108TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
108–683

SERVICEMEMBERS AND VETERANS LEGAL PROTECTIONS ACT OF 2004

SEPTEMBER 13, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 4658]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4658) to amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Servicemembers and Veterans Legal Protections Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

SEC. 101. CLARIFICATION OF MEANING OF "JUDGMENT" AS USED IN THE ACT.

Section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511) is amended by adding at the end the following new paragraph:

"(9) JUDGMENT.—The term 'judgment' means any judgment, decree, order, or ruling, final or temporary.".

SEC. 102. REQUIREMENTS RELATING TO WAIVER OF RIGHTS UNDER THE ACT.

Section 107 of the Servicemembers Civil Relief Act (50 U.S.C. App. 517) is amended—

(1) In subsection (a), by inserting after the first sentence the following new sentence: "Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection (c):

"(c) PROMINENT DISPLAY OF CERTAIN CONTRACT RIGHTS WAIVERS.—Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.".

SEC. 103. RIGHT OF SERVICEMEMBER PLAINTIFFS TO REQUEST STAY OF CIVIL PROCEEDINGS.

Section 202(a) of the Servicemembers Civil Relief Act (50 U.S.C. App. 522(a)) is amended by inserting "plaintiff or" before "defendant".

SEC. 104. TERMINATION OF LEASES.

(a) JOINT LEASES.—Subsection (a) of section 305 of the Servicemembers Civil Relief Act (50 U.S.C. App. 535) is amended to read as follows:

"(a) TERMINATION BY LESSEE.—

"(1) IN GENERAL.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

"(A) the lessee's entry into military service; or

"(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

"(2) JOINT LEASES.—A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease."

(b) MOTOR VEHICLES LEASES.—

(1) APPLICABILITY TO PCS ORDERS FROM STATES OUTSIDE CONUS.—Subparagraph (B) of subsection (b)(2) of such section is amended by striking "military orders for" and all that follows through "or to deploy" and inserting "military orders—

"(i) for a change of permanent station—

"(I) from a location in the continental United States to a location outside the continental United States; or

"(II) from a location in a State outside the continental United States to any location outside that State; or

"(ii) to deploy".

(2) DEFINITIONS.—Such section is further amended by adding at the end the following new subsection:

"(i) DEFINITIONS.—

"(1) MILITARY ORDERS.—The term 'military orders', with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

"(2) CONUS.—The term 'continental United States' means the 48 contiguous States and the District of Columbia.".

(c) COVERAGE OF INDIVIDUAL DEPLOYMENTS.—Subsection (b) of such section is further amended in paragraph (1)(B) and paragraph (2)(B)(ii) (as designated by subsection (b) of this section) by inserting ", or as an individual in support of a military operation," after "deploy with a military unit".

SEC. 105. PREVENTION OF DOUBLE TAXATION OF CERTAIN SERVICEMEMBERS.

Section 511(c) of the Servicemembers Civil Relief Act (50 U.S.C. App. 571(c)) is amended by adding at the end the following new paragraph:

"(5) USE, EXCISE, OR SIMILAR TAXES.—A tax jurisdiction may not impose a use, excise, or similar tax on the personal property of a nonresident servicemember when the laws of the tax jurisdiction fail to provide a credit against such taxes for sales, use, excise, or similar taxes previously paid on the same property to another tax jurisdiction.".

TITLE II—EMPLOYMENT AND REEMPLOYMENT RIGHTS

Subtitle A—Extension of Health Care Coverage

SEC. 201. TWO-YEAR PERIOD OF CONTINUATION OF EMPLOYER-SPONSORED HEALTH CARE COVERAGE.

(a) IMPROVEMENT IN PERIOD OF COVERAGE.—Subsection (a)(1)(A) of section 4317 of title 38, United States Code, is amended by striking "18-month period" and inserting "24-month period".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to elections made under such section 4317 on or after the date of the enactment of this Act.

SEC. 202. REINSTATEMENT OF REPORTING REQUIREMENTS.

Section 4332 of title 38, United States Code, is amended in the matter preceding paragraph (1) by striking "no later than February 1, 1996, and annually thereafter through 2000" and inserting "no later than February 1, 2005, and annually thereafter".

Subtitle B—Other Matters

SEC. 211. REQUIREMENT FOR EMPLOYERS TO PROVIDE NOTICE OF RIGHTS AND DUTIES UNDER USERRA.

(a) NOTICE.—Chapter 43 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 4334. Notice of rights and duties

"(a) REQUIREMENT TO PROVIDE NOTICE.—Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

"(b) CONTENT OF NOTICE.—The Secretary shall provide to employers the text of the notice to be provided under this section.".

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

"4334. Notice of rights and duties.".

(c) IMPLEMENTATION.—(1) Not later than the date that is 90 days after the date of the enactment of this Act, the Secretary of Labor shall make available to employers the notice required under section 4334 of title 38, United States Code, as added by subsection (a).

(2) The amendments made by this section shall apply to employers under chapter 43 of such title on and after the first date referred to in paragraph (1).

SEC. 212. DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL.

(a) ESTABLISHMENT OF PROJECT.—The Secretary of Labor and the Office of Special Counsel shall carry out a demonstration project under which certain claims against Federal executive agencies under the Uniformed Services Employment and Reemployment Rights Act under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including

investigation and resolution of the claim as well as enforcement of rights with respect to the claim.

(b) REFERRAL OF ALL PROHIBITED PERSONNEL ACTION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.—(1) Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under the Uniformed Services Employment and Reemployment Rights Act with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

(2) For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under the Uniformed Services Employment and Reemployment Rights Act.

(c) REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.—(1) Under the demonstration project, the Secretary—

(A) shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

(B) may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

(2) A claim referred to in paragraph (1) is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit, or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—(1) The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

(2) In the case of any claim referred, or otherwise received by, to the Office of Special Counsel under the demonstration project, any reference to the "Secretary" in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed a reference to the "Office of Special Counsel".

(3) In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

(e) PERIOD OF PROJECT.—The demonstration project shall be carried out during the period beginning on the date that is 60 days after the date of the enactment of this Act, and ending on September 30, 2007.

(f) EVALUATIONS AND REPORT.—(1) The Comptroller General of the United States shall conduct periodic evaluations of the demonstration project under this section.

(2) Not later than April 1, 2007, the Comptroller General shall submit to Congress a report on the evaluations conducted under paragraph (1). The report shall include the following information and recommendations:

(A) A description of the operation and results of the demonstration program, including—

(i) the number of claims described in subsection (c) referred to, or otherwise received by, the Office of Special Counsel and the number of such claims referred to the Secretary of Labor, and

(ii) for each Federal executive agency, the number of claims resolved, the type of corrective action obtained, the period of time for final resolution of the claim, and the results obtained.

(B) An assessment of whether referral to the Office of Special Counsel of claims under the demonstration project—

(i) improved services to servicemembers and veterans; or

(ii) significantly reduced or eliminated duplication of effort and unintended delays in resolving meritorious claims of those servicemembers and veterans.

(C) An assessment of the feasibility and advisability of referring all claims under chapter 43 of title 38, United States Code, against Federal executive agencies to the Office of Special Counsel for investigation and resolution.

(D) Such other recommendations for administrative action or legislation as the Comptroller General determines appropriate.

(g) DEFINITIONS.—In this section:

(1) The term "Office of Special Counsel" means the Office of Special Counsel established by section 1211 of title 5, United States Code.

(2) The term "Secretary" means the Secretary of Labor.

(3) The term "Federal executive agency" has the meaning given that term in section 4303(5) of title 38, United States Code.

TITLE III—MATTERS RELATING TO FIDUCIARIES

SEC. 301. DEFINITION OF FIDUCIARY.

(a) IN GENERAL.—(1) Chapter 55 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 5506. Definition of 'fiduciary'

"For purposes of this chapter and chapter 61 of this title, the term 'fiduciary' means—

"(1) 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

"(2) 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.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"5506. Definition of 'fiduciary'.".

(b) CONFORMING AMENDMENTS TO SECTION 5502.—Section 5502 of such title is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "other person" and inserting "other fiduciary"; and

(B) in the second sentence of paragraph (2), by inserting "for benefits under this title" after "in connection with rendering fiduciary services";

(2) in subsection (b), by striking "guardian, curator, conservator, or other person" each place it appears and inserting "fiduciary"; and

(3) in subsection (d), by striking "guardian, curator, or conservator" and inserting "fiduciary".

(c) CONFORMING AMENDMENT TO SECTION 6101.—Section 6101(a) of such title is amended by striking "guardian, curator," and all that follows through "beneficiary," and inserting "fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary,".

SEC. 302. INQUIRY, INVESTIGATIONS, AND QUALIFICATION OF FIDUCIARIES.

(a) IN GENERAL.—Chapter 55 of title 38, United States Code, as amended by section 301(a)(1), is further amended by adding at the end the following new section:

"§ 5507. Inquiry, investigations, and qualification of fiduciaries

"(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

"(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

"(A) to be conducted in advance of such certification;

"(B) to the extent practicable, to include a face-to-face interview with such person; and

"(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

"(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

"(3) the furnishing of any bond that may be required by the Secretary.

"(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary makes a specific finding that the person has been rehabilitated and is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

"(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection.

Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

"(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

"(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

"(B) the spouse or parent of an incompetent beneficiary;

"(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

"(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed $3600, as adjusted pursuant to section 5312 of this title.

"(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the item added by section 301(a)(2) the following new item:

"5507. Inquiry, investigations, and qualification of fiduciaries.".

SEC. 303. MISUSE OF BENEFITS BY FIDUCIARIES.

(a) PROTECTION OF VETERANS BENEFITS WHEN ADMINISTERED BY FIDUCIARIES.—(1) Chapter 61 of title 38, United States Code, is amended by adding at the end the following new sections:

"§ 6106. Misuse of benefits by fiduciaries

"(a) FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY FIDUCIARIES.—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

"(b) LIABILITY OF FIDUCIARIES FOR MISUSED BENEFITS.—(1) If the Secretary or a court of competent jurisdiction determines that a fiduciary that is not a Federal, State, or local government agency has misused all or part of a beneficiary's benefit that was paid to such fiduciary, the fiduciary shall be liable for the amount misused, and such amount (to the extent not repaid by the fiduciary) shall be treated as an erroneous payment of benefits under this title to the fiduciary for purposes of laws pertaining to the recovery of overpayments. The amount of such overpayment shall constitute a liability of such fiduciary to the United States and may be recovered in the same manner as any other debt due the United States. Subject to paragraph (2), upon recovering all or any part of such amount, the Secretary shall pay an amount equal to the recovered amount to such beneficiary or such beneficiary's successor fiduciary.

"(2) The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under paragraph (1) and under section 6107 of this title may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

"(c) MISUSE OF BENEFITS DEFINED.—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

"(d) REGULATIONS.—The Secretary may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this section.

"(e) FINALITY OF DETERMINATIONS.—A determination by the Secretary that a fiduciary has misused benefits is a decision of the Secretary for purposes of section 511(a) of this title.

"§ 6107. Reissuance of benefits

"(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the bene-

ficiary's successor fiduciary an amount equal to the amount of benefits that were so misused.

"(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

"(A) A case in which the Secretary failed to timely review a fiduciary's accounting.

"(B) A case in which the Secretary was notified of allegations of misuse, but failed to act in a timely manner to terminate the fiduciary.

"(C) In any other case in which actual negligence is shown.

"(b) REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

"(2) Paragraph (1) applies to a fiduciary that—

"(A) is not an individual; or

"(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

"(c) RECOUPMENT OF AMOUNTS REISSUED.—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.".

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

"6106. Misuse of benefits by fiduciaries.
"6107. Reissuance of benefits.".

SEC. 304. ADDITIONAL PROTECTIONS FOR BENEFICIARIES WITH FIDUCIARIES.

(a) ONSITE REVIEWS AND REQUIRED ACCOUNTINGS.—(1) Chapter 55 of title 38, United States Code, as amended by section 302(a), is further amended by adding at the end the following new sections:

"§ 5508. Periodic onsite reviews of institutional fiduciaries

"In addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, the Secretary shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary to another individual pursuant to the appointment of such person or agency as a fiduciary under section 5502(a)(1) of this title in any case in which the fiduciary is serving in that capacity with respect to more than 20 beneficiaries and the total annual amount of such benefits exceeds $50,000, as adjusted pursuant to section 5312 of this title.

"§ 5509. Authority to redirect delivery of benefit payments when a fiduciary fails to provide required accounting

"(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

"(b) ACTIONS UPON FAILURE TO FILE.—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 302(b) the following new items:

"5508. Periodic onsite reviews of institutional fiduciaries.
"5509. Authority to redirect delivery of benefit payments when a fiduciary fails to provide required accounting.".

(b) CIVIL MONETARY PENALTIES; JUDICIAL ORDERS OF RESTITUTION.—(1) Chapter 61 of title 38, United States Code, as amended by section 303(a), is further amended by adding at the end the following new sections:

"§ 6108. Civil monetary penalties

"(a) PENALTY FOR CONVERSION.—Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a fiduciary pursuant to section 5502 of this title, a payment under a law administered by the Secretary for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalty that may be prescribed by law, a civil monetary penalty assessed by the Secretary of not more than $5,000 for each such conversion.

"(b) PENALTY IN LIEU OF DAMAGES.—Any person who makes a conversion of a payment described in subsection (a) and is subject to a civil monetary penalty under that subsection by reason of such conversion shall also be subject to an assessment by the Secretary, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

"(c) COSTS OF RECOVERY.—From amounts collected under this section, the amount necessary to recoup the Department's costs of such collection shall be credited to appropriations currently available for the same purpose as the appropriation that incurred those costs, to remain available until expended.

"§ 6109. Authority for judicial orders of restitution

"(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

"(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

"(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

"(d)(1) Except as provided in paragraph (2), amounts received or recovered by the Secretary pursuant to an order of restitution under subsection (a), to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred by the Office of the Inspector General for the investigation of fiduciaries under this title.

"(2) Paragraph (1) shall not apply with respect to amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary. Such amounts shall be paid to the individual whose benefits were misused unless the Secretary has previously reissued the misused benefits, in which case the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 303(b) the following new items:

"6108. Civil monetary penalties.
"6109. Authority for judicial orders of restitution.".

SEC. 305. ANNUAL REPORT.

(a) IN GENERAL.—Chapter 55 of title 38, United States Code, as amended by section 304(a)(1), is further amended by adding at the end the following new section:

"§ 5510. Annual report

"The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following:

"(1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).

"(2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).

"(3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.

"(4) The number of fiduciaries who are the (spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payment).

"(5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

"(6) How such cases of misuse of benefits were addressed by the Secretary.

"(7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any civil or criminal penalties imposed.

"(8) Such other information as the Secretary considers appropriate.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the items added by the amendment made by section 304(a)(2) the following new item:

"5510. Annual report.".

SEC. 306. ANNUAL ADJUSTMENT IN BENEFITS THRESHOLDS.

Section 5312(b)(1) of title 38, United States Code, is amended by inserting "and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title," after "(d)(3) of such section,".

SEC. 307. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, this title and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act.

(b) SPECIAL RULES.—(1) Section 5510 of title 38, United States Code, as added by section 305(a), shall take effect on the date of the enactment of this Act.

(2) Sections 6106 and 6107 of title 38, United States Code, as added by section 303(a), shall apply with respect to any determinations by the Secretary of Veterans Affairs made after the date of the enactment of this Act of misuse of funds by a fiduciary.

TITLE IV—OTHER MATTERS

SEC. 401. INVENTORY OF MEDICAL WASTE MANAGEMENT ACTIVITIES AT DEPARTMENT HEALTH-CARE FACILITIES.

(a) INVENTORY.— The Secretary of Veterans Affairs shall establish and maintain a national inventory of medical waste management activities in the health-care facilities of the Department of Veterans Affairs. The inventory shall include the following:

(1) A statement of the current national policy of the Department on managing and disposing of medical waste, including regulated medical waste in all its forms.

(2) A description of the program of each geographic service area of the Department to manage and dispose of medical waste, including general medical waste and regulated medical waste, with a description of the primary methods used in those programs and the associated costs of those programs, with cost information shown separately for in-house costs (including full-time equivalent employees) and contract costs.

(b) REPORT.—Not later than April 15, 2005, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on medical waste management activities in the facilities of the Department of Veterans Affairs. The report shall include the following:

(1) The inventory established under subsection (a), including all the matters specified in that subsection.

(2) A listing of each violation of medical waste management and disposal regulations reported at any health-care facility of the Department over the preceding five years by any State or Federal agency, along with an explanation of any remedial or other action taken by the Secretary in response to each such reported violation.

(3) A description of any plans to modernize, consolidate, or otherwise improve the management of medical waste and disposal programs at health-care facilities of the Department, including the projected costs associated with such plans and any barriers to achieving goals associated with such plans.

(4) An assessment or evaluation of the available methods of disposing of medical waste and identification of which of those methods are more desirable from an environmental perspective in that they would be least likely to result in contamination of air or water or otherwise cause future cleanup problems.

SEC. 402. CARE FOR NEWBORN CHILDREN OF VETERANS RECEIVING MATERNITY CARE.

(a) AUTHORITY TO PROVIDE NEWBORN INFANT CARE.—Subchapter VIII of chapter 17 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 1786. Care for newborn children of veterans receiving maternity care

"(a) AUTHORITY.—Subject to subsections (b) and (c), when a female veteran who is enrolled in the health-care system established under section 1705 of this title is receiving maternity care from the Department delivers of a child in a Department facility or in a non-Department facility under a Department contract the Secretary may furnish care to the neonate.

"(b) CARE IN A DEPARTMENT FACILITY.—In a case in which a neonate covered by subsection (a) is born in a Department facility, care furnished for the neonate at that facility shall be furnished without charge to the veteran who delivered of that neonate.

"(c) CARE IN A NON-DEPARTMENT FACILITY.—In a case in which a neonate covered by subsection (a) is born in a non-Department facility or is provided care in a non-Department facility following birth in a Department facility and transfer from that facility, the Secretary may provide for the payment of the cost of care and services for the neonate in the same manner, and subject to the same limitations, as if such care and services were emergency treatment furnished the veteran subject to section 1725 of this title, except that—

"(1) the services for which the Secretary may make payment shall be limited to those items and services for which payment may be made under the medicare program under title XVIII of the Social Security Act for post-natal care furnished to a neonate; and

"(2) the rate of payment for such services may not exceed the payment rates applicable to those items and services under the medicare program under such title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1784 the following new item:

"1786. Care for newborn children of veterans receiving maternity care.".

SEC. 403. TECHNICAL AMENDMENTS TO EDUCATION PROGRAM PROVISIONS.

(a) INAPPLICABILITY OF WAGE REQUIREMENTS FOR ON-JOB TRAINING PROGRAMS LEADING TO SELF-EMPLOYMENT.—(1) Section 3677(b) is amended by adding at the end the following new paragraph:

"(3) Notwithstanding paragraph (1)(A) and subsection (c)(8), no wages shall be required to be paid an eligible person or veteran by a training establishment described in section 3452(e)(2) of this title.".

(2) Section 3452(e), as amended by section 301 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2658), is amended by striking "An" in paragraph (2) and inserting "For the period beginning on October 1, 2005, and ending on September 30, 2010, an".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 301 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2658).

Amend the title so as to read:

A bill to amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act, otherwise to improve legal protections provided to reserve component members called to active duty, and for other purposes.

