of a Federal department or agency that pays to a fiduciary or other person benefits under any law administered by such department or agency for the use and benefit of a minor, incompetent, or other beneficiary.

VA also opposes the provision that would require VA personnel to train fiduciaries on the use of encrypted, secure internet connections. Even if such connections were necessary to conduct the banking and bill payment business of a fiduciary (and they are not), VA does not have the resources or expertise to provide such training on a rolling basis to more than 95,000 individuals and entities who currently act as fiduciaries. VA does not oppose the investigation-of-misuse provisions because they codify current VA policy. However, upon a determination of misuse, VA provides the decision to the VA Office of Inspector General (OIG) for review and a determination regarding referral to the Department of Justice for prosecution. The Inspector General Act and Attorney General Guidelines already require the OIG to notify the Attorney General if the OIG has reason to believe that a Federal criminal law has been violated. VA opposes these provisions to the extent that they mandate dissemination of information to specific agencies regardless of VA's own internal review.

Section 2(c) would authorize VA to require a proposed fiduciary to serve as a fiduciary only with respect to VA benefits, except for the beneficiary's family members and individuals whom the beneficiary has pre-designated to serve as the beneficiary's fiduciary. It would require VA, in requiring the furnishing of a bond, to ensure that the bond is not paid using any beneficiary funds and to consider the care a proposed fiduciary has taken to protect the beneficiary's interests and the pro-

posed fiduciary's capacity to meet the financial requirements of a bond without sustaining hardship. It also would require a VA-appointed fiduciary to operate independently of VA to determine the actions that are in the beneficiary's interest. Finally, section 2(c) would require each VA regional office to maintain a list of the name and contact information for each fiduciary, the date of each fiduciary's most recent VA background check and credit check, the date any bond was paid, the name and contact information of each beneficiary for whom the fiduciary acts, and the amount that the fiduciary controls for each beneficiary.

VA opposes the provision that would authorize VA to limit the appointment of a fiduciary to management of VA funds. The purpose of this provision is unclear and unnecessary because VA appoints fiduciaries only for the limited purpose of receiving VA benefits on behalf of a beneficiary. Finally, VA strongly opposes the provisions that would require fiduciaries to pay annual surety bond premiums. Requiring the fiduciary to pay the annual premium would be a disincentive for both volunteer and paid fiduciaries and would significantly impair VA's ability to find qualified fiduciaries in some of its most difficult cases. Most fiduciaries are family members or friends who may not have the funds needed to meet the cost of the bond premium. With respect to paid fiduciaries who agree to take some of VA's most difficult cases, the cost of a bond premium might consume the entire nominal fee authorized by Congress. It is standard practice in the guardianship industry to allow for payment of surety bond premiums out of estate funds. If this provision is enacted, VA anticipates a dramatic increase in the number of fiduciaries who are also court appointed. Courts will allow the deduction of the cost of the bond and a substantial fee, generally between 5 and 15 percent of estate value, from the beneficiary's funds. VA cannot support the inequitable treatment of, and significant harm to, beneficiaries that would likely result from the enactment of this provision.

Section 2(d) of the bill would require VA to include on its prescribed compensation and pension application forms an opportunity for the claimant to designate an individual as a fiduciary if needed, a description of what a fiduciary is and the role served by a fiduciary, and a description of the actions VA will take if the claimant does not designate a fiduciary on the application. Section 2(d) would also require VA, in appointing a fiduciary for a claimant who has not designated one, to appoint the beneficiary's court-appointed guardian or a person authorized to act on the beneficiary's behalf under a durable power of attorney. If VA appoints a fiduciary other than the one designated by the beneficiary, VA would have to notify the beneficiary of the reasons for not appointing the designated individual and of the beneficiary's ability to file a claim to change the appointed fiduciary. Finally, section 2(d) would permit a beneficiary for whom VA has appointed a fiduciary to file with VA a claim to remove the appointed fiduciary and have a new one appointed. VA would have to ensure that any removal or new appointment of a fiduciary does not delay or interrupt the beneficiary's receipt of benefits.

VA opposes the provisions that would require modification of the compensation and pension application to include fiduciary designation information. The intent appears to be that VA would allow beneficiaries to designate a proposed fiduciary upon application. This would be unnecessary and not in the best interest of VA beneficiaries. There are currently over four million VA compensation or pension beneficiaries but only approximately 125,000 beneficiaries in VA's fiduciary program. VA has recently received feedback regarding the length and complexity of its application forms and has an aggressive plan to address those concerns. This provision of the bill would require VA to add further complexity to its application forms for a purpose for which most beneficiaries will not have an immediate need. Further, as a result of VA's increased outreach and collaboration with the Department of Defense, many individuals complete their initial benefit application early in their lifetime when they have no need for fiduciary services. Designating a fiduciary decades prior to any actual need for a fiduciary would likely render the initial designation stale and of no use to the beneficiary or VA. Also, VA's current appointment policy gives preference to the beneficiary's choice and family members' or guardian's desires as expressed at the time of the field examination, which VA believes is the best available and most relevant information for purposes of making a best-interest determination. Such determination should not be based upon stale information.

VA also opposes the provision that would give priority in appointment consideration to individuals holding a beneficiary's durable power of attorney (POA). Under current policy, VA first considers the beneficiary's preference and then considers family members, friends, and other individuals who are willing to serve, which may include individuals designated in a POA. However, based upon VA experience, it would not be good policy to give a person holding a beneficiary's POA priority over all other candidates based only on the existence of a POA. Veterans and other beneficiaries in the fiduciary program can be extremely vulnerable and easily coerced

into signing documents. Additionally, a POA can be executed and revoked by the beneficiary at any time. If an individual is holding a POA, VA would have no way of determining whether the POA is still in effect or if the beneficiary had the capacity to execute a legally enforceable POA under state law at the time. Implementing policies and procedures related to the assessment of POAs would needlessly complicate and delay the fiduciary-appointment process. Also, under current law, VA has a duty to appoint, based upon a field examination and consideration of the totality of the circumstances, the individual or entity that is in the beneficiary's best interest. While such a determination might conclude that appointment of an individual who holds the beneficiary's POA is in the beneficiary's interest, VA strongly opposes giving undue preference to an individual named in a POA. Under current law, VA appoints the person or entity who will provide the least restrictive fiduciary relationship. Thus, VA first considers the beneficiary's preference, followed by a spouse, other family member, or friend or other individual who is willing to serve as fiduciary without a fee. Such appointments constitute the overwhelming majority of VA's fiduciary appointments. Nonetheless, under this provision of the bill, if a beneficiary has not designated a proposed fiduciary, VA would be required to consider first the beneficiary's court-appointed guardian or an individual who holds the beneficiary's durable POA. It would require priority consideration for more restrictive arrangements, contrary to current VA policy.

