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H.R. 4032 AND A DRAFT BILL, THE VETERANS SELF-EMPLOYMENT ACT OF 2004

HEARING

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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CONTENTS

June 16, 2004

	Page
H.R. 4032 and a draft bill, the Veterans Self-Employment Act of 2004	1

OPENING STATEMENTS

Chairman Brown	1
Hon. Michael H. Michaud	1
Prepared statement of Congressman Michaud	17
Hon. Susan A. Davis	4

WITNESSES

Buehlmann, Beth B., Vice President and Executive Director, Center for Workforce Preparation, U.S. Chamber of Commerce	12
Prepared statement of Ms. Buehlmann	50
Gay, John F., Vice President, Government Relations, International Franchise Association, accompanied by James H. Amos, Jr., Chairman Emeritus of Mail Boxes Etc. and Managing Partner, Eagle Alliance Partners	11
Prepared statement of Mr. Gay	43
McCoy, Jack, Director, Education Service, Veterans Benefits Administration, accompanied by Robert Epley, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration and John Thompson, Deputy General Counsel, Department of Veterans Affairs	2
Prepared statement of Mr. McCoy	23
Pickering, John H., Former Chair, Commission on Law and Aging, American Bar Association, accompanied by Nancy M. Coleman, Director, Commission on Law and Aging, American Bar Association	9
Prepared statement of Mr. Pickering	37

MATERIAL SUBMITTED FOR THE RECORD

Letter:	
To Congressman Michaud from Congressman Frost concerning a constituent's wife who was inappropriately removed as his fiduciary, June 15, 2004	19
Statements:	
The American Legion	56
Veterans of Foreign Wars	58
Disabled American Veterans	60
Paralyzed Veterans of America	62

H.R. 4032 AND A DRAFT BILL, THE VETERANS SELF-EMPLOYMENT ACT OF 2004

WEDNESDAY, JUNE 16, 2004

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BENEFITS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC

The subcommittee met, pursuant to notice, at 11:14 a.m., in room 340, Cannon House Office Building, Hon. Henry Brown (chairman of the subcommittee) presiding.

Present: Representatives Brown, Miller, Brown-Waite, Michaud, and Davis.

OPENING STATEMENT OF CHAIRMAN BROWN

Mr. BROWN. Good morning. Let me apologize for the delay. I think we are up and operating now.

Today we're taking testimony on two bills, H.R. 4032, the Veterans Fiduciary Act of 2004, and the draft bill, the Veterans Self-Employment Act of 2004.

Mrs. Davis, Mr. Michaud and Mr. Evans introduced H.R. 4032 in response to testimony the subcommittee received last summer in our oversight hearing on the VA fiduciary program.

The bill would add protections for incompetent veterans when their benefits are misappropriated by the person or entity charged with overseeing their VA benefits.

This legislation is similar to Public Law 108-203, which deals with Social Security recipients.

We'll also take testimony on the proposed Veterans Self-Employment Act of 2004. This draft legislation would allow veterans, members of the Selected Reserve, survivors and dependents to use up the one-third of their VA educational assistance benefits toward the costs associated with the purchase of a franchise, as long as the company sponsor provides required training to the new franchise owner.

I now recognize the ranking member Mr. Michaud for his opening remarks.

OPENING STATEMENT OF HON. MICHAEL H. MICHAUD

Mr. MICHAUD. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing today on Mrs. Davis' fiduciary bill and the Chairman's draft veterans' employment legislation. I want to welcome the witnesses and thank them in advance for their testimony. And Mr. Chairman, I'd like to submit my opening remarks for the record.

Mr. BROWN. No objection.

Mr. MICHAUD. Thank you.

[The prepared statement of Congressman Michaud appears on p. 17.]

Mr. BROWN. Would any other member like to be heard? Opening remarks?

[No response.]

Mr. BROWN. The first panel this morning is representing the Department of Veterans Affairs, Mr. Jack McCoy. He's the Director of the Education Service at the Veterans Benefits Administration.

Mr. McCoy is accompanied by Mr. Robert Epley, Associate Deputy Under Secretary for Policy and Program Management at VBA, and Mr. John Thompson, the VA Deputy General Counsel. Mr. McCoy, you may begin.

STATEMENT OF JACK MCCOY, DIRECTOR, EDUCATION SERVICE, VETERANS BENEFITS ADMINISTRATION, ACCOMPANIED BY ROBERT EPLEY, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION AND JOHN THOMPSON, DEPUTY GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS

Mr. MCCOY. Mr. Chairman, members of the Subcommittee, thank you for this opportunity to appear today before this subcommittee to provide you with my summary statement.

I am pleased to testify today on H.R. 4032 and the draft bill, the Veterans Self-Employment Act of 2004. Let me first discuss H.R. 4032, the Veterans Fiduciary Act of 2004.

We support the concept of strong and steady oversight of the fiduciary program. Therefore, we are in agreement with the basic intent of the proposed legislation. As it is currently written, we felt it would be difficult to administer.

Section 3 requires conducting a background investigation on any proposed fiduciary to include determining if the proposed fiduciary has been convicted of any offense resulting in imprisonment for more than one year. Background investigations can be waived under prescribed regulation for certain classes to include parent of a minor beneficiary, spouse or parent of an incompetent beneficiary, our court-appointed fiduciaries.

VA believes that it would be unnecessarily burdensome to determine if a potential fiduciary previously in prison for more than one year has been rehabilitated. Our operating procedures already require us to confirm the integrity and reputation in the community of a potential fiduciary by interviewing one or more character witnesses and conducting a face-to-face interview with the proposed fiduciary.

Social Security records regarding any of that agency's fiduciary investigations should be made available to VA upon request. Social Security has approximately 6.8 million representative payees compared with 100,000 for VA. In many instances, Social Security may have already performed a background investigation.

We support waiving the background investigation only for the parents of minor beneficiaries not to include beneficiaries of VA insurance proceeds.

Our current operating procedures already require assessing the qualifications of all other fiduciaries, and we believe this should continue to protect beneficiaries.

We could, however, support waiving background investigations on individual fiduciaries receiving minimal VA benefits to be adjusted by the cost of living. Section 5 requires conducting periodic on-site reviews of any fiduciary that serves 15 or more individuals or is a community-based non-profit social service agency or any other type of agency serving 50 or more individuals.

We support this provision except that on-site reviews for community-based non-profit social service agencies should be required only if such an agency were fiduciary for 15 or more individuals and does not act as a payee for any Social Security beneficiaries.

VA typically uses community-based non-profit social service agencies only in cases where there are minimal benefits payable. To require on-site reviews for each such fiduciary would be an unjustified use of resources.

We agree with the annual certifications by community-based non-profits that they are in compliance with VA regulatory requirements, bonded if required, and provide proof that they are licensed if required by their state.

We also agree with providing a biannual report to the House and Senate Veterans' Affairs Committee on the results of inspections and any other reviews of fiduciaries to include the number of results of reviews, number of cases in which misuse was discovered. And we agree with the requirements for VA to repay benefits to a beneficiary when misuse by the fiduciary is determined to be a result of negligent failure of the Secretary to investigate or monitor a fiduciary or when a loss occurs where the fiduciary is in an institution or represents 15 or more awards.

Now I'd like to discuss the Veterans Self-Employment Act of 2004. Mr. Chairman, this draft bill would permit individuals entitled to educational assistance benefits under Chapter 30, 32 and 35 of Title 38 and Chapter 1606 of Title 10. United States Code, to use those benefit program to help defray the costs of training associated with the purchase of a franchise.

A lump sum payment would be made to the eligible individual in an amount equal to the cost of training a new owner of a franchise or one-third the total amount of educational assistance the individual has remaining on the day VA approves the individual's application for educational assistance, whichever is less.

The number of months of entitlement charge would be calculated by dividing the amount paid to the individual by that individual's full-time monthly benefit rate. The Secretary would be required to prescribe regulations establishing standards and qualifications for approval of training associated with the purchase of the franchise and for approving organizations or entities offering the training.

The Secretary would also have the discretion to delegate responsibility for approving such training and training organizations, for education benefits purposes, to the state approving agencies.

Mr. Chairman, we certainly believe it's important to promote and actively facilitate participation by veterans in training and opportunities that will result in suitable employment, including self-employment and small business ownership. Conceptually, therefore,

we appreciate the objectives of the draft legislation. However, we have concerns about the effect of this legislation in achieving its desired objective. Further, funds covering the costs associated with this proposal have not been included in the President's budget, and VA is unable to identify offsetting savings to defray those costs. Consequently, we cannot support the draft bill at this time.

Our survey of franchises show that franchise vendors do not regularly disclose a definite amount for owner training. Unlike educational institutions, which have uniform training costs that are published in a catalog or bulletin, it is not clear that franchise vendors necessarily have such established costs for training or, if they do, are willing to break out and publicly disclose them.

Moreover, where franchise vendors do create such training costs for purposes of this legislation, VA would have no real baseline for each individual case upon which to assess the justification of those costs.

Absent this ability by the department, we would anticipate a significant potential for fraudulent manipulation that could undermine the integrity of benefit payments for this training. The same conditions make it difficult for us to assess the appropriateness of the proposed cap on the amount of this training benefit to one-third of the amount of the individual's remaining educational assistance entitlement, as well as to estimate the cost of this proposal.

Nevertheless, our preliminary cost estimate indicates that enactment of this draft bill would result in a benefit cost of $778,000 in fiscal year 2005 and a 10 year cost of 11.9 million for fiscal years 2005 to 2014.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions from you or the subcommittee.

[The prepared statement of Mr. McCoy appears on p. 23.]

Mr. BROWN. Thank you, Mr. McCoy. I appreciate very much your openness and frankness on both of these bills. At this time, I'll recognize Mrs. Davis, please.

OPENING STATEMENT OF HON. SUSAN A. DAVIS

Mrs. DAVIS. Thank you very much, Mr. Chairman. I did want to give an opening statement to the bill. I thought we might have opening statements just generally for the hearing. But I appreciate very much your holding this hearing and thank you for that. I think this is an important issue, and I really want to thank Mr. McCoy as well for being here and for presenting his testimony.

Perhaps we could just step back a second in terms of why we're here and why this is important. We know that some veterans or their dependents who receive VA benefits are just not able to manage their own finances or face difficulties doing so, whether it's physical or mental disabilities for other reasons. In fact, over 100,000 of America's VA beneficiaries require a family member, a guardian or other person to act as their fiduciary to oversee their government benefits.

In the hearings that we held, we recognized that there are problems. In Southern California there are 1,082 veterans and other beneficiaries who have a fiduciary appointed through the San Diego regional office. Of this number, 723 have a legal custodian, either a professional fiduciary or a non-professional fiduciary, just

a family member or a friend. Another 97 beneficiaries have a court-appointed fiduciary.

And I'm interested, as I know my colleagues are as well, in protecting the benefits of these brave veterans from our communities and the benefits of veterans nationwide.

Caring for a dependent veteran involves using the payments the VA sends each month to pay utility bills, buy food and to meet other needs on behalf of the veteran.

Last year during our hearing into the VA's fiduciary program, I learned that some of these veterans are not being properly cared for because their fiduciary does not properly handle the tremendous responsibility. In fact, I was surprised to learn that some fiduciaries had held payments completely from the veteran.

The Office of Inspector General found extreme cases in which VA fiduciaries had embezzled thousands of dollars from dependent veterans over periods of several years without timely intervention by the VA.

In my district office of San Diego, my staff has tried to assist veterans who lost out on their payments only to learn that under current law the VA does not have the authority to replace the benefits when misuse has occurred.

Because of the flaws in the law and the lack of oversight, it is our most vulnerable veterans, those that do not have the ability to manage their own finances, who are suffering and who are paying the price.

I was also surprised to learn that Congress has not adjusted this law giving this vulnerable class of veterans new protections in over 25 years. So that is largely why we're here to go back and review this.

The Veterans Fiduciary Act of 2004, H.R. 4032, provides veterans with protections similar to those recently enacted to protect Social Security beneficiaries. And surely our nations veterans also deserve these same protections.

Clearly, Mr. Chairman, we have a responsibility to take action to adjust the law accordingly to protect the benefit of all of our nation's veterans and their families. And I think additionally we have a responsibility to the taxpayers to assure that their money is no longer misused or stolen and that it reaches those who have courageously served our country.

My legislation gives American veterans new protections and new avenues to recoup their losses. It would also send a clear message to those who accept the great responsibility of overseeing veterans' benefits that repercussions will ensue if the veteran is not properly looked after and cared for.