INTRODUCTION

The reported bill reflects the Committee's consideration of four bills introduced during the 108th Congress: H.R. 4658, H.R. 4659, H.R. 4477, and H.R. 4032, and testimony received from the Office of Special Counsel on June 23, 2004.

On June 16, 2004, the Subcommittee on Benefits held a hearing on H.R. 4032, the Veterans Fiduciary Act of 2004, introduced on March 25, 2004, by Honorable Susan A. Davis, Honorable Michael H. Michaud, Honorable Lane Evans, Honorable Bob Filner, Honorable Corrine Brown, Honorable Ciro D. Rodriguez, Honorable Darlene Hooley, Honorable Ted Strickland, Honorable Raul M. Grijalva, Honorable Barney Frank, Honorable Timothy H. Bishop, Honorable Tim Holden, Honorable Kevin Brady, Honorable Grace F. Napolitano, and Honorable Ben Chandler.

On June 23, 2004, the full Committee held a hearing on legislation, including H.R. 4477, and two draft bills. H.R. 4477, the Patriot Employer Act of 2004, was introduced on June 2, 2004, by Honorable James P. McGovern, Honorable Jeb Bradley and Honorable Lane Evans. The first draft bill was a proposed extension of the maximum period of employer-sponsored health care coverage that a Reservist or National Guardsmember may voluntarily elect to continue under the Uniformed Services Employment and Re-

employments Rights Act (USERRA), and was subsequently introduced as H.R. 4659 on June 23, 2004, by the Chairman and Ranking Member of the Subcommittee on Benefits, Honorable Henry E. Brown, Jr., and Honorable Michael H. Michaud, and the Chairman of the Committee, Honorable Christopher H. Smith. The second draft bill was a proposed amendment to the Servicemembers Civil Relief Act (SCRA) to make certain improvements and technical corrections to the Act, and was subsequently introduced as H.R. 4658 on June 23, 2004, by the Chairman and Ranking Member of the Committee, Honorable Christopher H. Smith and Honorable Lane Evans.

On July 21, 2004, the full Committee met and ordered H.R. 4658, as amended, reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 4658, as amended, would:

Title I—Improvements to Servicemembers Civil Relief Act

1. Define in the general provisions of the Servicemembers Civil Relief Act (SCRA) that the term "judgment" would mean "any judgment, decree, order or ruling, final or temporary."
2. Clarify that waivers by servicemembers of rights and protections under SCRA which must be in writing, must also be executed in a separate instrument; and require that certain written waivers must be in at least 12 point type.
3. Provide that plaintiffs as well as defendants may request stays of civil proceedings under SCRA.
4. Clarify that dependents as well as servicemembers are covered by SCRA's residential and motor vehicle lease termination provisions on joint leases.
5. Provide that SCRA's lease termination provisions also apply when the servicemember has permanent change of station orders from a State outside the continental United States to any location outside that State.
6. Define for the purposes of SCRA's lease termination provisions that the term "military orders" would mean, with respect to a servicemember, "official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status."
7. Define for the purposes of SCRA's lease termination provisions that the term "continental United States" would mean "the 48 contiguous States and the District of Columbia."
8. Clarify that SCRA's lease termination provisions cover individual deployments, as well as military unit deployments.
9. Prohibit double taxation of servicemembers when the laws of a tax jurisdiction do not provide a credit against use, excise or similar taxes the servicemember previously paid to another tax jurisdiction.

Title II—Employment and Reemployment Rights

1. Increase from 18 months to 24 months the maximum period of employer-sponsored health coverage that an employee covered by USERRA may elect to continue, beginning with the date the absence from the position of employment begins; and provide that the effective date of the increased coverage would be the date of enactment.
2. Reinstate the requirement for comprehensive annual reports from the Secretary of Labor to Congress on the disposition of cases filed under USERRA; such reports would begin no later than February 1, 2005.
3. Require employers to provide notice to employees of the rights, benefits and obligations of employers and employees that apply under USERRA, and require the Department of Labor to make available to employers the text of the notice, to be provided within 90 days after date of enactment.
4. Establish a demonstration project for the referral of complaints by federal executive branch employees under USERRA to the Office of Special Counsel for investigation and resolution, and require the Secretary of Labor and the Office of Special Counsel to carry out the demonstration project.
5. Allow the Office of Special Counsel for the demonstration project to receive and investigate all cases involving both complaints of prohibited personnel actions and complaints under USERRA.
6. Define a complaint for purposes of the demonstration project as one filed under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security number with an odd number as its terminal digit, or a case number assigned to the claim with an odd number as its terminal digit.
7. Allow the Secretary of Labor to refer to the Office of Special Counsel certain pending complaints filed before the beginning of the demonstration project.
8. Require the demonstration project to be carried out during the period beginning 60 days after the date of enactment, and ending on September 30, 2007.
9. Require the Comptroller General of the United States to conduct periodic evaluations of the demonstration project; require a report to Congress no later than April 1, 2007, on the periodic evaluations; and require the report to address certain other matters pertaining to the demonstration project.

Title III—Matters Relating to Fiduciaries

1. For purposes of payment of VA benefits, define a fiduciary as a guardian, curator, conservator, committee or person legally vested with the responsibility or care of a claimant (or the claimant's estate) or of a beneficiary (or the beneficiary's estate), or any other person appointed in a representative capacity to receive money paid by VA.
2. Require VA, prior to certification, to conduct an inquiry or investigation as to the fitness of a fiduciary. Such inquiry or

investigation would include, to the extent practicable, a face-to-face interview, a copy of a credit report within one year of appointment, and the furnishing of any bond that may be required by the Secretary.

3. Require the Secretary, as a part of the inquiry or investigation, to request information about whether the potential fiduciary has been convicted of any offense under Federal or State law.
4. Permit a less rigorous inquiry or investigation of the parent of a minor beneficiary, spouse or parent of an incompetent beneficiary, the person appointed by a court of competent jurisdiction, or the person appointed to manage an estate where the annual amount of veterans benefits to be managed does not exceed $3,600.
5. Give the Secretary the authority to appoint a temporary fiduciary, for a period not to exceed 120 days, if needed to protect the assets of the beneficiary when a determination of incompetence is being made or appealed, or a fiduciary is appealing a determination of misuse.
6. Prohibit the Secretary from continuing the temporary fiduciary beyond 120 days if a final decision has not been made on the competence of the beneficiary or fiduciary, unless the Secretary has obtained a court order for a guardian.
7. Prohibit a fiduciary from collecting a fee from the beneficiary for any month when the Secretary or a court has determined the fiduciary has misused some or all of the veteran's benefits.
8. Require that any fiduciary, except a Federal, State, or local government agency, shall be liable for any amount misused, and that such amount shall be treated as an erroneous payment to the fiduciary for purposes of law pertaining to the recovery of overpayments.
9. Require the Secretary to repay misused benefits if the misuse is due to the Secretary's failure to investigate or monitor a fiduciary, when the fiduciary is (1) not an individual or (2) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries.
10. Require the Secretary to conduct periodic on-site reviews of any person or agency located in the United States that serves as a fiduciary to more than 20 beneficiaries and the total annual amount of benefits exceeds $50,000.
11. Permit a fiduciary who converts a payment for some use other than for the beneficiary to be subject to a civil monetary penalty, and an assessment by the Secretary in lieu of damages sustained by the United States, of not more than twice the amount converted.
12. Permit that amounts received or recovered from a fiduciary, to the extent and in the amounts provided in advance appropriations, shall be available to defray expenses incurred by the Office of the Inspector General for the inquiry or investigation of fiduciaries.

13. Require the Secretary to include in an annual report information on the fiduciary program, to include the number of beneficiaries, the types of benefits being paid, and the number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

Title IV—Other Matters

1. Require the Secretary to establish and maintain an inventory of medical waste management activities in VA facilities.
2. Require the Secretary to submit by April 15, 2005, a report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on VA's medical waste management activities, including inventory, regulatory violations, and plans for management improvements.
3. Authorize VA to provide post-natal care to newborns of enrolled female veterans receiving maternity care who are without other health insurance coverage. VA's payment would be the amount Medicare would pay for services related to delivering the child of a Medicare beneficiary.
4. Make a technical correction to section 301 of P.L. 108–183, which expanded the Montgomery GI Bill program to authorize educational assistance for on-job training in certain self-employment programs, by clarifying that the veteran or dependent in on-job training for certain self-employment programs beginning on October 1, 2005, and ending on September 30, 2010 need not receive a training wage from the employer in order to receive the VA benefit for that period.

BACKGROUND AND DISCUSSION

Title I—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

Clarification of meaning of "judgment" as used in the Act.—Section 101 of the bill would clarify the meaning of the term "judgment" as used in the Servicemembers Civil Relief Act (SCRA). The term "judgment" appears in sections 103, 201, 202, 204 and 601 of the SCRA, but it is not included in section 101, which contains the statute's definitions. The Committee intends that the term be broadly construed and not be interpreted as limited to final judgments in cases. The term "judgment" would mean ". . . any judgment, decree, order, or ruling, final or temporary."

Requirements relating to waiver of rights under the Act.—Section 102 of the bill would require that waivers in writing under section 107 of the SCRA must also be executed in a separate instrument. This requirement would make the waiver provisions of section 107 consistent with the waiver provisions of section 103(d)(1) of the SCRA, which for waivers by certain persons primarily or secondarily liable on an obligation or liability, already requires a separate waiver instrument. While agreements by servicemembers and other persons to waive rights and protections under the SCRA would remain legal, the Committee believes that when written waivers are required under the SCRA, servicemembers should have the additional protection of a separate waiver instrument. This would pre-

vent an effective waiver from being placed, for example, in a lengthy unrelated text. Additionally, section 102 of the bill would require the prominent display of waivers in 12 point type. This would prevent an effective waiver from being placed, for example, in fine print at the bottom of a page.

Right of servicemember plaintiffs to request stay of civil proceedings.—Section 103 of the bill would allow servicemembers who are plaintiffs in a legal action to request a stay of a civil proceeding under section 202 of the SCRA. The predecessor statute, the Soldiers' and Sailors' Civil Relief Act, expressly covered plaintiffs for the purpose of stay requests, and the SCRA should similarly cover plaintiffs.

Termination of leases.—Section 104 of the bill would clarify that under section 305 of the SCRA, when a servicemember terminates a residential or motor vehicle lease entered into jointly with a dependent, the obligations of both the servicemember and the dependent are terminated. The Committee's belief that this clarification is necessary based on sworn testimony at a full committee hearing on June 23, 2004, that some servicemembers and their dependents in the Fort Hood, Texas, area have experienced refusals by certain property management companies to release dependents from joint leases. The large scale deployments of soldiers and unit relocations from Fort Hood as part of the war against terrorism have created unusual pressures on providers of rental housing in that local area, and the Committee is concerned about the potential for similar occurrences in other places with significant military populations.

The intent of Congress on this matter did not change with enactment of the SCRA, which updated and strengthened the Soldiers' and Sailors' Civil Relief Act. The overall purpose of the statute is to provide various legal rights and protections for servicemembers and their dependents. All along, the intent of Congress has been that, when the servicemember properly terminates such a lease, it is terminated with respect to all of the parties to the lease. An interpretation of section 305 that would as a practical matter provide no relief by leaving the servicemember's dependent bound by a joint lease is clearly inconsistent with the section's purpose. However, this clarification, with its more specific language, is intended to preclude future disputes about the application to dependents of section 305.

Section 104 of the bill would also modify the language of section 305 of the SCRA to allow motor vehicle lease terminations for any permanent change of station move from a state outside of the continental United States to any other location outside that state. The term "continental United States" would be defined as meaning the "48 contiguous states and the District of Columbia." The term "State" is currently defined in section 101(6)(A) of the SCRA to include "a commonwealth, territory, or possession of the United States." Section 104 would assure that a servicemember who receives a permanent change of station order to move from a state outside the continental United States to another location outside that state is accorded the same protections as a servicemember who receives a permanent change of station order to move from a

state within the continental United States to a location outside of the continental United States.

Section 104 of the bill would also amend section 305 to broaden the definition of the term "military orders" to mean "official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status." The amended definition would allow servicemembers who must deploy on short notice, who experience delays in receiving orders, or who for other valid reasons are without formal "military orders," to provide a suitable termination notice to lessors.

Section 305 of SCRA would further be amended to include individual as well as unit deployments. Some servicemembers receive individual orders to fill unit vacancies, and this section would allow lease termination for servicemembers who receive orders to deploy "as an individual in support of a military operation."

Prevention of double taxation of certain servicemembers.—Section 105 of the bill would not allow a tax jurisdiction to impose a use, excise, or similar tax on the personal property of a servicemember who is not a resident, if the tax jurisdiction's laws do not provide a credit against such taxes previously paid on the same personal property in another tax jurisdiction. With this section, the Committee would extend the long-standing policy of Congress against double taxation of servicemembers expressed in title V of the SCRA to use, excise, or other similar taxes.

Title II—EMPLOYMENT AND REEMPLOYMENT RIGHTS

SUBTITLE A—EXTENSION OF HEALTH CARE COVERAGE

Two-year period of continuation of employer-sponsored health care coverage.—Section 201 of the bill would increase from 18 months to 24 months the maximum period of employer-sponsored health coverage that an employee covered by USERRA may elect to continue. The coverage would become effective for elections made on or after the date of enactment.

Section 4317 of title 38, United States Code, allows servicemembers covered under USERRA to elect to continue employer-sponsored health coverage for up to 18 months while on active duty, provided the servicemember pays up to 102 percent of the premiums. A growing number of Guard and Reserve members are on active duty for longer than 18 months. This change would bring eligibility for continued health care coverage in line with the period of time which a member of the Guard or Reserve may be involuntarily called to active duty.

Reinstatement of reporting requirements.—Section 202 of the bill would reinstate a requirement that the Secretary of Labor, in consultation with the Office of Special Counsel and the U.S. Attorney General, provide annual reports to Congress on the disposition of cases filed under USERRA, effective February 1, 2005. The previous reporting requirement expired on February 1, 1996. With greater reliance on the National Guard and Reserve components of the Armed Forces for national defense during the war against terrorism, annual reports are necessary to evaluate USERRA's effectiveness.

SUBTITLE B—OTHER MATTERS

Requirement for employers to provide notice of rights and duties under USERRA.—Section 211 of the bill is derived from H.R. 4477 and would require employers to provide notice to employees of the rights, benefits and obligations under USERRA. Section 211 would also require the Department of Labor to make available to employers, within 90 days after the date of enactment of this provision, the text of the notice.

Since fiscal year 2002, the number of USERRA complaints filed with the Department of Labor has increased each year by approximately 10 percent. According to testimony received by the Committee, many problems emerge because employers and employees do not know the legal rights and duties associated with USERRA. This section is intended to raise awareness among employers and employees, as well as reduce workplace conflicts related to USERRA issues. The Committee believes that this provision would decrease inadvertent violations of the law by providing timely and accurate information to both employers and employees.

Demonstration project for referral of USERRA claims against Federal agencies to the Office of Special Counsel.—Section 212 of the bill would require the Secretary of Labor and the Office of Special Counsel (OSC) to carry out a three-year demonstration project on enforcement of USERRA rights for federal executive branch employees. OSC currently does not initially investigate USERRA claims made by Federal executive branch employees. The Department of Labor performs the initial investigation, resolves certain cases and then refers the remaining cases it finds to be meritorious to the OSC for formal enforcement. The demonstration project would allow the OSC to handle cases from beginning to end, including investigation, settlement and litigation, to determine whether that approach would be more effective.

Approximately half of the cases filed after the beginning of the demonstration project would be sent by the Department of Labor to the OSC, using a random selection process based on the last digit of the claimant's social security number or case number, if a social security number is not available. The Comptroller General of the United States would be required to conduct periodic evaluations of the demonstration project and to submit a report to Congress on the evaluations. The Comptroller would also be required to provide an assessment of the feasibility and advisability of referring all USERRA claims against federal executive agencies to OSC for investigation and resolution.

Title III—MATTERS RELATING TO FIDUCIARIES

When VA monetary benefits are payable to an individual who is incapable of managing his or her own affairs, the Secretary of Veterans Affairs has the authority to appoint a third party payee as a fiduciary. The fiduciary may be a relative, friend, guardian, conservator, curator, person with temporary custody of the beneficiary ("custodian-in-fact"), or other federal fiduciary appointed by VA.

Section 5502 of title 38, United States Code, permits a fiduciary to be appointed "regardless of any legal disability on the part of the beneficiary." Nonetheless, VA has issued regulations authorizing the appointment of a fiduciary only when a beneficiary is mentally

ill, incompetent, or under a legal disability. 38 C.F.R. § 13.55. According to VA, there are currently about 100,000 VA beneficiaries who have payments made to a fiduciary; approximately 65,000 of these are veterans, 32,000 are other adults such as surviving spouses and adult disabled children, and 3,000 are minor children.

At a July 2003 oversight hearing, the Subcommittee on Benefits learned that under current law, VA is not required to reissue benefits to a veteran if the fiduciary has misappropriated some or all of the beneficiary's funds. Title III of the bill would strengthen the protections afforded to incompetent veterans and other beneficiaries who receive VA benefits, as well as require additional oversight of the fiduciaries.

Definition of fiduciary.—Section 301 of the bill would define, for the purposes of chapters 55 and 61 of title 38, United States Code, the term fiduciary as (1) 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 (2) 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. Under current law, a fiduciary for VA purposes is not defined.

Inquiry, investigations, and qualification of fiduciaries.—Section 302 of the bill would require VA to certify, following an inquiry or investigation, the fitness of a fiduciary. Such inquiry or investigation would be conducted through, to the extent practicable, a face-to-face interview, review of a credit report for the proposed fiduciary issued within one year of appointment, and the furnishing of any bond that may be required by the Secretary. Additionally, the Secretary would be required to request information on whether that person has been convicted of any offense under Federal or State law; if so, the Secretary may certify the person as a fiduciary only if the Secretary makes a specific finding of rehabilitation and finds that the potential fiduciary is an appropriate person to act as the fiduciary for the beneficiary. This provision is not intended to require an extensive criminal background check of the proposed fiduciary. VA would be required to have a proposed fiduciary attest as to whether or not he/she had been imprisoned for more than one year. The Committee expects that if the proposed fiduciary had been so imprisoned, the Secretary would make further inquiry concerning the nature of the offense, the length of time since the offense occurred, and other indications of rehabilitation in order to determine if the proposed fiduciary is an appropriate person to serve as a fiduciary for a beneficiary.

In the case of a parent (natural, adopted, or step) of a minor beneficiary, spouse or parent of an incompetent beneficiary, a person who has been appointed by a court of competent jurisdiction, or appointed to manage an estate where the annual amount of veterans benefits to be managed does not exceed $3,600 (adjusted for annual cost-of-living increases), the Secretary may certify the potential fiduciary on an expedited basis. In such cases, the Secretary would be authorized to waive the requirements for a face-to-face interview, credit report check, or other requirements for appointment.

If needed to protect the assets of the beneficiary while a determination of incompetence is being made or appealed, or a fiduciary is appealing a determination of misusing a veteran's benefits, the Secretary would have the authority to appoint a temporary fiduciary, not to exceed 120 days. If a final decision has not been made within the allotted time frame, the Secretary would not be able to continue the temporary appointment without obtaining an order from a court of competent jurisdiction, such as a state Probate or Family Court, for the appointment of a guardian, conservator, or similar legal fiduciary. The Committee intends that the Secretary have the authority to act promptly to protect the beneficiary's interest in those unusual cases where the appointment of a custodian-in-fact is not available or while an appeal of a proposed finding of incompetency or change of fiduciary is pending.

