

VETERAN FRAUD REIMBURSEMENT ACT

APRIL 12, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BOST, from the Committee on Veterans' Affairs,
 submitted the following

R E P O R T

[To accompany H.R. 4016]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4016) to amend title 38, United States Code, to improve the repayment by the Secretary of Veterans Affairs of benefits misused by a fiduciary, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4016, the “Veteran Fraud Reimbursement Act,” was introduced by Rep. Gerry Connolly of Virginia on June 12, 2023. The

bill would require the Secretary of the Department of Veterans Affairs (VA) to promptly pay to a beneficiary (or a beneficiary's successor fiduciary) the amount of benefits that has been misused by that beneficiary's fiduciary. Specifically, the bill would require the Secretary to establish methods and timing with respect to determining whether an instance of misuse by a fiduciary was the result of negligence by the Secretary, and the bill would prohibit the Secretary from withholding repayment of misused benefits by reason of a pending negligence determination.

BACKGROUND AND NEED FOR LEGISLATION

Section 1: Short title

This Act may be cited as the "Veteran Fraud Reimbursement Act."

Section 2: Improvement to repayment by Secretary of Veterans Affairs of certain misused benefits

VA appoints fiduciaries for veterans who are unable to manage their VA benefits. Fiduciaries receive payments of VA funds on behalf of veterans and disburse those funds for the veterans' care and support. "Misuse" is when a fiduciary spends a veteran's VA benefit payments for something other than the veteran's benefit.

Under current law, before a veteran who is a victim of misuse can be made financially whole, VA is required to make a determination as to whether the misuse was the result of VA negligence. According to a July 21, 2021, report by the VA Office of Inspector General,¹ there have been significant wait times for veterans to recoup misused benefits because of the requirement that VA make a negligence determination before repaying veterans their misused benefits. In some cases, veterans have died before receiving their reimbursements. Delays in repaying veterans have largely been the result of VA inadequately monitoring whether VA is making timely negligence determinations and inadequately managing the workload related to negligence determinations.

To address this issue, this section would reduce delays in the repayment of misused funds to beneficiaries of VA benefits. Specifically, it would require the Secretary to establish methods and timing with respect to determining whether an instance of misuse by a fiduciary was the result of negligence by the Secretary, and would prohibit the Secretary from withholding repayment of misused benefits by reason of a pending negligence determination.

The Committee believes that this legislation is crucial to ensure that victims of misuse promptly recoup their misused VA benefits. Veterans with fiduciaries should not have to wait to be made financially whole because of delays in VA's processing of negligence determinations. The Committee also believes that this legislation is crucial to ensure that VA implements effective methods to decrease the processing time for VA negligence determinations.

¹VA Office of Inspector General, *VBA's Fiduciary Program Needs to Improve the Timeliness of Determinations and Reimbursements of Misused Funds*, July 21, 2021.

HEARINGS

On November 8, 2023, the Subcommittee on Disability Assistance and Memorial Affairs held a legislative hearing on H.R. 4016 and other bills that were pending before the subcommittee.

The following witnesses testified:

Ms. Beth Murphy, Executive Director, Compensation Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Kevin Friel, Deputy Director, Pension & Fiduciary Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Kenneth Arnold, Vice Chairman, Board of Veterans' Appeals, U.S. Department of Veterans Affairs; Mr. Shane Liermann, Deputy National Legislative Director, Disabled American Veterans; Ms. Quandrea N. Patterson, Associate Director, Veterans of Foreign Wars of the United States; and Mr. Zachary M. Stolz, Partner, Chisholm, Chisholm, & Kilpatrick LTD.

The following organizations submitted statements for the record:

American Veterans; National Organization of Veterans' Advocates; Paralyzed Veterans of America; Quality. Timeliness. Customer Service; Special Operations Association of America; ALS Association; and Service Women's Action Network.

SUBCOMMITTEE CONSIDERATION

On November 29, 2023, the Subcommittee on Disability Assistance and Memorial Affairs held a markup on proposed legislation, including H.R. 4016. There were no amendments to this bill. A motion was made by Mr. Pappas to favorably forward H.R. 4016 to the Full Committee.

