

PENSION POACHERS: PREVENTING FRAUD AND PROTECTING AMERICA'S VETERANS

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WEDNESDAY, JUNE 6, 2012

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The Committee met, pursuant to notice, at 2:05 p.m., in Room SD-562, Dirksen Senate Office Building, Hon. Herb Kohl, chairman of the committee, presiding.

Present: Senators Kohl [presiding], Corker, Wyden, Nelson, Tester, and McCaskill.

OPENING STATEMENT OF SENATOR HERB KOHL, CHAIRMAN

The CHAIRMAN. We thank you all for being here for this hearing to examine problems associated with the VA's pension benefit program. Sadly, there's a growing niche industry that profits by convincing veterans with substantial assets to hide these assets in trusts and annuity products in an effort to qualify for the maximum allowable pension from the aid and attendants program.

As we will hear today, many veterans and their families are being hurt by this practice, because their assets are being tied up. They are forced to pay exorbitant fees and penalties if they need to access their money, and because they are sometimes affecting their ability to access Medicaid benefits. This activity has also increased a backlog of pending VA pensions, slowing the application process for veterans who truly need assistance. All this comes at a great cost to taxpayers who pay to process these applications and for the needs-based pensions to individuals who are not actually in need at the time of their application.

These problems are not isolated to one state or region. They are a growing problem all across our country. The County Veterans Service Officer Association of Wisconsin has submitted a statement for the record that provides a variety of examples in my own home state.

The CHAIRMAN. We want to thank our Veteran Affairs Committee Chairman, Patty Murray, and Ranking Member Richard Burr, who is here with us today, for their leadership and for sharing responsibility of overseeing the veterans' pension benefit. We also thank and recognize Senator Ron Wyden for his work on this issue, and for providing a clear path to improvement.

I know that we all support the efforts to correct the problems that we will hear about today, and we look forward to hearing from our witnesses. Before turning the gavel over to Senator Ron Wyden, who will chair this hearing today, we turn to our ranking

member, Senator Corker, for any comments and observations that you may have.

STATEMENT OF SENATOR BOB CORKER

Senator CORKER. Thank you, Mr. Chairman. I rarely make opening comments, but I will today. I want to thank you and Senator Wyden for calling this hearing to examine this issue affecting our veterans' pension benefits. I'd also like to thank our witnesses, some of whom have traveled great distances to tell their stories and offer ideas and ways to protect these pension benefits for our veterans.

I, like I know everyone here, have the greatest respect for our military veterans and their families. The tremendous service and sacrifice of our men and women in uniform, past and present, is invaluable. They are patriots, and we owe them a great deal of gratitude for what they have done to protect and secure our country.

When Congress created the Aid and Attendance benefit, the goal was to assist our nation's veterans cope with healthcare costs and to make sure they could retire with financial peace of mind. Sadly, as our panel's members' testimonies illustrate, some of the veterans are being targeted and financially misled. The consequences can be severe, sometimes leaving a veteran without a home or unable to qualify for other benefits, such as Medicaid.

I come to this hearing today eager to hear recommendations on how we can improve aid and attendance overall to better serve the needs of veterans. With that in mind, I applaud Senator Wyden and Senator Burr, our first witness, on their joint work on this issue. I understand they plan to introduce a bill that would establish a 3-year look-back for the Aid and Attendance benefit, and prevent some of the harmful financial gaming that occurs. It is refreshing to see such bipartisanship. Thank you very much.

This committee is in a unique position to examine this issue, as is the authority to take a look across many jurisdictions: Judiciary, in the case of enforcement; Treasury, in the case of financial misinformation; and Veterans Affairs, in the case of application discrepancies and backlog. It is often said that sunlight is the best disinfectant, and I hope that by bringing attention to this issue, this hearing will put an end to many of the unethical practices that are hurting our nation's veterans.

So, Mr. Chairman, thank you very, very much for convening this hearing.

The CHAIRMAN. Thanks, Senator Corker.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman. Mr. Chairman, I'm going to defer my opening statement until after Senator Burr has spoken, because I know he's under a tight schedule, and he has just been an extraordinary bulldog on this issue. And it has really been a pleasure to work with him, and, of course, he's teamed up with Senator Murray, who is a tireless fighter for veterans on the Veterans Affairs Committee, and Senator Corker, as well.

I just wanted to say a word, Mr. Chairman, with respect to your tenure as chairman of this committee. Under your leadership, this committee has gone after a whole host of abuses of our senior citi-

zens, from essentially selling fake financial products to what amounts to literally physical abuse, what we know as elder abuse. And I just want you to know how much we have appreciated your leadership.

You and I have talked often. I was co-director of the Grey Panthers back in the days when I had a full head of hair and rugged good looks, and we used to always hope that there was a chair of the Senate Aging Committee like you, Senator Kohl. So, I just want you to know how much we appreciate your leadership.

I'll have more to say about these issues after we've heard from Senator Burr. But, it's pretty hard to get agreement in one committee here in the United States Senate, and we have been so fortunate to have Senator Corker, who also tries to tackle these issues in a bipartisan way. So, the combination of you, Senator Kohl, and Senator Corker here, and Senator Murray, and Senator Burr, for those who may be listening on C-Span, it doesn't exactly happen every single day here in the United States Senate. So, I am really thrilled to have been able to be a part of it, and look forward to working with you, Mr. Chairman, in the months we have with you still here as our chair.

**STATEMENT OF HON. RICHARD BURR, A U.S. SENATOR FROM
THE STATE OF NORTH CAROLINA**

Senator BURR. Good afternoon, Chairman Kohl, Ranking Member Corker, Senator Wyden. I've learned something new already, that Senator Wyden used to have hair and was good looking.

[Laughter.]

I want to thank you for inviting me, and more importantly, as the ranking member of the Veterans' Affairs Committee, I appreciate the opportunity to discuss some of the serious issues involving VA's pension program, and how they may be affecting elderly disabled veterans.

This program is one way our nation expresses gratitude to those who have answered the call to duty in a time of war. It offers a basic level of economic security to wartime veterans who have been disabled unrelated to their military service and limited means to provide for their own support. The intent is to ensure that the disabled veterans who honorably fought for our nation will never live in poverty.

Given that noble but limited purpose, it has long been recognized that these benefits should be available only to those who are truly in need. But, last year it came to the attention of the Veterans' Committee that some organizations were marketing financial products to veterans, generally elderly veterans, so they could move assets around in order to artificially qualify for pension benefits. That's why our committee asked the Government Accounting Office to look into this issue, and we were pleased to be joined in the request by you, Chairman Kohl and Senator Wyden. That GAO investigation, along with the efforts of the Aging Committee, shed light on an entire industry aimed at convincing veterans to manipulate their assets, by using products like trusts and annuities, so they can become eligible for VA pension benefits.

This GAO report reflects this practice can end up having a negative impact on some veterans. For example, it appears that these

companies sometimes convince elderly veterans to buy financial products that would not provide any income during their expected lifetimes. Also, some are using misleading marketing techniques to gain the trust of veterans, providing them with inaccurate information about VA benefits, or breaking their promise to help veterans apply for VA pensions.

On top of that, it appears that these companies often target veterans like those with dementia, who are particularly vulnerable, and who may charge them as much as \$10,000 in fees. All of this raises concerns that elderly veterans may be pressured into situations that leave them without adequate resources in their greatest time of need.

The GAO report also confirms that some individuals receiving VA pension actually had substantial wealth. In fact, GAO highlighted an individual who had put over \$1 million into a trust shortly before being granted VA pension. It should go without saying that a program meant to provide a safety net for low-income veterans should not be sending checks to millionaires. But, regardless of the amounts involved, it undermines the integrity of a need-based program if assets are being hidden in order to qualify.

The bottom line is that we need to take steps to strengthen the VA's pensions programs so that it will be there for the wartime veterans who truly need it and will discourage companies from preying on veterans who do not. That's why Senator Wyden and I are planning to introduce a bill that will require VA, in determining who's eligible for pensions, to look at whether assets have been moved around in order for that veteran to qualify.

In general, the bill would create a look-back period, running for 3 years before an individual applies for a VA pension. If the applicant repositioned assets during that window, VA could deny pensions for up to 3 years, depending on the value of the assets that were moved. As a safeguard, VA would have the authority to disregard asset transfers during the look-back period and allow a pension to be paid, if it would avoid an undue hardship.

These new protections should help to discourage abuses, while making sure that the benefits will be available to those who genuinely are in need. This approach is consistent with the GAO's recommendations; is similar to the rules already in place for other need-based programs, like Medicaid; and is in line with the changes VA has acknowledged are needed.

Mr. Chairman, I think this bill would be a common-sense step in the right direction to deal with many of the issues your committee will be discussing at today's hearing. I look forward to working with the ranking member, the chairman, and all members of your committee, as well as Senator Wyden, in hopes that this bill will become law and will become law soon.

Again, I thank you for the invitation to be here and for the attention of this committee on what I think is a very grave issue.

The CHAIRMAN. Thank you very much.

Senator WYDEN [presiding]. Mr. Chairman, I just want to say I think Senator Burr has laid this out very, very well. We're going to work on this in a bipartisan kind of fashion, and the bottom line, it seems to me, is to preserve this program for those who need it, rather than those who fleece it. And we've got a lot of heavy lifting

to do, and Senator Burr and I have had a chance to work together often over the years, going back to our days in the house. And I just feel I've got a really good partner in this. I want to thank Senator Burr. I didn't have any questions. Perhaps, colleagues do.

Senator CORKER. Thank you. I think it's disrespectful to ask a Senator questions.

Senator WYDEN. Is it? All right. Fair enough.

Senator CORKER. Thanks for coming.

The CHAIRMAN. Do you want to call the next panel?

Senator WYDEN. Would you like me to?

The CHAIRMAN. Go ahead. It's your hearing.

Senator WYDEN. Our next panel is Mr. Daniel Bertoni and Mr. David McLenachen, if I'm pronouncing that right.

Mr. Chairman, would it be okay if I gave a brief opening statement as our witnesses come up?

The CHAIRMAN. Go right ahead.

STATEMENT OF SENATOR RON WYDEN

Senator WYDEN. Senator Burr summed this up very well, it seems to me, and I just wanted to take a couple of minutes and outline what I think are the essential steps, in terms of fixing this program, and, in effect, draining the swamp. It's pretty clear that pension poachers and bad actors have to be eliminated from the program. And second, it's got to be clear that veterans can almost always secure their pensions and their needed services for free from county veterans' services officers and congressionally chartered service organizations. Going to a lawyer or a financial planner, based on what we have determined, should not be the norm, and I think there are several steps that ought to be part of the solution.

The first is education, making sure that veterans and their families know about their rights and responsibilities, and in that regard, Chairman Kohl and Senator Corker are moving us forward with today's session.

Second, the nursing home and retirement industry has to be part of the solution. The Assisted Living Federation has submitted a statement for today's hearings, and I think that that's very constructive. The industry is going to have to work with the VA and veterans organizations to develop best practices for their facilities. And in my home State, the Oregon Healthcare Association has just sent an alert out to all of their members to educate them about pension poachers, and I hope that other groups follow suit.

And the third part of the solution is the legislation to require the Veterans Administration to look back at pension applicant finances the way that Medicare and SSI do. This closes the loophole that the pension poachers have exploited.

So, in effect, you have education, begun here under the leadership of Chairman Kohl and Senator Corker, in terms of making sure that vets and their families understand their rights. Then, we mobilize the private sector, and the long-term care facilities, and others to step up along the lines of what the Oregon Healthcare Association has done. And the third piece is the legislation.

So, I appreciate the chance to mention that, Chairman Kohl. And why don't we just hear from the witnesses, all of the witnesses on

this panel. I guess we also have Kris Schaffer, Emily Schwarz, and Lori Perkio, and I believe that Senator Tester will be coming to introduce Ms. Schaffer and Ms. Perkio.

The CHAIRMAN. Do you want to describe who they are?

Senator WYDEN. Yes. Mr. Bertoni is Director of Disability Issues of the Government Accountability Office, here in Washington. Lori Perkio is the Assistant Director of the MEB/PEB program at the American Legion. Kris Schaffer is the daughter of a World War II veteran in Billings, Montana. And Mr. McLenachen is Director of Pension and Fiduciary Services, the Office of Disability Assistance, at the U.S. Department of Veterans Affairs, in Washington, D.C.

So, why don't you proceed, Mr. Bertoni.

Mr. BERTONI. Certainly.

STATEMENT OF DAN BERTONI, DIRECTOR OF DISABILITY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Mr. BERTONI. Chairman Kohl, Ranking Member Corker, members of the committee, good afternoon. I'm pleased to discuss the Department of Veterans Affairs pension program, which provides benefits to aged or disabled veterans with limited income and assets. Last year, VA paid over \$4 billion in benefits to over 500,000 recipients. Although the program was means tested, concerns have been raised that some organizations are marketing financial products and services to help veterans shelter valuable assets to qualify for pension benefits.

In our full report, released today, we identify numerous weaknesses in VA's processes for assessing veterans' financial eligibility. We also note that currently there is no prohibition in transferring assets prior to applying for benefits.

My testimony is based on our report and focuses on what is known about organizations that are marketing financial services and products to veterans. In summary, we identified over 200 organizations located throughout the country that help veterans and their survivors transfer or preserve excess assets that could otherwise disqualify them for benefits.

These organizations consist primarily of attorneys and financial planners who provide services and products, such as annuities and trusts, in order to reduce veterans' income and assets below program eligibility thresholds. Under current law, pension claimants can transfer assets and reduce their net worth prior to applying for benefits. And some provider web sites openly note that they specialize in helping those with hundreds of thousands of dollars qualify for benefits.

Others we contacted acknowledged helping millionaires acquire these benefits. In contrast, for Medicaid and other means-tested programs, Federal law explicitly restricts eligibility for long-term care benefits in the event of certain asset transfers, and requires a look-back period to identify such transfers within 60 months of application.

During our investigative calls, all 19 organizations we contacted noted that pension claimants can legally transfer assets to skirt program rules, and almost all provided examples of how to do this. It's noted in excerpts of the following recorded conversations, where

a GAO investigator posing as a son of an 86-year-old veteran, inquired about the services and products offered.

[Tape recording played.]

I know I'm a bit over, so I'll break. As indicated by these conversations, various strategies can be used to help claimants stay below income and asset thresholds, including transferring assets that VA would normally count when determining eligibility to family members via trusts or purchasing some type of annuity to reduce monthly income to acceptable levels. Despite the advantages of these transactions to applicants, some products, such as deferred annuities, may not be suitable for aged veterans, because they often cannot access all needed funds within their expected lifetime without incurring substantial penalties or fees. Such transactions could also cause some pensions to run afoul of Medicaid asset transfer rules, and risk an eligibility for long-term care benefits.

And finally, we found that the majority of the 19 organizations charged fees, ranging from a few hundred dollars for benefits counseling, to \$10,000 to establish a trust. While Federal law prohibits charging fees for completing VA benefit applications, veterans groups and others we interviewed are concerned that some organizations are finding ways around this prohibition, such as charging veterans fees for benefits counseling. One organization we spoke with charged \$850 for an attorney to work on processing a case, a \$225 analysis fee, and \$1,600 for establishing a trust.

In conclusion, the VA pension program provides a critical benefit to veterans with limited resources. However, as currently designed, claimants with significant assets can easily qualify for benefits. This arrangement clearly circumvents the intent of the program and wastes taxpayer dollars. Thus, we believe a look-back and penalty period is needed, and have asked the Congress to consider this.

Mr. Chairman, this concludes my statement. I am happy to answer any questions you have. Thank you.

Senator WYDEN. Thank you very much, Mr. Bertoni. And you've certainly, at your agency, have gone after this issue aggressively, and one of the questions we're going to be asking is why, particularly, the VA IG's office, they didn't do some of the work that you've been doing. So, I really appreciate it.

We have a very strong advocate for veterans with us now. Senator Tester. He's my neighbor, and he can often be out back at night, and then he tells me, "We better get on these veterans' issues." He said, "We've got to do something about these rip-offs." And he's here to introduce two Montanans, our next witnesses. I hope I'm pronouncing it right. Lori Perkio and Ms. Kris Schaffer. And we're happy to welcome Senator Tester for your remarks.

STATEMENT OF SENATOR JON TESTER

Senator TESTER. Yes. Thank you, Senator Wyden, and I want to thank Senator Kohl, Ranking Member Corker. It's always a pleasure to be with you two gentlemen on the committee dais.

Look, we all know what America's veterans have done for this country. This country would not be the place it is today without the sacrifice of our service members. Make no mistake about it. You compound that with the deplorability of folks who want to go after

our elderly disabled veterans, I can tell you that, well, it will make the enamel on your teeth chip. Let's just put it that way.

I appreciate Mr. Bertoni's testimony and the video. And I think that the look-back is definitely something that we should be considering in doing, probably sooner rather than later, but after we get done getting to the bottom of all of this.

I'm going to introduce Lori and Kris before you speak, and I will just tell, Lori is here on behalf of the American Legion. She is a Montanan who worked for the Legion in Montana for 15 years as a veteran service officer, and eventually made her way to D.C. I don't know if that's a step up or not for you, Lori, but it is very, very good to have you here advocating for veterans on a national level.

And then if I may, Senator Wyden, Kris Schaffer is a small business owner from Billings, Montana, a proud daughter of a veteran. Kris's father served in the Navy during World War II. She is here to tell us about the problems that he faced when he was scammed by an organization that submitted his VA claim. And after moving into a retirement home, Kris's father, a navy veteran, found out that he was not eligible for the VA benefits promised to him by this organization, and now he may be forced to move, because he cannot afford to remain in the facility. She can tell you more about the financial impacts of all this.