Misuse of benefits by fiduciaries.—Section 303 of the bill would protect a veteran's benefits when administered by a fiduciary. If the Secretary or a court has determined the fiduciary has misused some or all of the veterans' benefits, he or she would be prohibited from collecting a fee from a beneficiary for any month during which the misuse had occurred, and any fee collected would be treated as a misused benefit.

Any fiduciary, except a Federal, State, or local government agency, would be personally liable for the amount misused, and that amount would be treated as an erroneous payment to the fiduciary for purposes of laws pertaining to the recovery of overpayments. The misappropriated amount would be subject to recovery in the same manner as any other debt due the United States. The Committee expects the Secretary to vigorously use the tools available for the collection of debts owed to the United States in collecting misused benefits. In the event that any misused benefits are collected, the Secretary would be required to repay to the beneficiary or the beneficiary's successor fiduciary, an amount equal to the recovered amount of misused benefits, unless the benefits had already been reissued.

In the event the misused benefits are due to the Secretary's failure to investigate or monitor the fiduciary, the Secretary would be liable to repay all the benefits without first having to collect them from the fiduciary. Failure to adequately monitor a fiduciary would include the Secretary's failing to review, in a timely manner, a fiduciary's accounting; failing to act in a timely manner when notified of allegations of misuse; and any other case when actual negligence is shown. In addition, the Secretary would be required to reissue benefits when the misuse involves a fiduciary who is (1) not an individual, i.e. an agency, or (2) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under title 38, United States Code. If the Secretary reissues a benefit payment, a good faith effort would be required to recoup the funds from the fiduciary to which the original payment was made.

Additional protections for beneficiaries with fiduciaries.—Section 304 of the bill would require the Secretary to conduct periodic onsite reviews of any person or agency located in the United States that serves as a fiduciary to more than 20 beneficiaries and the total annual amount of benefits exceeds $50,000 (to be adjusted an-

nually to reflect cost-of-living adjustments). As part of the review, the Secretary would be able to require the fiduciary to submit a report or accounting of dispersement of benefits, and a fiduciary who fails to submit the report could be required to appear in person at a VA regional office in order to receive such payments.

In the event a fiduciary converts a payment for some use other than for the use and benefit of the beneficiary, he or she would be subject to, in addition to any other penalty that may be prescribed by law, a civil monetary penalty assessed by the Secretary of not more than $5,000 per conversion. Such person would also be subject to an assessment by the Secretary of not more than twice the amount of any payments converted. Additionally, any federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits, could order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department (the court would be required to state on the record the reasons for not ordering restitution, or only partial restitution). Any amounts received or recovered, other than those which would represent the amounts attributed to misuse, would be available to defray the expenses incurred by the VA's Office of Inspector General for the inquiry or investigation of fiduciaries. Recoveries of misused benefits would be made to the beneficiary or the beneficiary's successor fiduciary unless benefits had previously been reissued. Recovery of benefits which have previously been reissued would be credited to the applicable Department account in the same manner as is done for recovered overpayments of benefits.

Annual report.—Section 305 of the bill would require the Secretary to include in one of VA's annual reports information concerning fiduciaries who have been appointed to receive benefits, to include: the number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, parent); types of benefits being paid (compensation, pension, dependency and indemnity compensation, death pension); the number of fiduciaries who are the spouse, parent, legal custodian, court-appointed, institutional, custodian-in-fact, and supervised direct payment; the number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused; and how such cases of misuse of benefits were addressed by the Secretary.

Title IV—OTHER MATTERS

Inventory of medical waste management activities at Department health-care facilities.—Section 401 of the bill would require VA to establish and maintain an inventory of medical waste management activities in VA facilities. Not later than April 15, 2005, VA would be required to submit a report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on its inventory, regulatory compliance, and any violations of record, along with plans for management improvements.

Under current law, VA is subject to comply with a variety of Federal, state and local laws and regulations relating to the collecting, handling and disposing of medical waste. Failure to adhere to the laws and regulations could jeopardize the health and safety of patients, employees, and the public, as well as subject VA to civil or criminal liabilities. This section would provide a means for Con-

gress to evaluate the effectiveness of VA's medical waste management policies, to determine whether additional procedures are needed to reduce environmental and heath risks, and to assess the costs of waste disposal.

Care for newborn children of veterans receiving maternity care.—Section 402 of the bill would authorize VA to provide post-natal care to the neonate of an eligible female veteran who is receiving maternity and delivery care from VA, and who has no other health insurance coverage. The medical community generally accepts the definition of a neonate as a newborn from one to 30 days of age. The Committee expects that VA would follow this definition. This authority would be consistent with typical insurance coverage of pregnancy and delivery in community facilities.

Under current law, VA is authorized to provide maternity and delivery care to eligible female veterans, but does not have the authority to cover the cost of care of the veteran's newborn child. VA is only authorized to provide medical care to children of certain service-connected veterans in a very limited number of circumstances, such as benefits for children of Korea and Vietnam veterans who were born with spina bifida.

This section would provide for continuity of care to the enrolled female veteran as part of a basic health benefit, and would reduce administrative difficulties associated with payment for these services at private hospitals. According to VA, its options for contracting for maternity and delivery care are greatly impeded because it cannot easily negotiate care for the mother while excluding care for the newborn.

Technical amendments to education program provisions.—Section 403 of the bill would make a technical correction to section 301 of Public Law 108–183, which authorized certain self-employment and on-job-training programs (franchises) for less than six months under the Montgomery GI Bill (MGIB). VA was unable to implement the provision because of a statutory requirement that participants receive a training wage while enrolled in on-job training. This section would waive the training wage requirement for programs of less than six months beginning October 1, 2005, and ending on September 30, 2010. VA would be required to review and approve all such programs before any MGIB educational assistance benefits could be paid.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would provide that this Act may be cited as the "Servicemembers and Veterans Legal Protections Act of 2004".

Section 101 would amend section 101 of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. App. 511) by adding a new paragraph (a) to the definitions. This new paragraph would define the term judgment to mean "any judgment, decree, order or ruling, final or temporary."

Section 102 would amend section 107 of SCRA (50 U.S.C. App. 517) to require that written waivers of certain SCRA rights and protections must also be executed in a separate instrument, and add a subsection (c) to require that certain written waivers must be in at least 12 point type.

Section 103 would amend section 202(a) of SCRA (50 U.S.C. App. 522(a)) by inserting the words "plaintiff or" before "defendant", to provide that plaintiffs as well as defendants under SCRA may request stays of civil proceedings.

Section 104(a) would amend subsection(a) of section 305 of SCRA (50 U.S.C. App. 535) to clarify that dependents as well as servicemembers are covered by section 305's residential and motor vehicle lease termination provisions.

Section 104(b)(1) would amend section 305 of SCRA (50 U.S.C. App. 535) to provide that the SCRA's lease termination provisions also apply when a servicemember has permanent change of station orders from a State outside the continental United States to any location outside that State.

Section 104(b)(2) would amend section 305 of SCRA (50 U.S.C App. 535) to define the term "military orders" with respect to a servicemember, as "official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status." It would also define the term "continental United States" for purposes of the SCRA lease termination provisions as "the 48 contiguous States and the District of Columbia."

Section 104(c) would amend section 305 of SCRA (50 U.S.C. App. 535) to clarify that individual deployments are covered under the protections of the SCRA, as well as military unit deployments.

Section 105 would add a new paragraph (5) to section 511(c) of SCRA (50 U.S.C. App. 571(c)) to prohibit a tax jurisdiction from imposing a use, excise or similar tax on the personal property of a nonresident servicemember when the laws of the tax jurisdiction fail to provide a credit against such taxes for sales, use, excise or similar taxes previously paid on the same property to another tax jurisdiction.

Section 201(a) would amend section 4317(a)(1)(A) of title 38, United States Code, by striking "18-month period" and inserting "24-month period" as the maximum period for health coverage a person may elect to continue employer-sponsored health insurance when the employee is absent from employment by reason of service in the uniformed services.

Section 201(b) would make the change to section 4317(a)(1)(A) effective for elections made on or after date of enactment of this Act.

Section 202 would amend section 4332 of title 38, United States Code, by striking "no later than February 1, 1996, and annually thereafter through 2000" and inserting "no later than February 1, 2005, and annually thereafter" for the requirement that the Secretary of Labor, in consultation with the Office of Special Counsel and the U.S. Attorney General, provide annual reports to Congress on the disposition of cases filed under USERRA.

Section 211(a) would amend chapter 43 of title 38, United States Code, by adding a new section 4334 entitled: "Notice of rights and duties."

Section 4334(a) would require each employer to provide to persons entitled to rights and benefits under chapter 43 of title 38, United States Code, a notice of the rights, benefits, and obligations of such persons and such employers under this chapter; this sub-

section would also provide that the requirement for this notice could be met by posting of the notice where employers customarily place notices for employees.

Section 4334(b) would require the Secretary of Labor to provide to employers the text of the notice required under this section.

Section 211(c)(1) would require the Secretary of Labor to make available to employers the notice required under section 4334(a) of title 38, United States Code, not later than 90 days after date of enactment of this Act.

Section 211(c)(2) would require that the amendments made by section 211 shall apply to employers under chapter 43 of title 38, United States Code, on and after the first date referred to in section 211(c)(1).

Section 212(a) would require the Secretary of Labor and the Office of Special Counsel to carry out a demonstration project under which certain claims against Federal executive agencies under USERRA, under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim.

Section 212(b)(1) would allow the Office of Special Counsel, for purposes of the demonstration project, to receive and investigate all claims under USERRA with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over the related claims under section 1212 of title 5, United States Code.

Section 212(b)(2) would define a related claim, for purposes of the demonstration project, as a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under USERRA.

Section 212(c)(1)(A) and (B) would allow the Secretary of Labor to refer to the Office of Special Counsel pending related claims filed before and during the demonstration project.

Section 212(c)(2) would define a claim, under chapter 43 of title 38, United States Code, as a claim against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit, or in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

Section 212(d) would require the Office of Special Counsel to administer the demonstration project and require the Secretary of Labor to cooperate with the Office of Special Counsel in carrying out the demonstration project.

Section 212(d)(2) would allow for any reference to the "Secretary" in sections 4321, 4322, and 4326 of title 38, United States Code, to be deemed a reference to the "Office of Special Counsel".

Section 212(d)(3) would allow the Office of Special Counsel to retain administrative jurisdiction over a claim referred to, or otherwise received under the demonstration project.

Section 212(e) would require the demonstration project to be carried out during the period beginning 60 days after the date of enactment of the Act, and ending on September 30, 2007.

Section 212(f) would require the Comptroller General of the United States to conduct periodic evaluations of the demonstration project.

Section 212(f)(2) would require the Comptroller General to submit a report to Congress on the evaluations no later than April 1, 2007, and require the report to include: (A) a description of the operations and results of the demonstration project; (B) an assessment of the referral of claims to the Office of Special Counsel under the demonstration project; (C) an assessment of the feasibility and advisability of referring all claims filed under chapter 43 of title 38, United States Code, against Federal executive agencies to the Office of Special Counsel for investigation and resolution; and (D) recommendations for administrative action or legislation as the Comptroller General deems appropriate.

Section 212(g)(1) would define the term "Office of Special Counsel" as the Office of Special Counsel established by section 1211 of title 5, United States Code.

Section 212(g)(2) would define the term "Secretary" as the Secretary of Labor.

Section 212(g)(3) would allow for the term "Federal executive agency" to have the same meaning as the term in section 4303(5) of title 38, United States Code.

Section 301(a) would amend chapter 55 of title 38, United States Code, by adding a new section 5506 to define 'fiduciary' as (1) 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 (2) 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.

Section 302(a) would amend chapter 55 of title 38, United States Code, as amended by section 301(a)(1), by adding at the end a new section 5507 entitled "Inquiry, investigations and qualifications of fiduciaries."

Section 5507(a) would require certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of title 38, United States Code, on the basis of (1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary (A) to be conducted in advance of such certification; (B) to the extent practicable, to include a face-to-face interview with such person; and (C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment; (2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and (3) the furnishing of any bond that may be required by the Secretary.

Section 5507(b) would require that as part of any inquiry or investigation of any person under subsection (a), the Secretary would request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in

imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary makes a specific finding that the person has been rehabilitated and is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

Section 5507(c)(1) would authorize the Secretary, in conducting an inquiry or investigation under subsection (a)(1), on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis would be carried out under regulations prescribed for purposes of this section.

Section 5507(c)(2) would permit expedited waiver authority of subsection (c)(1) with respect to a proposed fiduciary who is (A) the parent (natural, adopted, or step-parent) of a beneficiary who is a minor; (B) the spouse or parent of an incompetent beneficiary; (C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or (D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed $3600, as adjusted pursuant to section 5312 of title 38, United States Code.

Section 5507(d) would authorize the Secretary to appoint one or more temporary fiduciaries, for a period not to exceed 120 days, when needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse. If a final decision has not been made within 120 days, the Secretary could not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of title 38, United States Code.

Section 303(a) would amend chapter 61 of title 38, United States Code, by adding two new sections: 6106 entitled "Misuse of benefits by fiduciaries"; and section 6107 "Reissuance of benefits."

Section 6106(a) would prohibit a fiduciary from collecting a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month would be treated as a misused part of the individual's benefit.

Section 6106(b)(1) would provide that if the Secretary or a court of competent jurisdiction determines that a fiduciary that is not a Federal, State, or local government agency has misused all or part of a beneficiary's benefit that was paid to such fiduciary, the fiduciary would be liable for the amount misused. Such amount (to the extent not repaid by the fiduciary) would be treated as an erroneous payment of benefits under title 38, United States Code, to the fiduciary for purposes of laws pertaining to the recovery of overpayments. The amount of such overpayment would constitute a liability of such fiduciary to the United States and could be recovered in the same amount as any other debt due the United States. Subject to paragraph (2), upon recovering all or any part of such amount, the Secretary would pay an amount equal to the recovered

amount to such beneficiary or such beneficiary's successor fiduciary.

Section 6106(b)(2) would specify that the total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under paragraph (1) and under section 6107 of title 38, United States Code, could not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

Section 6106(c) would specify that, for purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, would be considered to be for the use or benefit of such beneficiary.

Section 6106(d) would authorize the Secretary to prescribe by regulation the meaning of the term "use and benefit" for purposes of this section.

Section 6106(e) would clarify that a determination by the Secretary that a fiduciary has misused benefits is a decision of the Secretary for purposes of section 511(a) of title 38, United States Code.

Section 6107(a)(1) would require the Secretary to pay to a beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of benefits that were misused in any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary.

Section 6107(a)(2) would state that there shall be considered to have been a negligent failure by the Secretary to investigate or monitor a fiduciary in the following cases: (A) a case in which the Secretary failed to timely review a fiduciary's accounting; (B) a case in which the Secretary was notified of allegations of misuse, but failed to act in a timely manner to terminate the fiduciary; (C) in any other case in which actual negligence is shown.

6107(b)(1) would require the Secretary to pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused in any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefits paid to such fiduciary.

Section 6107(b)(2) would specify that paragraph (b)(2) applies to a fiduciary that (A) is not an individual; or (B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under title 38, United States Code.

6107(c) would specify that in any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b) of section 6107, the Secretary would make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.

Section 304(a) would amend chapter 55 of title 38, United States Code, as amended by section 302(a), by adding the following new sections: section 5508 entitled "Periodic onsite reviews of institutional fiduciaries"; and section 5509 entitled "Authority to redirect delivery of benefit payments when a fiduciary fails to provide required accounting."

Section 5508 would require the Secretary, in addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, to provide for periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary pursuant to the appointment as a fiduciary under section 5502(a)(1) of title 38, United States Code. This section would apply in any case in which the fiduciary is serving more than 20 beneficiaries and the total annual amount of such benefits exceeds $50,000, as adjusted pursuant to section 5312 of title 38, United States Code.

Section 5509(a) would permit the Secretary to require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

Section 5509(b) would permit the Secretary, in any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a) after notices to do so, to require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.

Section 304(b) would amend chapter 61 of title 38, United States Code, as amended by section 303(a), by adding the following new sections: 6108 (a) through (c): Civil monetary penalties; and 6109 (a) through (d): Authority for judicial orders of restitution.

Section 6108(a) would provide that any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a fiduciary pursuant to section 5502 of title 38, United States Code, a payment under a law administered by the Secretary for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalty that may be prescribed by law, a civil monetary penalty assessed by the Secretary of not more than $5,000 for each such conversion.

Section 6108(b) would provide that any person who makes a conversion of a payment described in subsection (a) and is subject to a civil monetary penalty under that subsection by reason of such conversion would also be subject to an assessment by the Secretary, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

Section 6108(c) would require that from amounts collected under this section, the amount necessary to recoup the Department's costs of such collection be credited to appropriations currently available for the same purpose as the appropriation that incurred those costs, to remain available until expended.

Section 6109(a) would permit any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under title 38, United States Code, to order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

Section 6109(b) would require that sections 3612, 3663, and 3664 of title 18, United States Code, pertaining to the issuance and enforcement of orders of restitution apply under subsection (a). Also, the section would provide that the Department is considered the victim.

Section 6109(c) would require the court to state on the record the reasons for not ordering restitution, or only partial restitution.

Section 6109(d)(1) would require that except as provided in paragraph (2), amounts received or recovered by the Secretary pursuant to an order of restitution under subsection (a), to the extent and in the amounts provided in advance in appropriations Acts, be available to defray expenses incurred by the Office of the Inspector General for the investigation of fiduciaries under title 38, United States Code.

Section 6109(d)(2) would specify that paragraph (1) would not apply where the restitution represents the amounts of benefits misused by a fiduciary. Such restitution would be repaid to the beneficiary or the beneficiary's successor fiduciary unless such amounts had previously been repaid to the beneficiary, in which case such amounts would be treated in the same manner as overpayments recouped by the Secretary and would be deposited to the credit of the applicable revolving fund, trust fun, or appropriation.

Section 305(a) would amend chapter 55 of title 38, United States Code, by adding a new section 5510 entitled "Annual report."

Section 5510 would require the Secretary to include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary would be required to separately set forth the following: (1) the number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent); (2) the types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of title 38, United States Code); (3) the total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit; (4) the number of fiduciaries who are the spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian-in-fact, and supervised direct payment; (5) the number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused; (6) how such cases of misuse of benefits were addressed by the Secretary; (7) the final disposition of such cases of misuse of benefits, including the number and dollar amount of any civil or criminal penalties imposed; and (8) such other information as the Secretary considers appropriate.

Section 306 would amend section 5312(b)(1) of title 38, United States Code, to provide that the annual benefit amount adjustments made under that section would also apply to the amounts

provided under sections 5507(c)(2)(D) and 5508 of title 38, United States Code.

Section 307 would provide that except as otherwise provided, this title and the amendments made by this title would take effect on the first day of the seventh month beginning after the date of enactment of this Act.

