

113TH CONGRESS
1ST SESSION

H. R. 894

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2013

Mr. JOHNSON of Ohio (for himself, Mr. STIVERS, Ms. TITUS, and Mr. ROE of Tennessee) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

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.

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. IMPROVEMENT OF FIDUCIARIES FOR VET-**
4 **ERANS.**

5 (a) APPOINTMENT AND SUPERVISION.—

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

1 **“§ 5502. Appointment of fiduciaries**

2 “(a) APPOINTMENT.—(1) Where it appears to the
3 Secretary that the interest of the beneficiary would be
4 served thereby, payment of benefits under any law admin-
5 istered by the Secretary may be made directly to the bene-
6 ficiary or to a relative or some other fiduciary for the use
7 and benefit of the beneficiary, regardless of any legal dis-
8 ability on the part of the beneficiary.

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

21 “(b) APPEALS.—(1) If the Secretary determines a
22 beneficiary to be mentally incompetent for purposes of ap-
23 pointing a fiduciary under this chapter, the Secretary shall
24 provide such beneficiary with a written statement detailing
25 the reasons for such determination.

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

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

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

9 “(B) have a new fiduciary appointed.

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

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

17 “(d) INDEPENDENCE.—A fiduciary appointed by the
18 Secretary shall operate independently of the Department
19 to determine the actions that are in the interest of the
20 beneficiary.

21 “(e) PREDESIGNATION.—A veteran may predesignate
22 a fiduciary by—

23 “(1) submitting written notice to the Secretary
24 of the predesignated fiduciary; or

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

3 “(f) APPOINTMENT OF NON-PREDESIGNATED FIDU-
4 CIARY.—If a beneficiary designates an individual to serve
5 as a fiduciary under subsection (e) and the Secretary ap-
6 points an individual not so designated as the fiduciary for
7 such beneficiary, the Secretary shall notify such bene-
8 ficiary of—

9 “(1) the reason why such designated individual
10 was not appointed; and

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

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

17 “(1) a relative of the beneficiary;

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

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

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
25 relating to section 5502 and inserting the following:

“5502. Appointment of fiduciaries.”.

1 (b) SUPERVISION.—

2 (1) IN GENERAL.—Chapter 55 of title 38,
3 United States Code, is amended by inserting after
4 section 5502, as amended by subsection (a)(1), the
5 following new section:

6 **“§ 5502A. Supervision of fiduciaries**

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

16 “(i) The amount that equals three percent
17 of the monthly monetary benefits under laws
18 administered by the Secretary paid on behalf of
19 the beneficiary to the fiduciary.

20 “(ii) \$35.

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

24 “(C) A commission may not be authorized for a fidu-
25 ciary who receives any other form of remuneration or pay-

1 ment in connection with rendering fiduciary services for
2 benefits under this title on behalf of the beneficiary.

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

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

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

17 “(b) COURT.—Whenever it appears that any fidu-
18 ciary, in the opinion of the Secretary, is not properly exe-
19 cuting or has not properly executed the duties of the trust
20 of such fiduciary or has collected or paid, or is attempting
21 to collect or pay, fees, commissions, or allowances that are
22 inequitable or in excess of those allowed by law for the
23 duties performed or expenses incurred, or has failed to
24 make such payments as may be necessary for the benefit
25 of the ward or the dependents of the ward, then the Sec-

1 retary may appear, by the Secretary's authorized attorney,
2 in the court which has appointed such fiduciary, or in any
3 court having original, concurrent, or appellate jurisdiction
4 over said cause, and make proper presentation of such
5 matters. The Secretary, in the Secretary's discretion, may
6 suspend payments to any such fiduciary who shall neglect
7 or refuse, after reasonable notice, to render an account
8 to the Secretary from time to time showing the application
9 of such payments for the benefit of such incompetent or
10 minor beneficiary, or who shall neglect or refuse to admin-
11 ister the estate according to law. The Secretary may re-
12 quire the fiduciary, as part of such account, to disclose
13 any additional financial information concerning the bene-
14 ficiary (except for information that is not available to the
15 fiduciary). The Secretary may appear or intervene by the
16 Secretary's duly authorized attorney in any court as an
17 interested party in any litigation instituted by the Sec-
18 retary or otherwise, directly affecting money paid to such
19 fiduciary under this section.

20 “(c) PAYMENT OF CERTAIN EXPENSES.—Authority
21 is hereby granted for the payment of any court or other
22 expenses incident to any investigation or court proceeding
23 for the appointment of any fiduciary or other person for
24 the purpose of payment of benefits payable under laws ad-
25 ministered by the Secretary or the removal of such fidu-

1 ciary and appointment of another, and of expenses in con-
2 nection with the administration of such benefits by such
3 fiduciaries, or in connection with any other court pro-
4 ceeding hereby authorized, when such payment is author-
5 ized by the Secretary.

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

ciary, 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

1 person so entitled under said two sentences is under legal
 2 disability at the time of death of the veteran, such five-
 3 year period of limitation shall run from the termination
 4 or removal of the legal disability.

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

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 inserting after
 20 the item relating to section 5502 the following new
 21 item:

“5502A. Supervision of fiduciaries.”.

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

24 (1) by striking “For purposes” and inserting
 25 “(a) For purposes”; and

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

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

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

8 “(B) any State or local government agency with
9 fiduciary responsibilities; or

10 “(C) any nonprofit social service agency that
11 the Secretary determines—

12 “(i) regularly provides services as a fidu-
13 ciary concurrently to five or more individuals;
14 and

15 “(ii) is not a creditor of any such indi-
16 vidual.

