

112TH CONGRESS
2D SESSION

H. R. 5948

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2012

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 38, United States Code, to improve the supervision of fiduciaries of veterans under the laws administered by the Secretary of Veterans Affairs, to establish a Place of Remembrance at Arlington National Cemetery, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Veterans Fiduciary Reform and Honoring Noble Service
4 Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Improvement of fiduciaries for veterans.
- Sec. 3. Establishment of Place of Remembrance at Arlington National Cemetery.
- Sec. 4. Furnishing caskets and urns for deceased veterans with no known next of kin.
- Sec. 5. Improved communication between Department of Veterans Affairs and medical examiners and funeral directors.
- Sec. 6. Report on compliance of Department of Veterans Affairs with industry standards for caskets and urns.
- Sec. 7. Exclusion of persons convicted of committing certain sex offenses from interment or memorialization in national cemeteries, Arlington National Cemetery, and certain State veterans’ cemeteries and from receiving certain funeral honors.
- Sec. 8. Veterans freedom of conscience protection.
- Sec. 9. Provision of access to case-tracking information.
- Sec. 10. Notification by the Secretary of Veterans Affairs of individuals whose sensitive personal information is involved in a data breach.
- Sec. 11. Limitation on bonuses for Department of Veterans Affairs employees who violate Federal civil laws or regulations.
- Sec. 12. Limitation on awards and bonuses to employees of the Department of Veterans Affairs.

7 **SEC. 2. IMPROVEMENT OF FIDUCIARIES FOR VETERANS.**

8 (a) APPOINTMENT AND SUPERVISION.—

9 (1) Section 5502 of title 38, United States
10 Code, is amended to read as follows:

11 **“§ 5502. Appointment of fiduciaries**

12 “(a) APPOINTMENT.—(1) Where it appears to the
13 Secretary that the interest of the beneficiary would be
14 served thereby, payment of benefits under any law admin-
15 istered by the Secretary may be made directly to the bene-

1 ficiary or to a relative or some other fiduciary for the use
2 and benefit of the beneficiary, regardless of any legal dis-
3 ability on the part of the beneficiary.

4 “(2) When in the opinion of the Secretary, a tem-
5 porary fiduciary is needed in order to protect the benefits
6 provided to the beneficiary under any law administered by
7 the Secretary while a determination of incompetency is
8 being made or appealed or a fiduciary is appealing a deter-
9 mination of misuse, the Secretary may appoint one or
10 more temporary fiduciaries for a period not to exceed 120
11 days. If a final decision has not been made within 120
12 days, the Secretary may not continue the appointment of
13 the fiduciary without obtaining a court order for appoint-
14 ment of a guardian, conservator, or other fiduciary under
15 the authority provided in section 5502(b) of this title.

16 “(b) APPEALS.—(1) If the Secretary determines a
17 beneficiary to be mentally incompetent for purposes of ap-
18 pointing a fiduciary under this chapter, the Secretary shall
19 provide such beneficiary with a written statement detailing
20 the reasons for such determination.

21 “(2) A beneficiary whom the Secretary has deter-
22 mined to be mentally incompetent for purposes of appoint-
23 ing a fiduciary under this chapter may appeal such deter-
24 mination.

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

4 “(A) remove the fiduciary so appointed; and

5 “(B) have a new fiduciary appointed.

6 “(2) The Secretary shall comply with a request under
7 paragraph (1) unless the Secretary determines that the
8 request is not made in good faith.

9 “(3) The Secretary shall ensure that any removal or
10 new appointment of a fiduciary under paragraph (1) does
11 not delay or interrupt the beneficiary’s receipt of benefits
12 administered by the Secretary.

13 “(d) INDEPENDENCE.—A fiduciary appointed by the
14 Secretary shall operate independently of the Department
15 to determine the actions that are in the interest of the
16 beneficiary.

17 “(e) PREDESIGNATION.—A veteran may predesignate
18 a fiduciary by—

19 “(1) submitting written notice to the Secretary
20 of the predesignated fiduciary; or

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

23 “(f) APPOINTMENT OF NON-PREDESIGNATED FIDU-
24 CIARY.—If a beneficiary designates an individual to serve
25 as a fiduciary under subsection (e) and the Secretary ap-

1 points an individual not so designated as the fiduciary for
 2 such beneficiary, the Secretary shall notify such bene-
 3 ficiary of—

4 “(1) the reason why such designated individual
 5 was not appointed; and

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

8 “(g) PRIORITY OF APPOINTMENT.—In appointing a
 9 fiduciary under this chapter, if a beneficiary does not des-
 10 ignate a fiduciary pursuant to subsection (e), to the extent
 11 possible the Secretary shall appoint a person who is—

12 “(1) a relative of the beneficiary;

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

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

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

“5502. Appointment of fiduciaries.”.