Section 401(a) would require the Secretary of Veterans Affairs to establish and maintain a national inventory of medical waste management activities in the health-care facilities of the Department of Veterans Affairs. The inventory would include the following: (1) a statement of the current national policy of the Department on managing and disposing of medical waste, including regulated medical waste in all its forms; and (2) a description of the program of each geographic service area of the Department to manage and dispose of medical waste, including general medical waste and regulated medical waste, with a description of the primary methods used in those programs and the associated costs of those programs, with cost information shown separately for in-house costs (including full-time equivalent employees) and contract costs.

Section 401(b) would require the Secretary of Veterans Affairs to submit a report, not later than April 15, 2005, to the Committees on Veterans' Affairs of the Senate and House of Representatives on medical waste management activities in the facilities of the Department of Veterans Affairs. The report would include the following: (1) the inventory established under subsection (a), including all the matters specified in that subsection; (2) a listing of each violation of medical waste management and disposal regulations reported at any health-care facility of the Department over the preceding five years by any State or Federal agency, along with an explanation of any remedial or other action taken by the Secretary in response to each such reported violation; (3) a description of any plans to modernize, consolidate, or otherwise improve the management of medical waste and disposal programs at health-care facilities of the Department, including the projected costs associated with such plans and any barriers to achieving goals associated with such plans; and (4) an assessment or evaluation of the available methods of disposing of medical waste and identification of which of those methods are more desirable from an environmental perspective in that they would be least likely to result in contamination of air or water or otherwise cause future cleanup problems.

Section 402(a) would amend subchapter VIII of chapter 17 of title 38, United States Code, by adding a new section 1785 entitled "Care for newborn children of veterans receiving maternity care."

Section 1785(a) would authorize the Secretary to furnish care to a newborn child when a female veteran who is enrolled in the health-care system established under section 1705 of title 38, United States Code, is receiving maternity care from the Department and delivers the child in a Department facility or in a non-Department facility under a Department contract.

Section 1785(b) would require that in a case in which a neonate covered by subsection (a) of section 1785 is born in a Department facility, care furnished for the neonate at that facility would be furnished without charge to the veteran who delivered the neonate.

Section 1785(c) would require that in a case in which a neonate covered by subsection (a) of section 1785 is born in a non-Department facility or is provided care in a non-Department facility following birth in a Department facility and transfer from that facility, the Secretary may provide for the payment of the cost of care and services for the neonate in the same manner, and subject to the same limitations, as if such care and services were emergency treatment furnished the veteran subject to section 1725 of title 38, United States Code, except that (1) the services for which the Secretary may make payment would be limited to those items and services for which payment may be made under the Medicare program under title XVIII of the Social Security Act for post-natal care furnished to a neonate; and (2) the rate of payment for such services may not exceed the payment rates applicable to those items and services under the Medicare program. Payments may be made under section 1725 only if there is no other source of payment for the services and the veteran is personally liable for payment for the health care provided.

Section 403(a)(1) would amend section 3677(b) of title 38, United States Code, pertaining to the approval of on the job training benefits, by adding a new paragraph (3).

Section 3677(b)(3) would clarify that notwithstanding paragraph (1)(A) and subsection (c)(8), wages are not required to be paid to an eligible person or veteran by a training establishment described in section 3452(e)(2) of title 38, United States Code. Section 3452(e)(2) defines a training establishment as "an establishment providing self-employment on-job training consisting of full-time training for a period of less than six months that is needed or accepted for purposes of obtaining licensure to engage in a self-employment occupation or required for ownership and operation of a franchise that is the objective of the training."

Section 403(a)(2) would authorize certain self-employment training benefits for the five-year period beginning on October 1, 2005 and ending on September 30, 2010.

Section 403(b) would require that the amendments made by section 403(a) would take effect as if included in the enactment of section 301 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2658).

PERFORMANCE GOALS AND OBJECTIVES

The reported bill would make improvements to laws providing rights and benefits to veterans and servicemembers. These laws are variously administered by the Secretary of Veterans Affairs, the Secretary of Defense, the Secretary of Labor, and the U.S. Special Counsel. The performance plans and goals for the Departments of Veterans Affairs, Defense and Labor, and the Office of Special Counsel are established in annual performance plans, and are subject to the regular oversight of the Committee, as well as evaluation by the U.S. Government Accountability Office.

STATEMENTS OF THE VIEWS OF THE ADMINISTRATION

STATEMENT OF THE HONORABLE SCOTT J. BLOCH, SPECIAL COUNSEL, UNITED STATES OFFICE OF SPECIAL COUNSEL, JUNE 23, 2004, BEFORE THE VETERANS' AFFAIRS COMMITTEE, U.S. HOUSE OF REPRESENTATIVES, CONCERNING THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Introduction

Mr. Chairman, and distinguished members of the Committee, I am honored to speak with you today about the vital role played by the Office of Special Counsel (OSC) in enforcing the Uniformed Services Employment and Reemployment Rights Act (USERRA) and to assure you that OSC is dedicated to enforce the law expeditiously and decisively so that no one's reemployment rights are denied and no one suffers invidious discrimination because of military service.

The country is in the midst of an historic and unprecedented mobilization and forthcoming demobilization of National Guard and Reserve forces. As of June 9, 2004, there were more than 168,000 members of the Air and Army National Guard and Reserve Forces on active duty to fight the global war on terrorism. Those brave and talented servicemen and women have temporarily left their civilian vocations and joined career servicemen, such as my 20-year old son, Marine Lance Corporal Michael Bloch, serving in the First Battalion 7th Marine Regiment, who has been stationed in Iraq once and is soon to be deployed again to Iraq.

The Federal government is the country's largest employer of guardsmen and reservists. Indeed, my Deputy and several other OSC employees are members of the National Guard or Reserve.

God willing, each of the thousands of guardsmen and reservists who are proudly and valiantly defending our freedom will return safely home to their families, friends, and civilian jobs and careers.

In light of their dedication and service to our country, I am truly honored to be among those public servants asked to provide you with information about the important law that was enacted to protect their employment and reemployment rights.

Moreover, I am grateful to be here because today's hearing provides a timely occasion and an appropriate forum to dispel any false impression regarding my agency's commitment to protecting the employment rights of those brave military service members who have served, are currently serving, and who will serve in the uniformed services.

Before becoming Special Counsel on January 5, 2004, there had been criticism of OSC's enforcement of USERRA. I examined therefore that critical commentary in light of OSC's past policies and practices. I concluded that some of the criticism was born of a lack of prompt action on USERRA cases.

Mr. Chairman and Committee members, be assured that regardless of what occurred or did not occur prior to my taking office, OSC, under my leadership, is steadfastly committed to enforcing USERRA. As you know, the statute states that it is the sense of the Congress that the Federal government should be a model employer in fulfilling its statutory obligations under USERRA. I assure you that as head of the independent agency with authority to prosecute violations of USERRA, I share completely in Congress' sense. Indeed, I have given USERRA matters a new found priority so that it now receives the attention it justly deserves.

OSC's Role in Enforcing USERRA

Pursuant to Section 4324 of Title 38, OSC is authorized to act as the attorney for an aggrieved person and initiate legal action against the involved Federal employer before the U.S. Merit Systems Protection Board (MSPB). The OSC is the Federal sector's "special prosecutor" of meritorious USERRA cases. As special prosecutor, OSC seeks to obtain full corrective action on behalf of claimants either via litigation against, or full corrective action settlements with, the involved Federal employer.

Under USERRA, a person who has sought relief through the U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS), may request that OSC review his or her USERRA claim to determine whether it has merit and, if so, represent the person in USERRA litigation before the MSPB.

When such a request is made, OSC receives from the DOL's Regional Solicitor (RSOL) the VETS investigative file and the RSOL's legal analysis of the claim. As special prosecutor, OSC objectively reviews the facts and laws applicable to each claim. Where the Office of Special Counsel is satisfied that a claimant is entitled to relief, then we may exercise our prosecutorial authority and represent the claimant before the MSPB and, if required, on appeal to the U.S. Court of Appeals for the Federal Circuit.

From fiscal years 2000 through 2003, OSC has received more than 50 referrals from VETS. During that time, full corrective action was successfully negotiated on every USERRA claim that OSC determined had merit.

Prior to today, OSC had never filed a USERRA action before the MSPB. Mr. Chairman, unfortunately I had to instruct my staff to file a case this morning with MSPB because an Agency was not willing to provide adequate relief for a service member. I assure you that under my leadership there will be no hesitation to commence litigation against a Federal agency where the evidence shows that such agency has failed to comply with any provision of USERRA.

Improving the Process

As mentioned, I have carefully examined USERRA's referral process since becoming Special Counsel. I have determined that the process creates unnecessary inefficiency.

For example, it is unclear whether OSC has the authority under USERRA to investigate claims or pursue disciplinary action against offending supervisors as we do in other federal employment violations we enforce. Instead, the investigative function is performed by VETS. Hence, if deemed necessary during our review of a USERRA claim, OSC will request that the involved Federal agency voluntarily provide additional information. Additionally, pursuant to the February 7, 2001, Memorandum of Understanding (MOU) between OSC and VETS, OSC may request VETS investigative assistance. Indeed, pursuant to that MOU, VETS recently assisted OSC in obtaining additional relevant evidence that is important to our current review of a particular case.

While those methods are adequate for OSC to collect additional evidence, the bifurcation of the investigative and prosecutorial steps is not as efficient as OSC's authority to investigate and prosecute allegations of prohibited personnel practices under Title 5.

I agree with British Prime Minister William Ewart Gladstone that "justice delayed is justice denied."

Already, I have made changes to reduce inefficiency by eliminating duplication and delay. First, through our experience in investigating and analyzing prohibited personnel practices such as whistleblower reprisal cases, we have learned that the closer our attorneys are involved in the investigation, the more efficiently we resolve cases. For example, the merger of investigative and analytical functions lessens the chances of "over-investigating" cases that are without merit and increases the chances of identifying cases warranting prosecution. As to the latter, the sooner we find meritorious claims, the sooner OSC can move toward obtaining corrective action on behalf of the aggrieved person.

Thus, at my urging and with my approval, OSC and DOL are drafting amendments to our MOU concerning the referral process. The changes under consideration aim to have OSC's investigative and legal expertise involved at a much earlier stage than under the current referral process. In particular, we have asked VETS to identify, as soon as practical, difficult cases that would benefit from OSC's early involvement. By alerting our office to such cases, there will be a reduction in duplication of effort.

I appreciate Department of Labor Solicitor Howard Radzely and his staff for working closely with OSC in bringing about this change, and I have already seen the benefits of having OSC's enforcement role triggered sooner. In fact, soon after this idea was presented, an RSOL invited OSC's involvement in a USERRA matter prior to referring the matter to us. The OSC contacted the agency and we obtained an extension of the agency-set deadline for the claimant to accept a settlement offer that DOL had procured. The OSC thereafter obtained additional information from the agency and, along with the information obtained by VETS, was able to guide the claimant to a successful resolution of his USERRA claim. But for DOL's cooperation in allowing OSC to be involved earlier than usual, the settlement offer would have expired, and the claimant may not have secured a favorable resolution.

Moreover, OSC has changed the manner in which USERRA referrals are handled internally. Since becoming Special Counsel, I have established a Special Project Unit (SPU). SPU's overriding function is to maximize OSC's efficiency in fulfilling its many crucial missions. The SPU can be likened to a SWAT team that can be quickly deployed to address any deficiency in OSC's ability to fulfill its various missions. When such an issue arises, OSC personnel having particular expertise in the given area are detailed to SPU. For example, SPU is examining new ways to eliminate permanently OSC's chronic backlogs.

Experienced attorneys with specialized knowledge of USERRA have been detailed to SPU and, at my direction, all USERRA referrals are assigned to SPU. By assigning all USERRA referrals to SPU, the matters receive priority attention and consideration. Additionally, OSC is prepared to detail additional attorneys and investiga-

tors to SPU to handle any surge in USERRA referrals as the result of the record number of guardsmen and reservists being demobilized and returning to the Federal workforce.

In summary, OSC has taken steps to speed up the referral process such that meritorious USERRA claims can be more quickly identified and prosecuted. I further pledge to devote whatever additional resources are needed to ensure that the law is vigorously enforced.

Educating the Public

I sense another problem affecting the referral process: lack of awareness among the Federal workforce about OSC's role in enforcing USERRA. Regardless of the merit of a USERRA claim, a person has the right to ask that his or her unresolved claim be referred to OSC. Yet, in fiscal year 2003, OSC received only seven USERRA referrals while the total number of Federal sector complaints is in the hundreds.

That low number of referrals may be the result of either: a) people knowingly choosing to bypass OSC as an avenue of redress, or b) people lacking accurate information about how OSC can protect their employment and reemployment rights. As to the latter, we want the public to know that OSC is here to assist persons who have had their reemployment rights violated and who have suffered discrimination because of their military service. We have already taken steps to send that message.

First, I have changed OSC's prohibited personnel practice outreach program so that it now includes information about OSC's role in enforcing USERRA. Now, each time OSC visits a Federal agency to provide prohibited personnel practice training, Federal employees will be informed of OSC's role in protecting the employment and reemployment rights of guardsman and reservists.

Second, we have also been working closely with the Department of Defense's Employer Support for the Guard and Reserve (ESGR) to ensure that accurate information about OSC is being disseminated more broadly. I extend my appreciation to ESGR for helping get the word out about OSC's vital role under USERRA.

Finally, OSC's USERRA Coordinator—a GS–15 Supervisory Attorney with USERRA expertise—maintains OSC's telephonic and electronic USERRA "hotlines" and regularly provides information and assistance to persons and employers about their respective rights and responsibilities under USERRA.

We are encouraged that these efforts will lead to a greater public awareness of our role, and we will continue to look for additional ways to get out the message that OSC will aggressively enforce the law and protect veterans, reservists, and guardsmen.

As for the seeming reluctance of persons to seek OSC's assistance, allow me to make the most of my appearance here today by setting the record straight:

I say to the brave guardsmen and reservist risking their lives for our freedom, I am completely and passionately committed to the protection of your employment and reemployment rights. Your sacrifices merit no less than OSC's 100% commitment to enforcing USERRA.

I state emphatically before this committee to the heads of every Federal agency that one USERRA complaint is one too many. As Special Counsel, I:

1) will not tolerate discrimination against persons because of their service in the uniformed services;
2) will not permit anything less than the prompt reemployment of persons upon their return from military service; and
3) will prosecute aggressively the failure to comply with any provision of USERRA, and I will not hesitate to file an action before MSPB if necessary.

With that in mind, I challenge every Federal agency to be a model employer under USERRA by protecting fully, vigilantly, and enthusiastically the employment and reemployment rights of its employees and applicants for employment. It is an ambitious goal, but one that is within reach—and it is the right thing to do.

Indeed, it is a goal that Federal agencies must strive to attain; and, to every Federal agency trying to do so, OSC pledges its assistance. As for complacent agencies, be advised that OSC shall not waiver from its commitment to enforce USERRA aggressively, diligently, and zealously.

Conclusion

Mr. Chairman and members of the Committee, regardless of what may have been the past policy, under my leadership; OSC takes its role as the sole prosecutorial enforcer of USERRA seriously. As you can see, we have already moved away from past practice and have given USERRA cases the priority they deserve.

Shakespeare wrote:

> There is a tide in the affairs of men, which taken at the flood, leads on to fortune. Omitted, all the voyage of their life is bound in shallows and in miseries. On such a full sea are we now afloat. And we must take the current when it serves, or lose our ventures.

As the Federal government is facing an historic and unprecedented number of guardsmen and reservist returning to their federal careers, OSC will soon be afloat upon a full sea.

Consequently, we are properly focused, and newly invigorated to fulfill our vital role under USERRA. We will navigate the current with unwavering commitment to enforce USERRA law expeditiously and decisively. We will welcome any legislative changes that enhance our ability to enforce this important law.

Mr. Chairman and members of the Committee, I thank you for the opportunity to testify today.

STATEMENT OF THE HONORABLE DAN G. BLAIR, DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, BEFORE THE COMMITTEE ON VETERANS' AFFAIRS, UNITED STATES HOUSE OF REPRESENTATIVES

Good morning Mr. Chairman and members of the Committee. I appreciate the opportunity to appear before you today to discuss the proposed legislation expanding health insurance coverage for our deployed service members and the public sector's obligation to veterans under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

President George W. Bush and Office of Personnel Management (OPM) Director, Kay Coles James, are dedicated to ensuring veterans receive the rights and benefits to which they are entitled under all veterans' employment laws, including USERRA. In truth, Director James has both a professional and a personal interest in veterans' rights issues. Her son-in-law recently returned from active duty in the Naval Reserves. So you know her dedication is genuine.

The Federal Government is the Nation's leader in employing veterans. Approximately one out of every four Federal employees is a veteran. The number of veterans in the Federal workforce is roughly 450,000. What's more, the Federal Government employs more reservists and National Guard members than any other employer—about 120,000 in total, of whom nearly 65,000 are military technicians whose civilian Federal employment requires National Guard or Reserve membership.

Today, over 15,000 Federal employees are serving on active duty with the Guard and Reserve. These veterans left their employment and placed their careers on hold to go fight in far-off lands . . . for us. These brave men and women were not forced to serve—it was by choice. They volunteered! These veterans deserve more than our thanks. When they leave the uniformed service, they deserve to know their right to return to public sector employment is protected.

As the leader in veterans' employment, the Director takes OPM's obligation to reemploy these men and women under USERRA very seriously. Again, it is not just the law . . . it is the right thing to do. We administer veterans' entitlements under the United States Code, in both title 5, including veterans' preference in employment and reduction in force, as well as title 38, which covers USERRA reemployment rights. (Title 38 also governs veterans' entitlement to benefits administered by the Department of Veterans Affairs (VA)).

Health Benefits Extension

First, I will speak to the proposed legislation to expand health benefit premium payments for reservists called up for active military service.

OPM is the Government's chief personnel office, which includes responsibility for administering the Federal Employees Health Benefits (FEHB) Program for Federal employees and annuitants. OPM is committed to finding ways to provide health benefits for our called-up employee reservists who bravely commit themselves to defending our Country.

Before 1994, Federal law allowed employee reservists to continue their FEHB enrollment for up to 365 days while on military duty. USERRA extended the 12 month period to 18 months by amending section 8906 of title 5 to provide up to 6 months additional coverage for reservists called to active duty. USERRA also empowered agencies to pay both the enrollee share and the Government share of the FEHB premium for called-up reservists for up to the entire 18 months.

On May 13, 2002, OPM Director James issued a Memorandum for Heads of Executive Departments and Agencies stating that OPM strongly encourages agencies to assist employees called-up to active duty by paying both shares of the FEHB premium. Director James specifically asked agencies to pay both shares of the premium in support of these reservists supporting Operation Iraqi Freedom, the September 11 terrorist attacks, Kosovo, other ongoing operations and future operations under title 10 of the United States Code.

Last year, we asked agencies how much of the FEHB premium they pay for these reservists. I am pleased to report most agencies pay both shares. Of the 114 agencies surveyed, 96 pay the full premium. We have learned the Postal Service recently indicated they will pay both shares of the premium, retroactive to 2003.

OPM will continue to support our called-up employees in every way possible. If the extension of FEHB coverage to 24 months becomes law, we will again strongly encourage agencies to pay both shares of the health benefits premium for the entire 24-month period. Based on the number of reservists now called to active duty and assuming up to 20 percent are extended to 24 months we estimate the cost to the agencies of the additional premium to be $9.6 million.

USERRA Reemployment Rights

Now, I would like to discuss reemployment rights under USERRA as it applies to the public sector.