VA also opposes the provision mandating preference for the beneficiary's court-appointed guardian because it would generally be bad policy for VA's most vulnerable beneficiaries. Appointment of a court-appointed guardian often is the most restrictive method of payment and the most costly. Under current law, a VA-appointed fiduciary may collect a maximum fee of 4 percent of the VA benefits paid to the beneficiary each year. Further, under current VA policy interpreting the law, a fee may not be based upon retroactive, lump-sum, or other one-time payments or upon accumulated funds under management. However, under State law, guardians may collect fees in excess of the 4-percent Federal limit. Although the fee structure varies from State to State, basic fees range between 5 percent of all income received by the guardian to as high as 10 to 15 percent of all income and funds under management by the guardian. Additionally, courts often allow extraordinary fees in excess of the standard fee. The appointment of a guardian often results in the guardian incurring the cost of attorney fees for filing motions and annual court accountings. These fees and costs can be as much as thousands to tens of thousands of dollars per year and are paid from the beneficiary's VA benefits. Also, VA cannot conduct consistent and effective oversight of guardians, who are appointed by a court, resulting in undesirable disparate treatment for vulnerable beneficiaries depending upon the State of residence. VA believes that Congress established the fiduciary program for the express purpose of ensuring a nation-wide, Federal standard for beneficiaries who cannot manage their own benefits.

VA does not oppose the provision that would require VA to notify beneficiaries of the reasons for appointing someone other than the individual designated by the beneficiary. Under current VA policy, a beneficiary may at any time for good cause shown request the appointment of a successor fiduciary. Accordingly, VA does not oppose the provision that would allow such a request. However, VA opposes the provision to the extent that it would imply that such a request is a "claim." Characterizing a request for a successor fiduciary as a claim would likely engender costly and time-consuming litigation over whether such requests are subject to all the provisions of law currently applicable to claims, such as VA's duty to notify the claimant of the information and evidence necessary to substantiate a claim, VA's duty to assist in obtaining the evidence necessary to substantiate a claim, and the ability to retroactively reverse or revise a decision on a claim based on clear and unmistakable error. The appointment of a fiduciary after VA has awarded benefits to a beneficiary is not a decision on a claim for benefits.

If a fiduciary is removed and a successor fiduciary is being appointed, VA's objective is to ensure the continuation of benefits. However, in some cases beyond VA's control, benefits do get delayed or interrupted when a fiduciary is being replaced. VA opposes this provision to the extent that it would prohibit, without exception or qualification, any delay in the delivery of benefits upon removal of a fiduciary. Under current law, VA must conduct the inquiry or investigation prescribed by Congress in 38 U.S.C. § 5507 when it replaces a fiduciary, and sometimes VA encounters an uncooperative beneficiary or beneficiary's representative. Some delay may be unavoidable in these cases.

Section 2(e) of the bill would make several changes with respect to the commission payable for fiduciary services. It would: (1) authorize a reasonable monthly commission limited to the lesser of 3 percent of the monthly monetary benefits paid or \$35; (2) prohibit a commission based on any "back pay" or retroactive benefit pay-

ment; (3) prohibit a commission if VA determines that the fiduciary misused a benefit payment; and (4) permit VA to revoke the appointment if VA determines that the fiduciary has misused any benefit payment.

VA opposes this provision. Payment of a suitable fee is necessary if there is no other person who is qualified and willing to serve as a fiduciary without compensation. In some instances, a beneficiary's interests can be served only by the appointment of a qualified paid fiduciary. As of April 30, 2012, VA has identified and appointed fiduciaries willing to serve without a fee for more than 92 percent of its beneficiaries.

Under current VA policy, fiduciaries are more than mere bill payers. VA's emerging view is that fiduciaries should remain in contact with the beneficiaries they serve and assess those beneficiaries' needs. Without such an assessment, fiduciaries who serve VA's most vulnerable beneficiaries would be unable to fulfill their obligation to determine whether disbursement of funds is in the beneficiary's interest. As noted above, for the overwhelming majority of beneficiaries, a relative or close personal friend will perform the duties without cost to the beneficiary. However, there are difficult cases in which VA has no alternative but to turn to an individual or entity that is willing to serve Veterans and their survivors for a suitable fee. Reducing the allowable fee when VA is attempting to strengthen the role of fiduciaries in the program would create a disincentive for serving these vulnerable beneficiaries. VA strongly opposes such a reduction because it would harm beneficiaries and needlessly hinder the program, which has a clear preference for volunteer service but recognizes the need for a pool of paid fiduciaries who are willing to accept appointment for a suitable fee in some of VA's most difficult cases. However, VA supports the provisions that would codify VA's current policy regarding limitations on fees and has no objection to the remaining fee provisions because they appear to restate current law.

Current 38 U.S.C. § 6107 requires VA to reissue benefits that a fiduciary has misused as a result of VA's negligent failure to investigate or monitor the fiduciary. The law deems certain situations as such a negligent failure, including any case in which actual negligence is shown. Section 1(f) of the bill would specify that VA's failure to conduct, in accordance with governing law, an inquiry or investigation into an individual's qualifications to serve as a fiduciary shall constitute such negligent failure.

VA does not oppose this provision, but the proposed amendment may insert ambiguity where it does not currently exist. The amendment would be to a statute that requires VA to reissue benefits if actual VA negligence is shown. The amendment would imply that "not acting in accordance with [38 U.S.C. §] 5507" constitutes a showing of actual negligence. Whether that implication is true in a given case would depend upon the circumstances.