21 (b) SUPERVISION.—

22 (1) IN GENERAL.—Chapter 55 of title 38,
 23 United States Code, is amended by inserting after
 24 section 5502, as amended by subsection (a)(1), the
 25 following new section:

1 **“§ 5502A. Supervision of fiduciaries**

2 “(a) COMMISSION.—(1)(A) In a case in which the
3 Secretary determines that a commission is necessary in
4 order to obtain the services of a fiduciary in the best inter-
5 ests of a beneficiary, the Secretary may authorize a fidu-
6 ciary appointed by the Secretary to obtain from the
7 monthly benefits provided to the beneficiary a reasonable
8 commission for fiduciary services rendered, but the com-
9 mission for any month may not exceed the lesser of the
10 following amounts:

11 “(i) The amount that equals three percent
12 of the monthly monetary benefits under laws
13 administered by the Secretary paid on behalf of
14 the beneficiary to the fiduciary.

15 “(ii) \$35.

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

19 “(C) A commission may not be authorized for a fidu-
20 ciary who receives any other form of remuneration or pay-
21 ment in connection with rendering fiduciary services for
22 benefits under this title on behalf of the beneficiary.

23 “(D) In accordance with section 6106 of this title,
24 a commission may not be paid to a fiduciary if the Sec-
25 retary determines that the fiduciary misused any benefit
26 payments of a beneficiary.

1 “(E) If the Secretary determines that the fiduciary
2 has misused any benefit or payments of a beneficiary, the
3 Secretary may revoke the fiduciary status of the fiduciary.

4 “(2) Where, in the opinion of the Secretary, any fidu-
5 ciary receiving funds on behalf of a Department bene-
6 ficiary is acting in such a number of cases as to make
7 it impracticable to conserve properly the estates or to su-
8 pervise the persons of the beneficiaries, the Secretary may
9 refuse to make future payments in such cases as the Sec-
10 retary may deem proper.

11 “(b) COURT.—Whenever it appears that any fidu-
12 ciary, in the opinion of the Secretary, is not properly exe-
13 cuting or has not properly executed the duties of the trust
14 of such fiduciary or has collected or paid, or is attempting
15 to collect or pay, fees, commissions, or allowances that are
16 inequitable or in excess of those allowed by law for the
17 duties performed or expenses incurred, or has failed to
18 make such payments as may be necessary for the benefit
19 of the ward or the dependents of the ward, then the Sec-
20 retary may appear, by the Secretary’s authorized attorney,
21 in the court which has appointed such fiduciary, or in any
22 court having original, concurrent, or appellate jurisdiction
23 over said cause, and make proper presentation of such
24 matters. The Secretary, in the Secretary’s discretion, may
25 suspend payments to any such fiduciary who shall neglect

1 or refuse, after reasonable notice, to render an account
2 to the Secretary from time to time showing the application
3 of such payments for the benefit of such incompetent or
4 minor beneficiary, or who shall neglect or refuse to admin-
5 ister the estate according to law. The Secretary may re-
6 quire the fiduciary, as part of such account, to disclose
7 any additional financial information concerning the bene-
8 ficiary (except for information that is not available to the
9 fiduciary). The Secretary may appear or intervene by the
10 Secretary's duly authorized attorney in any court as an
11 interested party in any litigation instituted by the Sec-
12 retary or otherwise, directly affecting money paid to such
13 fiduciary under this section.

14 “(c) PAYMENT OF CERTAIN EXPENSES.—Authority
15 is hereby granted for the payment of any court or other
16 expenses incident to any investigation or court proceeding
17 for the appointment of any fiduciary or other person for
18 the purpose of payment of benefits payable under laws ad-
19 ministered by the Secretary or the removal of such fidu-
20 ciary and appointment of another, and of expenses in con-
21 nection with the administration of such benefits by such
22 fiduciaries, or in connection with any other court pro-
23 ceeding hereby authorized, when such payment is author-
24 ized by the Secretary.

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

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

1 “(e) ESCHEATMENT.—Any funds in the hands of a
2 fiduciary appointed by a State court or the Secretary de-
3 rived from benefits payable under laws administered by
4 the Secretary, which under the law of the State wherein
5 the beneficiary had last legal residence would escheat to
6 the State, shall escheat to the United States and shall be
7 returned by such fiduciary, or by the personal representa-
8 tive of the deceased beneficiary, less legal expenses of any
9 administration necessary to determine that an escheat is
10 in order, to the Department, and shall be deposited to the
11 credit of the applicable revolving fund, trust fund, or ap-
12 propriation.”.

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

“5502A. Supervision of fiduciaries.”.

18 (c) DEFINITION OF FIDUCIARY.—Section 5506 of
19 title 38, United States Code is amended—

20 (1) by striking “For purposes” and inserting

21 “(a) For purposes”; and

22 (2) by adding at the end the following new sub-
23 section:

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

1 “(A) State or local government agency whose
2 mission is to carry out income maintenance, social
3 service, or health care-related activities;

4 “(B) any State or local government agency with
5 fiduciary responsibilities; or

6 “(C) any nonprofit social service agency that
7 the Secretary determines—

8 “(i) regularly provides services as a fidu-
9 ciary concurrently to five or more individuals;
10 and

11 “(ii) is not a creditor of any such indi-
12 vidual.