Basically, USERRA:

- Prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services;
- Prohibits an employer from denying any employment benefit based on an individual's membership or application for membership, or performance of, application for, or obligation for service in the uniformed services;
- Applies to all executive branch agencies, including the U.S. Postal Service; and
- Provides the right of called-up Reservists and National Guard members, as well as individuals who left their jobs to enlist in the Armed Forces, to be reemployed in their jobs when their military service obligation is over.

OPM is responsible for, and may order the placement of, a returning military service member in a different agency if it is impossible or unreasonable for the original agency to reemploy the returning veteran, if, for instance, the original agency was abolished.

Any Federal employee, permanent or temporary, who performs duty with a uniformed service whether voluntary or involuntary, is entitled to be restored to the position he or she would have attained had the employee not entered the uniformed service, provided the employee:

- Gave the agency advance notice of departure, except where prevented by military circumstances;
- Was released from uniformed service under honorable conditions;
- Served not more than a cumulative total of 5 years, with certain exceptions; and
- Applies for restoration within statutory time limits.

Pursuant to OPM's regulations in part 353 of title 5 of the Code of Federal Regulations, agencies must tell their employees who enter the uniformed service about their entitlements, obligations, benefits, and appeal rights. Also, we note that under the proposed H.R. 4477, all public and private employers with employees having USERRA rights, would be required to post a notice, with text to be provided by the Secretary of Labor, of those rights and benefits.

Those employees completing their military service obligation must apply for reemployment within specific timeframes, depending on how long they served. Agencies must reemploy these employees as soon as possible after receiving the reemployment application but no later than 30 days after receipt.

Generally, returning employees must be treated as if their employment had not been interrupted by military service. They must be reemployed in the position for which they would have been qualified. If they are not qualified for that position and cannot become qualified through reasonable employer efforts, the employee is entitled to be placed in the position he or she left.

Employees reemployed under USERRA are treated like they never left for most purposes including seniority, pay increases, retirement (a deposit to the retirement fund is usually required to cover the military service period), and leave rate accrual. Reemployed veterans are protected from not-for-cause separations (for example, by reduction in force) for 1 year after their return for those who served more than 180 days and 6 months for those who served more than 30 days but less than 180 days.

Applicants or employees who believe that an agency has not complied with the law or with OPM regulations governing USERRA restoration rights may file a complaint with the Department of Labor's local Veterans' Employment and Training Service (VETS) or, if VETS is unsuccessful in resolving the complaint, appeal to the Merit Systems Protection Board.

OPM Actions for Veterans

Director James has directed OPM to take a number of steps to guarantee that the rights and entitlements of our veterans are not compromised as they return to their Federal jobs. We provide guidance to Federal agencies and departments as well as directly to veterans.

- On September 14, 2001, 3 days after the tragedy of September 11, we published extensive guidance to agencies on the rights and benefits of employees called to active duty.
- On October 29, 2001, we published a set of Frequently Asked Questions on military leave.
- We update "VetGuide" on OPM's Web site to ensure it remains the most comprehensive site for veterans' information.

As a part of our general oversight authority, which we execute through Human Resource Operations audits and Delegated Examining Unit (DEU) audits, OPM ensures that veterans are protected against discrimination. Each year, we conduct approximately 20 operations audits and 125 DEU audits Governmentwide. We notify agencies of our coverage of veterans' issues and programs before each review and discuss key OPM initiatives.

Through the newly created OPM Veteran Invitational Program (VIP), we are providing veterans with timely, accurate, and useful information to inform them of their rights and employment opportunities with the Federal Government. The VIP provides assistance to military personnel who are transitioning to civilian life through various informational tools and publications. In this regard, OPM works with Transition Assistance Program offices on military bases to recruit and assist veterans. We distribute posters, pamphlets, and wallet size information cards as well as inform veterans through an accessible Web link. OPM has also produced the DVD *"What Veterans Need to Know About Veterans' Preference,"* a comprehensive 40-minute video seminar of veterans' preference rights and eligibilities.

In addition to the VIP, Director James and the OPM Team:

- Have developed outreach material to distribute at military bases' Transition Assistance Programs (TAP); Veterans Affairs Regional Offices; Veterans Service Organizations at the national, State and local levels; the U.S. Department of Labor's Veterans Employment and Training Service; and at recruitment fairs, including our recent Nationwide *Working for America* Recruitment Fairs.
- Have improved our USAJOBS Web site to make it more veteran-friendly by adding several veterans' links and additional veterans' employment information.
- Continue to explain veterans' rights at national conventions, conferences, workshops, and service officer training sponsored by the Veterans Service Organizations (VSOs). Also, we have reestablished quarterly meetings with VSO representatives for updates on issues of interest and provide an opportunity for them to share their concerns with OPM. I personally chair these meetings in which we invite leading experts on veterans' employment issues to share information.
- Actively participate as a member of the National Committee for Employer Support of the Guard and Reserve (ESGR), which is a Department of Defense-sponsored organization that seeks to minimize issues and misunderstandings that may arise between Reservists serving on active duty and their employers.
- Are actively involved with and a member of the National Task Force on Disability (assisting with the employment of Disabled Veterans) and the President's National Hire Veterans Committee, on which I personally serve.
- Work with the Department of Labor and the Department of Veterans Affairs to facilitate the employment of veterans, and share program information with the human resources community and others.
- Have staffed booths during the recent series of OPM-sponsored nationwide recruitment fairs to provide information concerning the VIP and other veterans' employment benefits and protections, such as that offered under USERRA. We also conducted workshops at each fair to provide veterans with information on employment preference, special appointment authorities, and complaint procedures.

OPM has been at the forefront of efforts to preserve and protect veterans' rights in Federal employment. We share the view held by Veterans Service Organizations that our Nation owes a debt of gratitude to its veterans. Veterans' preference laws provide a measure of compensation for those brave young men and women who left their families and homes to answer our Nation's call to arms.

Recently, Director James convened a meeting of the Chief Human Capital Officers Council and the leaders of America's Veterans Service Organizations at Walter Reed Army Medical Center. She took advantage of this opportunity to remind attendees that there are no longer any excuses for not using the many hiring authorities available to Federal agencies to bring veterans into the Federal service.

At a recent visit to Walter Reed, Director James stated that OPM will continue "aggressive" audits to ensure veterans' preference law is upheld. The day-long event included a personal message of thanks from Director James on behalf of the nation's 1.8 million civil servants, as well as training seminars and informational workshops for the soldiers conducted by OPM experts. OPM staff offered seminars including one which explained veterans' preference, appointing authorities, basis of preference, and veterans' preference types and benefits. Other seminars and workshops covered navigation of the USAJOBS.opm.gov Web site, resumé writing, interviewing skills, and the Federal application process. Staff also met one-on-one with military personnel about the opportunities and benefits within the Government and the processes for obtaining a Federal job.

OPM recently hosted a special Veteran Employment Symposium on veterans' preference and recruitment. The all-day event, attended by agency human capital leaders, human resources specialists, and program managers, focused on advancing existing policies and strategies to recruit veterans into the Federal workforce, and to reiterate that veterans' preference is the law and not a courtesy. As Director James told the audience of over 250 attendees:

> Today's veteran brings the same level of dedication to the job as previous generations of veterans, but in addition they bring many of the high-tech skills needed in the current Federal work force. The Federal Government has a responsibility to help these men and women as they transition back to civilian life. As members of the best trained and volunteer military in the world, veterans have demonstrated an appreciation and competence for excellence and teamwork, and I cannot think of a better source of talent for the Federal Government than those who have completed their service in uniform.

And just yesterday, as part of our VIP, OPM staff conducted an outreach effort at the Department of Veterans Affairs Hampton Rehabilitation Medical Center in Hampton, Virginia. OPM experts provided employment information to veterans seeking careers in the Federal civil service, including training on maximizing our USAJOBS.opm.gov website in Federal job searches and writing resumés.

Conclusion

The Federal human resources community understands our veterans are a valued resource who have earned, through their very life's blood, hiring preference and reemployment rights we should be so very honored to provide. We must never forget disabled veterans have paid a very personal price for our freedom. Veterans are assets to any organization. They bring strength, courage and commitment in a way that cannot be fully imagined by those who have never stood in harm's way for the cause of their country.

I would be glad to answer questions you might have.

STATEMENT OF THE HONORABLE DAVID C. IGLESIAS, UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO, DEPARTMENT OF JUSTICE, BEFORE THE HOUSE VETERANS AFFAIRS COMMITTEE, UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

JUNE 23, 2004

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to discuss the Department of Justice's ("DOJ's") representation of service members pursuant to the Uniformed

Services Employment and Reemployment Rights Act of 1994 ("USERRA"). USERRA provides the fundamental right to reinstatement to civilian employment (under specified conditions) following non-career military service. USERRA also includes a broad anti-discrimination provision, prohibiting discrimination or acts of reprisal against an employee or prospective employee based upon past, current, or future military obligations. The Committee's interest in this important area is especially timely in light of the large number of Reserve and National Guard members serving on active duty in the Persian Gulf and elsewhere.

In this statement, we address first the procedures we follow in handling USERRA claims. Next, we provide pertinent data on the number and disposition of claims we received during FY 2002, FY 2003, and the first half of FY 2004. Finally, we identify the steps the Department of Justice has taken recently to provide guidance to our attorneys handling USERRA cases and to publicize to employers their obligations under the law.

I. *Procedures*

Members of the uniformed services alleging a violation of USERRA may obtain representation by DOJ, provided that the member first submits a complaint to the Department of Labor's ("DOL's") Veterans Employment and Training Service ("VETS") and VETS is unable to successfully resolve it.

Where DOL is unable to resolve a complaint and the service member requests referral of his or her claim for consideration of representation, DOL, through its Regional Solicitors ("RSOL"), refers the claim to DOJ's Civil Division. Each referral includes the VETS investigative file, a memorandum prepared by VETS, and a letter or memorandum to DOJ from the RSOL analyzing the merits of the claim based upon the facts and the law and providing a recommendation as to whether DOJ should or should not represent the claimant.

DOJ's Civil Division serves as the gateway for DOL's USERRA referrals. Based upon its review of the investigative file, the VETS memorandum, the RSOL's memorandum, and its own analysis, the Civil Division either forwards the case to a United States Attorney's Office ("USAO") for appropriate action or declines representation and returns the matter to the RSOL because the claim lacks merit. When we return a claim, DOL informs the service member of our decision against representation and reminds the claimant that he or she remains free to pursue the claim through private counsel. Our determination not to provide representation nearly always accords with DOL's conclusion that the claim lacks merit.

When the Civil Division refers a claim to a USAO, the United States Attorney assigns the matter to an Assistant United States Attorney ("AUSA"), who reviews the investigative file and the VETS and RSOL memoranda and then interviews the claimant and potential witnesses. The AUSA may recommend that the United States Attorney decline to represent the service member because further review and investigation demonstrates that the claim lacks merit. If the AUSA determines that the claim is meritorious, and the United States Attorney agrees, the USAO represents the service member. Where representation is provided, the AUSA will typically contact the employer and attempt to resolve the matter without litigation. If this proves impossible, the AUSA will file a complaint against the employer in Federal district court.

Once suit is filed, a USERRA case proceeds much like any other litigation. After the complaint is filed, discovery may be undertaken, dispositive motions may be filed, and a trial and subsequent appeal may occur. Alternatively, a settlement may be negotiated at any stage of the litigation.

One type of case is somewhat unusual: a suit against a State. Recent case law curtailed employee suits against State governments based upon Federal law because of the immunity provisions of the Eleventh Amendment to the Constitution. *E.g., Velasquez* v. *Frapwell,* 160 F.3d 389 (7th Cir. 1998) (affirming dismissal of USERRA claim brought by employee against State employer as barred by Eleventh Amendment), *vacated in part,* 165 F.3d 593 (7th Cir. 1999). In response, Congress amended USERRA in 1998, to allow DOJ to sue States in the name of the United States on behalf of State employees. (Alternatively, USERRA allows a service member represented by private counsel to sue in his or her own name in State court, in accordance with the laws of the State.) As set forth below, DOL referrals involving claims against States represent a relatively small percentage of total referrals in recent years, and in many of those cases DOL recommended against representation.

II. *Statistics*

FY 2002 and 2003.

The number of USERRA claims DOL referred to DOJ annually has increased approximately 20 percent since September 11, 2001. During FY 2002, DOJ received 52 cases; 14 were referred to USAOs and 38 were returned to DOL because the facts

were insufficient for action. During FY 2003, DOJ received 53 cases; 12 were referred to USAOs and 41 were returned to DOL due to a lack of merit. By way of comparison, during FY 2001 and 2000, DOJ received 45 and 43 cases, respectively.

Of the 105 cases DOJ received during FY 2002 and 2003, 16 (or approximately 15 percent) involved claims against States. We declined representation in 12 of the 16 cases because we agreed with DOL's conclusion that the claims lacked merit. Of the 4 claims against States referred to USAOs, DOJ agreed to represent 3 of the claimants and has since settled 2 of those 3 claims without litigation. The fourth case was returned to DOL by agreement between DOL and the USAO.

Of the 26 cases the Civil Division referred to USAOs during FY 2002 and 2003 (including the 4 involving States), the USAOs agreed to represent the claimants in 12 cases and declined representation in 11 cases. 2 cases are under review at the USAOs and no representation decisions have yet been made. The remaining case was returned to DOL by agreement. In the 12 cases where representation was provided, the USAOs settled 4 of the claims without litigation and 4 after filing suit; 3 cases are pending and 1 was closed due to the claimant's failure to cooperate with the USAO. In the 11 cases where representation was declined, 7 declinations were due to a lack of merit, 3 due to the claimant's failure to cooperate, and 1 due to mootness. A summary of the status or disposition of the 26 cases referred to USAOs during FY 2002 and 2003 is attached. Attachment A.

First Half of FY 2004. During the first six months of FY 2004, DOJ received 31 USERRA claims (12 of the 31 claims presented a similar legal issue and they were referred as a group). The Civil Division referred 5 claims to USAOs and declined representation in 26 because they lacked merit (the 26 declinations included the 12 claims referred as a group). Of the 5 cases referred to USAOs, the USAOs declined representation in 3 and the remaining 2 are presently under review. 14 of the 31 FY 2004 referrals—almost 50 percent—involved claims against States. The percentage is skewed because the 12 referred as a group were against States. Of the 14 claims against States, the Civil Division declined representation in 13 and a USAO declined 1.

One factor which may affect the number of referrals to DOJ is USERRA's new provision permitting the district court to award (in addition to other relief) attorney fees, expert witness fees, and other litigation expenses to a service member who prevails in the litigation and is represented by private counsel. This may provide greater incentives for the private bar to provide representation and also motivate private employers to comply voluntarily to avoid additional costs. On the other hand, members incur no cost when being represented by the Department of Justice. The fee provisions may encourage litigation that could otherwise be avoided. Claimants may choose to retain private counsel and institute lawsuits, rather than seek the assistance of DOL, which historically has had a high rate of success in resolving these disputes amicably and obtaining employers' voluntary compliance with the law.

III. *DOJ's Recent Proactive Efforts*

DOJ recognizes the important role it plays in enforcing USERRA. We are committed to working closely with DOL in these matters and to representing vigorously USERRA claimants with meritorious claims. In addition to promptly processing USERRA referrals, the Civil Division and the United States Attorneys have taken the following recent steps in this area:

- The most recent edition of DOJ's *Federal Civil Practice Manual* (February 2003) includes a new chapter on USERRA.
- In April 2003, because of the mobilization of Reserve and National Guard members, the Military Issues Working Group of the Attorney General's Advisory Committee sent to all United States Attorneys a memorandum on USERRA to highlight the importance of USERRA cases and provide guidance in handling such claims.
- In June 2003, in a collaborative effort, lawyers from DOJ (both the Civil Division and the United States Attorneys) and DOL presented a Justice Television Network program entitled "A Practical Legal Guide to USERRA for AUSAs." The program was broadcast to United States Attorneys' offices nationwide from our National Advocacy Center.
- In September 2003, a Civil Division lawyer participated in the "USERRA Compliance Assistance" program at DOL headquarters The program was held for DOD and DOL employees, as well as private employers interested in learning about USERRA.
- Several United States Attorneys have conducted press conferences, lectured at Chamber of Commerce meetings, written articles and, in general, got the word out to the business community and the Guard and Reserve communities that DOJ is taking this issue very seriously.

Summary of Status or Disposition, By Category, of 26 USERRA Cases Referred to USAOs during FY 2002–2003
As of June 9, 2004

Category		*Number of Cases*
Representation granted		12
a) settled without litigation	4	
b) settled after filing complaint	4	
c) pending (pre-filing)	3	
d) closed due to failure to cooperate	1	
Total:	12	
Representation declined		11
a) due to lack of merit	7	
b) due to failure to cooperate	3	
c) due to mootness	1	
Total:	11	
Under review (no representation decision made)		2
Returned to DOL by agreement		1

Total Cases: 26

STATEMENT OF CHARLES CICCOLELLA, DEPUTY ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR, BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON VETERANS' AFFAIRS

JUNE 23, 2004

Chairman Smith, Ranking Member Evans, and other distinguished members of the House Veterans' Affairs Committee, the Department of Labor is pleased to have this opportunity to provide comments on compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA). As you know, USERRA has been very much in the news for nearly three years now. Within days after the attacks of September 11, 2001, the President authorized a partial mobilization, under which up to one million members of the Ready Reserve could be activated for up to 24 months. Since this historic mobilization began, over 385,854 of these citizen-soldiers have been called, of whom 156,667 currently remain on active duty. This includes 76 employees of the Department of Labor, 16 of whom currently remain on active duty.

USERRA is particularly important now as it provides reemployment rights to those men and women called from civilian jobs to serve in the nation's defense. In addition, the law prohibits employer discrimination against veterans and reservists because of their military service or obligations.

HISTORY

USERRA's roots go back to 1940, when the Congress was considering the nation's first peacetime draft. At the same time, the lawmakers resolved to provide newly inducted service members the right to return to their pre-service employers. To achieve this, what came to be popularly known as the Veterans' Reemployment Rights (VRR) law was enacted.

By the early 1990s, the VRR law had become a complex and often difficult patchwork of legislative amendments and court decisions. It was severely tested by the mobilization and subsequent return of some 265,000 Guard and Reserve members from Operation Desert Shield/Desert Storm in 1991. USERRA revised and restructured the VRR law, continuing or clarifying most of its provisions. It also made some substantive changes.

The legislative history of USERRA makes it clear that pre-USERRA case law developed under the VRR remains useful in interpreting the statute, to the extent it is consistent with USERRA. For example, in fulfilling our obligations to administer and help enforce USERRA, we are ever mindful of the two principles laid down by the United States Supreme Court in its first reemployment rights case, *Fishgold* v.

Sullivan Drydock. Those principles are as valid today as they were in 1946—first, that the law is to be construed liberally to the benefit of those it protects; and second, that upon completion of service, the returning servicemember is to be reemployed in the position he or she would have occupied had employment continued during the period of service—this is known as the "escalator principle."

USERRA is experiencing its greatest test due to the current war, as well as Operations Noble Eagle and Enduring Freedom. The Department of Labor believes that USERRA has worked extremely well in the face of its current challenges. I would like to turn now to our USERRA experiences and activities since September 11, 2001.