But, bottom line is this, folks who are trying to mislead the VA, on behalf of people who serve this country, is unacceptable, and leaving them out in the cold makes it doubly unacceptable.

So, thank you all for being here, and I'll turn it back to you, Senator Wyden.

Senator WYDEN. Thank you, Senator Tester, and particularly for your advocacy of veterans. And I think now it's going to be Montana's turn. We're going to start with you, Ms. Perkio, and then you, Ms. Schaffer, and we'll make your prepared remarks a part of the record in their entirety. And just go ahead with your comments.

**STATEMENT OF LORI PERKIO, ASSISTANT DIRECTOR, MEB/
PEB COORDINATOR, AMERICAN LEGION, WASHINGTON, DC**

Ms. PERKIO. Thank you, Mr. Chairman. Thank you for the opportunity for the American Legion to provide the views on Department of Veterans Affairs Aid and Attendance Program. The American Legion is deeply concerned regarding the poaching of our wartime veterans and their widows who apply for Veterans Administration pensions with aid and attendance benefits.

Our permanently disabled wartime veterans and their widows have become the victims of individuals, law firms, and in some cases, assisted living facilities through misrepresentation of the VA Aid and Attendance program. One law firm on the internet advertises recession proof your law practice with VA pension planning. It goes into detail on how lawyers charge fees for services. Some of those services that were listed were analysis of options available concerning the income, gift, and estate tax consequences, new legal documents, administrative trusts, review of investments, and specifically stating, "If trust is needed for qualifications, fees are generally two to four times the average planning fee." The fees result

in thousands of dollars from the responses we are seeing from our field offices.

Upon this issue being brought to my attention here in Washington, D.C., I sent out a request to all of our field offices across the United States asking for their input. Most of the responses were identical, in that these law firms, the American Legion department services officers were aware, but they didn't know how to stop them. So your participation in creating assistance to protect our veterans is greatly appreciated.

On the internet, also, it talked about one lawyer advertised a kit for sale for \$99 to hide assets. Another web site, how to hide assets to receive pension. And there's many, many more web sites that are out there like that, you know, to advertise their—to take advantage of our veterans.

One scenario is a poacher set up an elaborate presentation intentionally to lure veterans and the widows of veterans to the probability of being eligible for up to \$24,000 a year to pay for assisted living. The victims were told they qualified for VA aid and attendance benefits, and until the benefit was actually paid, they could go ahead and sign a one-year contract at the assisted-living facility at the reduced rate until the VA benefit was actually received.

The VA received a less than complete application, which required written correspondence from the VA to the veteran to obtain all relevant information, resulting in discovered unclaimed assets. The veteran reported he was told, his lawyer told him not to claim these assets on the application. The VA determined the assets exceeded the maximum annual pension rate and benefits were denied.

The assisted-living facility then charged the veteran the full rate of fees, to include penalty fees if the 1-year lease had been broken. The veteran no longer owned his home. His assets were put into a trust he could not access, and was charged over \$80,000 by the attorney who created the trust for him.

The pension claims being submitted by these poachers often omit actual amounts of assets, and the victims are constantly told, "You don't need to claim that." One veteran whose assets exceeded \$655,000 was told he only needed to claim \$25,000 of those on the application itself. A widow of a veteran submitted a claim through one of these law firms for pension, with aid and attendance, while in possession of \$1.1 million in land assets. These were not listed on the original claim form. When the VA had submitted correspondence to this widow, then it was discovered that she had these assets and did not qualify.

An 80-year-old veteran applied for pension with aid and attendance through an attorney. During the VA exam it was determined that due to his severe Alzheimer's that he was incompetent to handle his own VA monetary benefits. A VA field examiner contacted the veteran to appoint a fiduciary. During the interview, the field examiner discovered the attorney had created a 12-year annuity.

As part of my investigation of this poaching issue, a request was sent to all of our department service officers and department adjutants requesting information. The unanimous response was poachers submitted the VA claim form for pension, and when VA requested more information, the attorney directed that veteran to a

service organization, and would no longer be able to assist that veteran at that point.

The American Legion conducts service officer training twice a year. At each training session, we have a beginner course in pension training. This class is conducted by a national American Legion staff who work at our three pension maintenance centers. The importance of submitting a claim the first time is stressed. A complete claim is stressed to expedite that VA claim process. In addition, all assets are to be counted to determine the net worth, and the VA will determine which are counted and which are exempt.

The American Legion is also creating an information pamphlet specific to VA pension benefits. The pamphlet will be distributed to our 2,000 accredited service officers to get information into the hands of our wartime veterans and their widows, and we're going to, as much as we can, to make sure that the claims processes are being done correctly to support our veterans.

The American Legion greatly appreciates your attention to this issue to protect our veterans and their widows.

Senator WYDEN. Ms. Perkio, thank you. And I think what the Legion has uncovered here, in terms of these practices, is exceptionally important. It's shameful what you have described. There is no other way to describe it, and I really appreciate your perseverance and the professionalism that the Legion brings to these veterans' issues.

We've been joined by Senator Nelson. He's from Florida. He represents a great many elderly persons, many elderly veterans, and he and I have worked together on senior issues since our House days, a very strong advocate for seniors and veterans.

And Senator Nelson, we are, in effect, in the middle of hearing from Montana. If it would be acceptable to you, let's hear from Ms. Schaffer, and we so appreciate having you here. And then at that point, we'll recognize Senator Nelson, if that's all right, for his opening statement.

Ms. Schaffer.

**STATEMENT OF KRIS SCHAFFER, DAUGHTER OF WWII
VETERAN, BILLINGS, MT**

Ms. SCHAFFER. Thank you. I thank you very much for the opportunity to be addressing you today. My name is Kris Schaffer. I am the owner of a small print shop, Accent Print Shop, in Billings, Montana. I am a wife and a mother. I have been asked to come here today to provide testimony as to my experience with the VA Aid and Attendance pension program.

During the spring of 2011, only one short year ago, I was growing increasingly concerned about my mother's health. Both of my parents were still living, but her health seemed to be deteriorating rapidly, and providing her care was more than my father could manage, and more than I could, too.

My father served in the Navy in World War II in the South Pacific. I heard about the VA Aid and Attendance pension program, and it seemed that it might be the answer to our prayers. But I'm always a person who wants to get the particulars. This tendency of mine serves me well in my business and in my personal life. I am not a person who tends to be duped by a fast talker. I attended

a seminar on the VA Aid and Attendance pension program, along with my father, put on by an independent living facility, which I had understood was well thought of in our community, Aspen View.

My understanding was that it was a separate facility from the nearby nursing home facilities, but the nursing home services could be provided when and if they were needed. Providing information on the VA Aid and Attendance pension program was the sole purpose of the seminar my father and I attended. The speaker was an attorney, Douglas F. Ocker, who said he was an attorney and counselor-at-law in an elder caring law firm in Corpus Christi, Texas. He had been brought in by the independent living facility. The speaker represented himself as being accredited by the Veterans Affairs. His web site even was www.seniorveteransusa.com.

Each attendee was given a very official looking presentation folder with information and requirements on the VA Aid and Attendance pension program. The first question the attorney put forth was something he wanted to clarify. Why should I use a VA-credited attorney when some people fill out my applications for free? We then received 11 reasons why, such as insurance agents disguise themselves as veterans officers, attorneys are licensed to draft legal documents for assets and income restructuring. Medicaid is a time bomb. The attorney is licensed to represent clients in VA court, and so forth.

We were told that if we decided to use the VA Aid and Attendance pension program we needed to use an attorney to fill out this complicated paperwork. We were also advised not to use the local VA Department, because they were not familiar with this particular program. I feel very stupid now for believing him, but I did.

It all seemed so very much on the up and up, a program of our government showing us appreciation at the end of their lives for the dedication of our veterans in preserving our freedoms.

At the end of the seminar, all attendees were invited to visit with the attorney to see if they would qualify for the VA Aid and Attendance pension program. My father and I set an appointment and visited with Mr. Ocker himself. When we came, we had all my father's paperwork and necessary information.

As the attorney reviewed the paperwork, he guaranteed us that my father would qualify. Then he told us that we needed to have \$4,000 to fill out the paperwork. That was the first that we had heard of that requirement, and my father informed him that he did not have the \$4,000 to pay for the service, and that we did not realize that there was a charge for filling out VA paperwork.

The attorney told us that he would do us a favor by calling in the manager of the independent living facility and explaining our situation. The manager came into the meeting and the attorney told him that my father did not have the funds to pay him to fill out the VA paperwork. The manager asked the attorney if my father would qualify for the VA Aid and Attendance pension program. The attorney responded, "Most certainly."

With that being said, the manager of the facility told my father that he and my mother could move into Aspen View in Billings. They told me that I should fill out the paperwork, since we already knew from the attorney that they qualified and would not be turned down. We were told the amount of the monthly rent. We

were told that the VA Aid and Attendance pension program would pay \$1,949, the amount for a married couple, and that my parents would pay the remaining monthly balance which was \$1,638, a very large financial commitment to my parents.

In order for my parents to afford even their portion of the independent living facility rent, they needed to sell their home, which was their primary asset. They made that big and difficult decision, sold their beloved home in order to make the whole thing possible, the provision of care for their remaining years, and my parents would move into the facility July 7, 2011.

I filled out the paperwork required by the VA for my parents. I did not find the paperwork terribly complicated, and went through all the written requirements, and my father appeared, to me, to meet them all. I have provided copies of the presentation documents that were given to me for the use of the committee.

One of the requirements was that I needed to send a letter to the VA from the independent living facility. I remember picking up this letter from the facility. I read it prior to sending it in with the rest of the paperwork. I did see for the first time, when I read the letter, "Our staff is available 24 hours a day to assist Henry with any emergency that may arise. In addition to providing meal preparation, transportation, weekly housekeeping, and any other medical needs that are prescribed, numerous healthcare providers work with our residents in providing medication monitoring, assisting with bathing, dressing, feeding, and et cetera." It had certainly been my understanding that those services would be provided when they were needed.

I discovered later, as my mother grew more ill, that the independent living facility actually does not supply any medically necessary help for its residents. If the residents need help, they're required to search out companies as sources for a supply of such services.

In the end, I had very little time to cope with these issues, because my dear mother only lived for 5 days when she left her home and moved into the facility that we thought would be providing her necessary care before passing away.

At that time, I forwarded all documents to the VA, so that they knew that from that time forward only my father would be needing the benefit and continuing to live in the institutional independent living facility. Shortly after I sent those documents, my father received a letter of denial. Only after my father received the letter of denial were we told that in order to qualify for VA Aid and Attendance pension program, the person needed to require daily assistance in dressing, feeding himself, and bathroom chores. It was never addressed or set forth as a requirement in the seminar that we attended, in the written paperwork, or any other forms that I filled out for my parents.

My father's relatively healthy condition was clear when we met with the attorney and when the independent living facilities staff person was called to discuss the \$4,000 fee. It was clear to both the attorney and the staff person that my father would be selling my parents' house in order to be able to pay their portion of the monthly rent.

As I speak to you before you today, my father, heartbroken at the loss of his life partner, to whom he was married for 57 years, is also in limbo, or worse, not knowing how to proceed. My father has worked hard his whole life. He has never asked for a handout from anyone. He thought he was doing right by his beloved wife, as well as making certain that he would not become a burden on his children with his eventual health decline. By selling his home and moving into this facility as part of the VA Aid and Attendance pension program, he made this decision based on the advice of someone who held himself out as an attorney certified by the VA Aid and Attendance pension program, and was provided independent reliable advice.

When I received the information of denial, I was horrified. I informed Aspen View that I would be appealing. Then I went directly to Senator Tester's office, in Billings, for assistance. He was here, together with Senator Kohl, Senator Corker, and Senator Wyden who asked me to appear here today to tell my story and that of my family. The staff at Aspen View has not yet approached my father and demanded that the balance of the difference of what the VA was understood by them and by me to be paid. But I know that they will. In fact, some friends of my parents, in their nineties, are in this very same situation with the VA Aid and Attendance pension program, have been ousted from what they thought was their final residence for their declining years.

It appears to me that Aspen View does not actually comply with the requirements of the VA Aid and Attendance pension program. It also appears to me that senior citizen veterans are being lured into disposing of their limited assets by paying exorbitant amount for services and then only after it is too late, being denied any benefits, whatsoever, by the VA and are being left with no place to live.

I do not know fully who is at fault. I only know that for my father this is a terrible miscarriage of justice. I have come all the way from Montana to Washington, D.C., to the most powerful institution in the world, to ask for help for my father and others in this situation. I ask that you get to the bottom of what has happened, discover who is at fault, and set things right for the remaining years of the veteran whose stability has been so threatened.

I thank you so very sincerely for allowing me to appear today on behalf of those who tend to be so much older than I and so much less able to travel to meet with you and speak with you yourselves. I will be honored to answer any questions that you may have.

Senator WYDEN. Ms. Schaffer, thank you very much for a very powerful statement. I heard you early on say, I think in your words, you said you felt stupid. You were dealing with your mom, and your dad, and your mom passed away just a few days after she was forced to leave her place, and I sure would like to make it clear, not only do I not think you've been stupid, your folks have been very lucky to have you, because it's clear your love and your commitment to them can be seen by everybody up here on this side of the dais.

You asked at the end of your statement that this committee stay on it until we get to the bottom of this and get it fixed, and I can tell you, your Senator, John Tester, and the other members of the

committee, that's exactly what we're going to do for Montana families and Montana veterans until we get this corrected. So, thank you for an excellent statement. I've worked in the aging field a lot of years, and what you've said is going to make a big, big difference, and I thank you.

Let's hear from Senator Nelson.

Senator NELSON. Mr. Chairman, what we've heard is an outrage. There's no other commentary that can be applied. And so what I want to know, is the Department of Veterans Affairs asleep at the switch? And I'm looking forward to that, and I don't want to take more time. I want to hear the rest of the testimony. I will insert some remarks later on.

Senator WYDEN. Thank you, Senator Nelson. And we are going to hear from the Veterans Affairs Department here in the next few minutes, but our next witness is Ms. Emily Schwarz. She's the President of Veterans Financial, Incorporated, in Villanova, Pennsylvania. And she's expanded into one of the largest companies making presentations on aid and attendance nationwide.

Ms. Schwarz, please proceed.

**STATEMENT OF EMILY SCHWARZ, PRESIDENT, VETERANS
FINANCIAL, INC., VILLANOVA, PA**

Ms. SCHWARZ. I'd like to start by taking a moment to thank the Special Committee on Aging, including Senator Bob Casey, from my great State of Pennsylvania, who, unfortunately, is not here today, for inviting Veterans Financial, Incorporated, to address the GAO's veterans' pension benefits report. While I concur with many of the issues and concerns raised, as well as some of the recommendations, I believe my testimony will give the Senators a better understanding of how private companies are playing a key role in educating veterans about this VA benefit to which they are entitled.

Let me first give you a brief background on my company, Veterans Financial. We're a national organization, as Senator Wyden mentioned, working throughout the country. To date, we have educated just over 69,000 families about the VA's Aid and Attendance pension from the Department of Veterans Affairs. Callers are referred to our 800 number from a variety of sources, but primarily assisted living directors, other care professionals, workshops, and the internet. All 69,000 families have been helped at no cost to the family or any third party, and without regard for their need of financial planning services.

The majority of families we come in contact with did not know there were VA benefits available to pay for long-term care expenses prior to being referred to our company. Yet, it has always been Veterans Financial's belief that the VA wants all who are entitled to aid and attendance to receive it. Veterans Financial and the 200 other companies and attorneys surveyed for today's report are creating an awareness that wouldn't exist. However, as with any industry, there are those who perform their duties with responsibility and diligence, and others who are more concerned with what is in their best interests rather than their client's.

Several such examples are referenced in the GAO's report, including advising claimants to report erroneous care expenses, fail-

ing to submit an application once the VA—failing to submit an application to the VA, because the family did not take the planner’s advice, and charging astronomical fees for trusts or other work. This behavior is despicable and embarrassing to companies like mine who go to great pains to ensure that things were done ethically and in compliance with VA regulations.

I trust that you have selected my company to testify today, because you believe we have acted in good faith with our marketing efforts, promise of genuine assistance, and excellent follow-through to all veteran families. You can see today’s exhibits, for example, the full disclosure in our marketing materials.

While I cannot speak to the experiences of other organizations and attorneys, the typical caller to Veterans Financial is not similar to those referenced in the GAO report that transferred \$500,000 or \$1 million prior to applying for benefits. Our typical caller is the child of a veteran or surviving spouse who’s begun the search for assisted living or home care, and realized the monthly fees far exceed their parents’ income, and have savings significantly lower than the VA’s arbitrary threshold of \$80,000.

For these families, Veterans Financial becomes a source of invaluable information, and a great relief when they learn mom or dad may be eligible for aid and attendance, and, therefore, can afford the care they need without going into a Medicaid nursing home, somewhere they don’t currently belong.

To this point, we have countless letters of thanks and praise from people in all walks of life. The GAO’s report suggests that the type of financial planning my firm does, as well as trust creation by attorneys, is a rampant practice. The reality is the average assisted-living resident is 87 years old, with \$1,583 of monthly income, according to data provided by ALFA. At the same time, they’re paying \$3,300 a month for assisted living, according to Genworth’s 2012 cost of care survey, which does not include Medicare supplements, prescription medications, co-pays, and other expenses, while having long since diminished or exhausted whatever savings they had when they retired at 65.