13 “(2) The Secretary shall maintain a list of State or
14 local agencies and nonprofit social service agencies under
15 paragraph (1) that are qualified to act as a fiduciary
16 under this chapter. In maintaining such list, the Secretary
17 may consult the lists maintained under section 807(h) of
18 the Social Security Act (42 U.S.C. 1007(h)).”.

19 (d) QUALIFICATIONS.—Section 5507 of title 38,
20 United States Code, is amended to read as follows:

21 **“§ 5507. Inquiry, investigations, and qualification of**
22 **fiduciaries**

23 “(a) INVESTIGATION.—Any certification of a person
24 for payment of benefits of a beneficiary to that person as

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

3 “(1) an inquiry or investigation by the Sec-
4 retary of the fitness of that person to serve as fidu-
5 ciary for that beneficiary to be conducted in advance
6 of such certification and in accordance with sub-
7 section (b);

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

12 “(3) adequate evidence that the person to serve
13 as fiduciary protects the private information of a
14 beneficiary in accordance with subsection (d)(1); and

15 “(4) the furnishing of any bond that may be re-
16 quired by the Secretary, in accordance with sub-
17 section (f).

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

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

24 “(B) a background check of the proposed fidu-
25 ciary to—

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

4 “(ii) determine whether the proposed fidu-
5 ciary will serve the best interest of the bene-
6 ficiary, including by conducting a credit check
7 of the proposed fiduciary and checking the
8 records under paragraph (5).

9 “(2) The Secretary shall request information con-
10 cerning whether that person has been convicted of any of-
11 fense under Federal or State law. If that person has been
12 convicted of such an offense, the Secretary may certify the
13 person as a fiduciary only if the Secretary finds that the
14 person is an appropriate person to act as fiduciary for the
15 beneficiary concerned under the circumstances.

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

18 “(A) each time a person is proposed to be a fi-
19 duciary, regardless of whether the person is serving
20 or has served as a fiduciary; and

21 “(B) at no expense to the beneficiary.

22 “(4) Each proposed fiduciary shall disclose to the
23 Secretary the number of beneficiaries that the fiduciary
24 acts on behalf of.

1 “(5) The Secretary shall maintain records of any per-
2 son who has—

3 “(A) previously served as a fiduciary; and

4 “(B) had such fiduciary status revoked by the
5 Secretary.

6 “(6)(A) If a fiduciary appointed by the Secretary is
7 convicted of a crime described in subparagraph (B), the
8 Secretary shall notify the beneficiary of such conviction
9 by not later than 14 days after the date on which the Sec-
10 retary learns of such conviction.

11 “(B) A crime described in this subparagraph is a
12 crime—

13 “(i) for which the fiduciary is convicted while
14 serving as a fiduciary for any person;

15 “(ii) that is not included in a report submitted
16 by the fiduciary under section 5509(a) of this title;
17 and

18 “(iii) that the Secretary determines could affect
19 the ability of the fiduciary to act on behalf of the
20 beneficiary.

21 “(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In
22 the case of a proposed fiduciary described in paragraph
23 (2), the Secretary, in conducting an inquiry or investiga-
24 tion under subsection (a)(1), may carry out such inquiry
25 or investigation on an expedited basis that may include

1 giving priority to conducting such inquiry or investigation.
2 Any such inquiry or investigation carried out on such an
3 expedited basis shall be carried out under regulations pre-
4 scribed for purposes of this section.

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

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

9 “(B) the spouse or parent of an incom-
10 petent beneficiary;

11 “(C) a person who has been appointed a fi-
12 duciary of the beneficiary by a court of com-
13 petent jurisdiction;

14 “(D) being appointed to manage an estate
15 where the annual amount of veterans benefits
16 to be managed by the proposed fiduciary does
17 not exceed \$3,600, as adjusted pursuant to sec-
18 tion 5312 of this title; or

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

22 “(d) PROTECTION OF PRIVATE INFORMATION.—(1)
23 A fiduciary shall take all reasonable precautions to—

1 “(A) protect the private information of a bene-
2 ficiary, including personally identifiable information;
3 and

4 “(B) securely conducts financial transactions.

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

8 “(e) POTENTIAL MISUSE OF FUNDS.—(1) If the Sec-
9 retary has reason to believe that a fiduciary may be mis-
10 using all or part of the benefit of a beneficiary, the Sec-
11 retary shall—

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

14 “(B) if such veracity is established, transmit to
15 the officials described in paragraph (2) a report of
16 such investigation.

17 “(2) The officials described in this paragraph are the
18 following:

19 “(A) The Attorney General.

20 “(B) Each head of a Federal department or
21 agency that pays to a fiduciary or other person ben-
22 efits under any law administered by such depart-
23 ment of agency for the use and benefit of a minor,
24 incompetent, or other beneficiary.