Section 2(g) would mandate that VA require a fiduciary to file an annual report or accounting and that VA transmit the report or accounting to the beneficiary and any legal guardian of the beneficiary. It would also require that a report or accounting include for each beneficiary the amount of benefits that accrued during the year, the amount spent, and the amount remaining and an accounting of all sources of benefits or other income other than VA benefits that are overseen by the fiduciary.

VA opposes these provisions because they would burden fiduciaries, most of whom are volunteer family members or friends, but would not significantly improve VA's oversight of fiduciaries. Under current policy, which is based upon VA's experience in administering the program, VA generally requires fiduciaries to submit an annual accounting in cases in which: the beneficiary's annual VA benefit amount equals or exceeds the compensation payable to a single Veteran with service-connected disability rated totally disabling; a beneficiary's accumulated VA funds under management by the fiduciary is \$10,000 or more; the fiduciary was appointed by a court; or the fiduciary receives a fee. These accountings are comprehensive and must be supported by financial documentation that identifies all transactions during the accounting period. VA audits more than 30,000 accountings each year.

VA currently pays benefits to more than 17,000 spouse fiduciaries, many of whom are also caring for severely disabled or infirm Veterans. Countless other beneficiaries receive only \$90 each month and reside in the protected environment of a Medicaid-approved nursing home. Many other beneficiaries are cared for by family members who, due to the beneficiaries' recurring needs, expend all available VA benefits each month for the beneficiaries' care. The additional burden of documenting income and expenditure annually for the majority of our beneficiaries would be an undue hardship and would not result in any benefit to the beneficiary or the program. VA does not otherwise oppose the provisions, which restate current law or codify current VA policy regarding the information that must be included in an accounting.

Section 2(h) would require a separate annual report from VA on information concerning VA-appointed fiduciaries to be submitted to the House and Senate Committees on Veterans' Affairs by July 1st of each year. Section 2(i) of the bill would require VA to comprehensively report, not later than one year after enactment, to the Committees on the implementation of the amendments made by this bill, including detailed information on the establishment of new policies and procedures and training provided on them.

Under current law, VA's publicly-available Annual Benefits Report includes information regarding VA's oversight of the fiduciary program, specifically with respect to its misuse-of-benefits determinations and the Government's prosecution of misuse cases. VA opposes section 2(h) because providing the information solely to Congress excludes stakeholders and does not promote program transparency. VA does not oppose the submission of any report that Congress deems necessary to track VA's progress in implementing legislation. However, requiring a report not later than one year following enactment might be unreasonably soon given that rulemaking would be required to implement certain provisions.

Enactment of H.R. 5948 would not result in any mandatory benefit costs. VA estimates that implementing this bill would result in GOE costs of \$40.3 million in the first year, \$200.3 million over five years, and \$444.1 million over ten years. In addition, VA estimates that information technology costs would be \$1.6 million in the first year, \$5.3 million over five years, and \$9.9 million over ten years.

This concludes my statement, Mr. Chairman. I would be happy to entertain any questions you or the other Members of the Subcommittee may have.

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#### **Prepared Statement of Mr. Ibson**

Chairman Johnson, Ranking Member Donnelly, and Members of the Subcommittee:

Thank you very much for inviting Wounded Warrior Project (WWP) to testify today, and particularly to provide views on H.R. 5948, the Veterans Fiduciary Reform Act of 2012.

As this Committee's February oversight hearing on the VA fiduciary program underscored, the program continues to experience serious problems and weaknesses. We concur that legislation is needed. Our principal concern, however, is that H.R. 5948 falls short of resolving longstanding problems raised at February's oversight hearing, and prior to that, issues covered in a WWP statement submitted to an April 2010 hearing before the Subcommittee on Disability and Memorial Affairs. We welcome the opportunity to explain what we see as an omission, and hope to work with you prior to markup to develop pertinent language to address these issues.

As an organization dedicated to honoring and empowering wounded warriors, we keenly appreciate the importance of assuring responsible stewardship of veterans' benefits and the protection of vulnerable beneficiaries. We appreciate many of the steps H.R. 5948 would take to add safeguards and strengthen the program.

Mr. Chairman, in opening February's hearing, you observed that numerous honorable fiduciaries serve our veterans and they all too often find it difficult to navigate the maze of the fiduciary program. At the same time, you called attention to the existence of "bad actors" in the system. As one of your colleagues observed in citing a need for balance, abuses are the exception and not the rule.

WWP works closely with family members of severely wounded warriors who are both full-time caregivers and fiduciaries for those warriors. Recognizing the sacrifices these family members have made to care for their loved ones, and the emotional and financial toll associated with caregiving, Congress two years ago established the Comprehensive Caregiver Assistance program in Public Law 111-163 to provide them needed supports. To qualify and win formal approval for this VA assistance, family members of seriously wounded warriors must undergo VA review, training, home-inspection, and a determination that the proposed arrangement is in the veteran's best interest. The caregiver must also undergo regular quarterly home-inspections and monitoring of the veteran's well-being to continue to receive VA assistance. Any "red flags" that might arise in the course of these home-inspections can result in revocation of VA support. In short, Veterans Health Administration (VHA) staff assist and work closely with family caregivers – who in many instances are also fiduciaries and who have not only been screened before qualifying for the program, but whose care of the veteran is closely monitored.

In administering the Fiduciary Program, the Veterans Benefits Administration (VBA), however, does not take account of the unique circumstances of family members who have given up careers and depleted savings to care for their loved ones,

and who have already been screened and monitored under VHA's caregiver program. Surely that process and ongoing oversight provide ample evidence that these individuals are trustworthy, and do not pose a risk of misusing the veteran's benefits.

WWP is not proposing that caregiver-fiduciaries have no accountability for management of the beneficiary's funds. But we do see a need to make provision in law for more balanced accountability and far less intrusive oversight under circumstances where caregiver-fiduciaries have demonstrated that they do not pose significant risk and have earned VA's trust. Dedicated caregiving, as evidenced through unblemished participation in VA's comprehensive caregiver assistance program, should be recognized as establishing that trust.