Of the tens of thousands of families we have spoken with, less than 2 percent transfer assets out of their name in order to become eligible. The other 98 percent were financially eligible without transferring assets or had significant assets and elected not to apply for benefits.

I also see that the report references attorneys who promote the use of trusts for VA planning, while warning that annuities make people ineligible for Medicaid. It is necessary to point out to the committee that a transfer to an annuity into the children’s names starts the same 5-year look-back that a transfer to a trust does. Those strategies create a period of ineligibility, and in both cases, the family has to wait no longer to become Medicaid eligible than had they done no planning at all.

It is also key to understand that permitting families to receive aid and attendance as early as possible allows seniors to remain private pay significantly longer. Forcing them to wait until they’re nearly destitute will mean that aid and attendance is too little too late. Social Security and VA pension is not enough to pay for care.

Without adequate savings to supplement their expenses, most will have no care options other than a Medicaid facility.

It seems as if in this conversation Medicaid is seen as the optimum alternative to private pay assisted living, when in reality, the cost of skilled care is nearly double that of a private pay assisted living. Changes to the current system will not save the government money, but instead cause more seniors to join the Medicaid rolls, adding additional stress to our current budgetary constraints.

I would propose to the committee that the VA work with the private sector to develop a best practices policy which will ensure our nation's veterans receive only ethical accountable assistance, as well as to level the playing field from provider to provider. Families should not have to search to find a company or attorney charging the lowest fees, as if they were shopping for a new car. I would personally offer my experience and time to work with the Office of General Counsel in developing such a system and means for implementation across the United States.

One final thought. All veteran benefits, including compensation, pension, housing, healthcare, job training, and education programs have been set in place to prevent our nation's veterans and their families from becoming destitute. As John Gingrich, Department of Veterans Affairs Chief of Staff, expounded in his reply last month to the GAO, "VA's improved pension program was designed by Congress to promote economic security to financially disadvantaged wartime veterans and their surviving spouses without delay." Be very cautious about turning this valuable pension into a welfare program, with an arduous approval process that only helps those completely impoverished. Our veterans, who risk their lives for this country and our freedom, deserve better than that.

Senator WYDEN. Ms. Schwarz, thank you. I know we'll have some questions for you in a moment. We appreciate your testimony.

Mr. McLenachen, we appreciate your coming. We've already introduced you, and I'll look forward to your testimony. And I will tell you, I think the committee is especially interested in what Senator Nelson was talking about, and that is how it was that the number of these firms, these pension poachers, has mushroomed into several hundred, and where was the VA in terms of trying to address these issues. So, we welcome your testimony.

STATEMENT OF DAVID MCLENACHEN, DIRECTOR, PENSION AND FIDUCIARY SERVICE, OFFICE OF DISABILITY ASSISTANCE, U.S. DEPARTMENT OF VETERANS AFFAIRS, WASHINGTON, DC

Mr. MCLENACHEN. Yes, sir. Thank you.

Chairman Kohl, Ranking Member Corker, and members of the committee, thank you for the opportunity to discuss the Department of Veterans Affairs' pension program. The VA's pension program provides supplement income to wartime veterans who are either 65 years of age and older, or permanently and totally disabled, due to non-service-connected disabilities, and meet certain income and net worth requirements.

From its inception in 1979, VA's improved pension program has been designed to provide economic security to financially disadvantaged wartime veterans and their survivors by paying pension ben-

efits quickly, and without the extensive development of evidence often required with VA's disability compensation program.

The VA paid over \$4.5 billion in pension benefits to almost 314,000 veterans and 202,000 survivors in 2011. During that year alone, VA completed nearly 50,000 original claims for veterans' pension and over 60,000 for survivor's pension, while maintaining an accuracy rate of nearly 98 percent.

In addition to the basic rates, pension program provides for enhanced rates, which have become known by the type of disability required to establish an entitlement for each, aid and attendance and housebound. These are not unique benefits, but rather increased monthly pension amounts paid to veterans and surviving spouses, based on additional disability. VA provides pension at the aid and attendance rate to persons who require assistance with activities of daily living, are bedridden, a patient in a nursing home, or have severe vision disability. Between 2007 and 2011, VA granted over 144,000 veterans' claims and over 137,000 survivors' claims for pension at the aid and attendance rate.

In its recent report, titled, "Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits," GAO concluded that the design and management of the pension program did not limit pension to only those with financial need, and that many organizations helped pension claimants transfer assets in order to meet the net worth limitations for pension. VA generally agrees with the GAO's conclusions.

GAO's first recommendation was that VA modify its pension application and eligibility verification report forms to ensure that claimants and beneficiaries have space to report transfers of assets and to specify the type of assets transferred. VA concurred with this recommendation, and has already begun the process to revise the relevant forms. GAO's second recommendation was that VA verify financial information during the initial application process by requesting additional supplementing documentation, such as bank statements or tax returns, or using automated databases.

VA's priority goal is to decide claims within 125 days, while maintaining 98 percent accuracy. Accordingly, VA concurs in principle with this recommendation, but believes that further analysis is required to determine the best way to conduct additional upfront verification of income and assets without delaying the adjudication of claims or unnecessarily burdening pension claimants and beneficiaries, many of whom are elderly.

VA also concurred with GAO's third recommendation that VA improve coordination between its pension and fiduciary programs to identify unreported assets, but requested that VA close the recommendation, because current procedures require VA's fiduciary field examiners to report to the Veterans Benefits Administration Pension Management Centers any credible net worth and income information that would affect a beneficiary's pension benefit.

Finally, GAO's fourth recommendation was that VA should revise its procedures manual regarding the types of assets, such as annuities and trusts that should be counted as part of net worth, and establish criteria for spending down net worth before becoming eligible for pension benefits. VA concurs with GAO's recommendation, but disagrees with the proposed method of implementation.

VBA's adjudication procedures manual interprets VA regulations and establishes non-substantive policies and procedures for personnel to follow in adjudicating benefit claims.

Unlike regulations, manual provisions are not binding on the agency or claimants, and cannot be used to impose obligations on claimants. For this reason, we began drafting proposed regulations in March, which would address the effect of pre-filing asset transfers on pension eligibility. Upon completion of this rulemaking, we will amend our manual provisions consistent with the new regulations.

In conclusion, I want to affirm VA's commitment to improving customer service for our pension beneficiaries, while also improving the integrity of the program. Before GAO issued its report, VA began work to revise the program integrity measures needed to ensure that only veterans and their survivors with demonstrated financial need receive the benefits and services they have earned. The interest in our program expressed by GAO and this committee reflects the importance of this effort.

Mr. Chairman, this concludes my prepared remarks. I would be happy to address any questions or comments regarding my testimony here today.

Senator WYDEN. Mr. McLenachen, thank you very much for your testimony. I want to let my colleagues ask questions before I do. I will tell you, Mr. McLenachen, I did read that you agree with the Government Accountability Office's recommendations, but I'm still puzzled about why we had to get to the point where the Government Accountability Office had to make recommendations to clean up this program that you-all run. And I'm going to ask you some questions about that after my colleagues have had a chance. And we'll start with Senator Corker.

Senator CORKER. Thank you, Mr. Chairman, and thanks for your leadership, and all of you on this issue, and certainly, the witnesses provide quite a context here, and I thank you. And I'm certainly sorry, Ms. Schaffer, for the experiences your family have been through.

Ms. Schwarz, I know that you run a company that's a national company. You mentioned that, you know, you do not charge an upfront fee to talk with veterans and talk to them about what services might be available. How does your company make money? What are the products that you offer?

Ms. SCHWARZ. We're incredibly upfront about how we make money, and so that's a very valid question. My company is a private financial services company. So, we do sell the annuities that are mentioned in the report, but responsibly. So, we are selling immediate and deferred annuities, under VA guidelines, to help families become eligible, but not the typical \$500,000 or \$1 million that were referenced in the GAO report.

Senator CORKER. So, you were talking about the gaps, I think, between what the cost of the services are, not counting—not services. I'm talking about being able to stay in a home, not counting all the costs of prescriptions and everything else to go with it.

So, explain the typical structure of a deal that, where someone comes in, you take application, you sell them annuity that fills the gap, I guess, by using their existing assets, is that correct?

Ms. SCHWARZ. Uh-huh.

Senator CORKER. Walk us through that.

Ms. SCHWARZ. Sure.

Senator CORKER. Just so we understand it.

Ms. SCHWARZ. So, let's say you have a typical client, typical person who wants to apply. They probably have \$200,000. They have the \$200,000, because, like Ms. Schaffer's family, they sold a home, and that's where the primary amount of the assets come from. They're moving into an assisted living, as opposed to an independent living.

Senator CORKER. Right.

Ms. SCHWARZ. With those \$200,000, we would recommend that they put some of it in a reserve account, obviously, for additional expenses, some in a reserve account, typically, a money market account or a checking account, easily accessible, in the children's name as well, probably do an immediate annuity that would provide them some additional income, which you reference as that gap. They need to bring in another \$1,000 or \$2,000 a month to pay their assisted living, because \$3,300 is the average. However, we see it more in the \$4,000 or \$5,000 range, depending on the level of care that somebody moves into, or starts at. And then whatever was left will put into a deferred annuity, in the children's name, which would, yes, make them eligible.

The products that we choose to use have a lot of liquidity, and there was reference in the GAO report that people are not able to get in any of their funds until after the veteran is deceased. That would be irresponsible planning. And so, I am in total agreement that there are planners that are doing that, and I would recommend that that does get looked at. However, that's not my company.

Senator CORKER. So, the annuity is liquid, because once it's not being utilized by the senior, you can then sell it. Is that what you're saying?

Ms. SCHWARZ. No. If you use correct products, that have a 10 percent withdrawal, penalty-free, there are products that have up to 50 percent withdrawal, penalty-free, cumulative up to 5 years. So, in the fifth year, someone can actually take 50 percent of their annuity out.

The other thing that a financial planner should do, to be responsible, is look at what the person's needs are for the next 5 years. We've talked about Medicaid briefly. That is the look-back for Medicaid, and to move forward with planning if there are not enough liquid assets or ways to tap into the annuity during those 5 years, if the care expense increases, is irresponsible.

Senator CORKER. And you are aware then, though, there are practices out there by companies that apparently don't operate the same way that you do, that are ripping off senior veterans.

Ms. SCHWARZ. Absolutely. I think they're looking at annuities that are in the agent's best interest, higher commissions. They're not focusing on the long-term plan, a five-year plan, or longer. Yes.

Senator CORKER. And what would be the best way to keep the kind of thing that happened to Ms. Schaffer from happening?

Ms. SCHWARZ. Well, as I was proposing, it would be wonderful if companies like us could contract with the VA, work under some

certification program through the VA. An analogy to that would be the VA contracts with homecare agencies. Homecare agencies provide aids to veterans that need homecare. They're paid by the VA. They're contracted with the VA. That would be a great way for private companies to continue working in this arena, and have oversight by the VA.

Senator CORKER. And do you have to have some kind of agreement with the VA to provide the kind of services that you do right now to veterans?

Ms. SCHWARZ. Currently, there's nothing available such as that. No.

Senator CORKER. So, let me ask you this. Why is it that so many entities are springing up, and why is there such a need for seniors to have this kind of financial advice? I mean is there something that we're not doing right on our side of the equation, as it relates to making these services available in such a way that seniors don't have to go outside the norm to have them provided?

Ms. SCHWARZ. I think that's a two-part question, so let me answer the first. I think it's springing up, because it seems like it's an easy way to earn a dollar. Quite frankly, it's not. You need to really pay attention to these families year-in and year-out, and have a staff that's happy to support them. That's how we're structured. Some people are doing it, because they think it's a one-time fill out an application, do the annuity, and then you're done. Make the commission.

Senator CORKER. To your knowledge, whose responsibility is it to make sure these shady operators are not doing what they're doing?

Ms. SCHWARZ. I think the only body that could probably do that would be the VA. I don't know who the responsible body would be to weed out the shady operators. I think if we were allowed to be certified or contracted, checked out, audited. My office is always open. People are welcome to come and visit. That would be a way.

Senator CORKER. If I could ask maybe one more question.

Senator WYDEN. Of course.

Senator CORKER. From our VA representative, is that you-all's responsibility, to weed out shady operators?

Mr. MCLENACHEN. Sir, the problem with that suggestion is, VA is in the business of delivering benefits to our veterans. We're not in the business of regulating the healthcare industry, the financial services industry, and I think that's the one thing that we have to understand here, is that, you actually asked a very good question, is who should be responsible for monitoring the type of activity that we're talking about today.

If there are people in the financial services industry, the legal services industry, anyone else involved in this that are basically violating the law that's established by the State in which they're doing it, they should be prosecuted, or charged, or some kind of civil penalties should be provided for that activity.

Senator CORKER. But, you believe that to be external to the charge, if you will, that you're given at the VA?

Mr. MCLENACHEN. Yes, sir. With this one exception. The Department of Veterans Affairs does accredit individuals to provide representation, claims assistance type services for our veterans and

their survivors. So, individuals that have been accredited for that purpose are authorized by VA to provide that type of service.

If they violate the standards of conduct that we have in place for providing that type of service, we can suspend or cancel their accreditation. That program is run by the Office of General Counsel. But, with that exception, our focus has to be on delivering benefits in a timely and efficient manner to our veterans and beneficiaries.

Senator CORKER. Mr. Chairman, thank you for the time. And I would say to Ms. Schwarz, as we move ahead with this, I would certainly love to have input as to how to weed out slackly operators. I assume by virtue of you being here you may not be considered one of those. I have no knowledge of that, by the way. But I know that for people who do conduct themselves in a responsible way, assuming that's who you-all are, I know having people who don't candidly hurts tremendously, and I welcome your input, and the input of any of you if you move ahead. So, thank you.

Senator WYDEN. Thank you, Senator Corker.

Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman. Mr. McLenachen?

Mr. MCLENACHEN. Yes, sir?

Senator NELSON. Are you a veteran?

Mr. MCLENACHEN. Yes, I am.

Senator NELSON. Do you have immediate family that are veterans as well?

Mr. MCLENACHEN. Yes, I do.

Senator NELSON. I would assume since you're a veteran and you would have immediate family, that to hear a story like Mrs. Schaffer's, you would be outraged.

Mr. MCLENACHEN. I am. Yes, I am.

Senator NELSON. And yet, this happened, and it is one of the reasons that this committee has been called to examine. So, you have seemed to put some distance between the department and the responsibility to see that these veteran benefit programs are being conducted so that the veteran is getting the benefit. Why do you think that the department doesn't have a responsibility to check these programs?

Mr. MCLENACHEN. Well, Senator, let me clarify it. I'm glad you're giving me that opportunity, if I was unclear. Let me say that I'm very pleased that the committee is holding this hearing. And the reason why I say that is that I'm proud to have the opportunity to take on this position, because one of the issues I really wanted to address when I took this position on was this very issue that we're discussing today. I was aware of it when I took this position, and just to be clear, we did not wait for the GAO to come out with its report.

As I stated in my testimony, we've been working on this issue, and we already have draft regulations that we're looking at now that deal with these very issues.

Senator NELSON. Okay. Please clarify. The question is: Do you think it's the responsibility of the department to make sure that these programs are working?

Mr. MCLENACHEN. Yes, sir. To make sure that the programs are working, yes, sir, it is.

Senator NELSON. And so you said that you've addressed these problems through formulating regulations, because does that mean that you recognize that some of these programs are not working?

Mr. MCLENACHEN. We recognize, sir, that there are individuals who may have been granted benefits. We don't have good information either from GAO or from us internally how much that has occurred, but we agree that it has occurred. And to the extent it has occurred, that's not the purpose of this program. And that is what we have recognized, and that's what we're addressing.

My comment earlier was, to the extent that the problem is that financial planners are taking advantage of veterans, or facilities are taking advantage of them, VA doesn't have any authority to regulate those industries. What we do have authority to do, sir, is to make sure that we close what was referred to earlier as a loophole, to close that up, so that everybody out there knows that there is a look-back period, that there are rules against transferring assets to qualify for the benefits.

Now, there's been some discussion about attorneys who are advising individuals to structure their assets. Well, if there's a clear regulation or statute on the books that identifies the rules regarding those transfers, I would feel pretty good about saying that attorneys are not going to be advising people, hey, transfer your assets, because that will help you apply for benefits.

Senator NELSON. I'm going to interrupt you, because time is running out. And you're talking about rules and regulations, and so forth. What about just plain communication?

Mr. MCLENACHEN. Yes, sir.

Senator NELSON. What is the VA doing to communicate sufficiently for veterans so that they're not taken advantage of.

Mr. MCLENACHEN. Sir, there's a number of steps we're taking. As, I believe it was Senator Wyden mentioned, that the important element is education. I agree with that completely. The number of steps that were taken, for example, is even something down to as basic as the COLA letters, the cost of living adjustment letters that we're sending out. We're putting information in those letters about enhanced pension benefits. We're making contact with industry groups, professional groups that work in the healthcare industry, to go out and meet with them, do presentations about our benefit program.

Senator NELSON. And is part of that communication, be on the lookout for crooks?

Mr. MCLENACHEN. Yes, sir. And we think that that's a critical component, is to tell people about what's required for the benefit, who can represent you, who can charge fees, whether you can transfer assets. We think that's an important component of it. So, all of our outreach activities are going to be geared toward delivering that type of message.

We have a benefits assistance service that is helping us develop products for doing that, so it's not just going out and meeting people face to face, but developing things like short video clips that explain this information that could be distributed nationally to nursing homes and other facilities. What we really need to do is reach family members.