1 “(f) BOND.—In requiring the furnishing of a bond
2 under subsection (a)(4), the Secretary shall—

3 “(1) ensure that any such bond is not paid
4 using any funds of the beneficiary; and

5 “(2) consider—

6 “(A) the care a proposed fiduciary has
7 taken to protect the interests of the beneficiary;
8 and

9 “(B) the capacity of the proposed fiduciary
10 to meet the financial requirements of the bond
11 without sustaining hardship.

12 “(g) LIST OF FIDUCIARIES.—Each regional office of
13 the Veterans Benefits Administration shall maintain a list
14 of the following:

15 “(1) The name and contact information of each
16 fiduciary, including address, telephone number, and
17 email address.

18 “(2) With respect to each fiduciary described in
19 paragraph (1)—

20 “(A) the date of the most recent back-
21 ground check and credit check performed by the
22 Secretary under this section;

23 “(B) the date that any bond was paid
24 under this section;

1 “(C) the name, address, and telephone
2 number of each beneficiary the fiduciary acts on
3 behalf of; and

4 “(D) the amount that the fiduciary con-
5 trols with respect to each beneficiary described
6 in subparagraph (C).”.

7 (e) ANNUAL RECEIPT OF PAYMENTS.—

8 (1) IN GENERAL.—Section 5509 of title 38,
9 United States Code, is amended—

10 (A) in subsection (a)——

11 (i) by striking “may require a fidu-
12 ciary to file a” and inserting “, subject to
13 regulations prescribed pursuant to sub-
14 section (f), shall require a fiduciary to file
15 an annual”; and

16 (ii) by adding at the end the following
17 new sentence: “The Secretary shall trans-
18 mit such annual report or accounting to
19 the beneficiary and any legal guardian of
20 such beneficiary.”;

21 (B) by adding at the end the following new
22 subsections:

23 “(c) MATTERS INCLUDED.—An annual report or ac-
24 counting under subsection (a) shall include the following:

1 “(1) For each beneficiary that a fiduciary acts
2 on behalf of—

3 “(A) the amount of the benefits of the ben-
4 eficiary accrued during the year, the amount
5 spent, and the amount remaining; and

6 “(B) if the fiduciary serves the beneficiary
7 with respect to benefits not administered by the
8 Secretary, an accounting of all sources of bene-
9 fits or other income the fiduciary oversees for
10 the beneficiary.

11 “(2) A list of events that occurred during the
12 year covered by the report that could affect the abil-
13 ity of the fiduciary to act on behalf of the bene-
14 ficiary, including—

15 “(A) the fiduciary being convicted of any
16 crime;

17 “(B) the fiduciary declaring bankruptcy;
18 and

19 “(C) any judgments entered against the fi-
20 diciary.

21 “(d) RANDOM AUDITS.—The Secretary shall annu-
22 ally conduct random audits of fiduciaries who receive a
23 commission pursuant to subsection 5502A(a)(1) of this
24 title.

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

7 “(f) REGULATIONS.—(1) In prescribing regulations
 8 to carry out this section, the Secretary, in consultation
 9 with the Under Secretary for Benefits and the Under Sec-
 10 retary for Health, shall ensure that the care provided by
 11 a fiduciary described in paragraph (2) to a beneficiary is
 12 not diminished or otherwise worsened by the fiduciary
 13 complying with this section.

14 “(2) A fiduciary described in this paragraph is a fidu-
 15 ciary who, in addition to acting as a fiduciary for a bene-
 16 ficiary, provides care to the beneficiary pursuant to this
 17 title (including such care provided under section 1720G
 18 of this title).”; and

19 (C) by striking the section heading and in-
 20 serting the following: “**Annual reports and**
 21 **accountings of fiduciaries**”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
 23 tions at the beginning of chapter 55 of title 38,
 24 United States Code, is amended by striking the item

1 relating to section 5509 and inserting the following
2 new item:

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

3 (f) REPAYMENT OF MISUSED BENEFITS.—Section
4 6107(a)(2)(C) of title 38, United States Code, is amended
5 by inserting before the period the following: “, including
6 by the Secretary not acting in accordance with section
7 5507 of this title”.

8 (g) ANNUAL REPORTS.—Section 5510 of title 38,
9 United States Code, is amended by striking “The Sec-
10 retary shall include in the Annual Benefits Report of the
11 Veterans Benefits Administration or the Secretary’s An-
12 nual Performance and Accountability Report” and insert-
13 ing “Not later than July 1 of each year, the Secretary
14 shall submit to the Committees on Veterans’ Affairs of
15 the House of Representatives and the Senate a separate
16 report containing”.

17 (h) REPORT.—Not later than one year after the date
18 of the enactment of this Act, the Secretary of Veterans
19 Affairs shall submit to the Committee on Veterans’ Affairs
20 of the Senate and the Committee on Veterans’ of the
21 House of Representatives a comprehensive report on the
22 implementation of the amendments made by this Act, in-
23 cluding—

24 (1) detailed information on the establishment of
25 new policies and procedures pursuant to such

1 amendments and training provided on such policies
2 and procedures; and

3 (2) a discussion of whether the Secretary
4 should provide fiduciaries with standardized finan-
5 cial software to simplify reporting requirements.

