

108TH CONGRESS
2D SESSION

H. R. 4032

To amend title 38, United States Code, to provide additional safeguards for Department of Veterans Affairs benefit recipients who have fiduciaries for receipt and management of benefit payments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2004

Mrs. DAVIS of California (for herself, Mr. MICHAUD, Mr. EVANS, Mr. FILNER, Ms. CORRINE BROWN of Florida, Mr. RODRIGUEZ, Ms. HOOLEY of Oregon, Mr. STRICKLAND, Mr. GRIJALVA, Mr. FRANK of Massachusetts, Mr. BISHOP of Georgia, Mr. HOLDEN, Mr. BRADY of Pennsylvania, Mrs. NAPOLITANO, and Mr. CHANDLER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide additional safeguards for Department of Veterans Affairs benefit recipients who have fiduciaries for receipt and management of benefit payments, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Fiduciary
5 Act of 2004”.

1 **SEC. 2. DEFINITION OF FIDUCIARY.**

2 (a) IN GENERAL.—(1) Chapter 55 of title 38, United
3 States Code, is amended by adding at the end the fol-
4 lowing new section:

5 **“§ 5506. Definition of ‘fiduciary’**

6 “For purposes of this chapter and chapter 61 of this
7 title, the term ‘fiduciary’ means—

8 “(1) a person who is a guardian, curator, con-
9 servator, committee, or person legally vested with
10 the responsibility or care of a claimant (or a claim-
11 ant’s estate) or of a beneficiary (or a beneficiary’s
12 estate); or

13 “(2) any other person having been appointed in
14 a representative capacity to receive money paid
15 under any of the laws administered by the Secretary
16 for the use and benefit of a minor, incompetent, or
17 other beneficiary.”.

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

“5506. Definition of ‘fiduciary’.”.

21 (b) CONFORMING AMENDMENTS TO SECTION
22 5502.—Section 5502 of such title is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (1), by striking “other
25 person” and inserting “other fiduciary”; and

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

5 (2) in subsection (b), by striking “guardian, cu-
 6 rator, conservator, or other person” each place it ap-
 7 pears and inserting “fiduciary”; and

8 (3) in subsection (d), by striking “guardian, cu-
 9 rator, or conservator” and inserting “fiduciary”.

10 (c) CONFORMING AMENDMENT TO SECTION 6101.—
 11 Section 6101(a) of such title is amended by striking
 12 “guardian, curator,” and all that follows through “bene-
 13 ficiary,” and inserting “fiduciary (as defined in section
 14 5506 of this title) for the benefit of a minor, incompetent,
 15 or other beneficiary under laws administered by the Sec-
 16 retary,”.

17 **SEC. 3. INVESTIGATION AND QUALIFICATION OF FIDU-**
 18 **CIARIES.**

19 (a) IN GENERAL.—Chapter 55 of title 38, United
 20 States Code, as amended by section 2, is further amended
 21 by adding at the end the following new section:

22 **“§ 5507. Investigation and qualification of fiduciaries**

23 “(a) Any certification of a person for payment of ben-
 24 efits of a beneficiary to that person as such beneficiary’s

1 fiduciary under section 5502 of this title shall be made
2 on the basis of—

3 “(1) an investigation by the Secretary of the
4 fitness of that person to serve as fiduciary for that
5 beneficiary, such investigation—

6 “(A) to be conducted in advance of such
7 certification; and

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

10 “(2) adequate evidence that certification of that
11 person as fiduciary for that beneficiary is in the in-
12 terest of such beneficiary (as determined by the Sec-
13 retary under regulations); and

14 “(3) the furnishing of any bond that may be re-
15 quired by the Secretary.

16 “(b) As part of any investigation of any person under
17 subsection (a), the Secretary shall request information
18 concerning whether that person has been convicted of any
19 offense under Federal or State law which resulted in im-
20 prisonment for more than one year. If that person has
21 been convicted of such an offense, the Secretary may cer-
22 tify the person as a fiduciary only if the Secretary makes
23 a specific finding that the person has been rehabilitated
24 and is the most appropriate person to act as fiduciary for
25 the beneficiary concerned under the circumstances.

1 “(c)(1) In the case of a proposed fiduciary described
2 in paragraph (2), the Secretary, in conducting an inves-
3 tigation under subsection (a)(1), may carry out such in-
4 vestigation on an expedited basis that may include waiver
5 of any specific requirement relating to such investigation,
6 including the otherwise applicable provisions of subpara-
7 graphs (A) and (B) of such subsection. Any such inves-
8 tigation carried out on such an expedited basis shall be
9 carried out under regulations prescribed for purposes of
10 this section.