Senator NELSON. Ms. Schaffer, and I'll conclude with this, what do you think the VA could have done that would have alerted your family so that your father would not have been taken advantage of?

Ms. SCHAFFER. First of all, one of the reasons that we actually went with this program was because the attorney represented himself as being accredited by the VA. We took that at heart, saying that it had been looked at, that it was okay. It was something that we could follow-through with. Maybe looking into more how people are accredited, and how they take that accreditation and present it to the public.

Senator WYDEN. Thank you, Senator Nelson.

Senator TESTER.

Senator TESTER. Yes. Thank you, Mr. Chairman. I will start out with you, Mr. McLenachen. Thank you for your service. We appreciate your service to this country.

Mr. MCLENACHEN. Thank you.

Senator TESTER. You said you agreed with the GAO recommendations. Can you tell me when they'll be implemented?

Mr. MCLENACHEN. I can't give you an exact date, sir, but I can tell you that right now we're working on the forms that they recommended that we revise. That's a critical component of this. My staff has draft regulations ready.

Senator TESTER. Okay.

Mr. MCLENACHEN. We have draft regulations all ready. We've been working on them for months.

Senator TESTER. Okay. What I just need to know from you is, if you could get back to Chairman Wyden on when you anticipate those recommendations, a timeline for them to be implemented, that would be great.

Senator TESTER. I assume you're working on it. It sounds like you are.

Mr. MCLENACHEN. Yes, sir.

Senator TESTER. Claim assistance. Ms. Schaffer talked about the fact that they dealt with an organization that had been accredited in claims assistance. I don't know if you've had a chance to look at her testimony or not, but did the VA accredit the outfit that took her dad and mom to the cleaners?

Mr. MCLENACHEN. I can't answer the question of whether, I believe it was an attorney, was the testimony, and actually, yes, sir, I did. Before I came to testify, I checked the general counsel's web site, and that attorney is accredited by VA.

Senator TESTER. Okay. What are the ramifications of that attorney now? What process do you go through to determine if Ms. Schaffer's accusations are accurate? And then what do you go through to determine what you're going to do with him?

Mr. MCLENACHEN. The Office of the General Counsel has authority to suspend or cancel that attorney's accreditation.

Senator TESTER. Is there anything else other than that?

Mr. MCLENACHEN. Other than that, no sir. That's the limit of VA's authority.

Senator TESTER. Okay. So, what you are saying is, a person could go out and make a claim that they were accredited to a veteran, and not be accredited, or be accredited, and be a crooked person

that's accredited, and the only thing that happens to them is they just pull their accreditation?

Mr. MCLENACHEN. That's the limit of our authority right now.

Senator TESTER. Who gives you that authority?

Mr. MCLENACHEN. Congress does, sir.

Senator TESTER. Okay. We might want to look at that. Ms. Schwarz, you talked a little bit about 98 percent, and I'm just kind of quoting by the notes I got off your testimony. Thank you—all for being here, by the way. All of you. 98 percent are financially eligible right away. That means when they walk through the door to your organization, or you walk through their door, representing your organization, whichever it may be, that 98 percent of the folks don't have to have a reserve account, immediate annuity, or deferred annuity. They're already eligible.

Ms. SCHWARZ. Yes. Most of our seniors, the average amount of savings, excuse me, median liquid assets of a senior 87 years old living in a facility, is \$125,000.

Senator TESTER. Yes. So, you don't have to do a darn thing.

Ms. SCHWARZ. Correct.

Senator TESTER. They're ready to go.

Ms. SCHWARZ. Yes.

Senator TESTER. So, you're basically saying out of the 69,000 families that you've dealt with, 1,380 of them are ones that you've had to really work with.

Ms. SCHWARZ. Yes. We have not done—as I was making my statement, it's not as rampant—

Senator TESTER. So, the rest of them, you're not recommending to get into annuities or anything.

Ms. SCHWARZ. Right.

Senator TESTER. You're just helping them access the program. Is that correct?

Ms. SCHWARZ. Absolutely. Yes.

Senator TESTER. Okay. Could you give me any idea, Mr. McLenachen, have you been in contact with the veteran service organizations, as far as letting them know about the programs, and what's out there, and potential rules out there.

Mr. MCLENACHEN. Yes, sir. We regularly attend veteran service organization conferences. They meet with us at VBA headquarters. Just yesterday, I was up in Atlantic City.

Senator TESTER. So, this is regular communication with the VSOs, right?

Mr. MCLENACHEN. Yes, sir.

Senator TESTER. Ms. Perkio, from your perspective, does the VA work with the American Legion so that you can educate veterans? And I don't want to get you two in a fight here. Just tell me what's going on.

Ms. PERKIO. This was not brought to my attention. When I put out my request throughout the American Legion, this was not brought up that it had been put out there. So, it may just be a communication issue on my part, but it wasn't—this was not anything that I had heard before.

Senator TESTER. Okay. Well, I want to go back with what Senator Nelson said, and that is, I think, communication is critically important. And the VSOs, by the way, I believe, are an untapped

group of folks out there that just have an incredible opportunity to do outreach and let people know what's going on.

I had a question for Ms. Schwarz. Are you accredited as claim assistance?

Ms. SCHWARZ. The company is not. Private companies are not yet allowed to be accredited. No.

Senator TESTER. Well, hold it. Lawyers aren't exactly, they're not public entities. They're private entities. You're a credit lawyer, right?

Ms. SCHWARZ. I'm not.

Senator TESTER. So why don't they accredit you.

Ms. SCHWARZ. They're not allowing companies to become accredited.

Senator TESTER. Talk to me about this.

Mr. MCLENACHEN. Sir, let me explain. Congress has given us authority to recognize veteran service organizations. Those are the only organizations that we accredit. However, individuals can be accredited, non-attorneys, to be claims agents. So, Ms. Schwarz could apply to be a claims agent and represent veterans in the process.

Senator TESTER. Why haven't you? By your testimony, you're one of the good guys.

Ms. SCHWARZ. Uh-huh. I have.

Senator TESTER. You have.

Ms. SCHWARZ. And I have not been approved.

Senator TESTER. You've been turned down.

Ms. SCHWARZ. Correct.

Senator TESTER. When did you apply?

Ms. SCHWARZ. I don't have the date off the top of my head. I don't want to give you misinformation. I'd be happy to provide it to you.

Senator TESTER. A month ago? Six months ago? Year ago?

Ms. SCHWARZ. Year ago. Years ago. Yes.

Senator TESTER. Years ago?

Ms. SCHWARZ. I have a file. I could give it to you.

Senator TESTER. Typically, how long does it take to get accredited, Mr. McLenachen?

Mr. MCLENACHEN. I don't have that information with me, sir, but it depends on whether it's an attorney, a claims agent. A claims agent actually has to take a test and pass a test to be accredited.

Senator TESTER. Okay. Just real quick in closing, and I want to thank the chairman. I went over time, and I don't even belong in this committee, but I appreciate your guys' flexibility to allow me to ask some questions.

I don't care what happens in life, it seems like there's people who play by the rules and there's people who don't. And if you're unfortunate enough to get hooked up with somebody who doesn't play by the rules, you can lose, in your case, a lifetime, your parents' lifetime of savings. We've got to figure out how to fix it.

I, quite frankly, think that you ought to have greater authority than just pulling their accreditation, if, in fact, somebody you accredit does something that's inherently bad to our veterans, because that's not the trust you place in them initially, and I think

that that's not a big enough penalty to stop people from doing stuff, if they're inherently crooked.

And so, I appreciate the work this committee is doing, Mr. Chairman. I just think that it's good, and I think that the fact you had Senator Burr here earlier, Senator Murray, the chairman of VA Committee, if there's things we can do to work with you, since I'm a member of that committee, too, to make sure that we minimize this, in fact, wipe it out, count me in.

Thank you-all for your testimony.

Senator WYDEN. Thank you, Senator Tester. And we talked earlier, when Senator Burr was here, I mean the fact that under the leadership of Senator Murray and Senator Burr, the Veterans Committee and this committee are teaming up. As we know, you don't see this kind of cooperation all the time here in the United States Senate, and we really appreciate your leadership.

Let me begin with some questions, particularly for you, Ms. Schaffer, and you, Ms. Perkio, and we'll just get all of you involved in the discussion. Obviously, Ms. Schaffer, you now are very much aware of the eligibility requirements for aid and attendance. The pension poacher, in your particular case, in effect, that was Mr. Ocker, as I understand it, guaranteed acceptance for your father. Do you think there is any way he could have filled out the paperwork to get your father that benefit without providing inaccurate or misleading information?

Ms. SCHAFFER. I personally cannot answer for what Mr. Ocker would have done. I do know that he wanted the \$4,000. My father did not have \$4,000 to give him. But, his personal guarantee, and the fact that he brought in the gentleman from the facility and told him that my father did qualify, like I say, I cannot answer how he would have done it, but he did tell us that we had everything there, my father passed all of the eligibilities that he would need to, and that he definitely would have qualified.

Senator WYDEN. My sense was, as I listened to you and heard from the staff, was that he would have had to lie to qualify your father for aid and attendance. Do you think that's by and large correct?

Ms. SCHAFFER. To be honest with you, I would hate to think that someone would lie in order to get benefits of any sort. I cannot, once again, speak for him, whether or not he would have, but sitting in the meeting with him and the manager from the facility, and he said that my father would qualify, I don't know how he would have—what he would have done in order to assure that.

Senator WYDEN. Okay. Ms. Perkio, you all, at the Legion, do a terrific job for the vets, and, of course, your service, in terms of assisting these veterans, is free of charge. What do you think of this practice of charging fees for financial instruments like deferred annuities and that sort of thing? What do you-all think of that there at the Legion?

Ms. PERKIO. The American Legion finds that abhorrent. It's taking advantage of a system that is designed to work for our permanently disabled and elderly veterans who are wartime, and their widows. The American Legion does not agree with being able to basically hide an asset to qualify.

Senator WYDEN. What I said, I ran the legal aid program for senior citizens for a number of years before I came, you know, to the Congress, and listening to all of you just reaffirmed that it seemed to me that the work you do and other congressionally chartered organizations ought to be the norm. Now, there may be exceptional circumstances and the like for going to some of these financial planners and paid firms, but I'm certainly going to do everything I can to get across the principle to the VA and others that your kind of services that you do day-in and day-out for veterans, and have for many years, ought to be the norm. That ought to be the standard. And under general rule, we want veterans to pursue that.

Now, Mr. Bertoni, I'd like to turn to you and go to an example from your testimony and your report. You said your investigators contacted suspected pension poachers, posing as the adult child of an 86-year-old veteran with enough assets to be disqualified for the Aid and Attendance pension. You referenced a company that proposed the purchase of a deferred annuity that would likely not generate payments during the veteran's lifetime. Can you give us the name of the company in this particular example?

Mr. BERTONI. That's correct. It was Veterans Financial, Ms. Schwarz's company. We had between \$350,000 and \$500,000 in assets.

Senator WYDEN. Okay. Ms. Schwarz, you provided us a timely response with respect to our initial request for information. We do have, as you know, additional questions, based on the original response. We have not, to date, gotten answers to those questions. We would hope that you'd commit to providing us a response for the record. And there are a couple of questions that I just need to ask to get into the issues that I think are appropriate this afternoon.

Business records indicate that Veterans Financial, Inc. was established in 2008 by Emily Newmark. Is that you?

Ms. SCHWARZ. Yes.

Senator WYDEN. Okay. What is your relationship with Brian Newmark, who founded Veterans Financial Services, Inc. in 2004 and is currently incarcerated for fraud?

Ms. SCHWARZ. Why is that relevant to the conversation that we're having about asset transfer today?

Senator WYDEN. Well, I'll make my own judgments about why something is relevant. And if you would just answer the question that I posed, that would be helpful this afternoon.

Ms. SCHWARZ. I think my marital status is a protection by privacy, and I don't feel that I should have to answer my marital status.

Senator WYDEN. Besides Victoria Larson, and John White, and Mary Chiaveroli, are there any other Veteran Financial employees or associated independent contractors who have been indicted for fraud or named in class action lawsuits?

Ms. SCHWARZ. I don't know the answer. To be specific, we do have a few employees from the prior company, but I can't tell you, to be exact. I'd be happy to provide you that answer, but I don't have it at the moment.

Senator WYDEN. We would like that. And when would you be able to provide that?

Ms. SCHWARZ. I could provide it this week to you.

Senator WYDEN. Very good. Thank you.

Ms. Schwarz, I'd now like to refer to an enlarged version of a promotional material from your company, where it's highlighted, it says, and I quote, "With proper planning, most can become eligible, and Veterans Financial, Inc. specializes in this type of planning."

You stated in your written testimony that, "Charging astronomical fees for trusts or other work is despicable and embarrassing behavior." Yet, you've reported to this committee 4-year earnings on commissions from annuity sales of over \$9 million, based on sales of 479 annuities or other insurance-type products. This type of planning, your specialty, according to your own ad, averages just over \$19,000 per sale, according to your firm's numbers, and that is almost double the highest fees mentioned in the GAO report.

Now, you have said your company provides full disclosure. Do the veterans who come to you for help, based on advertising like this, know how much you are likely to gain from your business with them?

Ms. SCHWARZ. Are you asking if we give them our commission statements?

Senator WYDEN. Yes.

Ms. SCHWARZ. We would give them our commission statement, if they asked for it, yes. We're not trying to hide that we are earn an insurance commission from doing an annuity sale.

Senator WYDEN. Would they understand before the sale—the reason I feel strongly about this is that we have so many organizations who do this for free. Do these veterans have a sense, prior to doing business with you, what kind of money you're likely to make off of them? You've said that you'll give it to them if they ask.

Ms. SCHWARZ. I think I need to make something clear, though. An annuity commission does not come out of the senior's assets. If they put \$100,000 in the account, the company is compensated approximately 6 percent. 3 percent of that goes to the agent. 3 percent stays with the company. There's not 6 percent taken out of that \$100,000. There's nothing coming from the senior. So, we do not charge them fees, as I stated.

Senator WYDEN. Well, the Government Accountability Office talks about fees that are charged, and the type of specialty that you offer, according to your ad, averages just over \$19,000 per sale, according to your numbers. And it just seems to me that a veteran ought to know what you're likely to make off them.

Now, let's go to another visual, again, with a page from your web site. This page titled "Assisted Living Community Staff Training" lists training available from your company. The highlighted section includes the offering, "How to Use the Benefit as a Marketing and Sales Tool." Now, you heard Mr. Bertoni's testimony earlier on the intent of this program, and the VA's policy on estate preservation and asset protection.

Now, your own web site shows that you specialize, you specialize in moving assets to make financially over-qualified veterans eligible, and offer training on how to advertise aid and attendance to

maximize enrollment rates at assisted living facilities. And I'm just trying to figure out how that is in the spirit of the aid and attendance, you know, program.

This is a program for very frail, vulnerable seniors who served our country. We've heard from the American Legion that they can provide these services free. We've asked experts at some length that the norm ought to be for a veteran to get these services free of charge. And I'm just trying to get a sense of how what you-all do is consistent with the intent of the program.

The intent of the program, I don't see anything in this program that talks about how to be a specialist, a specialist in moving assets around to make financially overqualified veterans eligible, and offer training on how to advertise aid and attendance to maximize enrollment rates. So, tell me how what you-all do is consistent with the spirit of this program.

Ms. SCHWARZ. So, I think it's a two-part question, or a multiple-part question. First of all, the training that we have offered for senior living professionals is about the VA benefit, about the four criteria and the eligibility. It's not training on marketing on how to get people to move in with the benefit. It's about the four criteria, which unfortunately is not being provided to them by any other sources.

They're coming to us, asking for information about the criteria, because a lot of the people in the assisted living industry are new to the industry, and they're not familiar with it. It is a short presentation about how to understand the benefit, so they can explain it to a senior.

I'm trying to think of the rest of your question.

Senator WYDEN. Well, the rest of the question, ma'am, deals with the fact that on your web site you say you specialize in moving assets to make financially over-qualified veterans eligible.

Ms. SCHWARZ. I think the web site is exactly what my testimony said. We do understand how to make families, whose asset level is not destitute, eligible for VA benefits, under the current regulations. If the regulations are changed and you do a 3-year look-back, as was testified by Senator Burr, we're going to have to work within the regulations.

Senator WYDEN. Ms. Schwarz, that's simply not accurate. Let me just read you from their policy manual, or as it's been cited in the——

Ms. SCHWARZ. Okay.

Senator WYDEN [continuing]. GAO report. "VA's policy manual specifically states that the VA pension program is not intended to protect substantial assets or preserve an estate for a beneficiary's heirs." And that's the policy manual.

Ms. SCHWARZ. The GAO's report just stated that it was legal to do ——

Senator WYDEN. Right.

Ms. SCHWARZ [continuing]. The planning, and if the Senators choose to change that, we will absolutely abide by it.

Senator WYDEN. But, the GAO says that the pension program is not intended to do what you say you specialize in, and that's what concerns me. And I guess I'm just going to wrap it up.

You heard what Mr. Bertoni said about their investigators, looking at suspected pension poachers, posing as the adult child of an 86-year-old veteran, with enough assets to be disqualified for the aid and attendance pension. And he said it was your company. Any reaction to that?