H.R. 4032 gives the VA the ability to impose monetary civil fines against fiduciaries who withheld payments from the veteran. It also allows the VA to seek damages against a fiduciary and to reimburse the payments to the veteran.

In addition to help ensure the fiduciary is trustworthy from the beginning, my bill requires the VA to conduct an investigation and inquire whether the proposed fiduciary has been in prison for more than one year. This bill does not require a full criminal investigation background check before it could officially recognize a fiduciary, so I hope that we will recognize that this is limited. Only

when a proposed fiduciary has been in prison for more than one year, check to make sure that that has not occurred.

In cases where the fiduciary is the parent of a minor, the spouse or an incompetent beneficiary or a court-appointed fiduciary, the Secretary will have the flexibility to provide a more limited expedited investigation.

And finally, because it is my goal to protect our veterans, H.R. 4032 requires the VA to repay the veteran for lost benefits when it fails to act after misuse or when a problem involving the fiduciary is reported to VA officials.

I think it's critical that we protect the benefits of the veterans who are most in need of our care. So I'm very pleased that we are looking at this issue so closely today, Mr. Chairman, and we can perhaps massage it and look at some areas where we can manage some of the changes, but in the end we'll come out with a bill that really works well for our veterans. Thank you very much.

Mr. BROWN. Thank you, Mrs. Davis. I know the hearing certainly revealed how our most vulnerable veterans were being abused, and I appreciate your bringing this to our attention.

I have one quick question about the draft bill or the agenda. Mr. McCoy, your testimony's first concern is that portions of the franchise fee allocated for training is not typically broken out. Thus there would be no way to ensure the amount assigned would be appropriate. That's why I've drafted the bill in such a way as to limit the percentage of VA educational benefits the veterans could use to defray training costs to 33 percent.

I've also not yet introduced the bill, so would could informally work through the issues you've listed.

We are truly breaking new ground in empowering veterans to start franchise businesses with this proposed legislation. That said, would you be willing to participate in an informal work group to try to work through the concerns you have have raised? It would entail not more than two meetings at about one hour each.

Mr. MCCOY. Yes, sir. We would be more than willing to participate.

Mr. BROWN. Mr. Michaud, did you have a question?

Mr. MICHAUD. Thank you, Mr. Chairman. I have a letter from Congressman Frost concerning a constituent's wife who was inappropriately removed as his fiduciary. She has since been reinstated and I'd request that his letter be made part of throughout record.

Mr. BROWN. Without objection.

Mr. MICHAUD. Thank you, Mr. Chairman.

[The provided material appears on p. 19.]

Mr. MICHAUD. Mr. McCoy, according to this correspondence a VA field examiner has the authority to remove and select a fiduciary, and his decisions cannot be appealed. Since such a decision may involve substantial restriction of lifestyle activities as well as depletion of beneficiary fund when used to pay the alternate fiduciary, what is the specific legal authority for such a policy? And can you explain why such a policy would not violate the due process clause understood the United States Constitution?

Mr. MCCOY. I would ask Mr. Thompson to respond to that.

Mr. THOMPSON. Yes, Congressman. I'm not familiar with this particular situation, but Title 38 gives VA broad discretion and I

think appropriately so in determining who should be a fiduciary and whether that fiduciary is performing adequately in protecting the interests of the veteran.

Many, many veterans who have representative payees are dissatisfied, number one, with the status of having to have their benefits paid to a fiduciary at all. And number two, understandably, they are sometimes dissatisfied with the way that fiduciary is performing his or her services.

I think that given the number of very dissatisfied customers in that regard, one would want to be very careful in adding to the adjudication system a new class of claimants who could appeal these VA determinations, especially given the fact that the overwhelming majority of these have been adjudicated mentally incompetent.

I'm not aware of any constitutional right of an incompetent veteran to have a fiduciary of his or her choice. Those people are under legal disability and Congress has, I think, very prudently provided that the Secretary is authorized to step in and appoint someone who, in the view of the Secretary and at the Secretary's discretion, should serve in the capacity of payee.

Mr. MICHAUD. Is it practice to be named a fiduciary common, widespread, or is it isolated and rare? And should the bill be amended to include specific authority to the Secretary to appoint a temporary fiduciary for a limited period of time such as three to six months where a fiduciary alleged to have misused funds or beneficiary who is alleged to be incompetent in appealing the decision.

Mr. MCCOY. CFR 13.63 does give us the authority to appoint a temporary custodian.

Having said that, we would not normally do this until an investigation had been done of the accusation against the guardian and the party who made the accusation. But we do have the authority and we do use it.

There are a number of changes in guardians over time but, again, the majority of those are for reasons such as the guardian moves or the guardian doesn't want to do it any longer. Serving as a fiduciary is something that's hard to get people to do in the first place.

Mr. MICHAUD. Is it really widespread? Is it really isolated or rare instances when there is a change.

Mr. MCCOY. I would say it's more isolated.

Mr. BROWN. Thank you, Mr. Michaud. Are there any other questions? Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman. I want to just go back to that for a second. Now thinking about the time period from when perhaps investigation might commence and the veteran still needs help and assistance, what happens during that interim period then normally?

Mr. MCCOY. There are two options. Obviously, the first option is that we get an accusation that has not been substantiated. In that case, payment would continue to the fiduciary. To go back to what Mr. Thompson said earlier, these are often incompetent veterans who obviously do not like what is happening in their lives.

The second option is that we can suspend benefit payments to the fiduciary or beneficiary while we're doing the investigation.

Normally we try not to do that because of the beneficiary not getting any benefits during that time.

Mrs. DAVIS. What would you like to see happen? And do you think there's a better way to do this?

Mr. MCCOY. We talked about doing background investigations. We believe that the face-to-face interview that we do, the talking to character witnesses in the community in most cases takes care of that.

We would like to have money to do a credit check on these people that we appoint as fiduciaries. I'd like to see that.

Mrs. DAVIS. That seems like that would be a relatively easy thing to do.

Mr. MCCOY. I think it would be, other than cost.

Mrs. DAVIS. The cost from the credit agencies?

Mr. MCCOY. Yes, ma'am.

Mrs. DAVIS. Maybe there would be a way to work some of that out. I don't know. What we don't want to do is hurt the veteran in the meantime and certainly not to create unnecessary hardships on fiduciaries that are essentially clean and with family members I think that's particularly difficult to do.

I wonder, Mr. Chairman, if we could just go back to the issue of the investigation and the expedited investigation and see is there—I know that there are concerns about that, and you mentioned that, is that the more narrow way of looking of looking at that, is that a continuing problem? Do you see that that is, you know, causing a lot of grief on behalf of the VA?

Mr. MCCOY. I'm not sure I quite understand the question. In actually doing the investigation?

Mrs. DAVIS. Well, I know that you have concerns about doing that, having the investigation, looking into an individual's record, and I'm just wondering how we might narrow that so it doesn't create—it's not an unnecessary hardship, but at the same we're able to catch those individuals who really are not there for the right reasons.

Mr. MCCOY. I think that is something we could definitely work with you on. The thought of asking a potential fiduciaries whether they have a criminal record: what are they going to say? Once we know they do have a criminal record, does that automatically remove them from the possibility of being a fiduciary? I think that these are questions that would concern us that we'd have to talk about.

Mrs. DAVIS. I appreciate that. I think there are some instances in which, perhaps, that's something that happened in the past and it's a family member.

Do you, offhand, and I know that you're new to the position, but does anybody have any statistics on the number of the individuals who in fact do have felony records who are fiduciaries? Do those tend to be non-relatives?

Mr. MCCOY. No, we do not have that information. Stated very broadly, if you looked at the cases the IG talks about, that the IG talked about in 2003, in the majority of those cases, the field examiner saw that something was going on, and the cases were referred to the IG by VA.

But no. You have spouse payees, you have court appointed fiduciaries, and there doesn't seem to be pattern as to who misuses the funds.

Mrs. DAVIS. If there were a provision added to the expedited investigations, perhaps a cutoff in terms of the dollars that fiduciary works with, would that make sense?

Mr. MCCOY. I think, yes, definitely.

Mrs. DAVIS. Okay. So we might need to add a provision. Thank you.

I certainly look forward to working with you on this. I think we can come up with something that's reasonable. Thank you. Thank you, Mr. Chairman.

Mr. BROWN. Thank you, Mrs. Davis. And thank you, gentlemen, for being here and participating in this discussion.

Mr. MCCOY. Thank you.

Mr. BROWN. Next panel. Mr. John Pickering is the former chair of the Commission on Law and Aging at the American Bar Association. Welcome back, Mr. Pickering.

Mr. PICKERING. Thank you, sir.

Mr. BROWN. He's accompanied by Ms. Nancy Coleman, the Director of the Commission on Law and Aging.

Mr. John Gay is Vice President of Government Relations at International Franchise Association and is accompanied by Mr. James Amos, Jr., the Chairman Emeritus of Mail Boxes Inc. and the Managing Partner of Eagle Alliance Partners.

Rounding out this panel is Ms. Beth Buehlmann, Vice President and Executive Director for the Center for Workforce Preparations, who is here on behalf of the U.S. Chamber of Commerce.

Thank you for coming. Mr. Pickering, we'll start with you.

STATEMENTS OF JOHN H. PICKERING, FORMER CHAIR, COMMISSION ON LAW AND AGING, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY NANCY M. COLEMAN, DIRECTOR, COMMISSION ON LAW AND AGING, AMERICAN BAR ASSOCIATION; JOHN F. GAY, VICE PRESIDENT, GOVERNMENT RELATIONS, INTERNATIONAL FRANCHISE ASSOCIATION, ACCOMPANIED BY JAMES H. AMOS, JR., CHAIRMAN EMERITUS OF MAIL BOXES ETC. AND MANAGING PARTNER, EAGLE ALLIANCE PARTNERS; BETH B. BUEHLMANN, VICE PRESIDENT AND EXECUTIVE DIRECTOR, CENTER FOR WORKFORCE PREPARATION, U.S. CHAMBER OF COMMERCE

STATEMENT OF JOHN H. PICKERING

Mr. PICKERING. Thank you, Mr. Chairman. I have submitted a prepared statement, which I will ask to be made part of the record at this time.

Mr. BROWN. Yes, without objection.

Mr. PICKERING. Thank you. The American Bar Association has developed policy in many areas to protect vulnerable older people, whether they have been found lacking capacity under state guardianship statutes or in Social Security capability determinations or in veterans' incompetency proceedings.

The ABA is very pleased to be here today and to have appeared before you in July 2003. We're also pleased with the subsequent developments since our prior testimony.

First, our Social Security recommendations were substantially adopted in public law number 108-203 dated March 2, 2004.

Second, H.R. 4032, The Veterans Fiduciary Act of 2004, which is the subject of today's hearings, includes the changes recommended by the American Bar Association and adopted for the Social Security program. Thus, H.R. 4032 contains various reforms made in the public law 108-203, such as bonding of payees, making whole a beneficiary when the payee misuses funds, and greater oversight on the part of the Department of Veterans Affairs for making sure that the system responds to the needs of vulnerable veteran beneficiaries.

The Department of Veterans Affairs Office of Inspector General (OIG) has commented over the years about needed changes in the fiduciary beneficiary system. The OIG findings are similar to those found by the Social Security Inspector General with regard to the Social Security representative payment program.

The Findings show that required accountings have not been filed in a timely fashion and, thus, the agencies have not been able to identify whether funds were spent properly.

The reforms included in H.R. 4032 will go a long way in attempting to meet the shortcomings shown by the Office of Inspector General. We are pleased that the Veterans' Administration is substantially supporting H.R. 4032. They have raised a few questions that we have not had an opportunity to study yet. I request that I be given time for a brief response to those questions, which would go, of course, to the Veterans' Administration as well. And I would like a short time in which to do that if I might.

Mr. BROWN. Yes, we'd be happy to accommodate you on that.

Mr. PICKERING. Thank you. I appreciate the opportunity to be here today and to comment favorably on the constructive reforms that this committee is making in representative payee programs to protect our vulnerable older citizens, beneficiaries of Social Security, and our veterans.

On a personal note in conclusion, I might say I am a veteran of World War II. And while I am not in need, I think, of any particular competency determination at the moment, but against the time when that might happen and so on, I am very personally much pleased with all the work this committee has been doing on behalf of our older citizens. You are much to be applauded. Thank you very much, both officially on behalf of the American Bar Association and personally on my own behalf. Thank you, sir.

[The prepared statement of Mr. Pickering appears on p. 37.]