6 **SEC. 3. ESTABLISHMENT OF PLACE OF REMEMBRANCE AT**
7 **ARLINGTON NATIONAL CEMETERY.**

8 (a) ESTABLISHMENT AUTHORIZED.—

9 (1) IN GENERAL.—Chapter 446 of title 10,
10 United States Code, is amended by adding at the
11 end the following new section:

12 **“§ 4727. Place of Remembrance at Arlington National**
13 **Cemetery**

14 “(a) ESTABLISHMENT AUTHORIZED.—Under regula-
15 tions prescribed by the Secretary of Defense, the Secretary
16 of the Army may establish at an appropriate location in
17 Arlington National Cemetery a Place of Remembrance for
18 the interment of cremated specimens or other portion of
19 the remains of a deceased member of the armed forces
20 described in subsection (b) when one of the conditions
21 specified in subsection (c) applies with respect to the re-
22 mains of the member.

23 “(b) COVERED MEMBERS.—This section applies only
24 with respect to members of the armed forces who die while
25 on active duty—

1 “(1) in a war or contingency operation; or

2 “(2) in the line of duty, consistent with regula-
3 tions prescribed by the Secretary of the Army with
4 respect to burial at Arlington National Cemetery.

5 “(c) CONDITIONS ON INTERMENT OF REMAINS.—

6 The conditions under which cremated specimens or other
7 portion of the remains of a deceased member of the armed
8 forces described in subsection (b) (including cremated
9 specimens or other portion of remains believed by the Sec-
10 retary concerned to be from the remains of the deceased
11 member) are authorized to be interred in the Place of Re-
12 membrance are any of the following:

13 “(1) The remains are unidentified.

14 “(2) The person designated under section
15 1482(c) of this title to direct disposition of the re-
16 mains of the member agrees to interment of the re-
17 mains in the Place of Remembrance.

18 “(3) The person designated under section
19 1482(c) of this title to direct disposition of the re-
20 mains of the member has indicated to the Secretary
21 concerned that no further notification is required if
22 a specimen or portion of the remains of the member
23 is discovered.

24 “(4) When, especially in historical cases, the
25 Secretary concerned determines that there is no one

1 authorized to direct the disposition of the remains of
2 the member and the Secretary concerned rec-
3 ommends interment of the remains in the Place of
4 Remembrance.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions at the beginning of such chapter is amended
7 by adding at the end the following new item:

“4727. Place of Remembrance at Arlington National Cemetery.”.

8 (b) RETROACTIVE APPLICATION.—Section 4727 of
9 title 10, United States Code, as added by subsection (a),
10 applies with respect to any war or contingency operation
11 in which members of the Armed Forces participated and
12 covers members of the Armed Forces who died in the line
13 of duty before the date of the enactment of this Act, con-
14 sistent with regulations prescribed by the Secretary of the
15 Army with respect to burial at Arlington National Ceme-
16 tery.

17 **SEC. 4. FURNISHING CASKETS AND URNS FOR DECEASED**
18 **VETERANS WITH NO KNOWN NEXT OF KIN.**

19 (a) IN GENERAL.—Section 2306 of title 38, United
20 States Code, is amended—

21 (1) by redesignating subsections (f) and (g) as
22 subsections (g) and (h), respectively;

23 (2) by inserting after subsection (e) the fol-
24 lowing new subsection (f):

1 “(f) The Secretary shall furnish a casket or urn, of
2 such quality as the Secretary considers appropriate for a
3 dignified burial, for burial in a national cemetery of a de-
4 ceased veteran described in section 2414(b) of this title.”;
5 and

6 (3) in subsection (h), as redesignated by para-
7 graph (1), by adding at the end the following new
8 paragraph:

9 “(4) A casket or urn may not be furnished under sub-
10 section (f) for burial of a person described in section
11 2411(b) of this title.”.

12 (b) EFFECTIVE DATE.—Subsections (f) and (h)(4) of
13 section 2306 of title 38, United States Code, as added by
14 subsection (a), shall take effect on the date of the enact-
15 ment of this Act and shall apply with respect to deaths
16 occurring on or after such date.

17 **SEC. 5. IMPROVED COMMUNICATION BETWEEN DEPART-**
18 **MENT OF VETERANS AFFAIRS AND MEDICAL**
19 **EXAMINERS AND FUNERAL DIRECTORS.**

20 (a) IN GENERAL.—Chapter 24 of title 38, United
21 States Code, is amended by adding at the end the fol-
22 lowing new section:

1 **“§ 2414. Communication between Department of Vet-**
2 **erans Affairs and medical examiners and**
3 **funeral directors**

4 “(a) REQUIRED INFORMATION.—With respect to
5 each deceased veteran described in subsection (b) who is
6 transported to a national cemetery for burial, the Sec-
7 retary shall ensure that the local medical examiner, fu-
8 neral director, county service group, or other entity re-
9 sponsible for the body of the deceased veteran before such
10 transportation submits to the Secretary the following in-
11 formation:

12 “(1) Whether the deceased veteran was cre-
13 mated.