WWP has seen all too clearly that VBA's intensely detailed reporting requirements can be overwhelming to an already emotionally drained family member who is shouldering a young veteran's total-care needs. As one mother described it, "we are probed yearly by a forensic accounting that seemingly investigates for 'murderous' infractions," even requiring fiduciaries to "line-item Walmart receipts."

We greatly appreciate the Committee's work in getting VA to remove language from its fiduciary form 21-4703 that had stated, "VA must approve any use of a beneficiary's VA funds," and we very much welcome the inclusion of language in H.R. 5948 to make it clear that a fiduciary has the ability to spend money in the veteran's best interest. It bears noting, however, that VBA's April 19, 2012 instructions to the field that VA-appointed fiduciaries do not need to seek prior VA approval for any single expenditure made on behalf of a beneficiary from the beneficiary's funds, nevertheless advises that examiners "must carefully review expenditures in excess of \$1,000 when auditing a fiduciary's annual accounting and may request receipts or other documentation to verify questionable expenditures."<sup>1</sup>

While we applaud the wisdom of eliminating required pre-approval of significant expenditures, we see nothing in H.R. 5948 that would eliminate the inquisitorial audits caregivers too often experience. Consider the following examples:

- A mother/caregiver having to explain to a VBA examiner why she allowed her wounded-warrior son to spend "too much" money on Christmas gifts;
- An auditor insisting that the caregiver's electric bill was too high and asserting that during the summer in Florida she shouldn't run the air-conditioning at night;
- A family's being questioned about expenditures for gasoline used in transporting the wounded veteran; and
- A VBA examiner questioning the caregiver as to why she was buying movies and music for her son given that he has a brain injury.

As summed up by one caregiver-fiduciary, VBA fiduciary program staff "*don't really help with management [of assets] but audit every two years every penny I spend for my son's care. [There are] not many guidelines and auditors question expenses when they know nothing about the care needed.*"

We do not foresee in H.R. 5948 any real reversal in the "guilty until proven innocent" framework many caregiver-fiduciaries experience under VBA's fiduciary-management practices. While this approach may be prudent regarding unknown potential "bad actors," we think it goes too far in dealing with proven caregiver-fiduciaries.

Caregivers also emphasize that just trying to comply with the expectations of the program is not easy. VA's demanding requirements are not only difficult, fiduciaries report that they are on their own:

*"When the paperwork arrived at the end of the year, there were no instructions or assistance to do it. I had to figure out how to do everything on my own. I asked for software that I could use to make it easier to do the accounting but I was told there was none. I had to create an excel spreadsheet to enter in the amounts in the categories that were requested, and sometimes it takes me up to 2 weeks to complete all the data entry."*

We invite the Committee to recall the testimony in February of Pam Estes, a caregiver-fiduciary for her son Jason. Mrs. Estes—herself an accountant—related the frustrating and stressful experience of being threatened with removal as her son's fiduciary over the manner in which she had documented expenditures when VBA had never provided her instructions or forms for annual reporting, and "when we'd been working so hard to do what's best for Jason, including saving much of his money for the future when we're not here to care for him." As she related in a re-

<sup>1</sup>Department of Veterans Affairs, Veterans Benefits Administration, Fast Letter 12-13 (April 19, 2012), accessed at <http://www.vba.va.gov/bln/21/Fiduciary/FL12-013.doc>.

cent email (excerpted<sup>2</sup>), she has continued to have difficulties over the same problem to which she testified in February, to include having spent two months and four trips to bank branches to obtain a VBA-required months-old account-balance for a date falling in the middle of a month (and thus not reflected in any bank statement or otherwise readily attainable). Mrs. Estes' frustrations are hardly unique among VA caregiver-fiduciaries.

We applaud the efforts in H.R. 5948 to tighten this program (though we note that the bill would actually add to the reporting burden that is already problematic for caregiver-fiduciaries with the addition of requirements in new section 5509(c)). In sum, we urge that further work be done on the bill to address the caregiver-fiduciaries' concerns that we have outlined. We would be happy to work with the Committee to develop language to address those concerns.

Thank you for your consideration of WWP's views.

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### Prepared Statement of Ms. Kologe

Good morning, Mr. Chairman and other distinguished members of the Subcommittee. Vietnam Veterans of America (VVA) is pleased to have the opportunity to appear here today to share our concerns and thoughts regarding the pending legislation. In particular, we would like to share our views on H.R. 5948 the Veterans Fiduciary Reform Act of 2012 and how the Veterans Benefits Administration (VBA) can improve their Fiduciary program.

*H.R. 2985, Veteran's ID Card Act*, introduced by Representative Todd Akin [R-MO], provides for VA to issue, upon request, a Veteran's ID card for certain Veterans who do not already qualify for a VA ID card. Veterans who are not enrolled in VA health care will be able to obtain a Veteran's ID Card for a fee.

VVA supports this bill, as "goods, services, and promotional activities are often offered by public and private institutions to veterans who demonstrate proof of service in the military but it is impractical for a veteran to always carry official DD-214 discharge papers to demonstrate such proof." We strongly suggest that the application process for this ID card contain written information and/or verbal advisement on enrollment in VA health care, including the toll-free number for VA health care enrollment. This would allow a Veteran who is otherwise eligible for a free ID card and VA health care to more easily receive that benefit.

*H.R.3730, Veterans Data Breach Timely Notification Act*, introduced by Representative Joe Donnelly [D-IN], requires the Department of Veterans Affairs to notify individuals whose personal information has been involved in a data breach, as well as notifying the general public and the appropriate Committees of Congress.

VVA supports this bill. Although we are not information technology experts, we ask the Subcommittee to consider a provision which would require much faster notification when deposit or bank account information is breached. It takes significantly less time than 5 or 10 business days for experienced criminals to wipe out a Veteran's or dependent's entire savings.