Mr. BROWN. We always welcome you to these hearings, and we appreciate your advocacy, too, for those who can't help themselves. We're grateful for your testimony and your continued support. Thanks for being with us today.

Mr. PICKERING. Thank you.

Mr. BROWN. Nancy, do you have anything?

[No response.]

Mr. BROWN. Mr. Gay.

STATEMENT OF JOHN F. GAY

Mr. GAY. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member Michaud, and other members of the subcommittee, I appreciate this opportunity to testify on the Veterans Self-Employment Act of 2004. And Mr. Chairman, thanks to you and your staff for listening to the concerns of the franchise community, and the concerns of veterans in proposing this innovative program, and that thanks comes not just from me. I just flew back last night from our board of directors' meeting and was able to brief them on this bill, and there was much excitement, and the appreciation comes from there as well.

This bill would give veterans a chance to, as we say, be in business for themselves but not by themselves.

The International Franchise Association was established in 1960 and is the oldest and largest U.S. franchising trade group, and we represent 900 franchisor members, 6,000 franchisee members and 300 supplier numbers.

As you mentioned, with me is Jim Amos. In addition to what you had mentioned about him, Jim is a decorated Marine Corps veteran of Vietnam, and he is a board member of the Veterans' Corporation, and last but not least, is a former chairman of the International Franchise Association.

In March, the IFA released the results of an unprecedented study of the impact of franchising on the U.S. economy. What we learned was eye opening. The half million dollar study conducted by PricewaterhouseCoopers found that there are more than 760,000 franchise businesses in the U.S., and those businesses generate jobs for 18 million Americans and a total economic output of $1.53 trillion, and that's almost 10 percent of the private sector economy.

In the counties that make up the first Congressional district of South Carolina, Mr. Chairman, there are over 3,000 franchise businesses that employ almost 40,000 workers. Mr. Michaud, in your district there are roughly 1,650 franchise businesses employing 18,000 workers. And Mrs. Davis, in the counties in your district, 7,300 franchise establishments employing over 95,000 workers.

Clearly, franchising is a critical engine of economic growth in this country. Over 75 industries utilize the franchising model, everything from hotels to lawn care to tax preparation to movers. The list goes on. And even in down times franchising creates jobs. There are countless stories of people downsized from their companies who have chosen franchising as a way to become their own boss and control their own destiny.

There are two types of franchising predominantly. One is product distribution franchising, and that is where the franchisee sells the franchisors products. An example of that would be car dealerships, gas stations, soft drink distributorships.

Business format franchising is the other type, and that is the type of franchising represented by the IFA. And that is where the franchisee not only sells the franchisors goods and services with the franchisor's trademark, but they operate the business according to a system provided by the franchisor. And among the things provided by the franchisor are training, marketing materials and an operations manual. There are many examples of business format

franchising including quick service restaurants, automotive services, lodging, tax preparation, etc.

Franchising opportunities come in all shapes and sizes as well. To give you a few examples. For an initial investment of about $32,000 you could open a home cleaning franchise, and about $9,000 of that initial investment would be the franchise fee which would cover training, equipment, purchases, et cetera.

To open a quick service restaurant though, the range can be $300,000 to $2.8 million depending on the size and location of the establishment, and the franchise fee there is about $45,000 to $50,000. To start a major full service hotel, the initial investment can be $70 million with a franchise fee in the range of $85,000.

The training provided to franchisors to franchisees is diverse as the lines of business themselves but can include materials such as sales, costing and pricing, customer service, inventory control, quality standards, operational management, and business computer systems. The training also would likely include education on the specialized knowledge involved in the brand policies and services and practices of that particular system.

The IFA is not a newcomer to the idea that veterans and franchising can make a great team. In 1991, during the Gulf War, the IFA established the Veterans Transition Franchise Initiative, known as "VetFran." Through that program , and it's two years since its relaunch, nearly 100 franchises have been acquired by the program by veterans and an estimated 75 agreements are pending.

I'll talk a bit about the Veterans Self-Employment Act of 2004.

Mr. Chairman, we understand that you are seeking a program that is not burdensome and not one that would lead to new regulation in franchising but rather it would open up the greatest number of franchise opportunities to the greatest number of veterans, and we believe that this proposal has hit that mark and will allow more veterans to purchase franchising.

As with any new proposal, we have some questions and concerns about how it might work, and we would like the opportunity to work with you on that.

I would like, if I could, to take a moment to address something that was raised by Mr. McCoy. While it is true that—I'm just anticipating a question—while it is true that in the uniform franchise offering circular that franchisors are required to provide to franchisees, but typically training and education costs are not broken out. Typically those costs are broken out for accounting purposes by the franchisor. So I believe we do have a good idea of the training and educational costs involved in that.

You can understand how Mr. McCoy came to the conclusion about that, but I would appreciate the opportunity to work with him and the subcommittee on that question and others. Thank you very much.

[The prepared statement of Mr. Gay appears on p. 43.]

Mr. BROWN. Ms. Buehlmann.

STATEMENT OF BETH B. BUEHLMANN

Ms. BUEHLMANN. Mr. Chairman, Mr. Michaud, members of the subcommittee, thank you for inviting me today. I am the Vice

President and the Executive Director for the Center for Workforce Preparation, CWP.

CWP is a nonprofit affiliate of the U.S. Chamber of Commerce, which is the world's largest business federation representing more than three million businesses and organizations of every size, sector and region.

In partnership with over 2500 state and local chapters across the country, CWP is addressing a key employer concern—hiring, training, retaining and advancing qualified workers. We are in the forefront of helping businesses and chambers in their communities, use and build resources to develop a skilled workforce and support productive work places.

Using workforce development is the context for my remarks. I'm going to focus on several things including general employment factors that impact veterans, barriers faced by military personnel entering the civilian workforce, findings from a demonstration military transition model used by CWP in a high military discharge community and conclude with a few comments regarding the Veterans Self-Employment Act of 2004.

In CWP surveys of small and medium sized businesses over the past three years, employers report difficulty in finding qualified workers due to a lack of skills. In addition, within two years, about 30 percent these employers report that they no longer believe that the skills of their current workforce will keep pace.

In 1950, 80 percent of jobs were classified as unskilled. Today it's just the opposite, with an estimated 85 percent of all jobs classified as skilled. To be competitive, workers must have at least 15 years of education and training. However, only 40 percent of adults in the workforce have any post-secondary degree. This discrepancy is magnified for veterans, many of whom have had no formal training beyond high school other than what was provided to them during their time in the service. In addition, the unemployment rate among service members transitioning into the workforce for the first time is twice the national average.

Many service members are unable to see how the training they received in the military translates into mainstream employment opportunities. Further, there is little connectivity between the military's Transition Assistance Program, TAP, and the resources available in communities to connect transitioning military and their spouses to jobs.

American military veterans possess a wealth of experiences and abilities, high in skills that employers are looking for. Yet many are having difficulty finding employment. They do not know how to translate their skills into the civilian economy, and they do not have the knowledge or the resources available to them to assist this transition.

For the past two years, CWP has managed an effort to assist military personnel transitioning from armed services into civilian sectors.

We designed a successful demonstration program that aligned resources of the military, businesses through chambers, and the publicly-funded workforce investment system to create a seamless connection of services and support. This model responds to local and

regional needs and brings the whole community to bear in the successful transitioning of military personnel and their spouses.

From this experience we learned three things—workforce development systems, employers and the military must form partnerships that promote greater communication and exchange of information to provide transitioning military with a full range of resources and options.

The military must become a key stakeholder in the transitioning process by taking more responsibility for assisting veterans in preparing for work beyond military service. And more efficient use should be made of the military's TAP process to better support military personnel as they reenter civilian life.

To sum up the situation, the United States is facing: an impending shortage of skilled workers; a majority of incumbent workers without post-secondary educational who will not meet escalating skill needs without retraining or continuing education; a military transition system that does not encourage veterans to go into business for themselves; and a TAP process that needs to be better connected to community resources and employers.

The Veterans Self-Employment Act of 2004 begins to address these concerns. It provides a new option to veterans for training and job creation and employment that is consistent with the challenges we're facing in future labor markets with an impending shortage of qualified workers. Employers understand the relationship between a skilled workforce and remaining competitive.

Future job growth is going to be in small and medium sized businesses. Allowing veterans the option for training that leads to franchise development corresponds to where the new jobs are likely to be created.

We respectfully suggest, however, the subcommittee consider two things, connecting the proposed training to jobs in high growth industries through coordination with the publicly-funded workforce investment system, chambers of commerce and education and training providers, and modifying the TAP process to include access to entrepreneurship training and franchise development training as provided for in the Veterans Self-Employment Act.

I would also suggest, given the comment that Mr. McCoy made, you would connect with the U.S. Department of Education and the U.S. Department of Labor as they have processes in place to certify training providers and we might want to use these resources when working with the Veterans' Administration to deal with the issue raised by Mr. McCoy.

In conclusion, we believe that the Veterans Self-Employment Act of 2004 would encourage entrepreneurship and stimulate economic development, especially in locations that have high military discharge and unemployment rates among veterans as well as the local citizenry.

Again, I thank you for this opportunity and look forward to responding to questions that you may have.

[The prepared statement of Ms. Buehlmann appears on p. 50.]

Mr. BROWN. If I could, I'd ask that you, Mr. Gay and his staff work with Mr. McCoy as we work through this proposed legislation. I think you've come up with some good ideas. I think there's a lot of basic franchise information already in place and I think it

would certainly help maybe quiet some of the concerns Mr. McCoy might have as we work through this bill.

Ms. BUEHLMANN. We'd welcome that opportunity.

Mr. BROWN. I appreciate very much your testimony. I don't have any further questions; you answered the questions I had.

Mr. Michaud, do you have a question?

Mr. MICHAUD. Thank you very much, Mr. Chairman. I've got a question for Mr. Pickering, actually two. Should a beneficiary have the right to appeal a determination to replace a fiduciary with an alternate fiduciary? The first question.

My second one is, under current law, VA does not have specific authority to appoint a temporary fiduciary until after a beneficiary is given 60 days to contest a proposed finding of incompetency. In your experience, would such an authority be desirable?

Mr. PICKERING. I believe such an authority is available under the Social Security system. And while we have not specifically studied that within the American Bar Association, my personal view is certainly our veterans should have the same protection that our Social Security claimants have. I see no reason for differentiating between the two. What's sauce for the goose ought to be sauce for the gander here.

Mr. MICHAUD. Thank you, sir.

Mr. BROWN. Mrs. Davis?

Mrs. DAVIS. Thank you, Mr. Chairman. Mr. Pickering, thank you very much for being here once again. I appreciate it.

Going back to the idea of an expedited investigation in cases where the estate perhaps is minimal, would you think it's reasonable to have some kind of a cutoff point, perhaps an amount equal to the benefit payable to a veteran with no dependents who is rated about 30 percent?

Mr. PICKERING. I didn't hear all of your question.

Mrs. DAVIS. I'm wondering whether you think that it's possible to have a cutoff point where the estate is minimal for an expedited investigation of the fiduciary, if that authority should be granted or whether that's something the VA should pursue.

Mr. PICKERING. Offhand, I don't see any reason to object to that. If the amounts are minimal and there is a reasonable cutoff period, at least one that allows an investigation to be made—always there are problems but some of these run on much too long. I think it was Dr. Samuel Johnson who once said, "The sentence of hanging powerfully concentrates the mind." Well, a deadline for doing something sometimes helps get it done. I would personally have no objection to that.

Ms. COLEMAN. Let me add one statement, and that is I think there is a different issue involved when you have a veteran who only has veterans benefits and when you have a veteran who has additional benefits coming from some other source, either employment pensions or something else. The VA has a decision about VA benefits. A court has a decision about other kinds of benefits. So that relationship needs to be looked at when you're trying to either do expedited procedures or you're trying to decide whether or not the veteran's fiduciary is the appropriate person to be handling the VA portion or the VA plus whatever else is going on. So it's not only a decision within the VA.

Again, I think that Mr. McCoy raised the issue of representative payees, as well, in the Social Security system, so there is also the issue of who is the representative payee, who is the guardian of the local jurisdiction, and who is the VA fiduciary. So I think those have to be taken into account as well.

Mrs. DAVIS. Are there some areas in the background checks that you think we should particularly be looking at? What's a red flag for you?