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

13 “(A) the parent (natural, adopted, or step-
14 parent) of a beneficiary who is a minor;

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

17 “(C) a person who has been appointed a fidu-
18 ciary of the beneficiary by a court of competent ju-
19 risdiction.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of such chapter is amended by adding
22 after the item added by the amendment made by section
23 2(a)(2) the following new item:

“5507. Investigation and qualification of fiduciaries.”.

1 **SEC. 4. MISUSE OF BENEFITS BY FIDUCIARIES.**

2 (a) PROTECTION OF VETERANS BENEFITS WHEN
3 ADMINISTERED BY FIDUCIARIES.—(1) Chapter 61 of title
4 38, United States Code, is amended by adding at the end
5 the following new sections:

6 **“§ 6106. Misuse of benefits by fiduciaries**

7 “(a) FEE FORFEITURE IN CASE OF BENEFIT MIS-
8 USE BY FIDUCIARIES.—A fiduciary may not collect a fee
9 from a beneficiary for any month with respect to which
10 the Secretary or a court of competent jurisdiction has de-
11 termined that fiduciary misused all or part of the individ-
12 ual’s benefit, and any amount so collected by the fiduciary
13 as a fee for such month shall be treated as a misused part
14 of the individual’s benefit.

15 “(b) LIABILITY OF FIDUCIARIES FOR MISUSED BEN-
16 EFITS.—(1) If the Secretary or a court of competent juris-
17 diction determines that a fiduciary that is not a Federal,
18 State, or local government agency has misused all or part
19 of a beneficiary’s benefit that was paid to such fiduciary,
20 the fiduciary shall be liable for the amount misused, and
21 such amount (to the extent not repaid by the fiduciary)
22 shall be treated as an erroneous payment of benefits under
23 this title to the fiduciary for purposes of laws pertaining
24 to the recovery of overpayments. The amount of such over-
25 payment shall constitute a liability of such fiduciary to the
26 United States and may be recovered in the same manner

1 as any other debt due the United States. Subject to para-
2 graph (2), upon recovering all or any part of such amount,
3 the Secretary shall pay an amount equal to the recovered
4 amount to such beneficiary or such beneficiary's alter-
5 native fiduciary.

6 “(2) The total of the amounts paid to a beneficiary
7 (or a beneficiary's alternative fiduciary) under paragraph
8 (1) and under section 6107 of this title may not exceed
9 the total benefit amount misused by the fiduciary with re-
10 spect to that beneficiary.

11 “(c) MISUSE OF BENEFITS DEFINED.—For purposes
12 of this chapter, misuse of benefits by a fiduciary occurs
13 in any case in which the fiduciary receives payment, under
14 any of laws administered by the Secretary, for the use and
15 benefit of a beneficiary and converts such payment, or any
16 part thereof, to a use other than for the use and benefit
17 of such beneficiary or that beneficiary's dependents. Re-
18 tention by a fiduciary of an amount of a benefit payment
19 as a fiduciary fee or commission, or as attorney's fees (in-
20 cluding expenses) and court costs, if authorized by the
21 Secretary or a court of competent jurisdiction, shall be
22 considered to be for the use or benefit of such beneficiary.

23 “(d) REGULATIONS.—The Secretary may prescribe
24 by regulation the meaning of the term ‘use and benefit’
25 for purposes of this section.

1 “(e) FINALITY OF DETERMINATIONS.—A determina-
2 tion by the Secretary that a fiduciary has misused benefits
3 shall be considered to be a decision of the Secretary under
4 section 511(a) of this title.

5 **“§ 6107. Reissuance of benefits**

6 “(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In
7 any case in which the negligent failure of the Secretary
8 to investigate or monitor a fiduciary results in misuse of
9 benefits by the fiduciary, the Secretary shall pay to the
10 beneficiary or the beneficiary’s alternate fiduciary an
11 amount equal to the amount of benefits that were so mis-
12 used.

13 “(2) There shall be considered to have been a neg-
14 ligent failure by the Secretary to investigate and monitor
15 a fiduciary in the following cases:

16 “(A) A case in which the Secretary failed to
17 timely review a fiduciary’s accounting.

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

21 “(C) In any other case in which actual neg-
22 ligence is shown.