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<sup>2</sup> "... you may recall that my issue for the 2011 audit began when I was playing telephone tag with the Baltimore office of the VBA. Since we were unable to connect, I had sent my accounting to them in early December so that I would not be considered delinquent. In spite of that, I received a letter a month later indicating that I was delinquent. Following our testimony in February, the Fiduciary Manager from Baltimore came to our home the next day. He indicated that they did have the accounting I had submitted (and did indeed bring it with him), but wanted to re-do it to better meet the process requirements. You should also keep in mind that this was the third or fourth set of instructions I've been given. We redid the form and he requested that I have the banks complete form 21-4718a confirming the account balances on 9/19/11. Although the original bank statements were submitted, I did not realize that account balance confirmation was required as of a specific date (not to be confused with the statement date) and asked him if banks would even be able to provide that information 5 months later.

He assured me it would not be a problem. Nothing could have been further from the truth! It took me 2 months and 4 trips to the banks to find branches that could get me something even close to what was requested.

"On May 25, 2012, the hub office in Indianapolis sent me a letter letting me know that my accounting had been DISAPPROVED! It turns out that the original form I had submitted in December (the one they originally said they didn't have) had been forwarded from the Baltimore office to the Indianapolis hub office. So on June 3, 2012, I sent a letter to the hub office letting them know that they didn't have the proper form and submitted copies of the revised information. I also sent a letter to the Fiduciary Manager in Baltimore alerting him to the issue. I haven't heard back yet from either office.

"Needless to say, I'm weary! If I'm going through this effort even with the help of the VBA, I can only imagine what others are subjected to." Email of Pam Estes to Ralph Ibson, June 12, 2012.

*H.R. 4481, Veterans Affairs Employee Accountability Act*, introduced by Representative Phil Roe [R-TN], makes employees of the Department of Veterans Affairs ineligible for bonus compensation when they knowingly violate any civil law covered by the Federal Acquisition Regulation issued under section 1301(a)(1) of title 41 or the Veterans Affairs Acquisition Regulation.

VVA favors this bill, provided that two changes are made.

First, we urge the Subcommittee to remove the “knowingly” element. We believe the incentives must be changed for those in management and leadership capacities in the Department of Veterans Affairs. As this bill only provides that those who violate provisions of the acquisition act not receive bonuses, which are above and beyond their normal financial compensation, we believe that any employee who violates these provisions be ineligible to receive a bonus. This will eliminate any insulation of employees or “passing the buck”.

Second, we propose that “for or during that year” be changed to “for or during that year or the following fiscal year”. Because of the length of time of investigations and reporting requirements, we believe this would further dissuade violation of the Acquisition Regulations.

We urge for immediate passage of a bill with this revised language, before the calculation of fiscal year 2012 bonuses.

*H.R. 5948, Veteran’s Fiduciary Reform Act of 2012*, introduced by Representative Bill Johnson [R-OH], provides additional enhanced background checks for fiduciaries managing veterans’ funds, further limits the fees VA may pay fiduciaries, authorizes state agencies to be fiduciaries, allows pre-designation of a preferred fiduciary, and requires VA to prepare an annual report to Congress on the fiduciary program separate from the VBA annual report.

VVA strongly favors this bill, providing Congressional guidance for the Department of Veterans Affairs in reforming the fiduciary program, and also suggests changes to make it stronger and requiring less interpretation. We applaud the legislation’s sponsors in their courage to provide a clear reporting requirement for abuses of the system including misfeasance and malfeasance. The administration of the fiduciary program has been at cross-purposes with its intent, due to lack of prioritization and allocation of resources, lack of leadership at all levels, and confusion about the role of the fiduciary program.

We enthusiastically support the bill’s provisions for background checks of fiduciaries, enhanced reporting requirements to Congress, pre-selection of fiduciaries, and return of monies to the Veteran in cases of misfeasance. We offer today some concrete suggestions in marking up this bill, and in subsequent regulatory proceedings, to strengthen this legislation and make VA’s fiduciary program truly serve the Veterans it is meant to protect. We recommend the following additions or changes to the legislation:

1) We propose that the title of Section 5511 “Adjudication of financial incompetence” and the language “mentally incapacitated or deemed mentally incompetent” be changed to reflect the purpose of the fiduciary program. We would propose language substantially similar to “Adjudication of financial incapacity” and “financially incapacitated or deemed unable to manage financial affairs”. Current 38 U.S.C. § 5501 allows the VA to commit mentally incompetent veterans to a Department hospital or domiciliary. Although mental competency, for VA benefits purposes, refers only to the ability of the veteran to manage VA benefit payments in his or her own interest, this is not how a veteran sees a “rating of incompetency”. Furthermore, the words mentally incompetent mean much more outside the VA setting. This term is not only stigmatizing, it can lead to a veteran’s rights being taken away. For this reason, we believe financial incapacity is a clearer and more effective designation for individuals needing a fiduciary.

2) We recognize that many veterans and other beneficiaries in the fiduciary program require support services other than just managing benefits payments. Therefore, we urge a change to the examination protocol for determining that an individual is unable to manage his or her benefit payment. Currently, VA only assesses veterans’ ability to manage their benefit payments in certain disability exams. Furthermore, these compensation or pension exams frequently last only 20 to 30 minutes. It is unclear how VA is able to determine the capacity of a veteran without protocol for certain questions to be asked of the veteran, which are consistent across the board. It is also unclear how VA assesses a widow’s or dependent’s ability to manage benefit payments.

We propose that two determinations be made: one for financial capacity and one for any requirement of guardianship or incapacity for self-care. The fiduciary program is failing to monitor the well-being of the veterans in its care. Many of these veterans require additional services that fiduciaries are not trained to

do and are not paid to do. A question for the Subcommittee and the new administrator of VA's fiduciary program is what is the effect of 38 U.S.C. §§ 5502(d)-(e) on the administration of payments to beneficiaries in the fiduciary program? 38 U.S.C. §§ 5502(d)-(e) provide for escheat to the United States that money which is left unpaid to a beneficiary in the fiduciary program, when there are no survivors that may traditionally make a claim for accrued benefits. We have heard and have personally handled several claims where monies were withheld for no apparent reason. There is some type of incentive, either perceived or concrete, to build up the trust without making distributions that would improve the veteran's or beneficiary's quality of life. We urge legislation, regulation and culture change to combat the tendency to become overly paternalistic in the administration of VA benefits. We also advise the use of pre-paid and automated billing, home delivery services, and other programs that would ensure those in the fiduciary program have proper shelter, food, utilities, and other needs covered.