Ms. SCHWARZ. My honest reaction is, I don't understand why my company is sitting here, being asked these questions, without attorneys, 8,000 accredited attorneys doing trusts, usually of much larger value than anything that we're writing, are not sitting on this panel. That would be an objective panel. I am the only person from this side of the table discussing this. I know we do a good job for our families. I know my staff is very proud of the work we do, and we have a lot of very happy people. It sounds like there are other very unhappy people. But, those folks that have done that are not here.

Senator WYDEN. Well, Ms. Schwarz, when the Government Accountability Office describes particular situations, that certainly generates interest on my behalf and others, and that's why you were asked to come.

Let me ask you a question, if I might, Mr. McLenachen. The VA IG has been getting complaints about this for years. Is it correct that the agency has known about this problem for some time? I mean we've heard about that from those at the agency. Is that correct?

Mr. MCLENACHEN. Sir, I know that in my former position, before I came to this position in the General Counsel's office, we became aware of this issue, and I would say that it was within the year or two before I came to this new position we first started hearing about this, probably related to the change in law that allowed attorneys and claims agents to charge fees at an earlier point in the process. I imagine that's probably about the time where this started popping.

Senator WYDEN. So, you're saying that the agency knew about it a couple of years before it began to take steps, or you weren't in the position that you hold now, so you have authority to take these steps. Because, I will tell you, we have heard from those who are very familiar with this program that the VA had known about these complaints for years before action was taken. Is that right?

Mr. MCLENACHEN. Sir, what I can tell you is what I have knowledge of, and what I have knowledge of is when we got these type of complaints forwarded to us by the Veterans Benefits Administration, and when I was in the General Counsel's office, was our policy to advise the attorney general, the State where the incident occurred, of this issue, and to have them look into it. That was our policy at that time.

Senator WYDEN. Senator McCaskill has arrived, and I just want to make it clear to all of you that it's my view that this program has become a magnet for sleazy con men and rip-off artists who would exploit frail and vulnerable veterans. And there are two consequences of this.

First, you know, veterans get hurt, and we saw that with this really shameful example that you've given us this afternoon, Ms. Schaffer, with respect to your folks. And that was just about as outlandish as anything I've heard about over the years. And as

you've heard me say, this has really been an area that I focused on. So, you see veterans hurt.

And second, it seems to me that when the Federal budget is facing what's ahead, with budget sequestration and all of these tough decisions, the Federal Government and the Senate has a special obligation to protect a program that ought to be a lifeline for the needy. That's what this program is all about. This program is for people who need it, rather than people who fleece it, and as I listen to these accounts and people trying to manipulate these assets to qualify people who are not going to be qualified under normal circumstances, and sell products like deferred annuities that the American Legion thinks are simply, you know, a rip-off, this has got to get corrected, because if it's not, in this kind of financial climate, you're going to see people say, "Well, maybe this is a program we shouldn't have, shouldn't have it, because it's going to be ripped off."

We want to help needy people, but we don't want to see taxpayers ripped off. So, it's time to drain the swamp. And we are very fortunate here that one of our best investigators, and a strong advocate for veterans, who has been doing this kind of work for a number of years, has joined us, Senator McCaskill, and we welcome any comments you'd like to make, any questions you'd like for the panel.

Senator MCCASKILL. Thank you, Senator Wyden, and thank you for spearheading this effort. I think there's a special place in hell for companies that take advantage of veterans in this way. And they are taking advantage of veterans, because I have to believe—and let me ask the American Legion representative, Ms. Perkio, do you think these veterans understand that they're being asked to hide things, because if they didn't hide them they wouldn't qualify for these benefits. Do you think the veterans understand that they're being asked to commit a form of fraud?

Ms. PERKIO. No. No, ma'am. From my investigation, in looking into this, veterans don't realize—they're taking the word of that lawyer, or whoever they're dealing with, and when they're told they don't need to report it, they don't think that they've done anything wrong. And then when they get contacted by the VA, asking for more information, because the claim was typically incomplete, that's when it comes out that it should have been reported, and then they end up in the situation that we've heard about today. But I don't believe that they know that they're doing something wrong.

Senator MCCASKILL. So, the United States Government, and those of us who are privileged to serve it, in whatever capacity that we serve it, and you certainly serve it, and the folks at GAO certainly serve it, and obviously, no one serves it better than our veterans, we're trying to make sure that we honor these people by making sure that when they're old, they are not destitute. And some sleazy folks have figured out that they can make money off of it. And in the process, they are compromising the integrity of these very, very proud men.

And this is a generation that I'm very familiar with. My dad was in World War II, and he didn't talk much about it. We didn't even know he had a bronze star until after he died, because he was not

somebody who thought that it was special. He was very humble about it. And I guarantee you, the people, I'm sure, Ms. Schaffer, that the description I'm doing right now, I think probably sounds familiar to you.

Ms. SCHAFFER. Yes, ma'am, it does. My father doesn't speak of it very often.

Senator MCCASKILL. So, let me ask GAO—first of all, good work.

Mr. BERTONI. Thank you.

Senator MCCASKILL. As you know, I'm a weirdo. I love auditors. In fact, when I first came to Washington, David Walker teased me, because I have a place that looks over your building, and he said, "Let me see if I can get this straight. It was as close as you could get to being a government auditor without being a government auditor," by where I located my residence here in D.C. This is a good report.

Let me ask you about whether or not we should look at criminalizing this behavior with some more specificity. It seems to me this is really a kissing cousin of criminal fraud, if it isn't out and out fraud. Could you speak to that?

Mr. BERTONI. Sure. Fraud is very difficult to prove. It's a high bar. Right now, the financial planners and attorneys are working within—they're playing the edges. They're playing the fine lines in this program. And they're very clear in their web sites and in recorded conversations, the 19 recorded conversations that we had, to signal that this is allowed under the current framework, and that they're accredited, and that gives them some additional authority or reason for you to trust them, but it's skirting the lines of sort of credibility, and they're still able to work within those confines.

I really do think that VA needs to look at its accreditation process to weed out those folks who are not providing the products that they should be. Criminality is being pursued at the State level. We know the State attorneys general are looking at this on an individual level. But, it really is on an individual basis.

Right now, it is legal. I think statutorily, if you put a look-back period, and write this into the law, you could prevent a lot of the money-driven transactions and sometimes scams that are happening now.

Senator MCCASKILL. Have you got legislation drafted, Senator Wyden? Do we criminalize it?

Senator WYDEN. What we're going to propose, and we would very much like to work with the Senator from Missouri, because you spent so much time on these issues, Senator Burr and I have been working on trying to put forward a look-back approach to make sure that people are trying to gain these assets. And, you know, the pension poachers, who try to take people who are overqualified, and dupe them into signing up for these investments, that we'd have a chance to look back and unravel some of these rip-offs. That, of course, is what's done in Medicaid.

Senator MCCASKILL. Right. Isn't there a criminal penalty for someone who knowingly tries to hide assets for purposes of qualification for a government program in many of our other government programs?

Senator WYDEN. There is, and you bump up against exactly what Mr. Bertoni was talking about with respect to proving intent and

this high bar for fraud. But, if anybody can figure out how to make sure—

Senator MCCASKILL. Let's work on it.

Senator WYDEN [continuing]. That we take the toughest, most aggressive approach to these pension poachers, it will be the Senator from Missouri, and if you would like to pursue this, we'll talk to Senator Burr, and we're getting ready to put that in.

Senator MCCASKILL. Well, and also, I think if we draft this appropriately, so that we would have to have a "knowing" standard. You would have to knowingly, and I'm not talking about the veteran being criminalized here. I'm talking about the adviser who is advising someone that they need to transfer assets or buy these certain products in order to qualify for a government benefit. If we can draft that carefully enough, I think typically the bar is fairly high in these cases. It might not be quite as high in these cases, because at the end of the day the people who decide if the evidence is there beyond a reasonable doubt are 7, or 10, or 12, depending on the State, how many jurors there are in a criminal case or in a Federal case.

These are the kinds of facts that infuriate people. I mean it's like veterans who lie and say they're disabled veterans, in order to get advantages in the law. You know, people do that, also. The fact that the class of people that's being taken advantage of here, as it relates to accessing these benefits, are these veterans, I think make these very powerful cases. And I think the deterrent effect would be enormous, if we could criminalize some of this behavior.

Mr. BERTONI. If I could add just one thing. Right now, because it is such a high bar, I think that's going to be a difficult thing to do. I really do think that if you keep this in the arena of the look-back period, you can allow folks financial planning for estate planning, for retirement purposes, to have an income stream going forward. We all should be doing that. It's when you are doing it for the sole purpose of qualifying for a benefit where it becomes very abusive. And we have cases where individuals are going into trusts, converting into annuities weeks and just a month before applying for benefits. Those are the cases where I think you can make the case for fraud.

Senator MCCASKILL. Well, I think that you could. And by the way, we went through a lot of these same issues in the same hearing room on reverse mortgages, when you had people out hawking reverse mortgages and to the very same person they sold a reverse mortgage to, that was 80-some years old, they sold him a lifetime annuity at the age of 82 or 83. You know, obviously, an inappropriate financial product for that person, but it was done in connection with marketing the reverse mortgage, because it doubled up the commission for the people that were selling the reverse mortgages.

So, I thank all of you for being here. I thank the Senator and Senator Burr, both, for doing this, and I congratulate GAO on a strong audit. And you given me two or three good under-covers, and you've give me some of these people that are selling this stuff, and I know what GAO got on tape, I think some under-covers could do a really good job of exposing even more of this, if we looked at whether or not, in the most egregious circumstances, we could put

some criminal behavior in association with this, to protect these veterans.

Senator WYDEN. Look, pension poachers better look out, because Senator McCaskill is going to be coming after them.

Senator MCCASKILL. Well, I think the United States Senate should be coming after them. It's not me. This is really about, I hurt for the men and women who might be taken advantage of here, because the last thing in the world they want to end their life with is being accused of taking something they don't deserve. And that's what this is really about. I mean this program is supposed to be for poor people, not for people who transfer assets. I just hate it, for the integrity of these men and women who have served our country that they would have, at the end of their life, the notion that somehow they cheated. It's just not fair to them, because most of them, I don't think, would even be interested in doing it for the extra money if they hadn't been told that it was appropriate.

And thank you for sharing the story of your family. Sometimes it's embarrassing to say, when your family, in many ways, has been taken advantage of, but I thank you, Ms. Schaffer, for doing it. And I thank you all for being here.

Senator WYDEN. Senator, you just touched on a point that ironically in 2-and-a-half hours never really got made, and it deals with this question of this being a program for people who need it. What's striking about this is seniors who have assets, they have no problem at all finding reputable financial planners, and lawyers, and counselors. What this has been about is essentially a pattern of abuse by people who aren't either well off, you know, financially, under, you know, general circumstances, or have access to these professionals. These are about people who are vulnerable, and they're being ripped off, and you've made that distinction, and I appreciate it.

I've only one other question for you, Mr. Bertoni, at the GAO. One of the practices we heard about fairly late in our inquiry struck me as, again, really outlandish, and that was, we heard discussion of those who went to pension poachers, of course, and basically said to the senior, "You ought to sign up right now, because this is what you're going to have to do to get a good deal. You're going to get a discount." They, in effect, made up this, you know, deadline, or hyped a particular, you know, promotion, and, in effect, it's sort of a twofer, you know, abuse. Again, it's misrepresentation, but it also discourages veterans from going to the legitimate service organizations, such as Ms. Perkio's and the folks at the Legion.

Did you find that kind of a problem when you-all were doing your inquiry?

Mr. BERTONI. At least in regard to our 19 calls, we weren't getting to sort of get the deal of the day to sign up. We are aware in our travels and our interviews where folks have been, I don't want to say coerced, but sort of pressured to, you know, do this quickly, especially if you want to apply quickly, we can get this done, we can have you apply for benefits the next day.

We do know that some of these organizations have very official sounding names. They oftentimes don't acknowledge that they are

not representative of the government, and people can be led to believe they are. Again, aggressively promoting the accreditation, which lends an aura of trust to what they are telling you, and I think it's a vulnerability in the program.

As far as deals or sort of what they're telling clients, we don't know. We're not privy to those conversations, but we do know that the facilities, as well as the providers, are developing relationships, and there are referrals going back and forth both ways, from the facilities to the providers, to the providers, to the facilities, and we know in some cases that there are finders' fees going back and forth. So, there's clearly a relationship, and the independence here is becoming a bit murky.

Senator WYDEN. The slide that the staff is holding up is essentially one of people pretending to be part of the VA, and obviously, these kinds of misrepresentations, people, you know, pretending to offer these services that would be of real value to veterans, rather than these deferred annuities are exactly what we want to deal with.

We thank you all. We've had a good hearing. We appreciate all of the witnesses. And with that, the Committee on Aging is adjourned.

[Whereupon, at 4:00 p.m., the hearing was adjourned.]

APPENDIX

Senator Richard Burr

June 6, 2012

Good afternoon, Chairman Kohl, Ranking Member Corker, Senator Wyden, and other Members of the Committee. Thank you for inviting me to be here today. As Ranking Member of the Committee on Veterans' Affairs, I appreciate the opportunity to discuss with you some serious issues involving VA's pension program and how they may be affecting elderly, disabled veterans.

This program is one way our nation expresses gratitude to those who have answered the call to duty in a time of war. It offers a basic level of economic security to wartime veterans who have disabilities unrelated to their military service and limited means to provide for their own support. The intent is to ensure that disabled veterans who honorably fought for our nation will never live in poverty.

Given that noble but limited purpose, it has long been recognized that these benefits should be available only to those who are truly in need. But, last year, it came to the attention of the Veterans' Committee that some organizations were marketing financial products to veterans -- generally elderly veterans -- so they could move assets around in order to artificially qualify.

That's why our Committee asked the Government Accountability Office to look into this issue, and we were pleased to be joined in that request by Senators Kohl and Wyden. That GAO investigation, along with the efforts of the Aging Committee, shed light on an entire industry aimed at convincing veterans to manipulate their assets -- by using products like trusts or annuities -- so they can become eligible for VA pension.

As the GAO report reflects, this practice can end up having a negative impact on some veterans. For example, it appears that these companies sometimes convince elderly veterans to buy financial products that would not provide any income during their expected lifetimes. Also, some are using misleading marketing techniques to gain the trust of veterans, providing them with inaccurate information about VA benefits, or breaking their promises to help veterans apply for VA pension.

On top of that, it appears that these companies often target veterans -- like those with dementia -- who are particularly vulnerable and may charge them as much as \$10,000 in fees. All of this raises concerns that elderly veterans may be pressured into situations that leave them without adequate resources in a time of need.

The GAO report also confirms that some individuals receiving VA pension actually had substantial wealth. In fact, GAO highlighted an individual who put over \$1 million into a trust shortly before being granted VA pension. It should go without saying that a program meant to provide a safety net for low-income veterans should not be sending checks to millionaires. But, regardless of the amounts involved, it undermines the integrity of a need-based program if assets are being hidden in order to qualify.

The bottom line is that we need to take steps to strengthen VA's pension program, so it will be there for wartime veterans who truly need it and will discourage companies from preying on veterans who do not. That's why Senator Wyden and I are introducing a bill that will require VA -- in determining who is eligible for pension -- to look at whether assets have been moved around in order to qualify.

In general, the bill would create a "look-back" period, running for the three years before an individual applies for VA pension. If the applicant repositioned assets during that window, VA could deny pension for up to three years -- depending on the value of the assets that were moved. As a safeguard, VA would have authority to disregard asset transfers during the look-back period -- and allow pension to be paid -- if it would avoid an undue hardship.

These new protections should help to discourage abuses while making sure these benefits will be available to those who are genuinely in need. This approach is consistent with GAO's recommendations; is similar to rules already in place for other need-based programs, like Medicaid; and is in line with changes VA has acknowledged are needed.

Mr. Chairman, I think this bill would be a common-sense step to deal with many of the issues your Committee will be discussing at today's hearing. I look forward to working with you, Senator Wyden, and all of our colleagues to see that this bill soon becomes law.

Thank you, again, for inviting me to be here today.

United States Government Accountability Office

GAO

Testimony
Before the Special Committee on Aging,
U.S. Senate

For Release on Delivery
Expected at 2:00 p.m. EDT
Wednesday, June 6, 2012

VETERANS' PENSION BENEFITS

Improvements Needed to Ensure Only Qualified Veterans Receive Benefits

Statement of Daniel Bertoni, Director
Education, Workforce, and Income Security Issues



GAO-12-784T

Chairman Kohl, Ranking Member Corker and Members of the Committee:

I am pleased to be here to discuss the Department of Veterans Affairs' (VA) pension program, which provides economic benefits to wartime veterans age 65 and older or who have disabilities that are unrelated to their military service, as well as to their surviving spouses and dependent children. To qualify for VA pension benefits, a claimant must have limited income and assets. Recently, concerns have been raised that some organizations are marketing financial products and other services to help individuals whose assets exceed the program's financial eligibility thresholds qualify for these benefits. These organizations may charge substantial fees for products and services that may not always be in claimants' best long-term interests.

In our report released today on VA's pension program, we identified vulnerabilities in VA's procedures for assessing financial eligibility. We also found that there is no prohibition on claimants transferring assets prior to applying for benefits, and some claimants do so.¹ Other means-tested programs, such as Medicaid, conduct a look-back review to determine if an individual has transferred assets for less than fair market value, and if so, may deny eligibility for benefits for a period of time. This control helps ensure that only those in financial need receive benefits.