Ms. COLEMAN. Credit. Credit checks are the biggest red flags. However, while background checks of potential fiduciaries are, generally, a good idea the American Bar Association has policy that was established unrelated to the Social Security policy, which has to do with former felons and the extent to which collateral sections infringe or otherwise frustrate their ability to reenter society successfully. That policy, adopted by the American Bar Association in August 2003, prohibits "unreasonable discrimination" of convicted persons through "denial of . . . private professional or occupational license, permit of certification . . . on grounds related to the conviction, unless engaging in the conduct underlying the conviction would provide a substantial basis for denial even if the person had not been convicted." (ABA Standards for Criminal Justice (3d ed.), Collateral Sanctions and Discretionary Disqualification of Convicted persons, standard 19c3–3, Aug. 2003)

A past conviction shouldn't automatically be a red flag. As you said, it could have happened 25 years ago. So, while it's something that should, at least, be taken into consideration, a past conviction should not, necessarily, automatically, prohibit a person from becoming, or serving as, a fiduciary.

Mrs. DAVIS. Okay. Thank you. I look forward to working with you as well. Thank you.

Mr. BROWN. Are there further questions?

[No response.]

Mr. BROWN. If not, let me express my appreciation for you all coming in to offer your testimony. Mr. Pickering, we always welcome you back. Thank you for your continuing advice.

Mr. PICKERING. Thank you very much, Mr. Chairman. I appreciate those kind words. At my age, I don't know how much longer I'll be hearing them.

[Laughter.]

Mr. BROWN. We, neither one of us, is a spring chicken. Without any further business, we stand adjourned.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

APPENDIX

Opening Statement of Congressman Michaud
House Committee on Veterans Affairs Subcommittee on Benefits
June 16, 2004

Good morning Mr. Chairman.

Thank you for holding this hearing today on Ms. Davis's fiduciary bill and the Chairman's draft veterans employment legislation.

I want to welcome our witnesses and thank them for their testimony.

In my state, two VA employees travel thousands of miles in all kinds of weather to visit 788 VA beneficiaries who need assistance in managing their financial affairs.

This is a difficult task.

Without appropriate oversight, veterans whose finances are handled by others may be at risk.

During the past five years, the office of the VA's Inspector General has made 64 arrests and obtained recovery and restitution of more than a million dollars due to fiduciary fraud.

In our last hearing on this issue, we learned that in many cases, there is no remedy available to a veteran whose benefits are misused.

H.R. 4032 would provide additional remedies to make veterans whole.

I believe that there is one area of the bill we may need to amend.

I fully agree that it is necessary to provide a fiduciary an opportunity to contest a finding of misuse, as the bill does.

However, I question whether or not we should provide explicit authority in the bill for the short-term appointment of a temporary fiduciary where a fiduciary contests the VA's finding of misuse.

I am aware of a recent situation in which a spouse fiduciary was removed because of an apparent personality conflict with a VA employee and a federally appointed fiduciary.

This created expenses to the veteran for the fiduciary fees.

When the circumstances of the case were brought to the attention of appropriate VA officials, a subsequent evaluation was undertaken and the spouse fiduciary was reinstated.

In other cases, it is important to remove a fiduciary as quickly as possible because of serious misappropriations of beneficiary funds.

In such cases, there may be a need to appoint a temporary fiduciary while an appeal is taken.

While the Secretary has explicit authority to provide temporary benefits to a person having custody of the beneficiary, there may be circumstances under which a non-custodian should be appointed a temporary fiduciary while an appeal is pending.

I hope that the witnesses today will provide us some guidance concerning this issue.

I also am interested in hearing testimony regarding the draft small business bill.

Like the Chairman, I believe improving veterans' business opportunities should be one of the highest priorities of this subcommittee.

I look forward to working with you Mr. Chairman to provide our veterans with quality economic development and life-long learning opportunities.

Thank you again for holding this hearing and I hope that we will be able to report H.R. 4032 favorably to the full committee.

MARTIN FROST
24th District, Texas

RANKING MEMBER
RULES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

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Washington, DC 20515
(202) 225-3605
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June 15, 2004

The Honorable Michael Michaud
Committee on Veterans' Affairs
337 Cannon HOB
Washington, DC 20515

Dear Michael,

I understand that you will be holding a hearing tomorrow on the issue of fiduciaries, and I respectfully request that you submit this letter for the record.

Briefly, a constituent of mine, a 100% disabled veteran, contacted my office after learning that the Department of Veterans Affairs determined that his wife should no longer be spouse payee and instead appointed a federal fiduciary to handle their monetary affairs. When my constituents were advised that the payee had changed, they were never advised as to why or to whom. In addition, there was no mention that 4% of his monthly check would be paid to the fiduciary. Also, the amount that my constituent could spend on groceries or anything else was arbitrarily assigned by the fiduciary. I wrote a letter to the VA on May 6 and on May 17 received a response informing me that there was no appeal process available for my constituent (I've attached my letter and their response).

My staff then contacted Mary Ellen McCarthy on committee staff, who in turn contacted the Department in Waco and arranged for a home visit to my constituents to review the decision. This review occurred on May 26 and the Department reversed its' decision, allowing for the wife to remain the spouse payee.

While I am very pleased that the decision was reversed, I have some questions concerning this case and would appreciate any information you are able to provide to my office.

Does a veteran have any rights to appeal a decision of change of Payee?
Was it the intent of Congress to give the VA such authority over disabled veterans' benefits with no appeal process?
What credentials does a fiduciary have to possess in order to qualify to be appointed as a fiduciary?

Please reply to office checked

Fort Worth, TX 76140
☐ 3020 S.E. Loop 820
(817) 293-9231

Dallas, TX 75208
☐ 400 South Zang Boulevard, Suite 506
(214) 948-3401

Arlington, TX 76011
☐ 101 East Randol Mill Road, Suite 108
(817) 303-1530

And lastly, I understand that there have been hearings before your committee on the scope of fiduciaries. Is the practice of switching fiduciaries widespread or just occurring in isolated incidents?

I want to thank your staff for assisting my constituent, and I look forward to hearing from you in the near future.

Sincerely,

Martin Frost
MEMBER OF CONGRESS

06-10-04 09:33 From- T-486 P.003/003 F-426
RECEIVED MAY 1 7 2004

DEPARTMENT OF VETERANS AFFAIRS
One Veterans Plaza
701 Clay Avenue
Waco TX 76799

MAY 1 4 2004

In Reply Refer To: 349/219
[redacted]

The Honorable Martin Frost
Member, United States House
of Representatives
101 E. Randol Mill Road, Ste. 108
Arlington, TX 76011

Dear Congressman Frost:

Thank you for your inquiry on behalf of [redacted]. The following will explain why we removed [redacted] as spouse payee, and tell you who has been assigned to [redacted] as his new fiduciary.

On June 8, 1989, [redacted] was rated incompetent to handle his Department of Veterans Affairs (VA) benefits. At that time, [redacted] was appointed as spouse-payee for his VA compensation. When our field examiner visited [redacted] on March 17, 2004, it was his determination that a federal fiduciary should be appointed to handle [redacted] VA check due to [redacted]'s lack of cooperation with the required review of their finances, some questionable expenditures, and her medical and legal problems.

The Field Examiner has the authority to remove and select a fiduciary, and his decision cannot be appealed. [redacted] were told that [redacted], a VA approved federal fiduciary, would be appointed to receive [redacted] VA benefits check. They were instructed to send their bills to [redacted] at [redacted], Texas [redacted]. [redacted] may be contacted by calling [redacted]. [redacted] is entitled to disability compensation benefits of $2,633.00 monthly and his benefit payment for May was paid on April 30, 2004.

If [redacted] has any questions or needs assistance, he may contact our office toll-free at 1-800-827-1000. A veterans service representative will be pleased to assist him.

We appreciate your interest in veterans' affairs. Please let us know if we can be of further assistance.

Sincerely yours,

Carl E. Lowe II

CARL E. LOWE II
Director

06-10-04 08:33 From- T-488 P.002/003 F-428

MARTIN FROST
24th District, Texas

RANKING MEMBER
RULES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

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Washington, DC 20515
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May 6, 2004

Mr. Philip R. Mayo
Chief, House Congressional Liaison
Department of Veterans Affairs
B-328 Rayburn House Office Bldg.
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Mayo:

Enclosed is correspondence from [redacted], a constituent who recently contacted me requesting my assistance with regard to the changes in receiving his VA disability check. [redacted] advises me that he is 100% disabled and that his wife, [redacted] has long been the Payee on his disability checks and that she manages their finances.

It is my understanding that [redacted] has been informed by the VA Regional office in Waco that the Payee has been changed, but he does not know why nor to whom. Further, according to [redacted], he has been told the VA sent him a letter of explanation; however, to date, he has not received it and is unclear as to the reasons this action has been taken concerning his benefits. [redacted] stated that the last direct deposited check was on April 1, 2004. As you can imagine, [redacted] is rather concerned about not receiving his payment since he is currently unable to pay his May bills. Therefore, [redacted] is specifically requesting a detailed explanation regarding these matters and would like for his wife, or one of his children, to be assigned as his Payee as soon as possible due to his financial straits.

Lastly, [redacted] expressed his concerns of the treatment by VA investigator, [redacted], regarding these issues. [redacted] mentioned that [redacted] became rude and in a threatening manner told him that both his VA check and his Social Security disability benefit would be taken over by the VA.

I have assured [redacted] that his concerns will be thoroughly reviewed and a response be given in a timely manner. You may respond to my office checked below where this case has been assigned to my staff assistant, Patricia Musselman.

Thank you for your immediate attention in this matter.

Sincerely,

MARTIN FROST
Member of Congress

MF/pm

Please reply to office checked

Fort Worth, TX 76140
☐ 3020 S.E. Loop 820
(817) 253-9231

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STATEMENT OF

JACK McCOY,

DIRECTOR, VA EDUCATION SERVICE,

BEFORE THE

SUBCOMMITTEE ON BENEFITS,

HOUSE COMMITTEE ON VETERANS' AFFAIRS

JUNE 16, 2004

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

H.R. 4032

Background

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

Summary of VA's Position

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

Key Provisions of H.R. 4032

Section 2(a) of H.R. 4032 would define, for purposes of chapters 55 and 61 of title 38, United States Code, the term "fiduciary" as: (1) a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or (2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary. Section 2(b) would make conforming changes to 38 U.S.C. §§ 5502 and 6101. This definition provides needed clarity, and we can support this provision. There would be no costs associated with this change.

Section 3 of H.R. 4032 would require the Secretary to base any certification of a person as a beneficiary's fiduciary on an investigation of that person's fitness to serve as that beneficiary's fiduciary, adequate evidence that certification of that person would be in the beneficiary's interest, and the furnishing of any bond that may be required. Proposed 38 U.S.C. § 5507 would also require the Secretary to conduct investigations in advance of certification as

a fiduciary, would require a face-to-face interview with the person to the extent practicable, and would require the Secretary to request information about whether the person has a criminal record that resulted in imprisonment for more than one year. If a person has such a criminal record, VA could certify the person as a fiduciary only if the Secretary specifically finds that the person has been rehabilitated and is the most appropriate person to act as fiduciary for the beneficiary. For certain proposed fiduciaries (the parent of a minor beneficiary, the spouse or parent of an incompetent beneficiary, or a court-appointed fiduciary), VA would be permitted to investigate the fiduciary's fitness on an expedited basis, which may include waiver of any specific requirement relating to investigations.

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

Should the committee decide to proceed with this portion of the legislation, we suggest that an additional category be added to proposed 38 U.S.C.

§ 5507(c)(2) that would authorize VA to expedite investigation of fiduciaries if the amount of benefits the fiduciary will be handling is minimal.

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

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

Section 4 of H.R. 4032 would add two new provisions to title 38 to enhance VA's ability to protect incompetent beneficiaries. The first, proposed 38 U.S.C. § 6106, would have five subsections. The first subsection would prohibit a fiduciary from collecting a fee from a beneficiary for any month for which VA or

a court of competent jurisdiction has determined that the fiduciary misused all or a part of the benefits provided to the fiduciary. We support enactment of this provision.

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

The third, fourth, and fifth subsections of proposed section 6106 would define "misuse of benefits by a fiduciary," authorize certain VA regulations, and subject VA's decision that a fiduciary has misused benefits to appeal to the Board of Veterans' Appeals and the Court of Appeals for Veterans Claims. Making these decisions appealable would be consistent with the fact that VA determinations concerning overpayments of benefits are currently appealable. Accordingly, we support these provisions provided that savings found in another VA program can offset any new costs. However, we have reservations about the recourse of appeal through the Board of Veterans' Appeals (BVA). Our concerns involve both appropriateness of this venue and administrative efficiency. The BVA traditionally handles appeals relating to veterans' (or dependents' or survivors') claims for benefits. If this appeal mechanism would prove to be

unduly burdensome to the claims-adjudication process in practice, we would recommend an alternative process. We currently cannot provide costs concerning these provisions, and will forward this information as soon as it becomes available.