CURRENT DATA

Since USERRA was enacted in October 1994, the Veterans' Employment and Training Service (VETS) has reported periodically to this Committee on our activities related to the administration and enforcement of the statute. For Fiscal Years 1995 through 2001, which ended September 30, 2001, we reported a steady decline in the number of USERRA cases opened year-by-year. We opened nearly 1,400 cases in FY 1995, but by FY 2001 the number had declined to 895. In the wake of the mobilization that began in September 2001, this trend has reversed.

I should say here that while we have experienced an increase in cases opened, it is not proportional to the enormous number of men and women who have been called to duty. The nation's employer community is overwhelmingly supportive of employees who have been activated under the ongoing mobilization.

During FY 2002, we opened 1,195 new USERRA cases, an increase of less than 35 percent over the previous fiscal year. For FY 2003, the number of cases opened increased again, but at a lower rate. For that year, we opened 1,315 new USERRA cases, an increase of 10 percent over the previous year. As of mid-June, we had opened 979 new cases for FY 2004, which, on an annualized basis, would yield a further increase of about 10 percent over FY 2003.

I can report with pride that the VETS' staff has been up to the challenge of dealing with the increased USERRA caseload. Despite the increase of USERRA claims filed, our case handling statistics have remained generally consistent with prior years. As of mid-June, we have closed 954 cases during FY 2004. We closed 86 percent of these cases within 90 days after opening and 93 percent within 120 days. Of the cases closed, slightly more than one-third of the claims filed were found to be without merit or the claimants were found to be not eligible for USERRA protection, and about another 25 percent were closed because the claimant withdrew or did not pursue the complaint. One-third of the claims were successfully resolved in favor of the claimant, either because the claim was granted, or a mutually agreeable settlement was achieved. About 7 percent of cases closed were referred for further legal action. Of those cases, about nine in ten were referred to the Department of Justice because they involved a non-Federal employer, and the remaining cases were referred to the Office of Special Counsel because they involve Federal executive agencies.

The percentage of USERRA complaints that are filed against governmental employers has remained fairly consistent in recent years. Since FY 2001, 30 to 35 percent of cases opened each year have involved public employers. Federal cases have made up 10 to 14 percent of the total, while State or local governments have accounted for around 20 percent.

With respect to the types of issues arising under USERRA, we have found that two issues have recurred with the greatest frequency. Those issues involve discrimination of employees, due to their status as either current or former members of the armed forces, and reinstatement of demobilized service members seeking to return to their civilian employment. Here, the term "reinstatement" refers not only to those employees who were not reemployed in their former positions, but may also include cases in which the employees were improperly reinstated in positions that were not commensurate with the status or pay grade to which they would otherwise be entitled. Thus far, in fiscal year 2004, discrimination accounts for thirty-one percent of issues raised in USERRA cases, and reinstatement accounts for twenty-three percent of the issues raised in those cases.

COMPLIANCE ASSISTANCE EFFORTS

While our staff has been extremely effective at resolving complaints, a major focus for the Department remains the resolution of problems before complaints arise. Secretary Chao has made compliance assistance a priority with respect to all the laws administered and enforced by the Department, including USERRA.

Since September 2001, VETS' staff nationwide have responded to more than 23,000 requests for USERRA information from employers, members of Congress,

Guard and Reserve component members, the media and the general public. In addition, we have delivered USERRA briefings and presentations to more than 147,000 people nationwide. Most of these briefings were for members of mobilized Guard and Reserve units, but we have also reached many employers and employer groups. Just a few examples—Web casts for the U.S. Chamber of Commerce, the Society for Human Resource Management, the H.R. Policy Association (formerly known as the Labor Policy Association) and others; two appearances as a featured guest on the national FEDtalk radio broadcast; an appearance on a television broadcast to all the offices of the United States Attorneys and a nationwide network of National Guard units; a television broadcast co-presented by the Department of Veterans Affairs that addressed USERRA entitlements for disabled veterans; and an interactive conference call with employer members of the Equal Employment Advisory Council.

In fulfilling our statutory obligations to provide help and educational outreach, we have received tremendous support and assistance from colleagues both inside and outside the Department of Labor. The Department's Office of the Solicitor has provided support in all areas, particularly by participating in briefings and helping us respond to technical questions. They also helped draft proposed USERRA regulations, which I am pleased to report are in the final stages of review and I expect the regulations to be available for public comment in September 2004.

Additionally, we have received numerous briefings and invaluable technical assistance support from the Employee Benefits Security Administration. The Employment Standards Administration has helped us develop interpretations of the relationships between USERRA and other laws, such as the Family and Medical Leave Act and the Fair Labor Standards Act. Our web site's resource guide for the general public was revised in March 2003 to update and clarify VETS position on pension issues. And, VETS participates in DOL's Internet based Employment Laws Assistance for Workers and Small Businesses (elaws) Advisor program, whereby the Department provides interactive Advisors for USERRA and other laws. The e–VETS Resource Advisor, a portal site to numerous web sites with information and resources helpful to veterans, has been released and is available through the VETS homepage as well as through the elaws Advisor program on the DOL web site.

In July 2002, a joint memorandum was issued on the "Protection of Uniformed Service Members' Rights to Family and Medical Leave." The memorandum was signed by the Solicitor of Labor, the Assistant Secretary for VETS, and the Administrator of the Wage and Hour Division. The memorandum is posted on the VETS' web site.

Outside of the Department, I would like to mention the extraordinary efforts by our colleagues at the National Committee for Employer Support of the Guard and Reserve (ESGR) headed by General Bobby Hollingsworth, its Executive Director. Their small national staff and more than 4,000 volunteers nationwide perform prodigious service in promoting understanding between employers and their reservist-employees and in helping to informally resolve disputes when they arise. We would be hard pressed to do what we do without ESGR. Additionally, the Office of Personnel Management (OPM) remains a steadfast partner in helping to distribute information to federal agencies on the employment rights of the Reserve and National Guard. The Federal Government is the largest single employer of members of the Armed Forces Reserves, and we are proud of their dedication and commitment. You may be interested to know that Federal agencies have the authority to pay both the employee and government health benefit contributions for up to 18 months when employees are called to active duty. OPM took the lead in promulgating guidance and encouraging Federal agencies to pay the employees' portion of the health benefit premiums. Finally, the Department of Justice and the Office of Special Counsel provide valuable assistance with respect to referred cases and providing technical assistance and outreach on USERRA.

LEGISLATION

I am also pleased to present the Department's views on two introduced bills and a draft bill, which pertain primarily to protecting the employment rights of service members.

* * *

Patriotic Employer Act of 2004

H.R. 4477, the "Patriotic Employer Act of 2004," would amend USERRA to require employers to post a notice of the rights and duties that apply under that Act. The Department is always interested in finding new and effective ways to convey the rights and responsibilities of employers under USERRA. As part of its ongoing

compliance assistance efforts, the Department continues to reach out to employers and, as such, is not opposed to this bill.

USERRA Health Care Coverage Extension Act of 2004

Section 2 of the draft bill, "USERRA Health Care Coverage Extension Act of 2004," would extend the period of USERRA continuation coverage from 18 to 24 months for service members who elect such coverage, which would align this coverage period with the length of time reservists can be mobilized under the current mobilization authority. The bill provides that the 24-month period applies to all continuation coverage elections occurring on or after the date of enactment.

The Department supports the intent of this bill and would be pleased to work with the Committee on any technical issues.

In Section 3, the bill would reinstate the requirement to report on certain cases and complaints in consultation with the U.S. Attorney General and the U.S. Special Counsel. In the past, the Department found this requirement to be useful. As such, the Department has no objection to the reinstatement of these reporting requirements. The Department would defer to the Attorney General and the Special Counsel for their respective views on the implementation of this provision.

CONCLUSION

We remain committed to informing employers about USERRA and continuing our mission of protecting the reemployment rights of our service members, including the 76 service members employed by this Department. Mr. Chairman and members of the Committee, this concludes my statement. I will be happy to answer any questions.

TESTIMONY OF CRAIG W. DUEHRING, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE, RESERVE AFFAIRS, BEFORE THE COMMITTEE ON VETERANS' AFFAIRS, HOUSE OF REPRESENTATIVES

* * *

JUNE 23, 2004

Mr. Chairman and members of the Committee, thank you for giving me the opportunity to come before you this morning to discuss several proposed improvements to the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The Department of Defense supports enactment of the Servicemembers Legal Protection Act of 2004, which would amend several provisions of the SCRA to reflect our experience with the SCRA during its first six months. Each proposed amendment in the draft bill addresses a problem that has been encountered by servicemembers and brought to the attention of the Department through the legal assistance programs of the Military Services. Legal assistance attorneys play a key role in ensuring that servicemembers are able to fully exercise the rights and protections afforded by the SCRA, and we have been attentive to their experiences during this initial shakedown period under the new law. The Department passed on its concerns and recommendations to your staff, and you have responded expeditiously with this draft bill and this hearing. I commend and thank the Committee and its staff for this impressive responsiveness to the needs of our servicemembers.

Section 2 of the draft bill would amend the SCRA by defining the term "judgment" to include any judgment, decree, order, or ruling, final or temporary. Defining this term, which is used in several key provisions of the Act, will ensure that servicemembers are not excluded from any of the Act's rights or protections, such as the section 201 protection against default judgments, by a narrower State definition of the term "judgment."

Section 3 of the draft bill would require that written waivers of SCRA rights or protections be executed as an instrument separate from the obligation or liability to which they apply and that any such waiver that applies to a contract, lease, or similar legal instrument be in at least 12-point type. This amendment would protect servicemembers from fine print embedded in, for example, residential and motor vehicle leases that would waive the right under section 305 of the SCRA to terminate those leases under certain circumstances.

Section 4 of the draft bill would simply clarify that the right to request a stay of proceedings under section 202 of the SCRA applies to servicemembers who are plaintiffs in civil proceedings as well as those who are defendants. The applicability

of the stay provisions to both plaintiffs and defendants was clear in the predecessor Soldiers' and Sailors' Civil Relief Act, and this amendment would provide the same clarity in the SCRA.

Section 5 of the draft bill has several purposes. First, it would clarify that when a servicemember terminates a residential or motor vehicle lease under section 305 of the SCRA, any obligation of a dependent who is jointly liable under the lease is also terminated. This clarification is essential if the full intent of this lease-termination provision is to be realized and military family members are to have the flexibility they need when a servicemember is deployed. For example, this amendment will ensure that if a servicemember's spouse chooses to return to his or her hometown and the family support network there, he or she will not be deterred from doing so because of a residential lease obligation.

Second, section 5 would also extend the ability to terminate a motor vehicle lease upon a permanent change-of-station to servicemembers stationed in States or Territories outside the continental United States, such as Alaska, Hawaii, and Puerto Rico. This amendment would simply correct the unintentional exclusion of these servicemembers resulting from the current wording of section 305 of the SCRA.

Third, section 5 would define the term "military orders" to mean official military orders, or any notification, certification, or verification from a servicemember's commanding officer with respect to the servicemember's current or future military-duty status. This amendment recognizes that, in the case of deployments, servicemembers are usually not issued official orders that could be provided to a lessor as required by section 305 of the SCRA when terminating a residential or motor vehicle lease. Under this broad definition of "military orders", a servicemember could satisfy this procedural requirement by presenting the lessor with, for example, a letter from his or her commanding officer confirming the particulars of an upcoming deployment.

Fourth, section 5 would clarify that the deployments that trigger a servicemember's ability to terminate a residential or motor vehicle lease under section 305 of the SCRA include not only deployments with a military unit, but also deployments by individuals in support of a military operation. This amendment recognizes that some servicemembers deployed in support of a military operation do not deploy with a unit, but as individuals.

Section 6 of the draft bill would amend section 511 of the SCRA to state that a tax jurisdiction may not impose a use, excise, or similar tax on the property of a nonresident servicemember when the laws of the tax jurisdiction fail to provide a credit against such sales, use, exercise, or similar taxes previously paid on the same property to another tax jurisdiction. This amendment is needed to protect servicemembers from double taxation, which is possible under the current wording of section 511, as interpreted by the Supreme Court (*Sullivan* v. *United States,* 395 U.S. 169 (1969)) when it considered identical language in the Soldiers' and Sailors' Civil Relief Act.

* * *

The Department of Defense supports section 2 of the draft USERRA Health Care Coverage Extension Act of 2004. Increasing from 18 months to 24 months the maximum period of employer-provided health care plan coverage that an employee covered by USERRA may elect to continue is an important amendment that will align this coverage period with the length of time for which reservists can be mobilized under the current mobilization authority.

We defer to the Department of Labor on section 3 of the draft bill, which would reinstate the requirement for a comprehensive annual report on the disposition of cases filed under USERRA.

The Department also defers to the Department of Labor on section 2 of H.R. 4477, the Patriotic Employer Act of 2004, which would require employers to post notice of USERRA rights, benefits, and obligations in the place of employment of individuals protected by that Act.

I would again like to thank the Committee and its staff for all of your efforts on behalf of our servicemembers. The Department of Defense appreciates this opportunity to discuss these important matters with you.

STATEMENT OF JACK McCOY, DIRECTOR, VA EDUCATION SERVICE, BEFORE THE SUBCOMMITTEE ON BENEFITS, HOUSE COMMITTEE ON VETERANS' AFFAIRS

JUNE 16, 2004

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear today before this Subcommittee. I am pleased to testify today on H.R. 4032 and the draft bill, the "Veterans Self-Employment Act of 2004." Let me first discuss H.R. 4032, the "Veterans Fiduciary Act of 2004."

H.R. 4032

Background

During testimony before this Subcommittee in July of last year, we provided extensive background information about VA's Fiduciary Program, as well as statistics relating to quality reviews and to other steps VA is taking to oversee payments made to beneficiaries who are incapable of managing funds. The information we provided then remains accurate, and VA has not experienced any significant problems carrying out activities related to the Fiduciary Program since our July 2003 testimony.

Summary of VA's Position

Before getting into the specifics of the bill, I would first like to summarize VA's position. We agree that there is a value in strengthening the protections afforded to incompetent beneficiaries and for close oversight of fiduciaries. However, we see the current bill as imposing restrictions and requirements that are, in many instances, too broad for VA's unqualified support.

Key Provisions of H.R. 4032

Section 2(a) of H.R. 4032 would define, for purposes of chapters 55 and 61 of title 38, United States Code, the term "fiduciary" as: (1) 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 (2) 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. Section 2(b) would make conforming changes to 38 U.S.C. §§ 5502 and 6101. This definition provides needed clarity, and we can support this provision. There would be no costs associated with this change.

Section 3 of H.R. 4032 would require the Secretary to base any certification of a person as a beneficiary's fiduciary on an investigation of that person's fitness to serve as that beneficiary's fiduciary, adequate evidence that certification of that person would be in the beneficiary's interest, and the furnishing of any bond that may be required. Proposed 38 U.S.C. § 5507 would also require the Secretary to conduct investigations in advance of certification as a fiduciary, would require a face-to-face interview with the person to the extent practicable, and would require the Secretary to request information about whether the person has a criminal record that resulted in imprisonment for more than one year. If a person has such a criminal record, VA could certify the person as a fiduciary only if the Secretary specifically finds that the person has been rehabilitated and is the most appropriate person to act as fiduciary for the beneficiary. For certain proposed fiduciaries (the parent of a minor beneficiary, the spouse or parent of an incompetent beneficiary, or a court-appointed fiduciary), VA would be permitted to investigate the fiduciary's fitness on an expedited basis, which may include waiver of any specific requirement relating to investigations.

This provision would codify requirements already contained in VA's Adjudication Procedures Manual (M21–1MR, Part XI, Ch. 2, Section D.12) concerning initial appointment of fiduciaries and would add a requirement to investigate a person's fitness to serve as a fiduciary. Because VA has directives in place that generally parallel the requirements of this proposal, the provision is unnecessary. We also note that the requirement for investigation of potential fiduciaries carries a cost of about $527,000 annually. We believe the current screening procedure is sound and see little benefit in routinely requiring investigations that could unnecessarily delay urgently needed appointments of fiduciaries. Accordingly, we do not support this provision.

Should the committee decide to proceed with this portion of the legislation, we suggest that an additional category be added to proposed 38 U.S.C. § 5507(c)(2) that would authorize VA to expedite investigation of fiduciaries if the amount of benefits the fiduciary will be handling is minimal.

Finally, in this regard, the proposed statutory language requiring heightened scrutiny of potential fiduciaries that have been convicted of an offense that resulted in imprisonment for more than one year is also unnecessary. VA believes that it would be unnecessarily burdensome to determine if such a potential fiduciary were rehabilitated, particularly since VA already has the authority to make payment to any fiduciary who we determine will serve the best interest of a beneficiary. Further, VA already strives to avoid appointing as fiduciaries individuals who have criminal records.

In summary, we believe that VA's current process of appointing fiduciaries is working well and do not feel that the legislation would provide any significant improvements. Indeed, addition of proposed 38 U.S.C. §5507 may unnecessarily complicate a process that, in most instances, achieves VA's goal of appointing well-qualified fiduciaries. If it is enacted, we estimate that 6 additional FTE at the GS 10/5 level would be required to carry out these functions in VBA's field offices. Additionally, 1 FTE at the GS 13/5 level would be required to support these functions in VA's Central Office. We estimate that the total annual cost of this provision would be $447,000.

Section 4 of H.R. 4032 would add two new provisions to title 38 to enhance VA's ability to protect incompetent beneficiaries. The first, proposed 38 U.S.C. §6106, would have five subsections. The first subsection would prohibit a fiduciary from collecting a fee from a beneficiary for any month for which VA or a court of competent jurisdiction has determined that the fiduciary misused all or a part of the benefits provided to the fiduciary. We support enactment of this provision.

The second subsection, 38 U.S.C. §6106(b), would make a fiduciary liable to the United States if the Secretary or a court of competent jurisdiction has determined that the fiduciary has misused benefits entrusted to him or her in a fiduciary capacity. This provision, which excludes Federal, State, or local government agency fiduciaries, would direct VA to treat misused funds that are not repaid by the fiduciary as erroneous benefits payments, which may be recovered as debts owed to the United States and subsequently repaid by VA to the beneficiary. We support enactment of this provision.

The third, fourth, and fifth subsections of proposed section 6106 would define "misuse of benefits by a fiduciary," authorize certain VA regulations, and subject VA's decision that a fiduciary has misused benefits to appeal to the Board of Veterans' Appeals and the Court of Appeals for Veterans Claims. Making these decisions appealable would be consistent with the fact that VA determinations concerning overpayments of benefits are currently appealable. Accordingly, we support these provisions provided that savings found in another VA program can offset any new costs. However, we have reservations about the recourse of appeal through the Board of Veterans' Appeals (BVA). Our concerns involve both appropriateness of this venue and administrative efficiency. The BVA traditionally handles appeals relating to veterans' (or dependents' or survivors') claims for benefits. If this appeal mechanism would prove to be unduly burdensome to the claims-adjudication process in practice, we would recommend an alternative process. We currently cannot provide costs concerning these provisions, and will forward this information as soon as it becomes available.