23 “(b) REISSUANCE OF MISUSED BENEFITS.—(1) In
24 any case in which a fiduciary described in paragraph (2)
25 misuses all or part of an individual’s benefit paid to such

1 fiduciary, the Secretary shall pay to the beneficiary or the
 2 beneficiary's alternative fiduciary an amount equal to the
 3 amount of such benefit so misused.

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

5 “(A) is not an individual; or

6 “(B) is an individual who, for any month dur-
 7 ing a period when misuse occurs, serves 15 or more
 8 individuals who are beneficiaries under this title.

9 “(c) RECOUPMENT OF AMOUNTS REISSUED.—In any
 10 case in which the Secretary reissues a benefit payment (in
 11 whole or in part) under subsection (a) or (b), the Sec-
 12 retary shall make a good faith effort to obtain recoupment
 13 from the fiduciary to whom the payment was originally
 14 made.”.

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

“6106. Misuse of benefits by fiduciaries.

“6107. Reissuance of benefits.”.

18 **SEC. 5. ADDITIONAL PROTECTIONS FOR BENEFICIARIES**
 19 **WITH FIDUCIARIES.**

20 (a) ONSITE REVIEWS AND REQUIRED ACCOUNT-
 21 INGS.—(1) Chapter 55 of title 38, United States Code,
 22 as amended by section 3, is further amended by adding
 23 at the end the following new sections:

1 **“§ 5508. Periodic onsite reviews of institutional fidu-**
2 **ciaries**

3 “(a) INSPECTIONS REQUIRED.—In addition to such
4 other reviews of fiduciaries as the Secretary may otherwise
5 conduct, the Secretary shall provide for the periodic onsite
6 review of any person or agency located in the United
7 States that receives the benefits payable under laws ad-
8 ministered by the Secretary to another individual pursuant
9 to the appointment of such person or agency as a fiduciary
10 under section 5502 of this title in any case in which—

11 “(1) the fiduciary is a person who serves in that
12 capacity with respect to 15 or more such individuals;

13 “(2) the fiduciary is a certified community-
14 based nonprofit social service agency; or

15 “(3) the fiduciary is an agency (other than an
16 agency described in paragraph (2)) that serves in
17 that capacity with respect to 50 or more such indi-
18 viduals.

19 “(b) CERTIFIED COMMUNITY-BASED NONPROFIT SO-
20 CIAL SERVICE AGENCY DEFINED.—For purposes of this
21 section, the term ‘certified community-based nonprofit so-
22 cial service agency’ means a community-based nonprofit
23 social service agency that is in compliance with require-
24 ments, under regulations which shall be prescribed by the
25 Secretary, for annual certification to the Secretary that
26 it is bonded in accordance with requirements specified by

1 the Secretary and that it is licensed in each State in which
2 it serves as a fiduciary (if licensing is available in such
3 State) in accordance with requirements specified by the
4 Secretary. Any such annual certification shall include a
5 copy of any independent audit on such agency which may
6 have been performed since the previous certification.

7 “(c) BIENNIAL REPORT.—(1) Within 120 days after
8 the end of each even-numbered fiscal year, the Secretary
9 shall submit to the Committees on Veterans’ Affairs of
10 the Senate and House of Representatives a report on the
11 results of periodic onsite reviews conducted during the two
12 preceding fiscal years pursuant to subsection (a) and of
13 any other reviews of fiduciaries conducted during those fis-
14 cal years in connection with benefits under this title (such
15 as summaries of findings of reports of the Office of the
16 Inspector General) that the Secretary determines to be
17 pertinent for purposes of this subsection.

18 “(2) Each report under paragraph (1) shall describe
19 in detail all problems identified in such reviews and any
20 corrective action taken or planned to be taken to correct
21 such problems, and shall include the following:

22 “(A) The number of such reviews.

23 “(B) The results of such reviews.

24 “(C) The number of cases in which the fidu-
25 ciary was changed and why.

1 “(D) The number of cases involving the exercise
2 of expedited, targeted oversight of the fiduciary by
3 the Secretary conducted upon receipt of an allega-
4 tion of misuse of benefits, failure to pay a vendor,
5 or a similar irregularity.

6 “(E) The number of cases discovered in which
7 there was a misuse of benefits.

8 “(F) How any such case of misuse of benefits
9 was addressed by the Secretary.

10 “(G) The final disposition of such cases of mis-
11 use of benefits, including any civil or criminal pen-
12 alties imposed.

13 “(H) Such other information as the Secretary
14 considers appropriate.