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

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

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

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

The requirement to conduct the onsite reviews described in this provision appears to duplicate a requirement in the recently enacted Social Security Protection Act of 2004 (Public Law 108-203). Section 102 of Public Law 108-203 contains extensive requirements pertaining to oversight of entities that serve as representative payees for Social Security Administration (SSA) beneficiaries, including an annual report on the results of reviews conducted during that year.

Because SSA has 6.7 million beneficiaries in their representative payee program, compared to VA's 100,000 beneficiaries, we believe it would be preferable for VA to use SSA's reports on such representative payees. In cases where the payee is not on the SSA list of payees, VA would either ask SSA to add that payee to its list or VA would conduct an on-site review of that payee.

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

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

Section 5 would also add a new section entitled "Authority to redirect delivery of benefit payments when a fiduciary fails to provide required accounting." This provision, which would be codified at 38 U.S.C. § 5509, would

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

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

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

Section 5 of H.R. 4032 would also add two new sections to chapter 61 of title 38. The first would be 38 U.S.C. § 6108, "Civil monetary penalties," authorizing a civil penalty of not more than $5,000 for each conversion by a fiduciary appointed under 38 U.S.C. § 5502 of a VA benefit payment to a use that

the fiduciary knows or should know is for a use other than for the intended beneficiary. Section 6108(b) would subject a fiduciary who improperly converts a VA benefit payment to an assessment, in lieu of damages sustained by the United States, of not more than twice the amount of any payments converted. Under section 6108(c), any amounts collected as civil penalties or assessments would be credited to applicable appropriations to recoup VA's costs in pursuing civil collection actions against fiduciaries. Although we have no objection to these provisions, provided that any costs associated with them could be offset from savings found in another VA program, VA does not have a process in place for pursuing civil penalties against persons who misuse VA benefit payments. Costs associated with pursuing civil collection actions against fiduciaries would be borne primarily by VA's Office of General Counsel, through its various regional counsels. Such costs would depend directly on the number of civil penalty cases pursued by those offices. At this point, it is impossible to estimate such costs.

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

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

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

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

following the proposed effective date) is uncertain to us, and we therefore oppose this requirement.

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

Veterans Self-Employment Act of 2004

Mr. Chairman, this draft bill would permit individuals entitled to educational assistance benefits under chapters 30, 32, and 35 of title 38 and chapter 1606 of title 10, United States Code, to use those benefits for training associated with the purchase of a franchise enterprise. A lump-sum payment would be made to the eligible individual in an amount equal to the portion of the cost of a franchise enterprise used to train a new owner or one-third of the total amount of educational assistance the individual has remaining on the day VA approves the individual's application for educational assistance, whichever is less. The number of months of entitlement charged would be calculated by dividing the amount paid to the individual by that individual's full-time monthly rate. The Secretary would be required to prescribe regulations establishing standards and qualification for approval of training associated with the purchase of the franchise enterprise and for approving organizations or entities offering the training. The Secretary would have discretion to delegate responsibility for approving such

training and training organizations, for education benefits purposes, to the State approving agencies.

This draft bill would become effective on March 1, 2005.

Mr. Chairman, we certainly believe it is important to promote and actively facilitate participation by veterans in training opportunities that will result in suitable employment, including self-employment and small business ownership. However, as discussed below, we have concerns about the approach embodied in the draft bill.

The proportion of a franchise fee allocated to education and training is typically not broken out as a separate expense and, in the event that a franchise contract would assign a separate cost for education and training there would be no way to ensure the amount assigned would be appropriate, or related to the value of the training, or linked to the expense of providing the training.

Given that there is no way to ensure that any charge for education and training is not an arbitrary amount, enactment of the draft bill would transform veterans' education benefits into a program providing partial capitalization of the cost of starting a business venture, although that program would be arbitrarily limited to franchised businesses, to the exclusion of other business opportunities.

We do not believe that the record exists to support such a major and fundamental transformation in the purpose of veterans' education benefits. Nor does the record indicate that the proposed bill would address the concerns of the Congress when the it chose to exclude business capitalization from readjustment

programs enacted subsequent to the World War II GI Bill, a program that did include such a provision and a program that we believe was subject to abuse.

In addition, the proposed draft bill is not included in the President's budget proposal and does not provide for an offset of the cost, estimated to be $11.9 million over 10 years. For these reasons, we are unable to support enactment of the draft bill.

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

Statement of

JOHN H. PICKERING, FORMER CHAIR

of the

COMMISSION ON LAW AND AGING

on behalf of the

AMERICAN BAR ASSOCIATION

submitted to the

SUBCOMMITTEE ON BENEFITS

of the

COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

on the subject of

H.R. 4032: THE VETERANS FIDUCIARY ACT OF 2004

June 16, 2004

Mr. Chairman and members of the Subcommittee:

My name is John H. Pickering and I am here today on behalf of the American Bar Association, the world's largest voluntary professional organization with more than 400,000 members. I appear before you today in my capacity as former Chair of the Commission on Law and Aging, and as a member of the ABA House of Delegates. The ABA has developed policy in many of the areas that protect vulnerable older people whether they have been found to lack capacity under state guardianship statutes, in Social Security capability determinations or in Veterans incompetency determinations. The ABA is very pleased to be here today, and to have appeared before you in July 2003 prior to the introduction of H.R. 4032, the Veterans Fiduciary Act of 2004.

In February 2002, the ABA adopted policy that is very directly related to the fiduciaries performance. While the policy was developed to apply to the Social Security Representative Payment Program, it is directly applicable to the Veterans Administration Program. In part the policy provides as follows:

RESOLVED, that the American Bar Association urges the Administration to support and Congress to enact legislation that would strengthen the safeguards and protections of individuals receiving benefits under the Old Age, Survivors and Disability Insurance programs and the Supplemental Security Income program of the Social Security Act (Beneficiaries) which, because of such Beneficiary's disabilities and incapacities, are being received and managed by organizations designated by the Social Security Administration (SSA) as "representative payees." Such protections should include:
(A) Replacement by SSA of any benefits misappropriated or misused by an organizational representative payee if not otherwise reimbursed;
(B) Mandatory initial and continued bonding of organizational representative payees in all states where they provide services;
(C) Forfeiture by representative payees of any fees normally allowed by SSA for any months in which an organizational payee has misused all or part of a Beneficiary's benefits; and
(D) Authority for SSA to impose a civil monetary penalty against organizations which misuse, convert, or misappropriate payments for Beneficiaries received while acting in a representative payee capacity.

FURTHER RESOLVED, That SSA should require organizations or agencies that make application to serve as representative payees to:
A) Provide advance notice of their intention to family members (parents, siblings, children, and grandparents) of Beneficiaries and to other legal representatives and, in so doing, advise such parties of SSA's general preference for appointment of individual payees, with a demonstrated interest in the Beneficiary, over organizational payees [20 C.F.R. §§ 404.2021, and 416.635, 640 and 645];
B) Utilize all benefit payments received for the current exclusive use and welfare of the individual Beneficiary and make a maximum effort to conserve any unused funds to meet the special and future needs of such Beneficiary, pursuant to SSA's regulatory requirements and guidance on use, expenditure, and conservation of benefits [20 C.F.R. §§ 404.2035, 2040, and 2045 and 416.635, 640, and 645]; and
C) Ensure that representative payees manage benefit payments in a way that prevents Beneficiaries from unnecessarily exceeding asset limits that would render them ineligible for federal benefit programs.

The ABA policy is only directed at the Social Security Representative Payment Program and we have no policy directed to the Veterans Administration Program. However, the recommendations as adopted by the ABA in 2002 that were directed towards the Social Security Representative Payee Program are very similar to those outlined in H.R. 4032, the Veterans Fiduciary Act of 2004. The President signed Public Law No: 108-203 March 2, 2004 which contained a number of provisions to deal with problems created in the Social Security Representative Payee program similar to those advocated by the American Bar Association. H.R. 4032, the Veterans Fiduciary Act of 2004, provides for the various reforms contained in P.L. 108-203. These reforms included elements such as bonding of payees, making whole the beneficiary when the payee misuses funds, and greater oversight on the part of the Veterans Administration for making sure that the system responds to the needs of the vulnerable beneficiary.

Not many years after enactment of the Social Security Program in 1936, Congress passed legislation granting the Social Security Administration (SSA) the power to appoint "representative payees" (RPs) to receive and disburse benefits for Social Security beneficiaries who were too frail, too young or too incapacitated to manage their own finances [currently laid out in 42 U.S.C. §405(j) for old age, survivor and disability benefits and §1383(a) for SSI benefit recipients]. That initiative took place in 1939, and then covering retired workers, their spouses, their widows and children of deceased workers.

Today, the Representative Payment System is potentially available to all of the more than 50 million individuals receiving some form of Social Security benefit (including disabled workers and means-tested Supplemental Security Income beneficiaries whose benefit eligibility was established by legislative amendment several years after initiation of the RP system).

There are now more than 6.6 million persons whose benefits are actually under representative payee management, a group comprised of roughly 60% of children and 40% of adults. This equates to an approximate (and surprising) caseload of 1 out of 8 Social Security Act benefit recipients in the United States. Moreover, that proportion promises to rise in the near future as the number of our aged (and frail aged) citizens with "baby boomer" roots attain Social Security retirement benefit ages and the as incidence of SSI disabled child beneficiaries continues to expand.

In overall volume, the hybrid and mammoth "special guardianship" program represented by the federal RP system now exceeds by a factor of more than 10 the combined number of all court guardianships/conservatorships active in the 50 states (estimated at roughly 600,000). Fortunately, more than 80% of today's RPs are parents, spouses, other relatives, friends of long standing, and court appointed guardians of the adult and child beneficiaries who they serve and, thus, can be generally counted on for loving and responsible benefit management. However, no program this large could avoid instances of fiduciary fraud and abuse. The newly enacted legislation, Public Law 108-203 is expected to curtail the number of such instances. Such incidents have indeed occurred and these have been particularly troublesome in the area of multi-client "organizational payees."

Organizational payees are typically non-profit agencies and organizations which serve as RPs for individuals without access to family members or close acquaintances who might be able to step in to meet their needs for responsible benefit management. Such organizations have a definite need to fill and most are responsible state institutions and community agencies with long histories of competent service. However, these entities, by their nature and the vacuum that they fill, frequently wind up in charge of the monthly Social Security income of 15 or 50 or 100 or 200 or more SSA beneficiaries with large accumulations of funds to administer on a regular basis and enormous power over the economic well being of the incapacitated individuals they have been authorized to serve. Unfortunately there is a potential for many of the same problems with fiduciaries that serve Veterans.

The Veterans Administration allows for the appointment of a fiduciary for a beneficiary who is incompetent or unable to manage his or her own affairs. The beneficiary does not have to be adjudicated incompetent or rated incompetent by the VA. Under the governing statute, whenever it appears that the interest of a beneficiary would be served by the appointment of a fiduciary, payment of benefits may be made to a relative or some other person or entity for the use and benefit of the beneficiary, regardless of any legal disability on the part the beneficiary. 38 USCA § 5502 (a). There are approximately 100,000 fiduciaries that serve veterans who are unable to manage their own affairs. As of April 30, 2004: The fiduciaries fall under the following categories:

Federal Fiduciaries:	**87,624**	
	Legal Custodians	66,061
	Supervised Direct Payment	3,873
	Spouse Payees	13,561
	Institutional Awards	4,128
	Supt of Indian Reservations	1
Court Fiduciaries:	**12,507**	
	Corporate Court Fiduciaries	3,459
	Individual Court Fiduciaries	9,048
Grand Total		**100,131**

In comparison to the Social Security Representative Payment program this is a small number. However it is approximately 3.3 percent of those who receive benefits from the Veterans Administration.

The Department of Veterans Affairs Office of Inspector General has commented over the years about needed changes for the Fiduciary Beneficiary System. In 1997 it stated that the Fiduciary System needed to be updated to reflect records of incompetent beneficiaries. (Report N.: 7R5-B13-129.) The September 2002 Summary Report by the Inspector General found eleven basics in the fiduciary and field examinations in 10 of the 18 VA regional offices.

The OIG findings are similar to those found by the Social Security OIG with regard to the Representative Payment program. Numerous required accountings are not filed in a timely fashion and thus the agencies were unable to identify whether funds were spent on the Veteran.