Section 4 of H.R. 4032 would also add to title 38 a new section 6107. That provision would consist of three new subsections. The first subsection, 38 U.S.C. §6107(a), would require VA to reissue benefits to the beneficiary or alternative fiduciary in any case in which the Secretary's negligent failure to investigate or monitor a fiduciary results in the misuse of benefits by the fiduciary. VA, through its Fiduciary Program staff, field examinations, review of fiduciary accountings, general monitoring, and quality control, strives to avoid all instances of misuse of VA funds by fiduciaries. Nevertheless, VA recognizes that in isolated incidents its fiduciary staff may fail to meet the high standards set for this program. We do not believe that a beneficiary should suffer financially because of VA's negligent failure to oversee a fiduciary. Accordingly, we support enactment of 38 U.S.C. §6107(a) provided that savings found in another VA program can offset any new costs.

The second subsection, 38 U.S.C. §6107(b), would require VA to reissue benefits in a case of benefit misuse by a fiduciary who is not an individual or is an individual who serves fifteen or more beneficiaries. VA supports enactment of this provision provided that savings found in another VA program can offset any new costs. We estimate that subsections (a) and (b) together would cost $364,000 in the first year and approximately $4 million over ten years.

The third subsection, 38 U.S.C. §6107(c), would require VA to make a good-faith effort to recoup from the original fiduciary funds reissued to a beneficiary or alternative fiduciary under subsection (a) or (b). VA supports enactment of this provision provided that savings found in another VA program can offset any new costs. At this time, we do not know what the costs of the provision would be.

Section 5 of H.R. 4032 would add four new sections to title 38. The first of these, 38 U.S.C. § 5508, has three major requirements. The first would require the Secretary to provide for periodic onsite review of any fiduciary who is a person who serves fifteen or more individuals, is a certified community-based nonprofit social service agency, or is an agency that provides VA-related fiduciary services for 50 or more individuals. Section 5508(b) would define "certified community-based nonprofit social service agency" for these purposes. Proposed 38 U.S.C. § 5508(c) would require VA, within 120 days of the end of each even-numbered fiscal year, to report the results of the periodic onsite reviews conducted under 38 U.S.C. § 5508(a) and (b) during the previous two fiscal years, as well as any other fiduciary reviews conducted during that time.

The requirement to conduct the onsite reviews described in this provision appears to duplicate a requirement in the recently enacted Social Security Protection Act of 2004 (Public Law 108–203). Section 102 of Public Law 108–203 contains extensive requirements pertaining to oversight of entities that serve as representative payees for Social Security Administration (SSA) beneficiaries, including an annual report on the results of reviews conducted during that year. Because SSA has 6.7 million beneficiaries in their representative payee program, compared to VA's 100,000 beneficiaries, we believe it would be preferable for VA to use SSA's reports on such representative payees. In cases where the payee is not on the SSA list of payees, VA would either ask SSA to add that payee to its list or VA would conduct an on-site review of that payee.

We believe the requirements in proposed 38 U.S.C. § 5508(a) and (b) are too broad to serve VA purposes and that alternative means are available to accomplish the intended purpose. The reporting requirements in proposed section 5508(c) are also nearly identical to those in section 102 of Public Law 108–203. *See* Pub. L. No. 108–203, § 102(b), 118 Stat. 493, 498 (2004). We also believe that the resources devoted to producing such a report would be better used elsewhere.

Accordingly, we cannot support enactment of proposed 38 U.S.C. § 5508. We estimate that 6 additional FTE at the GS 10/5 level, and 1 FTE at the GS 13/5 level would be required to carry out the functions associated with enactment of 38 U.S.C. § 5508. We estimate that the total annual cost of this FTE would be approximately $447,000. Additionally, we estimate that there will be a cost of $350,000 in the first year associated with updating several VA computer systems in order to generate the data necessary for the biennial report to Congress.

Section 5 would also add a new section entitled "Authority to redirect delivery of benefit payments when a fiduciary fails to provide required accounting." This provision, which would be codified at 38 U.S.C. § 5509, would include the authority both to require reports and accountings from fiduciaries and to direct a fiduciary who fails to file a required report or accounting to personally appear at the local regional office to receive benefit payments. VA's current procedures already require certain fiduciaries to submit regular accountings and authorizes the replacement of a fiduciary that fails to provide a required accounting. The new provision has a purpose very similar to that of the current 38 U.S.C. § 5502(b), which states in pertinent part:

> The Secretary, in the Secretary's discretion, may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law.

Although proposed 38 U.S.C. § 5509 essentially restates authority already provided by 38 U.S.C. § 5502(b), we have no objection to including it in the current legislation provided that savings found in another VA program can offset any new costs. Indeed, the addition of this provision may provide a means by which VA can emphasize to fiduciaries the need to submit timely reports and accountings. Accordingly, we have no objection to this provision. We are currently evaluating whether this provision will result in any additional costs; our preliminary conclusion is that there will be no costs.

Section 5 of H.R. 4032 would also add two new sections to chapter 61 of title 38. The first would be 38 U.S.C. § 6108, "Civil monetary penalties," authorizing a civil penalty of not more than $5,000 for each conversion by a fiduciary appointed under 38 U.S.C. § 5502 of a VA benefit payment to a use that the fiduciary knows or should know is for a use other than for the intended beneficiary. Section 6108(b) would subject a fiduciary who improperly converts a VA benefit payment to an assessment, in lieu of damages sustained by the United States, of not more than twice the amount of any payments converted. Under section 6108(c), any amounts collected as civil penalties or assessments would be credited to applicable appropria-

tions to recoup VA's costs in pursuing civil collection actions against fiduciaries. Although we have no objection to these provisions, provided that any costs associated with them could be offset from savings found in another VA program, VA does not have a process in place for pursuing civil penalties against persons who misuse VA benefit payments. Costs associated with pursuing civil collection actions against fiduciaries would be borne primarily by VA's Office of General Counsel, through its various regional counsels. Such costs would depend directly on the number of civil penalty cases pursued by those offices. At this point, it is impossible to estimate such costs.

The final new provision that H.R. 4032 would add is a new 38 U.S.C. § 6109, "Authority for judicial orders of restitution." Section 6109(a) would authorize a Federal court, as part of the sentencing of a defendant convicted of an offense involving the misuse of VA benefits, to order the defendant to make restitution to VA. Section 6109(b) would make various provisions of title 18, United States Code, applicable to such restitution orders, and section 6109(c) would require a court that does not order full restitution to state its reasons on the record.

Proposed 38 U.S.C. § 6109(d) would describe the framework for handling payments obtained as a result of a court-ordered restitution. Subsection (d)(1) would authorize use of amounts recovered under restitution orders to defray expenses incurred in the supervision and investigation of fiduciaries. Subsection (d)(2) would require that "amounts received in connection with misuse by a fiduciary of funds paid as benefits" be paid to the individual whose benefits were misused or, if VA has reissued the benefits, be treated as a recouped overpayment and deposited into the applicable revolving fund, trust fund, or appropriation. VA has no objection to this amendment and does not expect to incur any costs as a result of this provision.

Section 6 of H.R. 4032 would make the provisions of this act, with the exception of new 38 U.S.C. §§ 6106 and 6107, effective the first day of the seventh month beginning after the date of the enactment of this Act. Sections 6106 and 6107, which concern fiduciaries' misuse and reissuance of benefits, would apply to determinations of fiduciary misuse of funds made by VA after the date of enactment. VA has no objection to this provision.

Section 7 of H.R. 4032 would require VA to prepare a report evaluating whether the existing procedures and reviews for the qualification of fiduciaries are sufficient to enable the Secretary to protect benefits paid to such individuals from being misused by fiduciaries and to submit the report no later than 270 days after enactment. This provision would direct the Secretary to include in the report any recommendations the Secretary considers appropriate. The purpose such a report would serve 270 days following enactment (and less than 90 days following the proposed effective date) is uncertain to us, and we therefore oppose this requirement.

In closing my remarks on H.R. 4032, Mr. Chairman, I want to emphasize again that VA's fiduciary program has a long history of providing oversight for those veterans who cannot manage their VA benefits. We take this responsibility seriously. I look forward to working with you and your committee to strengthen the safeguards available to provide additional protection to these beneficiaries. Now I would like to address the Veterans Self-Employment Act of 2004.

* * *

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or the members of the Subcommittee may have.

ROLL CALL VOTES

During Committee consideration of H.R. 4658, there was a recorded vote on an amendment offered by Mr. Buyer to strike section 402, "Care for newborn children of veterans receiving maternity care." The amendment was rejected on a roll call vote of 21–1. The vote of Committee Members is as follows:

Date: Wednesday, July 21, 2004
Call to Order: 1:15 p.m.
Adjourn: 2:25 p.m.
Subject: Markup of H.R. 4658, the Servicemembers and Veterans Legal Protections Act of 2004

NAME	YEA	NAY	NOT VOTING
Chris Smith, NJ, Chairman		x	
Michael Bilirakis, FL		x	
Terry Everett, AL			x
Steve Buyer, IN	x		
Jack Quinn, NY			x
Cliff Stearns, FL			x
Jerry Moran, KS		x	
Richard Baker, LA			x
Rob Simmons, CT		x	
Henry Brown, SC		x	
Jeff Miller, FL		x	
John Boozman, AR		x	
Jeb Bradley, NH		x	
Bob Beauprez, CO		x	
Ginny Brown-Waite, FL		x	
Rick Renzi, AZ			x
Tim Murphy, PA		x	
Lane Evans, IL, Ranking		x	
Bob Filner, CA			x
Luis Gutierrez, IL			x
Corrine Brown, FL			x
Vic Snyder, AR		x	
Ciro Rodriguez, TX		x	
Michael Michaud, ME		x	
Darlene Hooley, OR		x	
Ted Strickland, OH			x
Shelley Berkley, NV		x	
Tom Udall, NM		x	
Susan Davis, CA		x	
Tim Ryan, OH		x	
Stephanie Herseth, SD		x	
TOTAL	1	21	9

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 24, 2004

Honorable CHRISTOPHER H. SMITH
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4658, the Servicemembers and Veterans Legal Protections Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne Wright, who can be reached at 226–2840.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 4658, Servicemembers and Veterans Legal Protections Act of 2004

As ordered reported by the House Committee on Veterans' Affair on July 21, 2004

SUMMARY

H.R. 4658 would affect several veterans programs, including education, health care, disability compensation, and pensions. CBO estimates that enacting this legislation would raise direct spending for veterans programs by $11 million over the 2005–2009 period and by $16 million over the 2005–2014 period. In addition, CBO estimates that discretionary spending resulting from H.R. 4658 would total almost $28 million over the 2005–2009 period, assuming appropriation of the necessary amounts.

H.R. 4658 contains both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs for state, local, and tribal governments and the private sector to comply with those mandates would be well below the thresholds established by UMRA ($60 million in 2004 and $120 million in 2004, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4658 is shown in Table 1. The costs of this legislation fall within budget function 700 (veterans benefits and services).

TABLE 1. ESTIMATED BUDGETARY IMPACT OF H.R. 4658

	By Fiscal Year, in Millions of Dollars				
	2005	2006	2007	2008	2009
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	*	2	2	2	2
Estimated Outlays	*	2	2	2	2
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	4	5	5	6	6
Estimated Outlays	4	5	5	6	6

NOTES: Five and 10-year costs in the text may differ slightly from a summation of the annual costs listed here because of rounding.

* = less than $50,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted before the end of calendar year 2004, and that the amounts necessary to implement the bill will be appropriated for each year.

Direct Spending

H.R. 4658 would affect direct spending in veterans' programs for education, compensation, and pensions. Table 2 summarizes those effects, and the individual provisions that would affect direct spending are described below. In total, CBO estimates that enacting this legislation would increase direct spending by about $11 million over the 2005–2009 period and by $16 million over the 2005–2014 period.

TABLE 2. ESTIMATED CHANGES IN DIRECT SPENDING FOR VETERANS' BENEFITS UNDER H.R. 4658

Description of Provisions	By Fiscal Year, in Millions of Dollars									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
MGIB for Self-Employment Training	0	2	2	2	2	3	*	0	0	0
Misuse of Benefits by a Fiduciary	*	*	*	*	*	*	*	*	*	*
Total Changes	*	2	2	2	2	3	1	*	*	*

NOTES: Five and 10-year costs in the text may differ slightly from a summation of the annual costs listed here because of rounding.

MGIB = Montgomery GI Bill

* = less than $500,000.

Montgomery GI Bill (MGIB) for Self-Employment Training. Section 403 would allow veterans to use their education benefits to receive on-the-job training without pay for periods of less than six months, when that training is needed to obtain a license to engage in a self-employment occupation or is required for ownership and operation of a franchise. This provision would take effect October 1, 2005, and remain in force through September 30, 2010. Under current law, education benefits for on-the-job training would only be approved if the veteran was paid wages that, at the start of training, equaled at least 50 percent of the wage paid for the job for which the veteran was to be trained, and increased over the

course of the training to at least 85 percent of the prevailing wage. Based on information from the Department of Veterans Affairs (VA), CBO believes this temporary waiver of the wage requirement would be of use primarily to those seeking to own and operate a franchise. Franchise companies typically require prospective owners to undergo a four-to-six week program of on-the-job training and they do not pay wages to the prospective owners.

Based on information from the Department of Labor, CBO estimates that about 6,500 eligible veterans took self-employment classes through Small Business Development Centers in 2002, and we assume that about 1,600 of these also completed an average of five weeks of on-the-job training that was associated with the purchase of a franchise. Because the population eligible for and using MGIB benefits is growing, we estimate this number will increase to about 1,700 in 2006 and 2,000 by 2014. Under current law, the MGIB benefit, currently $1,000 a month, is adjusted annually for increases in the cost of living. CBO estimates that by 2006 the MGIB benefit will increase to about $1,020 a month or about $1,270 for a five-week period. Thus, CBO estimates that enacting section 403 would increase direct spending for veterans' education benefits by $2 million in 2006, $9 million over the 2006–2009 period, and $12 million over the 2006–2011 period.

Misuse of Veterans' Benefits by a Fiduciary. H.R. 4658 contains several provisions dealing with fiduciary fraud. Taken together, CBO estimates that enactment of those provisions would increase direct spending for veterans compensation and pensions by about $2 million over the 2005–2009 period and $4 million over the 2005–2014 period.

Reissuing of Benefits Associated with Fiduciary Fraud. Section 303 would require VA to reissue veterans' compensation and pension benefits to beneficiaries when those benefits were misused by a fiduciary if the fraud can be attributed to negligence by VA. (A fiduciary is the guardian, curator, organization, or person legally vested to care for a claimant or beneficiary's estate.) Under the bill, VA negligence would be defined as:

- VA's failure to review a fiduciary's accounting in a timely manner, or
- VA's failure to act on allegations of fraud by a fiduciary in a timely manner, or
- Any other case in which actual negligence is shown.

Under section 303, VA also would be required to reissue benefits to a beneficiary in cases where a fiduciary represents 10 or more beneficiaries, regardless of whether or not the benefits are recouped from the fiduciary. Currently, VA only reissues benefits that were recouped from the fiduciary through court-ordered restitution. Any benefits that are not recovered from the fiduciary are not reissued to the beneficiary.

CBO assumes that under the bill, VA would be held liable for any fraud that stems from certifying fiduciaries. (Under section 302 of the bill, VA would be required to complete in-depth investigations to determine the fitness of an individual before certifying him or her as a fiduciary.) According to data provided by VA for the

1999–2003 period, it received about 50 referrals a year for fiduciary fraud on average. Those referrals resulted in about 10 arrests a year and about $350,000 annually in recoveries. CBO assumes that roughly 90 percent of the recoveries are for actual benefit payments which would be reissued under the bill and that under the conditions specified most fiduciary fraud would be found to stem from VA negligence. After adjusting for inflation, CBO estimates that this provision would raise direct spending for veterans' disability compensation and pensions by less than $500,000 in 2005, about $2 million over the 2005–2009 period, and about $4 million over the 2005–2014 period.

Judicial Orders of Restitution. Section 304 would give VA the ability to pursue civil monetary penalties against fiduciaries of no more than $5,000 for each fraudulent act, and would subject a fiduciary to an assessment, in lieu of damages, of no more than twice the amount of any payments recovered. Section 304 also would allow VA to use court-ordered amounts recovered as penalties or fines that are not received in connection with misuse of benefits by a fiduciary to defray the costs of investigations of fiduciaries.

Under current law, all amounts received due to restitution, penalties, or court-ordered fines are returned to the Treasury. Thus, the spending of these receipts under section 304 by VA would be considered direct spending. Absent more information from VA, CBO cannot determine the amount of fines and penalties that VA might expect to recover and spend over the 2005–2014 period.

Spending Subject to Appropriation

CBO estimates that implementing H.R. 4658 also would increase discretionary spending for veterans' medical care and operating expenses within the Veterans Benefits Administration by about $28 million over the 2005–2009 period, assuming appropriation of the necessary amounts.

Veterans Receiving Maternity Care. Section 402 would allow VA to provide care to newborn infants when the mother is a veteran receiving maternity care from VA. According to VA, a little more than 700 women a year are expected to receive maternity care from VA. Based on data from VA, CBO estimates that the cost of providing neonatal care to those infants would be about $5,700 per infant in 2005. (Providing neonatal care for most infants would cost much less; the high average cost is driven by those infants who require extensive care for longer periods of time.) Based on assumed enactment late in calendar year 2004, CBO estimates that implementing section 402 would cost $3 million in 2005 and $21 million over the 2005–2009 period, assuming appropriation of the estimated amounts.

Qualification of Fiduciaries. Section 302 would both codify and expand upon current requirements for VA certification of status as a fiduciary. Under section 302, VA would be required to certify a fiduciary based upon an inquiry or investigation into the fitness of an individual to serve as a fiduciary, adequate evidence that certification of the fiduciary would be in the beneficiary's best interest, and the furnishing of any bond as required by VA.

Under current practice, when required, VA conducts investigations to determine the type of fiduciary best suited to a beneficiary. Using its field examiners, VA contacts the beneficiary or their family and through face-to-face interviews, if possible, determines the ability of the beneficiary to manage their benefit payments. The field examiner then certifies a fiduciary based upon his or her observations. VA also maintains periodic contact with certified fiduciaries to observe the performance of the fiduciary and also completes a review to determine whether the continued use of a fiduciary is necessary.

Under this section, VA would be required to review the proposed fiduciary's credit report and conduct a criminal background check to determine if that person has been convicted of any federal or state offense resulting in imprisonment for more than a year. If that person had been convicted and imprisoned, VA would be allowed to certify that person as a fiduciary only if it determines that the proposed fiduciary has been rehabilitated and is an appropriate person to act as a fiduciary for a beneficiary.

Based on information from VA, CBO estimates that requiring more in-depth reviews would require VA to hire seven additional people at an annual cost of about $500,000. Based on the cost of similar investigations conducted by the Social Security Administration, and using VA's estimate of new fiduciaries (excluding the number of family members who might become a fiduciary), CBO also estimates that conducting the required criminal background investigations would cost an additional $500,000 a year. Thus, CBO estimates that implementing section 302 would cost about $4 million over the 2005–2009 period, assuming appropriation of the necessary amounts

Additional Protections for Beneficiaries. Section 304 would codify and expand current procedures that protect beneficiaries from misuse of their benefits by fiduciaries. These protections include:

- Requiring VA to complete periodic on-site reviews of fiduciaries who serve 20 or more beneficiaries and manage benefits greater that $50,000;
- Requiring a report of accounting from the fiduciary;
- Allowing VA to pursue civil monetary penalties against persons who commit fraud; and
- Requiring any federal court to order a defendant convicted of fraud involving benefits to make restitution to VA, or to explain why no restitution was ordered.