My testimony is based on our report and focuses on what is known about organizations that are marketing financial products and services to veterans and survivors to enable them to qualify for VA pension benefits. To conduct this work, we reviewed relevant federal laws and regulations, and VA policies and procedures. We interviewed officials from VA headquarters, as well as staff at VA's three Pension Management Centers (PMC).² We also conducted Internet research and interviews with veterans' advocacy groups, VA officials, and state and local officials to identify organizations that market financial and estate planning services to help claimants qualify for VA pension benefits. We contacted some of these organizations to learn about the types of products and services provided. Moreover, our investigative staff posed as the son of an 86-

¹GAO, *Veterans' Pension Benefits: Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits*, GAO-12-540 (Washington, D.C.: May 15, 2012).

²VA's three PMC's are located in Milwaukee, WI; Philadelphia, PA; and Saint Paul, MN.

year-old veteran and contacted 25 judgmentally selected organizations which included both financial planners and attorneys. We had discussions with representatives of 19 of these organizations. A more detailed explanation of our methodology is available in our full report. Our audit work was conducted in accordance with generally accepted government auditing standards. Our investigative work was conducted in accordance with Quality Standards for Inspection and Evaluation published by the Council of the Inspectors General on Integrity and Efficiency.

In summary, we identified over 200 organizations that market financial and estate planning services to help pension claimants with excess assets qualify for pension benefits. These organizations consist primarily of financial planners and attorneys who offer products such as annuities and trusts. All 19 organizations our investigative staff contacted said a claimant can qualify for pension benefits by transferring assets before applying, which is permitted under the program. Two organization representatives said they helped pension claimants with substantial assets, including millionaires, obtain VA's approval for benefits. Some products and services provided, such as deferred annuities, may not be suitable for the elderly because they may not have access to their funds within their expected lifetime without facing high withdrawal fees. Also, such asset transfers may result in ineligibility for Medicaid coverage for long-term care for a period of time. The majority of the 19 organizations contacted charged fees, ranging from a few hundred dollars for benefits counseling to \$10,000 for establishment of a trust. In our report we asked Congress to consider establishing a look-back and penalty period for pension claimants who transfer assets prior to applying for pension benefits, similar to other federally supported means-tested programs, such as Medicaid. We also recommended that VA obtain timely information on asset transfers, strengthen income and asset verification processes, and provide clearer guidance to claims processors. VA concurred with our recommendations and agreed that a look back and penalty period for asset transfers was needed.

Background

In fiscal year 2011, VA provided about \$ 4.3 billion in pension benefits for about 517,000 recipients. These benefits are available to low-income wartime veterans who are 65 and older, or who are under age 65 but are permanently and totally disabled due to conditions unrelated to their military service.³ Surviving spouses and dependent children may also qualify for these benefits. Average annual payments in fiscal year 2011 were \$9,669 for veterans and \$6,209 for survivors.

VA provides pension benefits through its Veterans Benefits Administration (VBA), and claims processors assess claims at VBA's three PMCs. VA also accredits representatives of veterans service organizations, attorneys, and claims agents to assist claimants with the preparation and submission of VA claims at no charge.⁴ To become accredited, an individual must meet certain requirements set forth in federal law.⁵

To qualify for pension benefits, claimants' countable income must not exceed annual pension limits that are set by statute.⁶ These income limits are also the maximum annual pension payment that a beneficiary may receive and may vary based on whether claimants are veterans or survivors, their family composition, as well as whether they need enhanced

³VA currently administers three pension programs, commonly referred to as Improved Law Pensions (Pub. L. No. 95-588, 92 Stat. 2497), Prior Law Pensions (Pub. L. No. 86-211, 73 Stat. 432), and Old Law Pensions (Pub. L. No. 73-2, 48 Stat. 8). About 95 percent of all pension recipients are under the Improved Pension program, and new beneficiaries can only accede to this program. We focus on the Improved Pension program in this testimony. For veterans with service-connected disabilities, VA provides cash benefits through its disability compensation program.

⁴See 38 U.S.C. §§ 5901-5904.

⁵*Id.*

⁶See 38 U.S.C. §§ 1521, 1541, and 1542.

benefits, such as aid and attendance or housebound benefits.⁷ For example, to qualify for pension benefits in 2012 a veteran with no dependents and who is in need of aid and attendance benefits cannot have income that exceeds \$20,447. In determining if a claimant's income is below program thresholds, VA includes recurring sources of income such as Social Security retirement and disability benefits, but not income from public assistance programs such as Supplemental Security Income (SSI).

VA's policy manual specifically states that the VA pension program is not intended to protect substantial assets or preserve an estate for a beneficiary's heirs. In assessing financial eligibility, VA also considers net worth or the total value of claimants' assets, such as bank accounts, stocks, bonds, mutual funds, and any property other than the claimant's dwelling, a reasonable lot area, a vehicle, and personal belongings.^{8, 9} According to VA's policy manual, claims processors are generally required to formally determine if claimants with assets worth over \$80,000 have financial resources that will last a reasonable period of time to pay for their basic expenses. In making this determination, claims processors consider net worth, income, expenses, age, and life expectancy to

⁷As part of the pension program, VA provides enhanced pension benefit amounts to veterans and surviving family members who demonstrate the need for aid and attendance, or who are considered permanently housebound. Veterans may be eligible for Aid and Attendance benefits if they demonstrate an inability to perform everyday personal functions such as bathing, dressing, eating, adjusting prosthetic devices, and protecting themselves from hazards or dangers in their daily environment. They may also be eligible for these benefits if they are a patient in a nursing home, bedridden, or are blind or nearly blind. Veterans may be eligible for Housebound benefits if they have a disability rated at 100 percent and, as a result, are permanently or substantially confined to their homes, or have a disability rated at 100 percent and at least one other disability rated at 60 percent or more (although these individuals are legally classified as Housebound, they may be capable of leaving their homes). See GAO, *VA Enhanced Monthly Benefits: Recipient Population Is Changing, and Awareness Could Be Improved*, GAO-12-153 (Washington, D.C.: Dec. 14, 2011).

⁸See 38 C.F.R. § 3.275. For claimants who are veterans, VA also assesses the net worth of the veteran's spouse to determine financial eligibility.

⁹There are no thresholds on the value of a claimant's assets that are defined in statute. The relevant statute states that a veteran's pension shall be denied "when the corpus of the estate of the veteran or, if the veteran has a spouse, the corpus of the estates of the veteran and of the veteran's spouse is such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance." 38 U.S.C. § 1522(a).

determine if claimants' financial resources are sufficient to pay for their expenses without assistance from VA.

VA pension claimants may also be eligible for other means-tested programs, such as Medicaid, a joint federal-state health care financing program that provides coverage for long-term care services for certain individuals who meet specific income and resource thresholds. Each state administers its Medicaid program and establishes specific income and resource eligibility requirements that must fall within federal standards.¹⁰ Similarly, the SSI program provides cash benefits to individuals who are 65 or older, blind, or disabled who have limited income and whose resources are \$2,000 or less.¹¹

Organizations Help Veterans Transfer Assets to Qualify for Pension Benefits

We identified over 200 organizations located throughout the country that market their services to help veterans and their surviving spouses qualify for VA pension benefits by transferring or preserving excess assets. These organizations consist primarily of financial planners and attorneys offering products and services such as annuities and the establishment of trusts, to enable potential VA pension claimants with excess assets to meet financial eligibility criteria for VA pension benefits. For example, one organization's website advertised that it develops financial plans which include various insurance products, and that its specific area of expertise is to help VA pension claimants with hundreds of thousands of dollars in assets obtain approval for these benefits. Under current federal law and regulations, VA pension claimants are allowed to transfer assets and reduce their net worth prior to applying for benefits, so services being marketed and provided by these organizations to qualify for VA pension benefits are legally permissible under program rules. In contrast, for Medicaid—another means tested program—federal law explicitly restricts eligibility for coverage for long term care for certain individuals who

¹⁰We reported in 2007 that in most states, an individual must have \$2,000 or less in countable financial resources to be eligible for Medicaid (\$3,000 for a married couple). See GAO, *Medicaid Long-Term Care: Few Transferred Assets before Applying for Nursing Home Coverage; Impact of Deficit Reduction Act on Eligibility Is Uncertain*, GAO-07-280 (Washington, D.C.: Mar. 26, 2007).

¹¹Financial resources must be less than \$3,000 if the individual lives with their spouse. Also, individuals in some states who require long-term care services can become eligible for Medicaid benefits through participation in the SSI program.

transfer assets for less than fair market value prior to applying.^{12, 13} As a result, when an individual applies for Medicaid coverage for long-term care, states conduct a look-back—a review to determine if the applicant transferred assets for less than fair market value prior to applying. Individuals who have transferred assets for less than fair market value during the 60 months prior to applying may be denied eligibility for long-term care coverage for a period of time, known as the penalty period.¹⁴ For example, gifting assets would generally be considered a transfer of assets for less than fair market value and result in a penalty period. Also, under the SSI program, claimants who transfer assets for less than fair market value prior to applying may become ineligible for these benefits for up to 36 months.¹⁵

During our investigative calls, all 19 organizations correctly noted that pension claimants can legally transfer assets prior to applying. They indicated it is possible to qualify for VA pension benefits despite having excess assets, and almost all provided information on how to transfer these assets. (See figure 1 for transcript excerpts of calls with organizations on services they provide to qualify for VA pension benefits.)

¹²42 U.S.C. § 1396p(c).

¹³An asset transfer for less than fair market value would occur when the claimant gifts or sells an asset and gets in return an amount that is less than the value of the asset on the open market at the time of the transfer.

¹⁴The penalty period is calculated by dividing the uncompensated dollar value of the assets transferred by the average monthly cost of private nursing home care in the state (or in the community, at the option of the state). The penalty period generally begins on the later of (1) the first day of the month during or after which the individual transferred assets at less than fair market value, or (2) the date on which the individual would have been eligible for Medicaid coverage for long-term care if it were not for these asset transfers. Certain asset transfers are exempt from Medicaid penalty provisions such as assets transferred to an individual's spouse or disabled child. Asset transfers would also not be penalized if the individual can demonstrate that the transfer was carried out exclusively for purposes other than qualifying for Medicaid, or when the state determines that the penalty would result in undue hardship. 42 U.S.C. § 1396p(c).

¹⁵42 U.S.C. § 1382b(c)(1)(A).

Figure 1: Transcript Excerpts of Calls with Organizations Providing Products and Services to Help Claimants Qualify for VA Pension Benefits

A GAO investigator phoned multiple companies on behalf of a fictitious father, who was portrayed as a veteran seeking VA pension benefits, to learn about the services provided by the companies. Below are excerpts from three calls in which a company representative told the investigator that VA beneficiaries may qualify for benefits by transferring assets.

Call 1
Company representative:
“...I will just tell you this: The VA allows you to qualify, regardless of what your assets are. And I’ve had people with over a million dollars qualify for this benefit.”

Call 2
Company representative:
“It is a means-tested and an asset-tested benefit, but essentially there are legal work-arounds. And if you know, it’s basically you have to put together a good presentation for the Veterans Administration. And that’s what we do. We help people position assets and coordinate the presentation effort to the VA.”

Later in the call:
“Yeah, I’ve qualified people with that — beyond \$700,000 worth of liquid assets. So that’s not the issue.”

Call 3
Company representative:
“What that means is basically repositioning the assets to where again, the software tells us what we can and can’t do. But I’m just going to give you kind of a hypothetical: For example, you may be able to reposition, reallocate those funds into a trust... And we’re allowed to apply for VA benefits the day after, by reallocating those funds, so that dad can qualify.”

Source: GAO and company representatives.

Note: For a complete transcript of all three calls, see GAO-12-540.

A number of different strategies may be used to transfer pension claimants’ excess assets so that they meet financial eligibility thresholds. Among the 19 organizations our investigative staff contacted, about half advised transferring excess assets into an irrevocable trust with a family member as the trustee to direct funds to pay for the veteran’s expenses. A similar number also advised placing excess assets into some type of annuity. Among these, several advised placing excess assets into an immediate annuity that generates income for the client. In employing this strategy, assets that VA would count when determining financial eligibility for pension benefits are converted into monthly income. This monthly income would fall below program thresholds and enable the claimant to still qualify for the benefits. About one-third of the organizations recommended strategies that included the use of both annuities and trusts. For example, one organization we contacted advised repositioning some excess assets into an irrevocable trust, with the son as the trustee,

and placing remaining excess assets into a deferred annuity that would not be completely accessible, since most of the funds could not be withdrawn without a penalty. In addition, several organization representatives we interviewed also told us they may advise using caretaker agreements to enable a client to qualify for VA pension benefits. Organizations told us this strategy generally involves the pension claimant transferring assets to family members as part of a contract, in exchange for caretaker services to be provided by these family members for the remainder of the claimant's lifetime.

Some organization representatives we interviewed told us that transferring assets to qualify for VA pension benefits is advantageous for elderly pension claimants because it enables them to have more income to pay for care expenses and remain out of a nursing home for a longer period of time. For example, representatives from one organization said the use of immediate income annuities allows pension claimants to increase their monthly income that, combined with the VA pension, could help pay for assisted living or in-home care costs. Other financial planners and attorneys said if claimants do not conduct financial or estate planning to qualify for the VA pension and instead spend down their assets prior to applying, the monthly amount of the pension benefit they eventually receive may be insufficient to pay for their long-term care. They said that, as a result, these claimants may decide to seek Medicaid coverage for nursing home care because of their lack of financial resources, when they could have remained in an assisted living facility or at home with the aid of the VA pension. Some of these organizations told us that nursing home care financed by Medicaid is more costly for the government than if the veteran had received the VA pension benefit and obtained care in a lower-cost assisted living facility.

Many organizations we identified also conduct presentations on VA pension benefits at assisted living or retirement communities to identify prospective clients. According to attorneys and officials from state attorneys general offices we spoke with, managers of assisted living facilities or retirement communities may have an interest in inviting organization representatives to conduct presentations on VA pension benefits because these benefits allow them to obtain new residents by making the costs more affordable. For example, we obtained documentation indicating that one retirement community paid an organization representative a fee for a new resident he helped the facility obtain. Another community in another state paid organization representatives fees to assist residents in completing the VA pension application.

Some Products and Services May Adversely Affect Claimants

Some products may not be suitable for elderly veterans because they may lose access to funds they may need for future expenses, such as medical care. To help elderly clients become financially eligible for VA pension benefits, some organizations may sell deferred annuities which would make the client unable to access the funds in the annuity during their expected lifetime without facing high withdrawal fees, according to some attorneys we spoke with. An elderly advocacy organization representative we spoke with also noted that elderly individuals are impoverishing themselves by purchasing these products when they may need the transferred assets to pay for their long-term care expenses. As part of our investigative work, one organization provided a financial plan to qualify for VA pension benefits that included both an immediate annuity as well as a deferred annuity for an 86-year-old veteran that would generate payments only after the veteran's life expectancy.

Some organizations that assist in transferring assets to qualify people for VA pension benefits may not consider the implications of these transfers on eligibility for Medicaid coverage for long-term care. Individuals who transfer assets to qualify for the VA pension may become ineligible for Medicaid coverage for long-term care services they may need in the future. For example, asset transfers that may enable someone to qualify for the VA pension program, such as gifts to someone not residing in a claimant's household, the purchase of deferred annuities, or the establishment of trusts, may result in a delay in Medicaid eligibility if the assets were transferred for less than fair market value during Medicaid's 60-month look-back period. According to several attorneys we spoke with, some organization representatives are unaware or are indifferent to the adverse effects on Medicaid eligibility of the products and services they market to qualify for the VA pension. As a result, potential pension claimants may be unaware that the purchase of these products and services may subsequently delay their eligibility for Medicaid.

In addition to the potential adverse impact of transferring assets, we heard concerns that marketing strategies used by some of these companies may be misleading. According to several attorneys we spoke with, some organization representatives market their services in a way that may lead potential pension claimants and their family members to believe they are veterans advocates working for a nonprofit organization, or are endorsed by VA. As a result, they may fail to realize these representatives are primarily interested in selling financial products. For example, some organization representatives may tell attendees during presentations at assisted living facilities that their services consist of providing information on VA pension benefits and assisting with the application, and do not

disclose they are insurance agents selling annuities to help people qualify for these benefits. One elder law attorney we spoke with said many attendees at these presentations may have Alzheimer's disease or dementia and are not in a position to make decisions about their finances. Therefore, they are vulnerable to being convinced that they must purchase a financial product to qualify for these benefits.

Concerns have also been raised that VA's accreditation of individuals to assist with applying for VA benefits may have unintended consequences. According to attorneys and officials in one state, organization representatives use their VA accreditation to assist in preparing claims as a marketing tool that generates trust and allows them to attract clients. Claimants may not understand that this accreditation only means that the individual is proficient in VA's policies and procedures to assist in preparing and submitting VA benefits claims and does not ensure the products and services these individuals are selling are in claimants' best interests.

Finally, some organizations may provide erroneous information to clients, or fail to follow through on assisting them with submitting the pension application, which can adversely affect pension claimants. For example, one veteran said he was told by an organization representative to sell his home prior to applying for the VA pension and that he did not have to report the proceeds from the sale on the application. He followed this advice and was approved for benefits, but VA later identified these assets, which caused him to incur a debt to VA of \$40,000 resulting from a benefit overpayment. Organizations may also promise assistance with the application process to any interested pension claimant but, unbeknownst to the claimant, may not follow through in providing this service if the claimant does not want to transfer assets. For example, the daughter of a veteran we spoke with, who sought application assistance from an organization representative, told us the representative never submitted her father's pension claim to VA as promised. She learned of this about a year after she thought the claim was submitted and had to reapply through a county veterans service officer. Her father was approved 2 months later but passed away less than a month after his approval. She believes her father could have received benefits for a year if the representative had submitted the claim, and believes the representative did not do so because she did not want to use his services to transfer assets.