The American Bar Association appreciates the opportunity to be here today and comment on the representative payee programs.

The American Bar Association receives a variety of federal grants. Only two are relevant to the subject matter of this testimony. *Health Care Decisions Week* is funded by the U.S. Department of Health and Human Services in the amount of $163, 800 (9/99-12/03). *Legal Assistance in a Time of Change* is also funded by the U.S. Department of Health and Human Services in the amount of $299, 025 (9/02-9/04).

Testimony of

John F. Gay
Vice President, Government Relations
International Franchise Association

before the

Subcommittee on Benefits

of the

Committee on Veterans Affairs

United States House of Representatives

June 16, 2004

Introduction

Chairman Brown, Ranking Member Michaud, and other members of the Subcommittee, thank you for opportunity to testify before you on the proposed Veterans Self-Employment Act of 2004. And thank you and your staff for listening to our concerns and the concerns of veterans while producing this draft legislation. It is an innovative way to help veterans enter the world of franchising – to be, as we say, in business for yourself, but not by yourself.

My name is John Gay and I am the Vice President of Government Relations for the International Franchise Association (IFA). Established in 1960, the mission of the International Franchise Association (IFA) is to safeguard the business environment for franchising worldwide. IFA is the oldest and largest franchising trade group representing over 900 franchisor, 6,000 franchisee and 300 supplier members.

At the request of the Subcommittee, with me is Jim Amos, managing partner of Eagle Alliance Partners. Jim is a decorated Marine Corps veteran of Vietnam and a board member of the Veterans Corporation. He has many years of experience in franchising and, last but not least, is a past chairman of the International Franchise Association.

The Impact of Franchising

In March, the International Franchise Association Educational Foundation released the results of an unprecedented study of the economic impact of franchising on the economy. What we learned was eye opening: franchising is an enormous component of the U.S. economy.

This half-million dollar study conducted by PricewaterhouseCoopers found that the nation's more than 760,000 franchised businesses generate jobs for more than 18 million Americans (nearly 14 percent of the nation's private-sector employment) and account for $1.53 trillion in economic activity (9.5 percent of the private-sector economic output).

In the counties that make up the 1st Congressional District of South Carolina, Mr. Chairman, there are over 3,000 franchised establishments employing almost 40,000 workers. And in the 2nd Congressional District of Maine, Mr. Michaud, there are roughly 1,650 franchised establishments employing over 18,000.

The Contribution of 767,483 Franchised Businesses to the US Economy Indirect and Direct

	Because of Franchised Businesses (indirect)	Percent of the Private Sector Economy (indirect)	In Franchised Businesses (direct)	Percent of the Private Sector Economy (direct)
Jobs	18,121,595	13.7%	9,797,117	7.4%
Payroll	$506.6 billion	11.1%	229.1 billion	5.0%
Output	$1.53 trillion	9.5%	624.6 billion	3.9%

Direct Employment by Economic Sector

Information	3,629,000
Construction	6,826,000
Financial Activities	7,807,000
Franchised Businesses	**9,797,000**
Durable Goods Manufacturing	10,335,000

Impact of Franchising in the Counties of the Congressional Districts of Subcommittee Members

Congressional District	Franchised Establishments	Jobs
CA-53	7,306	95,198
FL-1	2,403	26,210
FL-3	12,097	165,295
FL-5	4,026	43,789
ME-2	1,655	18,498
NH-1	2,955	34,730
NY-27	2,468	35,349
SC-1	3,018	39,385
TX-16	1,647	22,251

Note on the data: All data are from 2001, the most recent year available.

Clearly, franchising is a critical engine of economic growth. Over 75 industries utilize the franchise model for distribution of products and services: everything from the familiar restaurants and hotels to lawn care, tax preparation, personnel services, movers; the list goes on.

Even in down times, franchising creates jobs. There are countless stories of people downsized from their companies who have chosen franchising as a way of becoming their own boss and controlling their own destiny.

About Franchising

The terms "franchising" and "franchise" are often used interchangeably to mean a business, a type of business, or an industry. Strictly speaking, the "franchise" is the agreement or license between two parties which gives a person or group of people (the franchisee) the rights to market a product or service using the trademark and operating methods of another business (the franchisor). The franchisee has the obligation to pay the franchisor certain fees and royalties in exchange for these rights. In this sense, franchising is not a business or an industry, but it is a way of doing businesses.

There are two main types of franchises – product distribution franchises and business format franchises.

Product distribution franchises sell the franchisor's products and are supplier-dealer relationships. In general, the franchisor licenses the use of its trademark to the franchisee but may not in all cases provide the franchisee with a system for running its business. Examples of product distribution franchises are soft drink distributors, automobile dealerships, and gas stations.

Business format franchises not only sell the franchisor's product or service, with the franchisor's trademark, but operate the business according to a system provided by the franchisor. Among other things, the franchisor also provides training, marketing materials, and an operations manual to the franchisee. There are many examples of business format franchises, including – quick service restaurants, automotive services, lodging, real estate agents, convenience stores, and tax preparation services, to name a few. The International Franchise Association represents business format franchising across this entire spectrum.

The typical franchise company (franchisor) will have establishments that are operated by franchisees as well as establishments that are operated by corporate employees. Over three quarters of franchised establishments are owned by franchisees. The remainder are owned by the franchisor.

One of the wonderful features of franchising is its diversity. As I mentioned earlier, over 75 industries franchise – everything from plumbers to realtors, florists to hoteliers. Likewise, franchisees come from all walks of life.

Franchise opportunities come in all shapes and sizes. For an initial investment of under $32,000, one can launch a residential cleaning franchise. That initial investment includes a franchise fee of around $9,000 with the rest being equipment purchases, lease costs, etc.

To open a quick service restaurant, the investment would be in the $300,000 – $2,8000,000 range depending on whether the location was a mall food court facility or a freestanding facility complete with a playground and would include a franchise fee of $45,000 to $50,000. To start a major, full service hotel, though, might require an investment of over $70,000,000. The franchise fee in this range would be about $85,000.

The training provided by franchisors is as diverse as the lines of business themselves, but can include material such as sales, costing and pricing, customer service, inventory control, regulatory obligations, quality standards, daily operational management, business computer systems. The training also likely will include education on specialized knowledge of the goods, services, policies, and practices of the individual franchise system.

Veterans and Franchising

The IFA is not a newcomer to the idea that veterans and franchising can make a great team. In 1991, during the Gulf War, the IFA – under the leadership of board member Don Dwyer – launched the Veterans Transition Franchise Initiative, known as "VetFran." Through VetFran, the participating franchise companies pledge to help qualified veterans acquire franchise businesses by providing financial incentives not otherwise available to other franchise investors. Veterans will get the "best deal" from these companies.

With the cooperation of the U.S. Department of Veterans Affairs, the Veterans Corporation and the U.S. Small Business Administration, and with outreach initiatives to our country's military and veteran organizations, the program continues to expand. Now, 139 companies are participating in the program.

To date, nearly 100 franchises have been acquired through the program and an estimated 75 agreements are in various stages of completion. Successful franchise agreements have been realized through companies such as Express Personnel Services, Geeks on Call, Glass Doctor, Kabloom Franchising Corp., Meineke Car Care Centers, Merry Maids, Mr. Rooter Plumbing, PostNet Postal & Business Services, and the UPS Store, just to name a few.

At the end of April, IFA Chairman Sidney Feltenstein signed a Memorandum of Understanding with the Department of Veterans Affairs renewing joint promotion of the VetFran program.

In a further effort to assist veterans, the IFA Educational Foundation and Michael H. Seid and Associates, LLC, last year established a veterans educational advancement scholarship. The program is designed to help veterans transitioning out of the military to achieve their dreams. The first scholarship provided by the program was presented to former Marine Captain Nathaniel Fick in March. He will attend Harvard University to study international development.

This new program is still growing. Just recently, IFA member Figaro's Italian Pizza announced a $15,000 donation to the program.

The Veterans Self-Employment Act of 2004

The Veterans Self-Employment Act would allow more veterans to take advantage of the opportunities in franchising by allowing a veteran to apply a portion of his or her educational benefits to defray the portion of a franchise purchase cost attributable to training.

Mr. Chairman, we understand that you are seeking a program that is not burdensome, but rather one that allows the greatest number of veterans to have access to the greatest number of franchise opportunities and we applaud that aim. In the limited time that we have had to review the draft bill, we believe that this legislation would make more franchise opportunities available to veteran potential investors.

As with any new proposal, we also have some questions and concerns about how the program might function that we would like to note and to work with the Subcommittee to address.

As I mentioned earlier, franchising is an astonishingly diverse world, with training curriculum that is tailored to each particular concept. There could be no typical training program for a franchise and no standard of franchisee education. For this reason, we urge that the new program be flexible enough to recognize the legitimate variations that exist in franchise training. We also hope that Congress will make clear its intent that this program is not intended to create a de facto standard for training requirements. While franchisors should be encouraged to participate in this program, that participation should be entirely voluntary.

Many franchise systems conduct centralized or regional training, which may require that prospective franchisees travel to the training location and be housed in hotels. We ask that such expenses be included in the training costs that the program would reimburse.

Another concern is that the program not create an entitlement to a franchise where none exists. We believe that Congress should be clear in its intent that veterans participating in the program must be otherwise qualified to purchase a franchise according to the participating franchisor's requirements and standards.

We realize that the legislation leaves to the Secretary of Veterans Affairs discretion whether to approve franchisor applications to the program or to delegate such approval to the states. We appreciate that the bill also suggests that the Secretary to consult with franchise representatives and we pledge to assist the Secretary in any way we can.

We strongly urge that Congress make its intent clear that these evaluation processes be sufficient to protect veterans and taxpayers while also being clear, simple and efficient enough to attract participation by the greatest number of franchise systems.

To give one example, if the Secretary retains authority to approve training programs, we urge that the process be similar to achieving Small Business Administration approval: that a franchisor can be placed on a VA registry so that approval is not required with respect to each franchisee's individual application. Similarly, should the Secretary choose to delegate evaluation of franchisor training programs to the state approving agencies, a franchisor should be able to satisfy the requirements of one state in order to

allow participation by veterans of all other states.

We also would seek an approval process that would ensure that a franchisor's trade secrets and other proprietary information would not become part of the public record.

We note that the legislation carries an effective date of March 1, 2005, but that regulations may not become effective until 18 months after enactment. We would seek a more accelerated implementation, if possible, and will work with the Subcommittee and the Secretary to achieve that end.

Another concern raised is the possibility of this program opening the door to federal regulation of franchising, which IFA believes is not only unnecessary, but which IFA believes would be unduly burdensome on an important segment of the private economy. Again, we understand this is not the intent, but Congress should clarify that point.

In conclusion, I would again like to thank you, Mr. Chairman, and your staff for proposing this legislation. America's veterans deserve every opportunity to achieve the dream of business ownership and we believe that franchising will be the right choice for many of them.

Thank you and I would be happy to answer any questions.

Testimony of Beth B. Buehlmann
Vice President and Executive Director
Center For Workforce Preparation
United States Chamber of Commerce
Before The
Committee on Veterans' Affairs
Subcommittee on Benefits
U.S. House of Representatives
108th Congress
June 16, 2004

Mr. Chairman, Congressman Evans, and Members of the Committee:

As the executive director of the Center for Workforce Preparation (CWP), I am pleased to submit the following testimony on how the Veterans Self-Employment Act of 2004 can play an important role in helping transitioning military and veterans contribute to the growth and strength of the nation's economy. CWP is a nonprofit affiliate of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region.

CWP is the only arm of the U.S. Chamber dealing solely with education and workforce development issues. Through its access to a broad network of chambers, CWP is on the forefront helping businesses and chambers in their communities find, use and build resources to develop a skilled workforce and support productive workplaces. CWP, in partnership with local chambers, other workforce development organizations and committed funders, is addressing a key employer concern – finding, retaining and advancing qualified workers. Over 90% of the businesses that are members of chambers are small and medium-size. It is for this reason that CWP and local chambers excel at reaching businesses of this size, where the majority of job growth occurs.

Workforce development, however, is about more than just hiring and training the right workers. It is also about identifying and addressing other critical concerns such as transportation, health care and child care as well as promoting the lessons and promising practices of successful communities to encourage chambers and employers to leverage resources that support productive workplaces.

My remarks will center on the latest unemployment statistics of the veteran community, the barriers faced by transitioning military personnel when trying to enter the civilian workforce and a CWP demonstration project that identified solutions to breaking down those barriers, and finally, comments on the Veterans Self-Employment Act and incorporating entrepreneurial options into systems that are already in place to help veterans successfully transition into civilian life.