14 “(2) The steps taken to ensure that the de-
15 ceased veteran has no next of kin.

16 “(b) DECEASED VETERAN DESCRIBED.—A deceased
17 veteran described in this subsection is a deceased veteran
18 whom the Secretary determines—

19 “(1) that there is no next of kin or other person
20 claiming the body of the deceased veteran; and

21 “(2) does not have sufficient resources to cover
22 burial and funeral expenses.

23 “(c) DETERMINATION OF SUFFICIENT RE-
24 SOURCES.—If the Secretary is unable to make a reason-
25 able determination of the amount of the resources of a
26 deceased veteran under subsection (b)(2), the Secretary

1 shall deem such resources to be an amount that is not
 2 sufficient to cover burial and funeral expenses.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 at the beginning of such chapter is amended by inserting
 5 after the item relating to section 2413 the following new
 6 item:

“2414. Communication between Department of Veterans Affairs and medical ex-
 aminers and funeral directors.”.

7 (c) EFFECTIVE DATE.—Section 2414 of title 38,
 8 United States Code, as added by subsection (a), shall take
 9 effect on the date of the enactment of this Act and shall
 10 apply with respect to deaths occurring on or after the date
 11 that is 180 days after the date of the enactment of this
 12 Act.

13 **SEC. 6. REPORT ON COMPLIANCE OF DEPARTMENT OF**
 14 **VETERANS AFFAIRS WITH INDUSTRY STAND-**
 15 **ARDS FOR CASKETS AND URNS.**

16 (a) IN GENERAL.—Not later than 180 days after the
 17 date of the enactment of this Act, the Secretary of Vet-
 18 erans Affairs shall submit to the Committee on Veterans’
 19 Affairs of the Senate and the Committee on Veterans’ Af-
 20 fairs of the House of Representatives a report on the com-
 21 pliance of the Department of Veterans Affairs with indus-
 22 try standards for caskets and urns.

23 (b) ELEMENTS.—The report required by subsection
 24 (a) shall include the following:

1 (1) A description of industry standards for cas-
2 kets and urns.

3 (2) An assessment of compliance with such
4 standards at National Cemeteries administered by
5 the Department with respect to caskets and urns
6 used for the interment of those eligible for burial at
7 such cemeteries.

8 **SEC. 7. EXCLUSION OF PERSONS CONVICTED OF COMMIT-**
9 **TING CERTAIN SEX OFFENSES FROM INTER-**
10 **MENT OR MEMORIALIZATION IN NATIONAL**
11 **CEMETERIES, ARLINGTON NATIONAL CEME-**
12 **TERY, AND CERTAIN STATE VETERANS'**
13 **CEMETERIES AND FROM RECEIVING CER-**
14 **TAIN FUNERAL HONORS.**

15 (a) PROHIBITION AGAINST.—Section 2411(b) of title
16 38, United States Code, is amended by adding at the end
17 the following new paragraph:

18 “(4) A person—

19 “(A) who has been convicted of a Federal
20 or State crime causing the person to be a tier
21 III sex offender for purposes of the Sex Of-
22 fender Registration and Notification Act (42
23 U.S.C. 16901 et seq.);

24 “(B) who, for such crime, is sentenced to
25 a minimum of life imprisonment; and

1 “(C) whose conviction is final (other than
2 a person whose sentence was commuted by the
3 President or Governor of a State, as the case
4 may be).”.

5 (b) CONFORMING AMENDMENTS.—Section
6 2411(a)(2) of such title is amended—

7 (1) by striking “or (b)(2)” each place it ap-
8 pears and inserting “, (b)(2), or (b)(4)”; and

9 (2) by striking “capital” each place it appears.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to interments and me-
12 morializations that occur on or after the date of the enact-
13 ment of this Act.

14 **SEC. 8. VETERANS FREEDOM OF CONSCIENCE PROTEC-**
15 **TION.**

16 Section 2404 of title 38, United States Code, is
17 amended by adding at the end the following new sub-
18 section:

19 “(h)(1) With respect to the interment or funeral, me-
20 morial service, or ceremony of a deceased individual at a
21 national cemetery, the Secretary shall ensure that—

22 “(A) the expressed wishes of the next of kin or
23 other agent of the deceased individual are respected
24 and given appropriate deference when evaluating
25 whether the proposed interment or funeral, memorial

1 service, or ceremony affects the safety and security
2 of the national cemetery and visitors to the ceme-
3 tery;

4 “(B) to the extent possible, all appropriate pub-
5 lic areas of the cemetery, including committal shel-
6 ters, chapels, and benches, may be used by the fam-
7 ily of the deceased individual for contemplation,
8 prayer, mourning, or reflection; and

9 “(C) during such interment or funeral, memo-
10 rial service, or ceremony, the family of the deceased
11 individual may display any religious or other sym-
12 bols chosen by the family.