3) Section 5507 describes qualifications for fiduciaries. The proposed bill states that the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law (and if the answer is yes, the person is subject to increased scrutiny). We appreciate keeping criminals away from our most vulnerable veterans and dependents. However, this language seems to also exclude those convicted of minor offenses including non-moving violations of traffic laws and other on-the-books laws. While the current law is under-inclusive, the proposed language is overly restrictive. We would like Congress to consider exceptions for minor violations.

4) We very much like the section in the proposed legislation that requires recertification/background checks each time a fiduciary is appointed. However, as the bill adds state agencies as "persons", there should be clarification on how the background checks will be done for a state agency. Will one person from the agency be assigned as a fiduciary for each veteran, or will the agency as a whole function as a fiduciary? This would impact the scope of background checks.

5) We exhort the Subcommittee to provide a whistleblower provision or a more definite reporting system for abuses in the fiduciary program. A clear chain of command and expectations goes a long way toward reporting and fixing problems before they get worse. There should at least be a requirement in the law for the Secretary to report on the steps VA employees, beneficiaries, and third parties can take to report malfeasance and misfeasance, so that the officials most able to fix the system can make the necessary changes.

Thank you for this opportunity to present our views here today. I will be happy to answer any questions.

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#### Prepared Statement of Ms. Ansley

VetsFirst is pleased to provide our support and recommendations for the following legislation.

##### *Veteran's I.D. Card Act (H.R. 2985)*

We believe that this legislation will ensure that eligible veterans are able to fully benefit from services and promotional opportunities open to them by allowing them to prove their veteran status without having to present their DD-214s. Protections in the legislation ensure that there will be no confusion regarding the purpose of the card, which does not entitle the veteran to any benefits.

##### *Veterans Data Breach Timely Notification Act (H.R. 3730)*

We believe that the Veterans Data Breach Timely Notification Act provides important steps toward ensuring that veterans are properly informed of data breaches involving their sensitive personal information. This legislation not only requires the Department of Veterans Affairs (VA) to make a notification of a breach of this information but also requires VA to provide veterans with important information regarding the breach and how to take precautions to minimize the impact. Although we support this legislation, we believe that it is important to clarify the timeline for VA notification of a breach and to ensure accessibility of the notification for all disabled veterans.

##### *Veterans Affairs Employee Accountability Act (H.R. 4481)*

This legislation will ensure that employees who knowingly violate any civil law covered by the Federal Acquisition Regulation or the Veterans Affairs Acquisition Regulation do not receive bonuses for or during the year of the violation. It is our hope that using bonuses to reward only those employees who follow these laws will

ensure that veterans receive the highest level of services from VA. Ultimately, VA must ensure that veterans' needs can be clearly and efficiently met within the contracting requirements of federal law.

*Veterans Fiduciary Reform Act of 2012 (H.R. 5948)*

The Veterans Fiduciary Reform Act takes important steps toward ensuring that VA's fiduciary program is more transparent and focused on the needs of veterans and other beneficiaries. We support efforts to clarify factors that will be considered to determine if a beneficiary needs a fiduciary and believe that efforts to strengthen the inquiry and investigation into and the qualifications for fiduciaries will ensure a higher level of service. It will be important, however, to ensure that VA exercises appropriate discretion to ensure that family member fiduciaries are not unduly burdened and that no fiduciaries exert authority over non-VA benefits except as properly authorized.

Chairman Johnson, Ranking Member Donnelly, and other distinguished members of the Subcommittee, thank you for the opportunity to testify regarding VetsFirst's views on the four bills under consideration today.

VetsFirst represents the culmination of 60 years of service to veterans and their families. United Spinal Association, through its veterans service program, VetsFirst, provides representation for veterans, their dependents and survivors in their pursuit of Department of Veterans Affairs (VA) benefits and health care before VA and in the federal courts. Today, United Spinal Association is not only a VA-recognized national veterans service organization, but is also a leader in advocacy for all people with disabilities.

*Veteran's I.D. Card Act (H.R. 2985)*

Veterans who retire from the military by meeting the time-in-service requirement or who have a medical-related discharge receive cards from the Department of Defense identifying their status as veterans. VA provides identification cards for veterans who use VA medical care but not for those eligible for other types of benefits. For veterans who do not meet any of these requirements, a DD-214 is the only way to prove veteran status.

This legislation will ensure that eligible veterans are able to fully benefit from services and promotional opportunities open to them by allowing them to prove their veteran status without having to present their DD-214s. This is particularly important because DD-214s include sensitive personal information. To ensure that there is no confusion regarding the purpose of the identification card, we are pleased that it must specify that it does not serve as proof of entitlement to any benefits.

Thus, we urge swift passage of this legislation which will protect veterans' information by allowing them to prove veteran status at times when presenting or carrying a DD-214 is not practical.

*Veterans Data Breach Timely Notification Act (H.R. 3730)*

VA has a legal and moral duty to secure the sensitive personal information of our Nation's veterans. The dangers of identity theft and the possible ramifications for a veteran's credit must be carefully guarded against. Furthermore, the release of health information could not only be very damaging for a veteran's professional career or personal life, but it also may cause veterans to avoid VA health care, including mental health care, because of concerns about confidentiality.

Veterans must believe they can trust VA with sensitive personal information. This means that they must be notified if their personal information is breached. We believe that the Veterans Data Breach Timely Notification Act takes important steps toward ensuring that veterans are

properly informed of data breaches. This legislation not only requires notification of a breach but also requires VA to inform veterans of a description of the sensitive personal information breached, to explain how to contact a VA employee to learn more about the breach, to alert the veteran of credit monitoring protections, and to provide resources for identify theft and how to contact the major credit reporting agencies.

Although we support this legislation, we believe that certain areas could be strengthened. Specifically, we believe that it is important to clarify the timeline for VA notification of a breach and to ensure accessibility of the notification for all disabled veterans.