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

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

1 **“§ 5507. Inquiry, investigations, and qualification of**
2 **fiduciaries**

3 “(a) INVESTIGATION.—Any certification of a person
4 for payment of benefits of a beneficiary to that person as
5 such beneficiary’s fiduciary under section 5502 of this title
6 shall be made on the basis of—

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

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

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

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

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

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

4 “(B) a background check of the proposed fidu-
5 ciary to—

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

9 “(ii) determine whether the proposed fidu-
10 ciary will serve the best interest of the bene-
11 ficiary, including by conducting a credit check
12 of the proposed fiduciary and checking the
13 records under paragraph (5).

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

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

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

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

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

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

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

8 “(B) had such fiduciary status revoked by the
9 Secretary.

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

15 “(B) A crime described in this subparagraph is a
16 crime—

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

19 “(ii) that is not included in a report submitted
20 by the fiduciary under section 5509(a) of this title;
21 and

22 “(iii) that the Secretary determines could affect
23 the ability of the fiduciary to act on behalf of the
24 beneficiary.

1 “(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In
2 the case of a proposed fiduciary described in paragraph
3 (2), the Secretary, in conducting an inquiry or investiga-
4 tion under subsection (a)(1), may carry out such inquiry
5 or investigation on an expedited basis that may include
6 giving priority to conducting such inquiry or investigation.
7 Any such inquiry or investigation carried out on such an
8 expedited basis shall be carried out under regulations pre-
9 scribed for purposes of this section.

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

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

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

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

19 “(D) being appointed to manage an estate
20 where the annual amount of veterans benefits to be
21 managed by the proposed fiduciary does not exceed
22 \$3,600, as adjusted pursuant to section 5312 of this
23 title; or

1 “(E) a person who is authorized to act on be-
2 half of the beneficiary under a durable power of at-
3 torney.

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

6 “(A) protect the private information of a bene-
7 ficiary, including personally identifiable information;
8 and

9 “(B) securely conducts financial transactions.

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

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

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

19 “(B) if such veracity is established, transmit to
20 the officials described in paragraph (2) a report of
21 such investigation.

22 “(2) The officials described in this paragraph are the
23 following:

24 “(A) The Attorney General.

1 “(B) Each head of a Federal department or
2 agency that pays to a fiduciary or other person ben-
3 efits under any law administered by such depart-
4 ment of agency for the use and benefit of a minor,
5 incompetent, or other beneficiary.

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

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

10 “(2) consider—

11 “(A) the care a proposed fiduciary has
12 taken to protect the interests of the beneficiary;
13 and

14 “(B) the capacity of the proposed fiduciary
15 to meet the financial requirements of the bond
16 without sustaining hardship.

17 “(g) LIST OF FIDUCIARIES.—Each regional office of
18 the Veterans Benefits Administration shall maintain a list
19 of the following:

20 “(1) The name and contact information of each
21 fiduciary, including address, telephone number, and
22 email address.

23 “(2) With respect to each fiduciary described in
24 paragraph (1)—

1 “(A) the date of the most recent back-
2 ground check and credit check performed by the
3 Secretary under this section;

4 “(B) the date that any bond was paid
5 under this section;

6 “(C) the name, address, and telephone
7 number of each beneficiary the fiduciary acts on
8 behalf of; and

9 “(D) the amount that the fiduciary con-
10 trols with respect to each beneficiary described
11 in subparagraph (C).”.

12 (e) ANNUAL RECEIPT OF PAYMENTS.—

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

15 (A) in subsection (a)——

16 (i) by striking “may require a fidu-
17 ciary to file a” and inserting “, subject to
18 regulations prescribed pursuant to sub-
19 section (f), shall require a fiduciary to file
20 an annual”; and

21 (ii) by adding at the end the following
22 new sentence: “The Secretary shall trans-
23 mit such annual report or accounting to
24 the beneficiary and any legal guardian of
25 such beneficiary.”;

1 (B) by adding at the end the following new
2 subsections:

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

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

7 “(A) the amount of the benefits of the ben-
8 eficiary accrued during the year, the amount
9 spent, and the amount remaining; and

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

15 “(2) A list of events that occurred during the
16 year covered by the report that could affect the abil-
17 ity of the fiduciary to act on behalf of the bene-
18 ficiary, including—

19 “(A) the fiduciary being convicted of any
20 crime;

21 “(B) the fiduciary declaring bankruptcy;
22 and

23 “(C) any judgments entered against the fi-
24 duciary.

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

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

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

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

23 (C) by striking the section heading and in-
 24 serting the following: “**Annual reports and**
 25 **accountings of fiduciaries**”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
2 tions at the beginning of chapter 55 of title 38,
3 United States Code, is amended by striking the item
4 relating to section 5509 and inserting the following
5 new item:

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

6 (f) REPAYMENT OF MISUSED BENEFITS.—Section
7 6107(a)(2)(C) of title 38, United States Code, is amended
8 by inserting before the period the following: “, including
9 by the Secretary not acting in accordance with section
10 5507 of this title”.

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

20 (h) REPORT.—Not later than one year after the date
21 of the enactment of this Act, the Secretary of Veterans
22 Affairs shall submit to the Committee on Veterans’ Affairs
23 of the Senate and the Committee on Veterans’ Affairs of
24 the House of Representatives a comprehensive report on

1 the implementation of the amendments made by this Act,
2 including—

3 (1) detailed information on the establishment of
4 new policies and procedures pursuant to such
5 amendments and training provided on such policies
6 and procedures; and

7 (2) a discussion of whether the Secretary
8 should provide fiduciaries with standardized finan-
9 cial software to simplify reporting requirements.

○