13 “(2) Subject to regulations prescribed by the Sec-
14 retary under paragraph (5), including such regulations en-
15 suring the security of a national cemetery, the Secretary
16 shall provide to any military or volunteer veterans honor
17 guard, including such guards belonging to a veterans serv-
18 ice organization or other non-governmental group that
19 provides services to veterans, access to public areas of a
20 national cemetery if such access is requested by the next
21 of kin or other agent of a deceased individual whose inter-
22 ment or funeral, memorial service, or ceremony is being
23 held in such cemetery.

24 “(3) With respect to the interment or funeral, memo-
25 rial service, or ceremony of a deceased individual at a na-

1 tional cemetery, the Secretary shall notify the next of kin
 2 or other agent of the deceased individual of funeral honors
 3 available to the deceased veteran, including such honors
 4 provided by any military or volunteer veterans honor
 5 guard described in paragraph (2).

6 “(4) Any person aggrieved by a violation of this sub-
 7 section or any regulation prescribed pursuant to this sub-
 8 section may in a civil action in an appropriate Federal
 9 court obtain any appropriate relief against the Federal
 10 Government with respect to the violation. Standing to as-
 11 sert a claim or defense under this subsection shall be gov-
 12 erned by the general rules of standing under Article III
 13 of the Constitution.

14 “(5) The Secretary shall prescribe regulations to
 15 carry out this subsection.”.

16 **SEC. 9. PROVISION OF ACCESS TO CASE-TRACKING INFOR-**
 17 **MATION.**

18 (a) IN GENERAL.—Chapter 59 of title 38, United
 19 States Code, is amended by adding at the end the fol-
 20 lowing:

21 **“§ 5906. Provision of access to case-tracking informa-**
 22 **tion**

23 “(a) IN GENERAL.—(1) In accordance with sub-
 24 section (b), the Secretary shall provide a covered employee
 25 with access to the case-tracking system to provide a vet-

1 eran with information regarding the status of a claim sub-
2 mitted by such veteran, regardless of whether such em-
3 ployee is acting under a power of attorney executed by
4 such veteran.

5 “(2) In providing a covered employee with access to
6 the case-tracking system under paragraph (1), the Sec-
7 retary shall ensure—

8 “(A) that such access—

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

12 “(ii) does not include access to medical
13 records; and

14 “(B) that each time a covered employee ac-
15 cesses such system, the employee must certify that
16 such access is for official purposes only.

17 “(b) PRIVACY CERTIFICATION COURSE.—The Sec-
18 retary may not provide a covered employee with access to
19 the case-tracking system under subsection (a)(1) unless
20 the covered employee has successfully completed a certifi-
21 cation course on privacy issues provided by the Secretary.

22 “(c) TREATMENT OF DISCLOSURE.—The access to
23 information by a covered employee pursuant to subsection
24 (a)(1) shall be deemed to be—

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

3 “(2) a permitted disclosure under regulations
4 promulgated under section 264(c) of the Health In-
5 surance Portability and Accountability Act of 1996
6 (42 U.S.C. 1320d–2 note).

7 “(d) DEFINITIONS.—In this section:

8 “(1) The term ‘case-tracking system’ means the
9 system of the Department of Veterans Affairs that
10 provides information regarding the status of a claim
11 submitted by a veteran.

12 “(2) The term ‘covered employee’ means—

13 “(A) an employee of a Member of Congress
14 who assists the constituents of the Member with
15 issues regarding departments or agencies of the
16 Federal Government; or

17 “(B) an employee of a State or local gov-
18 ernmental agency (including a veterans service
19 officer) who, in the course of carrying out the
20 responsibilities of such employment, assists vet-
21 erans with claims for any benefit under the
22 laws administered by the Secretary.”.

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

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

1 **SEC. 10. NOTIFICATION BY THE SECRETARY OF VETERANS**
2 **AFFAIRS OF INDIVIDUALS WHOSE SENSITIVE**
3 **PERSONAL INFORMATION IS INVOLVED IN A**
4 **DATA BREACH.**

5 (a) IN GENERAL.—Subchapter III of chapter 57 of
6 title 38, United States Code is amended by inserting after
7 section 5724 the following new section:

8 **“§ 5724A. Data breach notification**

9 “(a) NOTIFICATION REQUIREMENT.—Except as pro-
10 vided in subsection (d), in the event of a data breach with
11 respect to sensitive personal information that is processed
12 or maintained by the Secretary, by not later than 10 busi-
13 ness days after the date on which the Secretary learns of
14 the data breach, the Secretary shall notify the appropriate
15 committees of Congress and each individual whose sen-
16 sitive personal information is involved in the data breach
17 is notified of the data breach. If the Secretary determines
18 that providing such notification within 10 business days
19 is not feasible due to circumstances necessary to accu-
20 rately identify the individuals whose sensitive personal in-
21 formation is involved in the data breach or to prevent fur-
22 ther breach or unauthorized disclosure and reasonably re-
23 store the integrity of the data system the Secretary shall
24 provide such notification not later than 15 business days
25 after the date on which the Secretary learns of the data
26 breach.