Establishing a timeline for notification in the event of a data breach is critical to ensuring not only that veterans are able to act quickly if their data is compromised but also requires VA to be immediately transparent. We think that it would be helpful to clarify, however, that VA must notify individuals within five business days of learning about the breach. This clarification is important because

it may be more than five business days before VA learns that a breach has occurred. Clear expectations will facilitate compliance.

We also believe that the method and content of notification to individual veterans should specify that the notices must be compliant with Section 504 of the Rehabilitation Act of 1973. This means that VA should be required to ensure that notification will include the opportunity to receive information in large print, Braille, audio, or electronic formats. For disabled veterans who have visual or other impairments, these options are particularly critical. Otherwise, these disabled veterans will not receive proper notice of the breach and will be unable to take proper action to address their concerns.

*Veterans Affairs Employee Accountability Act (H.R. 4481)*

Most VA employees are dedicated public servants who are devoted to serving the needs of our Nation's veterans. Bonuses play an important role in ensuring that VA is able to retain skilled employees who fill critical roles. However, they should be reserved for employees who truly excel at fulfilling their job functions. Otherwise, bonuses are viewed as an expectation instead of a reward for superior performance.

This legislation will ensure that employees who knowingly violate any civil law covered by the Federal Acquisition Regulation or the Veterans Affairs Acquisition Regulation do not receive bonuses for or during the year of the violation. It is our hope that using bonuses to reward only those employees who follow these laws will ensure that veterans receive the highest level of services from VA. Ultimately, VA must ensure that veterans' needs can be clearly and efficiently met within the contracting requirements of federal law.

*Veterans Fiduciary Reform Act of 2012 (H.R. 5948)*

VA may appoint a fiduciary for a veteran or other beneficiary when VA determines that it would be in his or her best interest. As defined by Title 38 United States Code Section 5506, a VA fiduciary is "a person who is a guardian, curator, conservator, Committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary."

In a hearing before this Subcommittee on February 9, 2012, witnesses testified about numerous problems and concerns involving VA's fiduciary program. Some of these problems included the inability of veterans to receive needed medications due to the inaction of a VA appointed fiduciary and demands that veterans and their families provide information on all of a veteran's finances, not just his or her VA benefits. VA has also appointed paid-fiduciaries despite the availability of competent family members and in disregard of valid powers of attorney. For other family members who serve as their veterans' fiduciaries, the specter of the appointment of a paid-fiduciary is raised in a manner that feels threatening to these otherwise compliant fiduciaries.

Although VA has recently taken some steps to address concerns about the VA fiduciary program, much more must be done to ensure that the program fully meets the needs of veterans and other beneficiaries. Specifically, we believe that VA's fiduciary program must be more veteran-centric and tailored to address only those veterans or other beneficiaries who truly need assistance due to a determination of financial incompetence. It is important to remember that these VA benefits have been earned by the veteran and that the funds belong to the veteran, even if he or she needs assistance with managing them. Furthermore, the program must provide an appropriate balance between protecting the needs of veterans and placing undue burden on family members who serve as fiduciaries.

The Veterans Fiduciary Reform Act takes important steps toward ensuring that VA's fiduciary program is more transparent and focused on the needs of veterans. Specifically, this legislation ensures that the determination of whether or not an individual requires a fiduciary is based on factors such as a determination by a court of competent jurisdiction and an evaluation by a medical professional regarding the role of financial management in the rehabilitation of the individual. Importantly, it also states the types of evidence that must be considered in an appeal of such a determination, including court determinations, medical evidence, and lay evidence offered by the appellant. Also, an individual can file a claim to terminate any fiduciary relationship.

In addition to laying out the rights of veterans and other beneficiaries, this legislation also expands the definition of a fiduciary to include state or local government agencies and nonprofit social service agencies. Expanding the statutory definition of a VA fiduciary will open up avenues for individuals who need fiduciaries but lack

family members or other individuals who can serve in that capacity. Requiring VA to maintain a list of entities that can serve as fiduciaries will ensure that this option may be easily exercised.

This legislation also significantly strengthens the inquiry and investigation into and qualifications required for fiduciaries. Although removing the ability to waive aspects of the fiduciary review, we are pleased that the legislation allows for priority in conducting the inquiry or investigation for parents, spouses, and court appointed fiduciaries. The legislation also adds to this list any person who is authorized to act on behalf of the beneficiary under a durable power of attorney. We hope that adding individuals who hold viable durable powers of attorney to the expedited list of approval will ensure that VA will fully consider these individuals when appointing fiduciaries. We also hope the requirement for VA to conduct the face-to-face interview within 30 days of the beginning of the inquiry or investigation will expedite the review process.

We continue to have concerns about whether efforts to tighten the review of potential fiduciaries will be unduly burdensome on family members seeking to serve as fiduciaries. Family members must be fully reviewed prior to appointment, but we hope VA will make every effort to exercise discretion where appropriate. We are appreciative of the consideration of the ability of a proposed fiduciary to meet the financial requirements of acquiring a bond without sustaining hardship, which could be critically important to family members seeking to be fiduciaries.

We also appreciate efforts to ensure that veterans have an opportunity to play a role in determining who may serve as their fiduciary. The opportunity to designate a fiduciary in the event that one is later needed is an intriguing effort to provide veterans with the opportunity to have their preferences considered. We think it is important to note, however, that the need for a fiduciary may arise many years after designation and that this individual may no longer represent the veteran's preference. Furthermore, the legislation does not appear to provide for predesignation of fiduciaries for other types of beneficiaries, including those seeking Dependency and Indemnity Compensation.

This legislation also makes significant changes in the commissions that fiduciaries are able to receive for their services. We believe that a commission should only be authorized where absolutely necessary to ensure that the best possible fiduciary serves a veteran or other beneficiary. Regardless of whether the percent authorized is the current four percent or the proposed lesser of three percent or \$35, our only concern is that a paid-fiduciary be available to veterans if there are no other alternatives. As long as highly qualified fiduciaries are available when needed, we support the lower commission.