National Unemployment Statistics for Veterans

America is facing an impending workforce shortage. Skilled workers qualified to perform in today's and tomorrow's highly technological workplace are becoming a rare commodity. In CWP surveys of small and medium-size

businesses conducted over the past three years, employers report difficulty in finding qualified workers due to a lack of skills. In addition, within two years, about 30 percent of these employers no longer believe that the skills of their current workforce will keep pace.

To be competitive and sought-after in the 21st century job market, Americans, whatever their background, must have at least 15 years of education and training over the course of their lives. In 1950, 80 percent of jobs were classified as "unskilled." Now, an estimated 85 percent of all jobs are classified as "skilled." Today, few working adults have the education and skills required for a knowledge economy – only 40 percent of adults in the workforce in 2000 had any postsecondary degree, associates or higher. For veterans, this situation is magnified. The U.S. Department of Defense reports that nearly 80 percent (78%) of active duty personnel are below age 35 with at least a high school diploma (82%). Statistics show that many have had no formal education or training beyond their high school years other than what has been provided during their tenure with the military.

National unemployment statistics for veterans reflect the important link between education level and employment. Over 200,000 military personnel transition into the national civilian workforce annually and unemployment among service members transitioning into the workforce for the first time is almost twice the nation's average. According to the annual report of Veterans in Federal Government for FY 2002, veterans made up 10.2 percent of the total civilian labor force. For the same period of time, DOL statistics report a national unemployment rate of 4.7 percent for veterans. Certain subgroups among veterans have recently shown disproportionately higher unemployment rates than the overall veterans' rates. This is especially true for African American veterans where unemployment stands at 7.1% and 6.0% for Hispanics.

Among active duty personnel, almost half are married with children and live off base. There are approximately 750,000 spouses of active duty military personnel stationed at bases around the world. U.S. Department of Defense figures show that over 65 percent of all military spouses work and that 80 to 91 percent would like to work if they could find appropriate employment opportunities. Just under half of officer spouses are employed with an additional 7 percent seeking work. In contrast, over half of enlisted spouses are working and 8 percent are looking for employment.

Barriers Faced by Transitioning Military in the Civilian Workforce

American military veterans possess a wealth of experience and abilities. Their training in the armed forces has provided them with high-end skill sets that employers are looking for in their future workforce. Yet veterans are having difficulty finding employment in the civilian labor force. Two main causes are attributed to this dilemma:

- Many highly-skilled transitioning military personnel do not know how to apply their knowledge in the civilian labor market.
- Upon discharge from the military, many transitioning military personnel and their spouses are not given information on available resources that will help them find jobs compatible with

their skills or obtain the training they need to advance in the civilian workplace.

Unfortunately, many veterans are unable to see how their training translates into mainstream employment opportunities, which in turn makes it difficult to articulate to prospective employers how their skills apply to available jobs. As a result, these veterans remain unemployed for long periods of time or feel they have no other option but to apply for low-wage, low-skilled jobs under the assumption that there is no demand for their skills in the civilian job market.

Small and medium-size employers especially, need to better communicate their workforce requirements through chambers that organize and aggregate the labor market needs of business and articulate them to the publicly-funded workforce system and other community resources. By making meaningful connections with military transitioning programs, these community stakeholders can figure prominently in developing processes that better serve transitioning veterans.

In the past two years, CWP has been actively involved in an effort to help military personnel transition from the armed forces into civilian careers. In 2002, CWP created *Operation Transition*, a successful demonstration program designed in collaboration with the Veterans of Foreign Wars (VFW). *Operation Transition* is a proven, demonstrated model that aligns the resources of the military, business and the publicly-funded workforce system to create a seamless connection of services and support for transitioning military personnel and their spouses. The model responds to local and regional needs and brings the whole community to bear in the successful transitioning of military personnel into civilian life.

The demonstration project provided a wealth of information on the needs of the transitioning military population. For example, we found that several individuals leaving the service who worked on airplanes in the military applied for civilian jobs in the same field. None were hired. The civilian company was invited to the base to get a better understanding of the applicants' skills. After that visit, the company came away with a greater knowledge of what the applicants could do and decided to hire transitioning military personnel. The initial problem was that the resumes submitted by veteran applicants did not properly convey their transferable skills and qualifications.

In another case, a site visit to observe a Transition Assistance Program (TAP) seminar at a Marine Recruit Depot provided an opportunity to witness first-hand the information shared with the military as they prepared to enter civilian life. In the first two days of the seminar, a significant amount of time was spent on preparing for employment, yet very little time was spent on accessing local employment and training resources to help with the job search before and after separation. In addition, many separating military personnel commented that they did not feel they had the skills to match the needs of the local workforce.

With knowledge of these gaps in communication and disconnects in the system, it became clear that three primary factors had to be addressed in order to help veterans successfully transition from the military to the civilian workforce.

- The military, civilian workforce development systems and businesses must form partnerships that promote greater communication and exchange of information to provide transitioning veterans with a full range of resources and options.
- The military must become a key stakeholder in the transitioning process by taking more responsibility for helping veterans to prepare for work beyond military service.
- More efficient use should be made of the military's TAP program to better support military personnel as they reenter civilian life.

Subsequently, CWP identified recommendations for fostering better communication and collaboration between TAP, businesses, community service providers and the publicly-funded workforce system to create a seamless system of services and support for transitioning military personnel. As it stands now, we are seeing: an impending shortage of skilled workers; a majority of incumbent workers without a postsecondary education that will not meet the challenges of the 21st century workplace two years from now without retraining or continuing education; a military transitioning system that does not encourage veterans to go into business for themselves or even offer the option of entrepreneurship; and a TAP process for transitioning veterans that needs to be better connected to the community. The Veterans Self-Employment Act, however, appears to address these concerns.

Specific Comments on the Veterans Self Employment Act

Understanding the future demographics and the rapidly increasing skill demands for jobs, remaining competitive is going to require focusing on:

- Recruiting and retaining qualified workers in the workforce
- Making the best use of resources so that employers have the workers they need and workers have access to jobs with family-sustaining wages
- Providing access to education and training opportunities for all workers to remain competitive and advance in their careers
- Reaching underutilized populations and bringing them into the workforce
- Finding new options for more experienced workers to continue their careers and remain in the workforce

The Veterans Self-Employment Act of 2004 provides a new option to veterans for training, job creation and employment that is consistent with our understanding of future labor market opportunities. A significant portion of future job growth is going to occur in small and medium-size business. Allowing veterans the option of training that leads to franchise development corresponds to where the new jobs are likely to be created.

CWP has learned through its work that a vast array of resources is available to transitioning military personnel, spouses and veterans. While these resources have proven effective over time, they have not been coordinated and aligned

with the needs of the local labor markets which are critical to success. Through relevant training and career assistance linked to accurate local labor market information, eligible veterans can apply their military experience and training to entrepreneurial pursuits in order to become successful civilian employers.

In order to achieve a coordinated strategy to address veterans' employment needs as well as market needs, we would suggest that the committee consider language that encourages bridging the gap between military and workforce resources in communities. Training must connect to real jobs. By creating a strategy that coordinates veterans' training with the publicly- funded workforce system, chambers of commerce that reach thousands of small and medium-size businesses and education and training providers, this goal can be achieved.

Additionally, we would suggest that the Veterans' Self-Employment Act of 2004 include ways to modify the military's own Transition Assistance Program (TAP) to include access to entrepreneurship training and franchise development. By helping to create new small and medium-size businesses, self-employed veterans can contribute to the strength and economic development of their communities.

Conclusion

The U.S. Chamber of Commerce and the Center for Workforce Preparation believe that the Veterans Self-Employment Act would encourage entrepreneurship and stimulate economic development across the country, especially in areas that have high military discharge rates and unemployment among veterans and the local citizenry in general. The provisions of the Act increase options for veterans and help them to leverage their military training and knowledge to create new business ventures. Small and medium-size businesses are expected to account for 75% of new job growth in the next 15 years. This is why franchising is so important and the Veterans Self-Employment Act will serve as a catalyst for the creation of those jobs.

I hope that my testimony has been helpful and informative. I want to thank the Committee for this opportunity.

Federal Grant Programs Implemented by the Center for Workforce Preparation (CWP) Since 2001 Updated 5/19/03

SL# Title of Project/Program	Agency Served	Grant Number	Grant Effective Period	Funds Obligated to CWP	Current Status
Category A: Where CWP is the prime grant recipient					
1. Workforce Development Learning Academies (DOL-II)	DOL/ETA	AF-11556-01-60	6/15/01 - 6/15/03	$742,000	Completed 6/15/03
2. Transitioning Veterans Workforce Dev. Model Proj. (VFW)	DOL/VETS	E-9-5-2-0009	6/30/02 - 11/30/03	$99,712	Completed 11/30/03
3. CWP-Job Corps Partnership Program (JC-II)	DOL/ETA	AE-11569-01-60	6/15/01 - 6/30/04	$900,000	Ongoing
4. Business Coalition for Workforce Dev. Phase-2 (WIA-II) *(Transferred from the former grantee (NAB) effective 12/1/02)*	DOL/ETA	AN-12365-02-60 *(AF-12365-02-60)*	6/4/02 - 6/30/04	$1,502,700	Ongoing
			Sub-total (A):	**$3,244,412**	
Category B: Where CWP is a sub-recipient					
1. Rehabilitation Research and Training Centers (Y4-Y5.5)	DOE (via VCU)	H133B980036-00-02	10/1/01 - 3/31/04	$265,454	Completed 3/31/04
2. Workforce Dev. Collaborative for Youth with Disabilities	DOL/ETA (via IEL)	E-9-4-1-0070	11/1/02 - 9/29/03	$10,000	Completed 9/29/03
3. Building an Employer-Led Workforce Dev. System (INTR-I)	DOL/ETA (via JFF)	AF-12751-03-60	10/11/02-10/11/03	$141,757	Completed 10/11/03
4. Expanding the Employer-Led Workforce Dev. Sys. (INTR-II)	DOL/ETA (via JFF)	AF-12824-03-60	12/12/02-12/12/05	$1,411,884	Ongoing
			Subtotal (B):	**$1,829,095**	
			Total (A+B):	**$5,073,507**	

STATEMENT OF
PETER S. GAYTAN, PRINCIPAL DEPUTY DIRECTOR
THE AMERICAN LEGION
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
TO THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
HR 4032, THE VETERANS FIDUCIARY ACT OF 2004
AND
A DRAFT BILL, THE VETERANS SELF EMPLOYMENT ACT OF 2004

JUNE 16, 2004

Mr. Chairman, thank you for the opportunity to submit testimony on behalf of the 2.7 million members of The American Legion regarding HR 4032, the Veterans' Fiduciary Act of 2004, and the draft of the Veterans' Self-Employment Act of 2004.

HR 4032, "The Veterans' Fiduciary Act of 2004"

The Department of Veterans Affairs (VA) provides earned benefits to eligible veterans, their dependents or survivors. VA has an ethical, moral and statutory duty to protect the interests of these individuals and to ensure they receive timely financial support and assistance intended by Congress.

Under Title 38, United States Code, Section 5502, when an individual has been found to be incompetent, VA is authorized to appoint a fiduciary to receive payment on behalf of that beneficiary who may be a relative or another individual or agency. This statute also includes provisions for legal action against any appointed fiduciary that VA determines has not properly carried out the duties of that Trust or has failed to furnish the VA with a satisfactory accounting of the disposition of payments on behalf of the beneficiary. In addition, it also authorizes the payment of any court costs or other expenses incident to any investigation or court proceeding for the appointment or removal of a fiduciary. Title 38, Code of Federal Regulations, Part 13 Fiduciary Activities, sets forth the guidelines for the operation of the fiduciary program.

The Veterans' Fiduciary Act of 2004, HR 4032, addresses some of the apparent shortcomings in the current statute and regulation, by improving the integrity of the VA's fiduciary program through better safeguards to protect the beneficiaries of those benefits. This bill incorporates and expands many of the provisions contained in Section 13 of the regulations and provides a more comprehensive definition of the term "fiduciary" to include anyone who is legally responsible for the benefits and care of a VA beneficiary. There would be a requirement for VA to conduct an in-depth investigation into the qualifications of an individual to be a fiduciary. The bill also provides for administrative and legal remedies to recover monies paid to a fiduciary where there has been a determination of misuse of a beneficiary's benefits. To ensure the beneficiary does not suffer a financial loss as a result of such misuse, VA would be authorized to pay the amount recovered to the beneficiary or an alternative fiduciary. Where VA failed to properly investigate or monitor a fiduciary that misused the benefits, VA would be required to repay the beneficiary.