Costs for Services to Transfer Assets Varied, but Some Organizations May be Charging Prohibited Fees

The costs of services provided by these organizations to assist in qualifying for VA pension benefits varied, but organizations may be charging prohibited fees. Among the 19 organizations our investigative staff contacted for this review, about one-third said they did not charge for their services to help qualify claimants for VA pension benefits. For example, financial planners told us that, generally, there are no direct costs associated with transferring assets into an annuity, but that costs would be included in the terms of the annuity, such as the commission earned by the insurance agent. Among organizations that did charge for services, fees ranged from a few hundred dollars for benefits counseling up to \$10,000 for the establishment of a trust. Also, although federal law prohibits charging fees to assist in completing and submitting applications for VA benefits,¹⁶ representatives from veterans advocacy groups and some attorneys we spoke with raised concerns that these organizations may be charging for fees related to the application, or find ways to circumvent this prohibition, such as by claiming they are charging for benefits counseling. For example, one organization our investigative staff contacted charged \$850 to have an attorney work on the application process, a \$225 analysis fee, and \$1,600 for the establishment of a trust. Another organization representative indicated he charged a "long term planning fee" of \$1,200 to be paid prior to services being provided. The organization representative asked that someone other than the veteran pay this fee, claiming that only disinterested third parties can be charged fees but not the veteran. Also, in a case identified by officials in one state, a veteran was charged \$3,000 by an individual for assistance in applying for VA pension benefits which were ultimately denied. In addition, concerns have been raised that fees charged may be excessive for the services provided. For example, in July 2011, California enacted a law generally prohibiting unreasonable fees from being charged for these services.¹⁷

Concluding Observations

The VA pension program provides a critical benefit to veterans, many of whom are elderly and have limited financial resources to support themselves. Current federal law allows individuals to transfer assets prior to applying for VA pension benefits and still be approved. As a result,

¹⁶See 38 U.S.C. §§ 5902(b)(1)(A), 5903(a)(1), and 5904(c)(1).

¹⁷See Cal. Civ. Code § 1770(a)(24). An "unreasonable fee" is defined as a fee that is exorbitant and disproportionate to the services performed.

claimants who have sufficient assets to pay for their expenses can transfer these assets and qualify for this means-tested benefit. This arrangement circumvents the intended purpose of the program and wastes taxpayer dollars. A number of organizations help claimants with these asset transfers, but some of the products and services provided may have adverse implications for the claimant such as delaying eligibility for Medicaid coverage for long-term care or causing claimants to lose access to their financial resources. Accordingly, we asked Congress to consider establishing a look-back and penalty period for pension claimants who transfer assets at less than fair market value prior to applying for pension benefits, similar to other federally supported means-tested programs.

Chairman Kohl, Ranking Member Corker, and Members of the Committee, this concludes my prepared statement. I would be pleased to answer any questions that you may have at this time.

**GAO Contact and
Staff
Acknowledgements**

For further information about this testimony, please contact Daniel Bertoni at (202) 512-7215 or bertonid@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Other key contributors to this testimony include Jeremy Cox, Paul Desaulniers, Alex Galuten, Nelson Olhero, Martin Scire, and Walter Vance.

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**STATEMENT OF
LORI PERKIO, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
ON
AID AND ATTENDANCE, A DEPARTMENT OF VETERANS AFFAIRS PROGRAM
JUNE 6, 2012**

Chairman Kohl and Members of the Committee:

The American Legion welcomes this opportunity to comment on the Department of Veterans Affairs (VA) Aid and Attendance program. The American Legion was chartered and incorporated by Congress in 1919 as a patriotic veterans organization devoted to mutual helpfulness. Since that time we have been dedicated to providing service and protection to veterans and we provide accreditation for over 2,000 service officers nationwide to help veterans negotiate the often convoluted and confusing process of obtaining the benefits they have earned through their service and sacrifice on behalf of this nation.

While all veterans are deserving of every protection we can offer them, special attention must be paid to certain groups of veterans who are particularly vulnerable to abuse. As the veteran population, and indeed the overall population of America ages and must make decisions about care in the later years of their lives, it has become clear America's aging veterans are at particular risk from predatory actors. These ill intentioned organizations seek to take advantage of gaps and loopholes in the system to separate veterans from their hard-earned savings with promises of long term care that often do not deliver as promised.

There are literally hundreds of organizations throughout the country that "offer services" to veterans seeking long term care. Unlike service organizations such as The American Legion which provide services free of charge to veterans and their families, these organizations charge fees, often substantial, to the veterans and can deplete hard earned savings and place these vulnerable veterans in a far worse position than they would otherwise be entitled. While these organizations may be legally entitled to operate, it is unclear as to whether or not they are truly serving the best interests of the veterans and their families. There is little apparent oversight of this field; indeed, given the vast scope of how many organizations exist and how widespread they are, it would be difficult to provide extensive oversight.

Furthermore, the influx of these organizations and their manipulation of veterans into diversion of assets and filing for benefits add an undue burden to an already struggling veterans' benefits system. The entire veterans' community is acutely aware of the backlog and wait times for benefits, but few realize the concrete impact this industry is having on that backlog. When VA began tracking pension claims separately in their Monday Morning Workload Report in October

of 2009, there were 55,546 pension claims pending. As of Monday, May 19, 2012 that number had ballooned by nearly 75% to 74,987. To make matters worse, this is clearly impacting processing time at VA's three Pension Management Centers (PMCs). Over the same time period, the number of claims pending more than 125 days, VA's internal standard for what claims constitute a backlog, has more than doubled, exploding from 15,637 claims in 2009 to 34,788 claims in the present day. This influx of claims is negatively impacting all veterans who utilize the pension benefits system, and veterans in the pension system are among the most destitute and vulnerable class of veterans.

While serving as a service officer for nearly two decades I saw firsthand the impact of the struggles with the benefits system on veterans. Today in my work I am still in regular contact with The American Legion's network of over 2,000 accredited service officers on the front lines, and what they see on a daily basis regarding these organizations seeking to worm their way into the veterans' elder care industry raises serious concerns in our organization.

After consulting with our network of service officers, some of the highlights of the concerns raised include:

- In Alabama - a veteran and his wife were contacted regarding assistance with a local assisted living facility. They were told the \$800,000 in savings would be "diverted" to allow them to qualify for VA Aid and Attendance benefits. This couple contacted the Alabama Department of Veterans Affairs for clarification and did not follow through with the application for Aid and Attendance understanding they did not qualify for the pension benefit.
- In California – an organization provided assistance to a veteran promising assistance to file a claim for Aid and Attendance benefits to live in an assisted living facility. The veteran was told he had to pay \$1700 in advance to complete the paperwork in order to receive a monthly benefit of \$1800.
- In Montana - The daughter of a veteran was working with an agency that provided a seminar at the local assisted living facility which promised assistance to veterans and surviving spouses of war time veterans in obtaining Veterans Affairs Aid and Attendance benefits. The daughter contacted the Montana Veterans Affairs Division requesting clarification of the VA program. The company providing the assistance told her she needed to divert her father's assets and made an appointment for her to meet with a financial advisor who was over a hundred miles away.
- In Florida – American Legion service officers have run across a growing number of lawyers specializing in elder law who contact veterans directly through assisted living facilities (ALFs) with promises of how to divert income and assets to qualify for VA pension. Many of these attorneys do not provide follow up assistance with the ultimate pension claims process. All of these lawyers work to appoint themselves as powers of attorney for the veterans, initiating an additional problem when the veterans ultimately seek the assistance needed from Veteran Service Organizations (VSOs) as the process to change the power of attorney for the veteran to allow the VSO to advocate on behalf of the veteran's claim can add as much as an additional month to the claims process.
- Also in Florida – many of these organizations provide "briefings" at ALFs in which they portray VA pension as a "secret government benefit" they can provide to the veterans. In

order to utilize the benefit, they make it appear the veterans must divert their assets into financial instruments run by their companies. Most of these cases involve “helping” the veteran to file for pension, but there is little follow up aid as many of these organizations are actually unfamiliar with the intricacies of VA pension eligibility and therefore they cannot provide accurate information to the veterans about how to best proceed with their claim.

- Service officers in the northern Midwest report issues with organizations cold-calling veterans and charging nearly \$500 for “assistance” with pension benefits, and taking credit card information from the veterans over the phone.
- Other Florida veterans have complained of persons “representing them” for as much as \$6,000 up front with a percentage of any eventual back payment from the VA as a portion of the ultimate fee.
- One attorney bragged in his own newsletter of “earning over \$200,000 helping people receive VA benefits.”
- Even simple internet searches reveal dozens of organizations outright promising “how to hide assets to receive VA pension”

The American Legion service officers across the country all express frustration with seeing veterans and their families, at a difficult and vulnerable crossroads in their lives, being manipulated and taken advantage of by these organizations moving in to separate veterans from their assets with often false promises about VA benefits.

The VA pension system exists to help some of the most financially disadvantaged veterans. These veterans are not being served justly if outside actors can manipulate the system to take advantage of veterans for their own organizations’ financial gain. Other systems, such as Social Security and Medicare, have a longer “look back” period than VA, and some organizations exploit the difference in these periods for their own gain to the detriment of the veterans they claim to be “assisting” with their claims. While The American Legion cannot specifically state what appropriate look back period would be, one that would still adequately serve the needs of the veterans involved, we are examining the issue closely in the hopes of providing sound policy advice for the future of this program.

What is clear is that this is an issue that deserves greater scrutiny. We cannot allow these veterans to be defenseless against the predations of these organizations when they have so selflessly offered the sacrifice of their lives and well being in defense of this nation. The American Legion thanks this committee for their work to help ensure protections of the elderly of this nation, and specifically for taking the time to delve into this matter regarding the aging veterans’ population. It is only with continued attention to this problem that we will be able to offer protection to our nation’s aging veterans.

**Testimony to the United States Senate
Special Committee on Aging
by Kris Schaffer of Billings, Montana**

June 6, 2012; 2:00 pm

Senators, of the Special Committee on Aging: I thank you very much for the opportunity to be addressing you today.

My name is Kris Schaffer. I am the owner of a small print shop, Accent Print Shop, in Billings, Montana. I am a wife and a mother. I have been asked to come here today to provide testimony as to my experience with the VA Aid and Attendance Pension Program.

During the Spring of 2011, only one short year ago, I was growing increasingly concerned about my mother's health. Both of my parents were still living, but her health seemed to be deteriorating rapidly; and providing her care was more than my father could manage, and more than I could, too.

My father served in the Navy in World War II in the South Pacific. I heard about the VA Aid and Attendance Pension Program, and it seemed that it might be the answer to our prayers. But I am always a person who wants to get the particulars. This tendency of mine serves me well in my business as well as my personal life; I am not a person who tends to be duped by a fast talker. I attended a seminar on the VA Aid and Attendance Pension Program, along with my father, put on by an independent living facility, which I had understood was well thought of in our community: Aspen View. My understanding was that it was a separate facility from the nearby nursing home facilities, but that nursing home services could be provided, when and if they were needed. Providing information on the VA Aid and Attendance Pension Program was

the sole purpose of the seminar my father and I attended.

The speaker was an attorney, Douglas F. Ocker, who said he was "an Attorney and Counselor at Law" in "An Elder Caring Law Firm" in Corpus Christi, Texas; he had been brought in by the independent living facility. The speaker represented himself as being "accredited by the Department of Veterans Affairs;" his website was even:

www.SeniorVeteranUSA.com. Each attendee was given a very official-looking presentation folder with information and requirements on the VA Aid & Attendance Pension Program.

The first question the attorney put forth as something he wanted to clarify was "Why should I use a VA accredited attorney when some people will fill out my application for free?" We then received eleven reasons why, such as: Insurance agents disguise themselves as Veteran's Officers; Attorneys are licensed to draft legal documents for asset and income restructuring; Medicaid is a "timebomb;" the attorney is licensed to represent clients in VA court, and so forth.

We were told that, if we decided to use the the VA Aid and Attendance Pension Program, we needed to use an attorney to fill out this complicated paperwork. We were also advised not to use the local VA department because they were not familiar with this particular program. I feel very stupid now for believing him, but I did. It all seemed so very much on the up-and-up: a program of our government showing its appreciation, at the end of their lives, for the dedication of our veterans in preserving our freedoms.

At the end of the seminar, all attendees were invited to visit with the attorney to see if they would qualify for this VA Aid & Attendance Pension Program. My father and I set an appointment and visited with Mr. Ocker himself. When we came, we had all my father's papers and necessary information. As the attorney reviewed the paperwork, he "guaranteed" us that my father "would qualify." Then, he told us he "needed to have \$4000.00 to fill out the

paperwork." That was the first we had heard of that requirement, and my father informed him that he did not have \$4000.00 to pay for this service and that we did not realize that there was a charge for filling out VA paperwork. The attorney told us he would "do us a favor" by calling in the manager of the independent living facility and explaining our situation. The manager came into the meeting, and the attorney told him that my father did not have the funds to pay him to fill out the VA paperwork. The manager asked the attorney if my father would qualify for the VA Aid and Attendance Pension Program; the attorney responded "most certainly." With that being said, the manager of the facility told my father that he and my mother could move into Aspen View in Billings. They told me that I should fill out the paperwork since we already knew, from the attorney, that they qualified and would not be turned down. We were told the amount of their monthly rent. We were told that the VA Aid and Attendance Pension Program would pay \$1949.00 (the amount for a married couple) and that my parents would pay the remaining balance of the monthly rent, which was \$1638.00; a very large financial commitment for my parents.

In order for my parents to afford even their portion of the independent living facility rent, they needed to sell their home, which was their primary asset. They made that big and difficult decision, sold their beloved home in order to make the whole thing possible-- the provision of care for their remaining years-- and my parents moved into the facility on July 7, 2011.

I filled out the paperwork required by the VA for my parents. I did not find the paperwork terribly complicated. I went through all of the written requirements, and my father appeared to me to meet them all. I have provided copies of the presentation documents that were given to me for the use of the Committee. One of the requirements was that I needed to send a letter to the VA from the independent living facility. I remember picking up this letter from the facility. I

read it prior to sending it in with the rest of the paperwork. I did see, for the first time, when I read the letter, "Our staff is available 24 hours a day to assist Henry with any emergency that may arise, in addition to providing meal preparation, transportation, weekly housekeeping, and any other medical needs that are prescribed. Numerous health care providers work with our residents in providing medication monitoring, assistance with bathing, dressing, and feeding etc." It had certainly been my understanding that those services would be provided when they were needed.

I discovered, later, as my mother grew more ill, that this independent living facility actually does not supply any medically necessary help for its residents. If the residents need help, they are required to search out outside companies as sources for a supply of such services.

In the end, I had very little time to cope with these issues because my dear mother only lived for five days, once she left her home and moved into the facility that we thought would be providing her necessary care, before passing away. At that time, I forwarded all documents to the VA so that they knew that, from that time forward, only my father would be needing the benefits of continuing to live in the institutional independent living facility. Shortly after I sent those documents, my father received a letter of denial.

Only after my father received that letter of denial were we told that, in order to qualify for the VA Aid and Attendance Pension Program, a person needs to require daily assistance in dressing, feeding himself, and bathroom chores. This was never addressed, or set forth as a requirement in the seminar that we attended, in the written paperwork, or in any of the forms I filled out for my parents. My father's relatively healthy condition was clear when we met with the attorney and when the independent living facility staff person was called in to discuss the \$4000 fee. It was clear to both the attorney and the staff person that my father would be selling

my parents' house in order to be able to pay their portion of the "monthly rent."

As I speak before you today my father, heartbroken at the loss of his life's partner, to whom he was married for 57 years, is also in limbo, or worse; not knowing how to proceed. My father has worked hard his whole life. He has never asked for a hand out from anybody. He thought he was doing right by his beloved wife as well as making certain that he would not become a burden on his children with his eventual health decline, by selling his home and moving into this facility as a part of the VA Aid and Attendance Pension Program. He made this decision based on the advice of someone who held himself out as an attorney "certified" by the VA Aid and Attendance Pension Program and was providing independent and reliable advice.

When I received the information of the denial, I was horrified. I informed AspenView that I would be appealing. Then I went directly to Senator Tester's office in Billings for assistance. It was he, together with Senator Kohl, Senator Corker and Senator Wyden, who asked me to appear today to tell my story and that of my family.

The staff of AspenView has not yet approached my father and demanded the balance of the difference of what the VA was understood, by them and by me, to be paying. But I know that they will. In fact, some friends of my parents, in their 90s, in this very same situation with the VA Aid and Attendance Pension Program, have been ousted from what they thought was their final residence for their declining years.

It appears to me that AspenView does not actually comply with the requirements of the VA Aid and Attendance Pension Program. It also appears to me that senior citizen veterans are being lured into disposing of their limited assets to pay an exorbitant amount for services and then, only after it is too late, being denied any benefits whatsoever by the VA and are being left with no place to live. I do not know, fully, who is at fault. I only know that, for my father, this

is a terrible miscarriage of justice. I have come all the way from Montana to Washington, DC, to the most powerful institution in the world, to ask for help for my father and others in his situation. I ask that you get to the bottom of what happened, discover who is at fault, and set things right for the remaining years of the veterans whose stability has been so threatened.

I thank you so very sincerely for allowing me to appear today on behalf of those, who tend to be so much older than am I and so much less able to travel to meet with you and speak for themselves. I would be honored to answer any questions you may have.