It is important to remember that VA's authority to appoint a fiduciary only extends to VA benefits. Thus, while we appreciate the exemption for family members from the requirement that a proposed fiduciary serve only as a fiduciary for benefits paid by VA, we believe that the need to address this issue would be met by simply clarifying the extent of a fiduciary's duty. This duty does not extend, for instance, to Social Security benefits unless that agency appoints that fiduciary as a representative payee for those benefits.

We appreciate the efforts of the Subcommittee to address concerns in the VA's fiduciary program. We also support the intent of this legislation, which is to ensure more accountability of fiduciaries to our Nation's veterans and other beneficiaries. We would welcome the opportunity to continue addressing the areas of recommendation that we have discussed today.

Thank you for the opportunity to testify concerning VetsFirst's views on these important pieces of legislation. We remain committed to working in partnership to ensure that all veterans are able to reintegrate in to their communities and remain valued, contributing members of society.

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#### **Prepared Statement of Ms. Perkio**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide The American Legion's views on the legislation being considered before this Subcommittee.

#### *H.R. 2985 – Veteran's ID Card Act*

This legislation would provide authority to the Department of Veterans Affairs (VA) to provide a Veteran ID Card. As matters currently stand, a veteran generally will only have a government issued photo ID card if they either served an entire period of service greater than twenty years and have retired, or have certain types

of medically related discharges. With a growing number of goods, service and promotional activities available to veterans, it is not always easy to prove veteran status for those who have served, short of carrying around a copy of the Form DD-214 discharge papers. The intent of the legislation would be to create cards for veterans which would clarify that status, in the absence of other ID cards.

The ID card would be a photo ID containing the veteran's name and an identifying number separate and distinct from a Social Security number.

*The American Legion has no position on this legislation.*

#### *H.R. 3730 – Veterans' Data Breach Timely Notification Act*

This legislation directs standard notification procedures for VA in the event of a data breach where personal information of veterans may have been compromised. The bill calls for prompt notification of affected parties within five business days, or an appropriate amount of time if longer is needed to determine the scope of veterans so affected. The bill further calls for broad notification of the general public in addition to specific notification to affected veterans, as well as for the notification of the appropriate Committees and Subcommittees of Congress.

With the rising tide of identity theft and other cybercrimes, veterans have as many concerns about the security of their personal information as any other citizen. While every measure must be taken to ensure the security and integrity of personal information entrusted to the government, equally as important is the need to deal with any potential breaches when they occur. Often in such cases, the best thing to do is to proactively reach out to everyone affected and loudly and publically get the word out so the affected parties can act in their best interest. Veterans must be able to respond to appropriate credit authorities or otherwise as soon as is humanly possible.

The American Legion agrees in the need for swift response to such breaches and potential threats to veterans' personal identifying information. In the past, such as in the case of the January 2009 data breach, The American Legion has applauded swift action in dealing with such incidents.

*The American Legion supports this legislation.*

#### *H.R. 4481 – Veterans Affairs Employee Accountability Act*

This bill bars VA employees from receiving bonuses if "... during any year, [the employee] knowingly violates any civil law covered by the Federal Acquisition Regulation issued under section 1301(a)(1) of Title 41 or the Veterans Affairs Acquisition Regulation ..."

The American Legion has previously been critical of bonuses given out by the VA to senior officials who by outward observation failed to meet basic performance measures, as VA's numbers in the fight against the backlog slipped further and further beyond reach of recovery. Certainly employees who are engaging in illegal practices should not be rewarded with bonuses.

Bonus pay, by its very definition should not be considered something automatic or guaranteed regardless of the positive or negative actions of the employee. Bonus pay should be a reward for job performance superior to the average expectation, and the average expectation should certainly include operating within the bounds of laws and regulations.

*The American Legion supports this legislation.*

#### *H.R. 5948 – Veterans Fiduciary Reform Act of 2012*

In February of this year, The American Legion provided testimony for the record to this Subcommittee addressing several concerns regarding the state of the VA fiduciary program. Some of the concerns included the length of time necessary to conduct interviews with potential fiduciaries, the inability of veterans to offer input into the selection of their fiduciaries, the lack of redress available to veterans if unhappy with the performance of their fiduciaries, and other concerns.

In testimony in February, The American Legion expressed concern that since the establishment of the Western Fiduciary Hub in Salt Lake City, UT, the overall wait times for necessary follow up visits had ballooned to over 151 days. New regulations make clear the shorter mandatory deadlines which should help reduce these lengthy wait times. Legion testimony expressed concerns about the lack of redress available to veterans who have issues with their fiduciaries, and this legislation has both an appeals process for the initial appointment and there are guidelines for investigation of those fiduciaries who are believed to be misusing the funds of the beneficiaries. Our testimony expressed concerns about the lack of input generally allowed to veterans to help select a family member who could be an appropriate finan-

cial custodian for them, and finally their input in this matter should now be addressed with procedures for veteran recommended fiduciaries.

The American Legion is grateful to this Committee for their commitment to working with service organizations and the VA and interested parties to find areas for improvement in this program that affects some of our most vulnerable veterans. It is hoped that this legislation, with attentive follow up and oversight, will lead to improvements in the operation of the fiduciary program for VA. There are still areas of concern to be addressed, such as the poor chain of contact through the phone banks, and the sometimes great physical distances involved with fiduciaries located hundreds of miles from the beneficiaries they serve, but these are obstacles which can be overcome with continued work and attention to the process, and The American Legion is reassured to see the deep commitment of this Committee to getting the job done right.

*The American Legion supports this legislation.*

The American Legion thanks this Subcommittee again for the opportunity to come before you today to offer the views of our 2.4 million members on this slate of legislation affecting veterans.

SUMMARY OF POSITIONS OF THE AMERICAN LEGION ON LEGISLATION

BILL	AMERICAN LEGION POSITION
HR 2985 – VETERAN ID CARD	NO POSITION
HR 3730 – VETERANS DATA BREACH TIMELY NOTIFICATION	SUPPORTS
HR 4481 – VETERANS AFFAIRS EMPLOYEE ACCOUNTABILITY ACT	SUPPORTS
HR 5948 – VETERANS FIDUCIARY REFORM ACT OF 2012	SUPPORTS