This legislation further sets specific requirements for periodic reviews of institutional fiduciaries and reports to Congress. The bill includes civil monetary penalties for a fiduciary's illegal use of a beneficiary's funds as well as provisions for the courts to require restitution to the VA. Under this legislation, VA would be required to report to Congress on the effectiveness of current procedures and safeguards of the fiduciary program within 270 days of the enactment.

Incompetent beneficiaries are a vulnerable group who, because of their various impairments, rely on the integrity and honesty of an individual recognized by VA to receive and administer their benefits. The statute and regulations must ensure that those serving in a fiduciary capacity meet certain formal requirements and their activities are appropriately monitored. This will help deter a fiduciary's misuse of funds entrusted to them by VA on behalf of an incompetent beneficiary.

The American Legion supports the improvements in the VA's fiduciary program proposed by HR 4032.

A Draft Bill – "The Veterans Self-Employment Act of 2004"

This draft legislation amends the pertinent sections of Title 38, United States Code, to allow VA educational benefits to be paid to defray the costs associated with the purchase of certain franchise enterprises so long as training required to successfully operate the franchise is part of the costs. Title 10, United State Code, is also amended in this way to allow active duty service members to complete the training necessary to operate a franchise while still in service. The reimbursement available is limited to a maximum of one-third of the veteran's basic monthly educational entitlement; however, the veteran's total months of entitlement is charged at a reduced rate. This draft bill also establishes the VA's authority to approve and establish standards and qualifications for the training and the organizations or entities providing it. The VA may also delegate approval to State agencies.

Small business is the backbone of the American economy. It has been one of the driving forces behind past economic growth and will continue to be a major factor as America and the world progress into the new millennium. According to the Small Business Administration (SBA), small businesses represent 99 percent of all businesses, employ over half of the American work force and create two thirds of the new jobs in this country. This draft legislation will establish those veterans who are small business owners as key stakeholders in future economic growth.

In June 1999, The American Legion testified before this Subcommittee that 30 percent of small businesses are veteran-owned and that, unlike other SBA constituency groups, veterans have earned the right to quality entrepreneurship services because of their sacrifices and service to the nation. We reaffirm this position today.

The American Legion is fully supportive of allowing qualified veterans to use their earned educational benefits when seeking business education through recognized franchise and entrepreneurship courses.

Mr. Chairman, that concludes my testimony. Again, I thank the Subcommittee for this opportunity to submit testimony. The American Legion looks forward to working with each of you on these important issues.

STATEMENT OF

PAUL A. HAYDEN, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

TO THE

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H.R. 4032, VETERANS FIDUCIARY ACT OF 2004
DRAFT BILL, VETERANS SELF-EMPLOYMENT ACT OF 2004

WASHINGTON, D.C JUNE 16, 2004

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I appreciate the opportunity to comment on *H.R. 4032, Veterans Fiduciary Act of 2004* and draft bill titled the *Veterans Self-Employment Act of 2004.* The VFW supports H.R. 4032, *Veterans Fiduciary Act of 2004* as it will strengthen the Department of Veterans Affairs' (VA) Fiduciary Program to protect the needs of our most vulnerable veterans.

According to Veteran Benefits Administration (VBA) statistics, there are 224 Field Examiners and 127 Legal Instruments Examiners (LIEs) located throughout VA's 57 Regional Offices. They are charged with monitoring the needs and finances of fiduciary program beneficiaries. Currently they are supervising the benefits of 100,000 VA beneficiaries with funds valued at around $2.8 billion. A recent assessment review conducted by the VA Office of the Inspector General found that out of the 18 VA Regional Fiduciary Field Activity Offices, 10 were in need of improvements for failure to pursue delinquent accounts, under developed field examinations and inadequate management oversight.

The VFW believes that this legislation will begin to address some of the problems identified and strengthen the safeguards under the fiduciary program to protect those individuals receiving these benefits.

We especially applaud Section 4, which would add several new provisions to Title 38 U.S.C. 6106, to further protect incompetent veterans. Some of the changes include prohibiting a fiduciary from collecting his or her fee if it is found that the fiduciary misused all or part of the veterans benefit; holding the fiduciary liable to the VA for any misused benefits; directing the VA to treat misused funds as a debt that would then be repaid by VA to the beneficiary and requiring the VA to reissue benefits to the beneficiary or an alternative fiduciary if the VA is found negligent in its oversight of the fiduciary where funds have been misused.

The bill also provides additional protections under Section 5, which the VFW testified to earlier as "areas that needed improvement," those recommendations include:

- Periodic onsite reviews of institutional fiduciaries
- Requiring periodic accounting reports by fiduciaries to avoid misappropriation of funds and abuse of the veteran
- Civil monetary penalties

It has been some 25 years since protections for the beneficiary under the fiduciary program has been adjusted; we believe that this bill will provide a positive change for those veterans who cannot manage for themselves.

The VFW also supports draft legislation titled the *"Veterans Self-Employment Act of 2004."* This bill would amend Title 38, United States Code, to authorize the use of educational assistance under programs of the Department of Veterans Affairs to defray the costs associated with the purchase of certain franchise enterprises. The VFW has long supported educational benefits to ease the transition from military to civilian life. We also recognize that some transitioning service personnel aspire to be entrepreneurs. The provisions of the "Veterans Self-Employment Act of 2004" would expand the scope of employment opportunities and encourage those who dream of business ownership. We thank the Chairman for introducing this valuable legislation and support its timely enactment.

Mr. Chairman, this concludes my statement for the record. Again, thank you for allowing the VFW to present its views on this legislation. We look forward to working with the Subcommittee to improve these programs.

STATEMENT OF
BRIAN E. LAWRENCE
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 25, 2004

Mr. Chairman and Members of the Subcommittee:
On behalf of the more than one million members of the Disabled American Veterans (DAV), I appreciate the opportunity to present, for the record, our testimony regarding the following bill and draft bill.

H.R. 4032, the Veterans' Fiduciary Act of 2004

This bill would define the term 'fiduciary' as person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant, or any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Department of Veterans Affairs (VA) for the benefit of an incompetent.

A requirement would be established that, prior to certification of a fiduciary, there must be an investigation regarding the fitness of that person to serve as fiduciary. Evidence must show that certification of the fiduciary is in the interest of the beneficiary.

H.R. 4032 protects beneficiaries from benefit misuse by fiduciaries with the following provisions:

- The fiduciary would be liable for any misused portion of the individual's benefit.
- The VA would pay the beneficiary an amount equal to the benefits that were misused
- The VA would provide periodic onsite reviews of certain fiduciary agencies and report to the House and House Veterans Affairs Committee, the results of such reviews
- The VA would have authority to redirect delivery of payment when a fiduciary fails to provide required accounting
- Civil monetary penalties would be imposed for the misuse of benefits
- VA would prepare a report regarding the sufficiency of existing procedures to protect beneficiaries.

In accordance with our Constitution and Bylaws, the DAV's legislative agenda is determined by mandates in the form of resolutions adopted by our membership. We have no resolution specific to the provisions of H.R. 4032. However, we agree incompetent veterans should be protected from financial harm caused by the neglect or malignant acts of fiduciaries.

Veterans' Self Employment Act

This draft bill would authorize the use of VA educational assistance benefits to help defray the costs associated with the purchase of certain franchise enterprises. Eligible veterans would be able to receive a lump-sum payment equal to a portion of the cost of a franchise enterprise used to train a new owner or one-third of his or her entitlement, whichever is less.

Though we have no resolution specific to this bill, the DAV appreciates the Subcommittee's bipartisan efforts to expand entrepreneurial opportunities for veterans. We will not oppose the passage of this legislation provided that the VA budget is sufficiently expanded to accommodate it. We would not support using resources from some other VA program to fund this endeavor.

The DAV would also welcome and support legislation allowing a service-disabled veteran enrolled in vocational rehabilitation program to pursue self-employment goals and receive assistance from the VA in establishing a small business, without having to establish that he or she is unemployable in the regular job market.

Closing

Mr. Chairman, thank you for the opportunity to present our views on these bills. The Subcommittee's effort to provide better health services for veterans signifies that their dedicated military service to our country is noted and appreciated. Clearly, the DAV's mission to improve the lives of disabled veterans is shared by the Subcommittee. We appreciate your efforts and look forward to working with you in the future on issues important to disabled veterans.

STATEMENT FOR THE RECORD OF

PARALYZED VETERANS OF AMERICA

BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS,

SUBCOMMITTEE ON BENEFITS

CONCERNING H.R. 4032, THE "VETERANS FIDUCIARY ACT OF 2004" AND

THE "VETERANS SELF-EMPLOYMENT ACT OF 2004"

JUNE 16, 2004

Chairman Brown, Ranking Member Michaud, members of the Subcommittee, PVA would like to thank you for the opportunity to testify today on the H.R. 4032, the "Veterans Fiduciary Act of 2004" and a draft bill entitled the "Veterans Self-Employment Act of 2004." It is important that the Subcommittee improve the Department of Veterans Affairs (VA) Fiduciary and Field Examination Activity to ensure that veterans are not taken advantage of by individuals whose care they are entrusted to.

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H.R. 4032, the "Veterans Fiduciary Act of 2004"

H.R. 4032 would provide additional safeguards to veterans whose VA benefits are received and managed by a designated fiduciary. The legislation includes provisions to investigate individuals or institutions that will be designated as fiduciaries, punishment for a fiduciary who misuses or mishandles a veteran's benefits, and repayment of benefits to a veteran when the VA has been negligent in properly investigating his or her designated fiduciary.

The Fiduciary Program was originally intended to provide oversight of the payment of VA benefits to veterans who are incapable of managing their own finances due to injury or age. A court must first determine that a veteran is incapable of handling his or her finances before a fiduciary may be appointed. Under current regulations, the wife or husband of a veteran may be designated as a fiduciary or the chief of staff of a non-VA institution where a veteran is receiving care.

The best fiduciary for an individual veteran is determined after a field examination is completed by a VA official. The VA official uses this opportunity to observe the living conditions, as well as the ability of a veteran who will receive the benefits to handle his or her own finances. The official then makes a recommendation to a state court about the best means to provide the veteran with his or her benefits through a particular fiduciary.

PVA understands that VA field examiners then maintain periodic contact with the veteran to ensure that his or her needs are being met and that the fiduciary is doing a satisfactory job of providing financial management for that veteran. However, this program provides a perfect

opportunity for individuals to perpetrate fraud against a veteran who is incapable of protecting himself or herself.

PVA has particular interest in the handling of veterans' benefits through the fiduciary program activity. Many of PVA members are incapable of handling their own finances due to the severity of the disability which they suffer. Our members are at great risk to agencies that claim to hold the best interests of the veteran, but that only seek to take advantage of a veteran who is in a desperate situation. PVA members cannot afford to be subject to the poor decision-making of some fiduciaries. Without proper management of his or her benefits, as well as quality living conditions, a spinal cord injured veterans life may be placed in jeopardy. PVA fully supports the provisions of H.R. 4032 that will ensure that the most vulnerable veterans are not taken advantage of by those who are supposed to be caring for them.

The "Veterans Self-Employment Act of 2004"

The "Veterans Self-Employment Act" would authorize a veteran to use education benefits provided by the VA to purchase a franchise enterprise. In order for a veteran to use these benefits, the company that owns the franchise must provide training to the veteran. The veteran would be able to use up to one third of the educational assistance provided by the VA to defray the costs associated with the purchase of a franchise. This benefit would be available to veterans, members of the Selected Reserves, survivors and dependents.

PVA has worked with many other veterans' service organizations to ensure that veterans have every opportunity to be successful in business upon leaving the military. This legislation

would provide a veteran or one of his family members a new and different opportunity to achieve that success. Being able to open a franchise business gives the veteran an even greater opportunity to succeed as he or she will be buying into an established company. They will also benefit from the corporate infrastructure that a franchise company can provide. PVA fully supports the proposed legislation. As the young men and women return home from Iraq and Afghanistan and leave the military, they will be looking for employment. This bill will open up doors that they would otherwise not be able to walk through.

PVA would like to thank the Subcommittee for considering these important measures. They will provide security and stability to current veterans and future veterans.

Information Required by Rule XI 2(g)(4) of the House of Representatives

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2004

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $228,000 (estimated).

Fiscal Year 2003

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $228,803.

Fiscal Year 2002

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $228,413.