COMMITTEE CONSIDERATION

On December 5, 2023, the Full Committee met in open markup session, a quorum being present, and ordered H.R. 4016 be reported favorably to the House of Representatives by voice vote.

A motion by Ranking Member Takano to report H.R. 4016 favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, no recorded votes were taken on amendments or in connection with ordering H.R. 4016 reported to the House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives of H.R. 4016 are to ensure access to VA disability com-

pensation and pension for veterans and their families, including ensuring that VA's fiduciary program is managed efficiently and that there is no delay in any veteran being repaid any VA benefits that a fiduciary used for anything other than the veteran's care and welfare.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 4016 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the Congressional Budget Office cost estimate on this measure.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 4016, Veteran Fraud Reimbursement Act			
As ordered reported by the House Committee on Veterans' Affairs on December 5, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2028	2024-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	*
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.R. 4016 would modify the process that the Department of Veterans Affairs (VA) follows when replacing benefits for veterans who have been defrauded by fiduciaries appointed to manage those benefits.

Under current law, veterans and survivors who are deemed unable to manage benefits they receive from VA may have someone assigned to administer those benefits on their behalf. Those fiduciaries, who are appointed and supervised by VA, are responsible for accepting the benefits and ensuring that they are used to support the intended recipient. When fiduciaries misuse some or all of those benefits, VA must reissue the misused portion to the intended beneficiary or a successor fiduciary. Before the department reissues those benefits it must assess whether negligence by VA contributed to the misuse of benefits, but VA reissues misused benefits regardless of the results of those assessments.

H.R. 4016 would allow VA to reissue benefits before it determines whether its negligence contributed to the misuse. Because the bill would change the timing—but not the amounts—of benefit

payments (which are paid from mandatory appropriations), enacting the bill would not affect direct spending for VA benefits.

The bill also would require VA to establish oversight methods to determine when misuse may have occurred. VA's new oversight process could cost more or less than the current one. CBO expects that any change in costs would be insignificant. Any changes in spending would be subject to appropriation.

The CBO staff contact for this estimate is Logan Smith. The estimate was reviewed by Christina Hawley Anthony, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4 is inapplicable to H.R. 4016.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 4016.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 4016 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 4016 would establish or reauthorize a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 would establish the short title of the bill as the "Veteran Fraud Reimbursement Act."

Section 2. Improvement to repayment by Secretary of Veterans Affairs of certain misused benefits

This section would amend 38 U.S.C. § 6107 to require the Secretary to establish methods and timing with respect to determining whether an instance of misuse by a fiduciary, of all or part of an individual's benefit paid to such fiduciary, is the result of negligence by the Secretary. This section would also prohibit the Secretary from withholding repayment of misused benefits by reason of a pending negligence determination.

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):

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TITLE 38, UNITED STATES CODE

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

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§ 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 review a fiduciary's accounting within 60 days of the date on which that accounting is scheduled for review.

[(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification 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 not covered by subsection (a) in which a fiduciary 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) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary's successor fiduciary as the case may be.

[(c) LIMITATION ON TOTAL AMOUNT PAID.—The total of the amounts paid to a beneficiary (or a beneficiary’s successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.]

[(d) 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.】

§6107. Reissuance of benefits

(a) REISSUANCE OF MISUSED BENEFITS.—(1) *In any case in which a fiduciary 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) *In any case in which the Secretary reissues a benefit payment (in whole or in part) under paragraph (1), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.*

(3) *In any case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary’s successor fiduciary, as the case may be, to the extent that such amounts have not been paid under paragraph (1).*

(b) LIMITATION ON TOTAL AMOUNT PAID.—*The total of the amounts paid to a beneficiary or the beneficiary’s successor fiduciary under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.*

(c) OVERSIGHT OF NEGLIGENCE.—(1) *The Secretary shall establish methods and timing with respect to determining whether an instance of misuse by a fiduciary, of all or part of an individual’s benefit paid to such fiduciary, is the result of negligence by the Secretary.*

(2) *The Secretary may not withhold the reissuing of a benefit payment under subsection (a)(1) by reason of a pending determination under paragraph (1).*

(3) *The Secretary is not required to make a determination under paragraph (1) for each instance of misuse by a fiduciary, of all or part of an individual’s benefit paid to such fiduciary.*

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