Based on information from VA, CBO estimates that to complete the tasks of completing periodic on-site reviews and pursuing civil penalties, VA would hire an additional seven people at an annual cost of about $500,000. Thus, CBO estimates implementing section 304 would cost about $2 million over the 2005–2009 period, subject to appropriation of the necessary amounts.

Annual Report on Fiduciary Program. Section 305 would require VA to prepare an annual report on the fiduciary program. The report would include the number of beneficiaries, total amount of benefits involved, number of fiduciaries, and information regard-

ing fiduciary fraud and results of investigations. According to VA, preparation of the report would require an update to their computer systems to comply with the data requirements for the report. Based on information provided by VA, CBO estimates that implementing section 305 would cost less than $500,000 in 2005, subject to appropriation of the necessary amounts.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4658 contains both intergovernmental and private-sector mandates as defined in UMRA, but CBO estimates that the costs for state, local, and tribal governments and the private sector to comply with those mandates would be well below the thresholds established by UMRA ($60 million in 2004 and $120 million in 2004, respectively, adjusted annually for inflation).

Extension of Health Insurance

Current law imposes a mandate on public and private-sector employers by requiring them to continue to provide health insurance coverage to certain workers, including those who are absent from work because of military service. Although those workers can be required to pay the employer 102 percent of the average cost of the insurance, research suggests that the actual cost of providing that coverage generally is greater than that amount.

This bill would increase, from 18 months to 24 months, the amount of time those reservists who are mobilized are eligible to continue their health insurance. That extension would increase the cost of the existing mandate on both public and private-sector employers to provide continued coverage. However, CBO estimates that few workers would participate in the program and the total direct cost for employers to comply with that mandate would be about $2 million annually.

State and Local Government Authority to Tax

H.R. 4658 also contains an intergovernmental mandate as defined by UMRA because it would prohibit state and local jurisdictions from collecting certain taxes from servicemembers. Specifically, the bill would prohibit those governments from collecting sales, use, and excise taxes from nonresident servicemembers unless they provided a credit for fees paid on the same property in other jurisdictions.

The Servicemembers' Civil Relief Act (SCRA) protects servicemembers from paying the same tax in multiple jurisdictions and provides that, for certain tax purposes, a servicemember's place of residence is his or her home state, not the state in which he or she is stationed. This bill would extend the SCRA tax provisions to explicitly include excise and other use taxes. Currently, no state or local governments collect those taxes from nonresident servicemembers. It would require jurisdictions, if they choose to collect such revenues, to credit payments made in other locations. CBO estimates that the cost, if any, for those governments to comply with that mandate would be minimal.

Termination of Leases

Section 104 of this bill would provide that, in the case of joint leases, the termination of a lease (residential and motor vehicle) by a servicemember under the provisions of section 305 of the Servicemembers Civil Relief Act also terminates the obligation of a dependent under that lease. However, implementation of current law has typically extended coverage of lease termination to both servicemembers and their dependents. In particular, the disputes that have arisen about dependents' rights to terminate leases have usually been resolved in favor of a servicemember's dependent. Therefore, CBO estimates that this section of H.R. 4658 would not create new costs for the private sector. The joint lease language in H.R. 4658 is predominantly clarifying and would not create a new mandate.

ESTIMATE PREPARED BY:
Federal Costs:
Readjustment Benefits: Sarah T. Jennings (226–2840)
Compensation and Pensions: Dwayne M. Wright (226–2840)
Health Care: Sam Papenfuss (226–2840)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Adebayo Adedeji (226–2900)

ESTIMATE APPROVED BY:
Peter H. Fontaine,
Deputy Assistant Director for Budget Analysis

STATEMENT OF FEDERAL MANDATES

The preceding Congressional Budget Office (CBO) cost estimate states that the bill contains intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act, but CBO estimates that those mandates would be well below the thresholds established by the Act.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

EXCHANGE OF LETTERS REGARDING H.R. 4658 BETWEEN THE COMMITTEE ON GOVERNMENT REFORM AND THE COMMITTEE ON VETERANS' AFFAIRS

COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, September 7, 2004

Honorable TOM DAVIS
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: The Committee on Veterans' Affairs wishes to schedule for rapid Floor consideration H.R. 4658, the Servicemembers and Veterans Legal Protections Act of 2004, a bill that would, among other things, under section 212 authorize a demonstration project for referral of claims under the Uniformed

Services Employment and Reemployment Act against Federal agencies to the Office of Special Counsel.

It is my understanding that the Committee on Government Reform does not intend to request an additional referral of the bill and has no objection to Floor consideration of the bill. Of course, this would not be construed as affecting in any way the jurisdiction of the Committee on Government Reform over the Office of Special Counsel or as precedent for other bills. Upon confirmation of my understanding, I will include our exchange of letters in the report on H.R. 4658 or place the letters in the record during Floor consideration of the bill.

Thank you for your cooperation in this matter and I look forward to working with you again on other legislation of mutual interest.

Sincerely,

CHRISTOPHER H. SMITH
Chairman

COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, September 7, 2004

Honorable CHRISTOPHER H. SMITH
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: Thank you for consulting with the Government Reform Committee regarding H.R. 4658, "*the Servicemembers and Veterans Legal Protections Act,*" and for your recent letter. Section 212 of H.R. 4658 authorizes a demonstration project for referral of claims under the Uniformed Services Employment and Reemployment Act against Federal agencies to the Office of Special Counsel. As you know, the Committee on Government Reform has jurisdiction over the Office of Special Counsel. In order to expedite the consideration of this important bill in the house and because of your willingness to consult with my committee, I do not intend to seek a sequential referral of H.R. 4658 to the Committee on Government Reform.

By agreeing to waive its consideration of the bill, the Government Reform Committee does not waive its jurisdiction over H.R. 4658 or the Office of Special Counsel. In addition, the Committee on Government Reform reserves its authority to seek outside conferees on this bill or a similar Senate bill and I would ask for your support in the event of a conference with the Senate on this or similar legislation.

I respectfully request that you include this letter and your response in your committee report and Congressional Record during consideration of this legislation on the House floor. Thank you for your attention to these matters.

Sincerely,

TOM DAVIS
Chairman

COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, September 9, 2004

Honorable TOM DAVIS
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: Thank you for your letter of September 7, 2004, regarding the jurisdictional interest of the Committee on Government Reform in section 212 of H.R. 4658, the "Servicemembers and Veterans Legal Protections Act."

Your willingness to forego a sequential referral to expedite House consideration of H.R. 4658 is most appreciated. The Committee on Veterans' Affairs understands that your letter does not waive jurisdiction of the Committee on Government Reform over the bill and is not a precedent for other bills. In addition, if a conference on H.R. 4658 should become necessary, I will support any request by you for the Committee on Government Reform to be represented on the conference.

Again, thank you for your cooperation in this matter.

Sincerely,

CHRISTOPHER H. SMITH
Chairman

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SERVICEMEMBERS CIVIL RELIEF ACT

* * * * * * *

TITLE I—GENERAL PROVISIONS

SEC. 101. DEFINITIONS.

For the purposes of this Act:

(1) * * *

* * * * * * *

(9) JUDGMENT.—The term "judgment" means any judgment, decree, order, or ruling, final or temporary.

* * * * * * *

SEC. 107. WAIVER OF RIGHTS PURSUANT TO WRITTEN AGREEMENT.

(a) IN GENERAL.—A servicemember may waive any of the rights and protections provided by this Act. *Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.* In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties

that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

* * * * * * *

(c) PROMINENT DISPLAY OF CERTAIN CONTRACT RIGHTS WAIVERS.—Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.

[(c)**]** *(d)* COVERAGE OF PERIODS AFTER ORDERS RECEIVED.—For the purposes of this section—

(1) * * *

* * * * * * *

TITLE II—GENERAL RELIEF

* * * * * * *

SEC. 202. STAY OF PROCEEDINGS WHEN SERVICEMEMBER HAS NOTICE.

(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the *plaintiff or* defendant at the time of filing an application under this section—

(1) * * *

* * * * * * *

TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

* * * * * * *

SEC. 305. TERMINATION OF RESIDENTIAL OR MOTOR VEHICLE LEASES.

[(a) TERMINATION BY LESSEE.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

[(1) the lessee's entry into military service; or

[(2) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.**]**

(a) TERMINATION BY LESSEE.—

(1) IN GENERAL.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

(A) the lessee's entry into military service; or

(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) JOINT LEASES.—A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) COVERED LEASES.—This section applies to the following leases:

(1) LEASES OF PREMISES.—A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

(A) * * *

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit*, or as an individual in support of a military operation,* for a period of not less than 90 days.

(2) LEASES OF MOTOR VEHICLES.—A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if—

(A) * * *

(B) the servicemember, while in military service, executes the lease and thereafter receives [military orders for a permanent change of station outside of the continental United States or to deploy] *military orders—*

(i) for a change of permanent station—

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit*, or as an individual in support of a military operation,* for a period of not less than 180 days.

* * * * * * *

(i) DEFINITIONS.—

(1) MILITARY ORDERS.—The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS.—The term "continental United States" means the 48 contiguous States and the District of Columbia.

* * * * * * *

TITLE V—TAXES AND PUBLIC LANDS

* * * * * * *

SEC. 511. RESIDENCE FOR TAX PURPOSES.

(a) * * *

* * * * * * *

(c) PERSONAL PROPERTY.—

(1) * * *

* * * * * * *

(5) USE, EXCISE, OR SIMILAR TAXES.—A tax jurisdiction may not impose a use, excise, or similar tax on the personal property of a nonresident servicemember when the laws of the tax jurisdiction fail to provide a credit against such taxes for sales, use, excise, or similar taxes previously paid on the same property to another tax jurisdiction.

* * * * * * *

TITLE 38, UNTIED STATES CODE

* * * * * * *

PART II—GENERAL BENEFITS

* * * * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL

SUBCHAPTER VIII—HEALTH CARE OF PERSONS OTHER THAN VETERANS

* * * * * * *

§ 1786. Care for newborn children of veterans receiving maternity care

(a) AUTHORITY.—Subject to subsections (b) and (c), when a female veteran who is enrolled in the health-care system established under section 1705 of this title is receiving maternity care from the Department delivers of a child in a Department facility or in a non-Department facility under a Department contract the Secretary may furnish care to the neonate.

(b) CARE IN A DEPARTMENT FACILITY.—In a case in which a neonate covered by subsection (a) is born in a Department facility, care furnished for the neonate at that facility shall be furnished without charge to the veteran who delivered of that neonate.

(c) CARE IN A NON-DEPARTMENT FACILITY.—In a case in which a neonate covered by subsection (a) is born in a non-Department facility or is provided care in a non-Department facility following birth in a Department facility and transfer from that facility, the Secretary may provide for the payment of the cost of care and services for the neonate in the same manner, and subject to the same limita-

tions, as if such care and services were emergency treatment furnished the veteran subject to section 1725 of this title, except that—

(1) the services for which the Secretary may make payment shall be limited to those items and services for which payment may be made under the medicare program under title XVIII of the Social Security Act for post-natal care furnished to a neonate; and

(2) the rate of payment for such services may not exceed the payment rates applicable to those items and services under the medicare program under such title.

* * * * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

* * * * * * *

SUBCHAPTER I—PURPOSE; DEFINITIONS

§ 3452. Definitions

For the purposes of this chapter and chapter 36 of this title—

(a) * * *

* * * * * * *

(e) The term "training establishment" means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established pursuant to the Act of August 16, 1937, popularly known as the "National Apprenticeship Act" (29 U.S.C. 50 et seq.), or any agency of the Federal Government authorized to supervise such training.

(1) * * *

(2) [An] *For the period beginning on October 1, 2005, and ending on September 30, 2010, an* establishment providing self-employment on-job training consisting of full-time training for a period of less than six months that is needed or accepted for purposes of obtaining licensure to engage in a self-employment occupation or required for ownership and operation of a franchise that is the objective of the training.

* * * * * * *

CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

* * * * * * *

SUBCHAPTER I—STATE APPROVING AGENCIES

* * * * * * *

§ 3677. Approval of training on the job

(a) * * *
(b)(1) * * *

* * * * * * *

(3) Notwithstanding paragraph (1)(A) and subsection (c)(8), no wages shall be required to be paid an eligible person or veteran by a training establishment described in section 3452(e)(2) of this title.

* * * * * * *

CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

* * * * * * *

§ 4317. Health plans

(a)(1) In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), and such person is absent from such position of employment by reason of service in the uniformed services, the plan shall provide that the person may elect to continue such coverage as provided in this subsection. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of—

(A) the **[**18-month period**]** *24-month period* beginning on the date on which the person's absence begins; or

* * * * * * *

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

* * * * * * *

§ 4332. Reports

The Secretary shall, after consultation with the Attorney General and the Special Counsel referred to in section 4324(a)(1) and **[**no later than February 1, 1996, and annually thereafter through

2000] *no later than February 1, 2005, and annually thereafter*, transmit to the Congress, a report containing the following matters for the fiscal year ending before such February 1:

(1) * * *

* * * * * * *

§ 4334. Notice of rights and duties

(a) REQUIREMENT TO PROVIDE NOTICE.—Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

(b) CONTENT OF NOTICE.—The Secretary shall provide to employers the text of the notice to be provided under this section.

* * * * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * * * *

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

* * * * * * *

§ 5312. Annual adjustment of certain benefit rates

(a) * * *

(b)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the maximum monthly rates of dependency and indemnity compensation for parents payable under subsections (b), (c), and (d), and the monthly rate provided in subsection (g), of section 1315 of this title and the annual income limitations prescribed in subsections (b)(3), (c)(3), and (d)(3) of such section, *and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title,* as such rates and limitations were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

* * * * * * *

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.
5501. Commitment actions.

* * * * * * *

5506. Definition of "fiduciary".
5507. Inquiry, investigations, and qualification of fiduciaries.

* * * * * * *

§ 5502. Payments to and supervision of fiduciaries

(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some [other person] *other fiduciary* for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services *for benefits under this title* on behalf of the beneficiary.

(b) Whenever it appears that any [guardian, curator, conservator, or other person] *fiduciary*, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such [guardian, curator, conservator, or other person] *fiduciary* or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such [guardian, curator, conservator, or other person] *fiduciary* who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested

party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

* * * * * * *

(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's [guardian, curator, or conservator] *fiduciary*, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

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§ 5506. Definition of "fiduciary"

For purposes of this chapter and chapter 61 of this title, the term "fiduciary" means—

(1) 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

(2) 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.

§ 5507. Inquiry, investigations, and qualification of fiduciaries

(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

(A) to be conducted in advance of such certification;

(B) to the extent practicable, to include a face-to-face interview with such person; and

(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

(3) the furnishing of any bond that may be required by the Secretary.

(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary makes a specific finding that the person has been rehabilitated and is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

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

(B) the spouse or parent of an incompetent beneficiary;

(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fi-

duciary does not exceed $3600, as adjusted pursuant to section 5312 of this title.

(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.

§ 5508. Periodic onsite reviews of institutional fiduciaries

In addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, the Secretary shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary to another individual pursuant to the appointment of such person or agency as a fiduciary under section 5502(a)(1) of this title in any case in which the fiduciary is serving in that capacity with respect to more than 20 beneficiaries and the total annual amount of such benefits exceeds $50,000, as adjusted pursuant to section 5312 of this title.

§ 5509. Authority to redirect delivery of benefit payments when a fiduciary fails to provide required accounting

(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

(b) ACTIONS UPON FAILURE TO FILE.—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.

§ 5510. Annual report

The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following:

(1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).

(2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).

(3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.

(4) The number of fiduciaries who are the (spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payment).

(5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

(6) How such cases of misuse of benefits were addressed by the Secretary.

(7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any civil or criminal penalties imposed.

(8) Such other information as the Secretary considers appropriate.

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

§ 6101. Misappropriation by fiduciaries

(a) Whoever, being a [guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant or a claimant's estate, or any other person having charge and custody in a fiduciary capacity of money heretofore or hereafter paid under any of the laws administered by the Secretary for the benefit of any minor, incompetent, or other beneficiary,] *fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary,* shall lend, borrow, pledge, hypothecate, use, or exchange for other funds or property, except as authorized by law, or embezzle or in any manner misappropriate any such money or property derived therefrom in whole or in part and coming into such fiduciary's control in any manner whatever in the execution of such fiduciary's trust, or under color of such fiduciary's office or service as such fiduciary, shall be fined in accordance with title 18, or imprisoned not more than five years, or both.

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§ 6106. Misuse of benefits by fiduciaries

(a) FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY FIDUCIARIES.—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of com-

petent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

(b) LIABILITY OF FIDUCIARIES FOR MISUSED BENEFITS.—(1) If the Secretary or a court of competent jurisdiction determines that a fiduciary that is not a Federal, State, or local government agency has misused all or part of a beneficiary's benefit that was paid to such fiduciary, the fiduciary shall be liable for the amount misused, and such amount (to the extent not repaid by the fiduciary) shall be treated as an erroneous payment of benefits under this title to the fiduciary for purposes of laws pertaining to the recovery of overpayments. The amount of such overpayment shall constitute a liability of such fiduciary to the United States and may be recovered in the same manner as any other debt due the United States. Subject to paragraph (2), upon recovering all or any part of such amount, the Secretary shall pay an amount equal to the recovered amount to such beneficiary or such beneficiary's successor fiduciary.

(2) The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under paragraph (1) and under section 6107 of this title may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

(c) MISUSE OF BENEFITS DEFINED.—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

(d) REGULATIONS.—The Secretary may prescribe by regulation the meaning of the term "use and benefit" for purposes of this section.

(e) FINALITY OF DETERMINATIONS.—A determination by the Secretary that a fiduciary has misused benefits is a decision of the Secretary for purposes of section 511(a) of this title.

§ 6107. Reissuance of benefits

(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of benefits that were so misused.

(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

(A) A case in which the Secretary failed to timely review a fiduciary's accounting.

(B) A case in which the Secretary was notified of allegations of misuse, but failed to act in a timely manner to terminate the fiduciary.

(C) In any other case in which actual negligence is shown.

(b) REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

(2) Paragraph (1) applies to a fiduciary that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

(c) RECOUPMENT OF AMOUNTS REISSUED.—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.

§ 6108. Civil monetary penalties

(a) PENALTY FOR CONVERSION.—Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a fiduciary pursuant to section 5502 of this title, a payment under a law administered by the Secretary for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalty that may be prescribed by law, a civil monetary penalty assessed by the Secretary of not more than $5,000 for each such conversion.

(b) PENALTY IN LIEU OF DAMAGES.—Any person who makes a conversion of a payment described in subsection (a) and is subject to a civil monetary penalty under that subsection by reason of such conversion shall also be subject to an assessment by the Secretary, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

(c) COSTS OF RECOVERY.—From amounts collected under this section, the amount necessary to recoup the Department's costs of such collection shall be credited to appropriations currently available for the same purpose as the appropriation that incurred those costs, to remain available until expended.

§ 6109. Authority for judicial orders of restitution

(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

(d)(1) Except as provided in paragraph (2), amounts received or recovered by the Secretary pursuant to an order of restitution under

subsection (a), to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred by the Office of the Inspector General for the investigation of fiduciaries under this title.

(2) Paragraph (1) shall not apply with respect to amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary. Such amounts shall be paid to the individual whose benefits were misused unless the Secretary has previously reissued the misused benefits, in which case the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

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