15 **“§ 5509. Authority to redirect delivery of benefit pay-**
16 **ments when a fiduciary fails to provide**
17 **required accounting**

18 “(a) REQUIRED REPORTS AND ACCOUNTINGS.—The
19 Secretary may require a fiduciary to file a report or ac-
20 counting pursuant to regulations prescribed by the Sec-
21 retary.

22 “(b) ACTIONS UPON FAILURE TO FILE.—In any
23 case in which a fiduciary fails to submit a report or ac-
24 counting required by the Secretary under subsection (a),
25 the Secretary may, after furnishing notice to such fidu-

1 ciary and the beneficiary entitled to such payment of bene-
 2 fits, require that such fiduciary appear in person at a re-
 3 gional office of the Department serving the area in which
 4 the beneficiary resides in order to receive such pay-
 5 ments.”.

6 (2) The table of sections at the beginning of such
 7 chapter is amended by adding after the item added by the
 8 amendment made by section 3(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.”.

9 (b) CIVIL MONETARY PENALTIES; JUDICIAL ORDERS
 10 OF RESTITUTION.—(1) Chapter 61 of title 38, United
 11 States Code, as amended by section 4(a), is further
 12 amended by adding at the end the following new sections:
 13 **“§ 6108. Civil monetary penalties**

14 “(a) PENALTY FOR CONVERSION.—Any person (in-
 15 cluding an organization, agency, or other entity) who, hav-
 16 ing received, while acting in the capacity of a fiduciary
 17 pursuant to section 5502 of this title, a payment under
 18 a law administered by the Secretary for the use and ben-
 19 efit of another individual, converts such payment, or any
 20 part thereof, to a use that such person knows or should
 21 know is other than for the use and benefit of such other
 22 individual shall be subject to, in addition to any other pen-
 23 alty that may be prescribed by law, a civil monetary pen-
 24 alty of not more than \$5,000 for each such conversion.

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

8 “(c) COSTS OF RECOVERY.—From amounts collected
9 under this section, the amount necessary to recoup the De-
10 partment’s costs of such collection shall be credited to ap-
11 plicable appropriations, to remain available until ex-
12 pended.

13 **“§ 6109. Authority for judicial orders of restitution**

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

19 “(b) Sections 3612, 3663, and 3664 of title 18 shall
20 apply with respect to the issuance and enforcement of or-
21 ders of restitution under subsection (a). In so applying
22 those sections, the Department shall be considered the vic-
23 tim.

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

4 “(d)(1) Except as provided in paragraph (2),
5 amounts received or recovered by the Secretary pursuant
6 to an order of restitution under subsection (a), to the ex-
7 tent and in the amounts provided in advance in appropria-
8 tions Acts, shall be available to defray expenses incurred
9 in the supervision and investigation of fiduciaries under
10 this title.

11 “(2) Paragraph (1) shall not apply with respect to
12 amounts received in connection with misuse by a fiduciary
13 of funds paid as benefits under laws administered by the
14 Secretary. Such amounts shall be paid to the individual
15 whose benefits were misused unless the Secretary has pre-
16 viously reissued the misused benefits, in which case the
17 amounts shall be treated in the same manner as overpay-
18 ments recouped by the Secretary and shall be deposited
19 to the credit of the applicable revolving fund, trust fund,
20 or appropriation.”.

21 (2) The table of sections at the beginning of such
22 chapter is amended by adding after the item added by the
23 amendment made by section 4(b) the following new items:

“6108. Civil monetary penalties.

“6109. Authority for judicial orders of restitution.”.

1 **SEC. 6. EFFECTIVE DATES.**

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

6 (b) SPECIAL RULES.—Sections 6106 and 6107 of
7 title 38, United States Code, as added by section 4(a),
8 shall apply with respect to any determinations by the Sec-
9 retary of Veterans Affairs made after the date of the en-
10 actment of this Act of misuse of funds by a fiduciary.

11 **SEC. 7. REPORT TO CONGRESS.**

12 The Secretary of Veterans Affairs shall prepare a re-
13 port evaluating whether the existing procedures and re-
14 views for the qualification (including disqualification) of
15 fiduciaries are sufficient to enable the Secretary to protect
16 benefits from being misused by fiduciaries. The Secretary
17 shall submit the report to the Committee on Veterans' Af-
18 fairs of the Senate and House of Representatives no later
19 than 270 days after the date of the enactment of this Act.
20 The Secretary shall include in such report any rec-
21 ommendations that the Secretary considers appropriate.

○