1 “(b) CONTRACTS FOR DATA PROCESSING OR MAIN-
2 TENANCE.—If the Secretary enters into a contract for the
3 performance of any Department function that requires ac-
4 cess to sensitive personal information, the Secretary shall
5 require as a condition of the contract that the contractor
6 agree to provide notification of data breaches in the same
7 manner as required of the Secretary under subsection (a).

8 “(c) METHOD AND CONTENT OF NOTIFICATION.—
9 (1) Notification provided to an individual under subsection
10 (a) shall be provided clearly and conspicuously by one of
11 the following methods:

12 “(A) Written notification.

13 “(B) Notification by email or other electronic
14 means, if the Secretary’s primary method of commu-
15 nication with the individual is by email or such other
16 electronic means.

17 “(2) Regardless of the method by which notification
18 is provided to an individual under paragraph (1), such no-
19 tification shall include—

20 “(A) a description of the sensitive personal in-
21 formation involved in the data breach;

22 “(B) a telephone number that the individual
23 may use, at no cost to the individual, to contact an
24 appropriate employee of the Department to inquire

1 about the data breach or the individual’s sensitive
2 personal information maintained by the Department;

3 “(C) notice that the individual is entitled to re-
4 ceive, at no cost to such individual, credit protection
5 services under section 5724 of this title;

6 “(D) the toll-free contact telephone numbers
7 and addresses for the major credit reporting agen-
8 cies; and

9 “(E) a toll-free telephone number and website
10 address whereby the individual may obtain informa-
11 tion regarding identity theft.

12 “(d) NOTIFICATION OF GENERAL PUBLIC.—The Sec-
13 retary, acting through the Office of Public Affairs of the
14 Department, shall notify the general public concerning any
15 data breach involving sensitive personal information by
16 not later than 10 business days after the date on which
17 the Secretary learns of the data breach, unless the Sec-
18 retary determines that to do so is not feasible due to cir-
19 cumstances necessary to accurately identify the individuals
20 whose sensitive personal information is involved in the
21 data breach or to prevent further breach or unauthorized
22 disclosure and reasonably restore the integrity of the data
23 system, such notification shall be made as soon as pos-
24 sible.

1 “(e) APPROPRIATE COMMITTEES OF CONGRESS.—In
 2 this section, the term ‘appropriate committees of Con-
 3 gress’ means the Committee on Veterans Affairs’ of the
 4 House of Representatives and the Committee on Veterans’
 5 Affairs of the Senate.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
 7 at the beginning of such chapter is amended by inserting
 8 after the item relating to section 5724 the following new
 9 item:

“5724A. Data breach notification.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply with respect to a data breach oc-
 12 ccurring on or after the date that is 90 days after the date
 13 of the enactment of this Act.

14 **SEC. 11. LIMITATION ON BONUSES FOR DEPARTMENT OF**
 15 **VETERANS AFFAIRS EMPLOYEES WHO VIO-**
 16 **LATE FEDERAL CIVIL LAWS OR REGULA-**
 17 **TIONS.**

18 (a) IN GENERAL.—Chapter 7 of title 38, United
 19 States Code, is amended by adding at the end the fol-
 20 lowing new section:

21 **“§ 713. Limitation on bonuses**

22 “(a) IN GENERAL.—(1) The Secretary shall ensure
 23 that no employee of the Department who, during any year,
 24 knowingly violates any law, regulation, or policy described
 25 in paragraph (2) receives a bonus for or during that year.

1 “(2) A law, regulation, or policy described in this
2 paragraph is any of the following:

3 “(A) A Federal civil law or Federal regulation,
4 including such civil laws or regulations covered
5 under the Federal Acquisition Regulation and the
6 Veterans Affairs Acquisition Regulation.

7 “(B) An internal policy of the Department.

8 “(b) CERTIFICATION.—The Secretary shall annually
9 certify to Congress that each bonus awarded by the Sec-
10 retary during the previous year was awarded in accord-
11 ance with subsection (a)(1).

12 “(c) BONUS DEFINED.—For purposes of this section,
13 the term ‘bonus’ includes—

14 “(1) a retention incentive;

15 “(2) a retention incentive payment;

16 “(3) a retention incentive award; and

17 “(4) any other incentive requiring approval
18 from the Central Office Human Resource Service,
19 the Chief Business Office Workforce Management,
20 or the Corporate Senior Executive Management Of-
21 fice.”.

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

“713. Limitation on bonuses.”.

1 **SEC. 12. LIMITATION ON AWARDS AND BONUSES TO EM-**
2 **PLOYEES OF THE DEPARTMENT OF VET-**
3 **ERANS AFFAIRS.**

4 For each of fiscal years 2013 through 2017, the Sec-
5 retary of Veterans Affairs may not pay more than
6 \$357,613,229 in awards or bonuses under chapter 45 or
7 53 of title 5, United States Code, or any other awards
8 or bonuses authorized under such title.

Passed the House of Representatives September 19,
2012.

Attest:

KAREN L. HAAS,
Clerk.