VETERANS FINANCIAL, INC.

**U.S. Senate Special Committee on Aging
Hearing**

**VA Aid and Attendance Program
June 6, 2012**



I would like to start by taking a moment to thank the Special Committee on Aging, including Senator Bob Casey from my great state of Pennsylvania, for inviting Veterans Financial, Inc. to address the GAO Veterans' Pension Benefits Report. While I concur with many of the issues and concerns raised as well as some of the recommendations, I believe my testimony will give the Senators a better understanding of how private companies are playing a key role in educating Veteran families about this VA benefit to which they are entitled.

Let me first give you a brief background of my company, Veterans Financial, Inc. We are a national organization working throughout the country. To date, we have educated just over 69,000 veteran families about the VA's Aid & Attendance Pension from the Department of Veterans Affairs. Callers are referred to our 800# from a variety of different sources but primarily assisted living directors, eldercare professionals, workshops and the Internet. All 69,000 families have been helped at no cost to the family or any third party and without regard for their need of financial planning services.

The majority of families we come in contact with did not know there were VA benefits available to help pay for long term care expenses prior to being referred our company, yet it has always been Veterans Financial's belief that the VA wants all who are entitled to Aid and Attendance to receive it. Veterans Financial and the 200 other companies and attorneys surveyed for today's report are creating an awareness that otherwise wouldn't exist.

However, as with any industry there are those who perform their duties with responsibility and diligence and others who are more concerned with what is in their best interest rather than their clients. Several such examples are referenced in the GAO's report, including advising claimants to report erroneous care expenses, failing to submit an application to the VA because the family did not take the planners advice, and charging astronomical fees for trusts or other work. This behavior is despicable and embarrassing to companies like mine who go to great pains to ensure that things are done ethically and in compliance with VA regulations. I trust that you have selected my company to testify today because you believe we have acted in good faith with our marketing efforts, promise of genuine assistance and excellent follow-through to all Veteran families. See today's exhibits for examples of the full disclosure in our marketing materials.

While I cannot speak to the experiences of other organizations and attorneys, the typical caller to Veterans Financial is not similar to those referenced in the GAO report that transferred \$500,000 or \$1,000,000 prior to applying for benefits. Our typical caller is the child of a veteran or surviving spouse who has begun the search for assisted living or home care and realized that the monthly fees far exceed their parent's income and have savings significantly lower than the VA's arbitrary threshold of \$80,000. For these families Veterans Financial becomes a source of invaluable information and great relief when they learn Mom or Dad may be eligible for Aid and Attendance and therefore can afford the care they need without having to go into a Medicaid nursing home, somewhere they don't currently belong. To this point, we have countless letters of thanks and praise from people in all walks of life.

Veterans Financial, Inc.

The GAO's report suggests that the type of financial planning my firm does as well as trust creation by attorneys is a rampant practice. The reality is the average assisted living resident is 87 years old with \$1,583 of monthly income according to data provided by ALFA. At the same time they are paying \$3,300 per month for assisted living according to Glenworth's 2012 Cost of Care Survey which does not include Medicare Supplements, prescription medications, co-pays and other expenses while having long since diminished or exhausted whatever saving they had when they retired at 65. Of the tens of thousands of families we have spoken with, less than 2% transfer assets out of their name in order to become eligible. The other 98% were financially eligible without transferring assets or had significant assets and elected not to apply for benefits.

I also see that the report references attorneys who promote the use of trusts for VA planning while warning that annuities make people ineligible for Medicaid. It is necessary to point out to the Committee that a transfer to an annuity into the children name starts the same 5 year look back that a transfer to a trust does. Both strategies create a period of ineligibility and in both cases, the family has to wait no longer to become Medicaid eligible then had they done no planning at all.

It is also key to understand that permitting families to receive Aid and Attendance as early as possible allows seniors to remain private pay significantly longer. Forcing them to wait until they are nearly destitute will mean that Aid and Attendance is too little too late. Social Security and VA Pension is not enough to pay for care. Without adequate savings to supplement their expenses, most will have no other care option than a Medicaid facility. It seems as if in this conversation Medicaid is seen as the optimum alternative to private pay assisted living when in reality the cost of a skilled care is nearly double that of a private pay assisted living. Changes to the current system will not save the government money, but instead cause more seniors to join the Medicaid rolls adding additional stress to our current budgetary constraints.

I would propose to the Committee that the VA work with the private sector to develop a best practices policy which will ensure our nation's veterans receive only ethical, accountable assistance as well as to level the playing field from provider to provider. Families should not have to search to find a company or attorney charging the lowest fees, as if they were shopping for a new car. I would personally offer my experience and time to work with the Office of General Council in developing such a system and a means for implementation across the United States.

One final thought, all Veterans benefits including Compensation, Pension, Housing, Healthcare, Job Training and Education programs have been set in place to prevent our nation's veterans and their families from becoming destitute. As John Gingrich, Department of Veterans Affairs Chief of Staff expounded upon in his reply last month to the GAO, "VA's improved pension program was designed by Congress to provide economic security to financially disadvantaged wartime Veterans and their surviving spouses without delay." Be very cautious about turning this valuable Pension into a welfare program with an arduous approval process that only helps those completely impoverished. Our veterans, who risked their lives for this country and our freedom, deserve better than that.

Emily Schwarz
President
Veterans Financial, Inc.

Veterans Financial, Inc.

STATEMENT OF
DAVID R. MCLENACHEN
DIRECTOR, PENSION AND FIDUCIARY SERVICE
VETERANS BENEFITS ADMINISTRATION (VBA)
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
SENATE SPECIAL COMMITTEE ON AGING
June 6, 2012

Chairman Kohl, Ranking Member Corker, Senator Wyden, and Members of the Committee thank you for the opportunity to discuss the Department of Veterans Affairs (VA) pension program.

Pension Overview

VA's pension program provides supplemental income to wartime Veterans who are either 65 years of age and older or permanently and totally disabled due to non-service connected disabilities, and meet certain income and net worth requirements.

Although VA administers three pension programs, most of the nearly 516,000 pension beneficiaries are participants in the program known as Improved Pension, which was established by Congress as of January 1979. VA's other pension programs, Old-Law and Section 306 Pension, have less than 26,000 beneficiaries combined and are closed to new applicants. From its inception, VA's Improved Pension program has been designed to provide economic security to financially disadvantaged wartime Veterans and their survivors by paying pension benefits quickly and without the extensive development often required with VA's disability compensation program. With this goal in mind, VA implemented in 1979 the current program design based upon the statutory framework established by Congress. Operating under this framework, VA paid in fiscal

year (FY) 2011 over \$4.5 billion in pension benefits to almost 314,000 Veterans and 202,000 survivors. During that year alone, VA completed nearly 50,000 original claims for Veterans' pension and over 60,000 claims for survivors' pension, while maintaining an accuracy rate of nearly 98 percent.

In addition to the basic rates, the pension program provides for "enhanced" or "special monthly pension" rates, which have become known by the type of disability required to establish an entitlement for each: aid and attendance (A&A) and housebound. These are not unique benefits, but rather increased monthly pension amounts paid to Veterans and surviving spouses based on additional disability. Generally, VA provides pension at the A&A rate to persons who require assistance with activities of daily living, are bedridden, a patient in a nursing home, or have severe vision disability. VA provides pension at the housebound rate to persons who are substantially confined to their home by reason of permanent disability. Between FY 2007 and FY 2011, VA granted over 144,000 Veterans' claims and over 137,000 survivors' claims for pension at the A&A rate.

Increased Oversight

Because of their financial need and often-advanced age, pension recipients are among VA's most vulnerable population of beneficiaries. These beneficiaries comprise more than 50 percent of the individuals in VA's fiduciary program for beneficiaries who cannot manage their VA benefits as a result of injury, disease, or the infirmities of age. Recognizing this, last year, Secretary Shinseki approved reorganization within the Veterans Benefits Administration (VBA) to establish a new office to more directly control and administer the pension program. In April 2011, VBA established the Pension and Fiduciary (P&F) Service, led by a VA Senior Executive, to focus, in part, on the unique needs of the pension program and pension beneficiaries. This reorganization has allowed VBA to establish a staff dedicated to pension policy and procedures, and to establish a separate staff responsible for all aspects of pension quality, training, and field station oversight visits.

Program Initiatives

One of the first tasks undertaken by the new P&F Service in January 2012, was to identify gaps in VA's pension regulations, particularly with respect to program integrity measures. Among the gaps identified were a lack of a prescribed look-back period for asset transfers, and a lack of specific regulations addressing the use of gifts, trusts, and annuities for purposes of reducing net worth and creating pension eligibility. P&F Service noted that the forward-looking nature of the pension application process, combined with the lack of specific rules governing asset transfers, produced circumstances in which one claimant could transfer substantial assets to another person before applying for pension and still receive the benefit, while a similarly situated claimant in possession of the same assets would not be eligible for pension due to excessive net worth. Accordingly, P&F Service began drafting regulations to address these and other issues related to the integrity of the pension program. VA plans to publish proposed regulations before December 1, 2013.

Government Accountability Office (GAO) Report, GAO-12-540

In its recent report, "Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits," GAO concluded that (1) the design and management of the pension program did not limit pension to only those with financial need, and (2) many organizations help pension claimants transfer assets in order to qualify for pension. As will be explained below, VA generally agrees with GAO's conclusions. I will address each of GAO's four recommendations and describe the steps VA is taking to address them.

GAO's first recommendation was that VA modify application and eligibility verification report (EVR) forms to ensure that claimants and beneficiaries have space to report transfers of assets and to specify the types of assets transferred. For those transfers that are reported, GAO recommended that the forms direct claimants to provide documentation sufficient to enable VA to determine whether a claimant has retained ownership and control of the assets. VA concurred with this recommendation and has already begun the process to revise relevant forms. Currently, VBA is revising VA Form

21-527, *Income-Net Worth and Employment Statement*, and will revise the other forms, including the various EVRs, which VA uses to gather net worth information in the pension program. VA notes that all the forms and their associated collections of information will be revised and subject to review and approval by the Office of Management and Budget.

GAO's second recommendation was that VA verify financial information during the initial application process by requesting supporting documentation such as bank statements or tax returns or using automated databases. VA's priority goal is to decide disability compensation and pension claims within 125 days while maintaining 98 percent accuracy. Accordingly, VA concurs in principle with this recommendation, but believes that further analysis is required to determine the best way to conduct up-front verification of income and assets without adding to the time required for the adjudication of claims for pension or unnecessarily burdening pension claimants and beneficiaries, many of whom are elderly. VA also notes that additional analysis is required to determine whether the benefits of up-front verification, as measured in the number and amount of unwarranted pension payments prevented, justifies the imposition of system-wide changes that will increase the time required to adjudicate pension claims, increase the reporting burden on eligible Veterans or surviving spouses, and increase the resources needed to adjudicate claims. VA expects to complete its analysis by November 1, 2012.

Before receiving the GAO report, VA had already started the process to determine what types of objective information would be readily available to pension adjudicators, claimants, and beneficiaries, which could be used to verify financial information. However, we note that annuities, trusts, and other financial products or legal instruments, in particular, are complicated documents, which may vary significantly depending upon the claimant's circumstances. Accordingly, VA must consider in its analysis the feasibility of using non-standard financial documents to adjudicate claims and the training that would be required for VA's pension personnel to timely review and adjudicate pension claims based on financial information received from claimants.

VA concurred with GAO's third recommendation, that VA improve coordination between its pension and fiduciary programs to identify unreported assets, but requested that GAO close the recommendation because current VA procedures address the issue. Current procedures require VA's fiduciary field examiners, employees who visit Veterans and survivors and their proposed fiduciaries, to report to the VBA Pension Management Center with jurisdiction any credible net worth and income information that would affect a beneficiary's pension benefit. In addition, VBA established in November 2011 a pension-fiduciary workgroup that meets monthly to discuss methods of program coordination. As part of its efforts, the workgroup is establishing procedures to further facilitate the reporting of relevant income information from fiduciary to pension personnel.

GAO's fourth recommendation was that VA should, "revise the VA procedures manual to better define the concept of ownership and control to help claims processors determine when specific types of assets such as annuities and trusts should be counted as part of net worth, and establish a more specific criteria for what is considered a reasonable period of time for pension claimants to use up their financial resources before becoming eligible for pension benefits."

VA concurs with GAO's recommendation that the rules governing the pension program's definitions of net worth, ownership of assets, and asset transfers should be clarified to provide clear guidance to pension personnel, but disagrees with the proposed method of implementation. VBA's adjudication procedures manual interprets VA regulations and establishes non-substantive policies and procedures for personnel to follow in adjudicating benefit claims. Unlike regulations, which, when properly promulgated, have the force and effect of law, manual provisions are not binding on the agency or claimants and cannot be used to impose obligations on claimants. Accordingly, VBA began drafting proposed regulations in March 2012, which would address the effect of pre-filing asset transfers on pension eligibility. The proposed regulations would also address and clarify the various factors VA uses to determine

whether excessive net worth precludes eligibility for pension (e.g., life expectancy, income, expenses, and liquidity of assets), and generally provide a more consistent set of rules for efficiently adjudicating pension claims. Upon completion of the rulemaking proceedings, VBA will amend its manual provisions consistent with the new regulations. The amended manual will interpret the regulations and provide the procedures required to properly implement them. Because the rulemaking process established by the Administrative Procedure Act provides an opportunity for public comment on the proposed rules and requires VA's final rule to address any comments received, we estimate that any rulemaking would not be complete until December 1, 2013.

Program Spending

Between FY 2007 and FY 2011, obligations for VA's pension program increased from over \$3.7 billion to approximately \$4.3 billion, an increase of over 4.1 percent annually over this time period. Some portion of this increase is due to cost-of-living adjustments (COLA). By law, VA is required to increase the maximum rate of VA pension benefit amounts by the same amount Social Security benefit amounts are increased for a COLA. In FY 2012, VA increased the maximum rate of pension benefits by 3.6 percent, which is equal to the COLA provided for Social Security and Supplemental Security Income (SSI) benefits. Similarly, the COLA increased the maximum rate of VA pension benefits by 3.3 percent in FY 2007, 2.3 percent in FY 2008, and 5.8 percent in FY 2009. There was no COLA in FY 2010 or FY 2011.

Increased Claims and Grants of Enhanced Pension

Between FY 2007 and FY 2011, grants for pension at the A&A rate increased from 22,513 and 19,593, for Veterans and survivors, respectively, to over 38,000 in each category. VA believes several factors contributed to this increase and that grants for pension at the A&A rate will continue to increase.

Changes in the laws governing representation of claimants before VA may have increased the number of claimants seeking pension. In December 2006, Congress enacted Public Law 109-461, which, among other things, permitted VA-accredited

attorneys and agents to charge claimants fees for representation earlier in the claim process. The law also eliminated misdemeanor criminal penalties for unlawfully charging fees for representation of claimants before the Department. Since the enactment of that law and the publication of VA's implementing regulations in May 2008, VA has accredited over 8,900 attorneys and almost 190 claims agents. We also note that the biggest increase in grants of pension at the A&A rate occurred between 2009 and 2011, a period of economic difficulty for many Americans.

In response to a December 2011 report, "VA Enhanced Monthly Benefits: Recipient Population is Changing, and Awareness Could be Improved," GAO-12-153, VA's P&F Service recently began to collaborate with professional groups that serve the elderly in an effort to improve education about VA pension, and is working with VBA's Benefits Assistance Service on other efforts to reach potential pension beneficiaries. Based on this expanded outreach, which may include targeted mailings to those beneficiaries not currently in receipt of enhanced pension benefits, we estimate that applications and grants for enhanced pension will continue to increase, regardless of our efforts to strengthen program integrity. Consequently, while some portion of the increase in claims and grants of pension at the A&A rate are attributable to promotion of enhanced pension by businesses selling financial products and services, VA cannot determine what percentage of the increase is due to this or any other reason.

Involvement of VA's Office of Inspector General (OIG)

The Committee has asked why more was not done by VA's OIG in response to complaints about businesses that help claimants transfer assets prior to applying for pension. VA defers to OIG regarding the scope of its investigative activities. However, we note that VA's current pension regulations do not prohibit the pre-claim reduction of net worth through gifts and certain asset transfers. A pension claimant may transfer his or her assets before applying for pension, as long as the transfer is to someone other than a family member living in the same household and the claimant relinquishes all ownership and control over the assets. Therefore, if a business sells a Veteran a financial product that satisfies these transfer requirements, and all other pension

eligibility requirements are satisfied, the Veteran may qualify for pension, including pension at the enhanced A&A or housebound rates. Absent amendment of VA's regulations or legislation to prohibit such gifts and transfers, the sale of such a financial product might benefit the Veteran and would be legal for purposes of VA pension.

The Need for a Look-Back and Related Provisions

The legislative history of the law governing pension suggests that Congress intended that eligibility for VA's pension program would be based on actual financial need of wartime Veterans and their survivors. Accordingly, it is VA's position that the pension program was not intended to help preserve the estates of pension beneficiaries for their own or the heirs' use, and that claimants should not be permitted to create need where it does not exist by transferring assets that could otherwise be used for their maintenance.

Pursuant to section 1522 of title 38, United States Code, VA is required to deny or discontinue pension payments "when the corpus of the estate of the veteran or [the combined estates of the veteran and spouse] . . . is such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance." In other words, if a Veteran's net worth is such that some of it may be used for support, then net worth is excessive and bars eligibility for pension. Absent from section 1522, however, are any of the program integrity measures prescribed by Congress for other federal needs-based programs. These measures ensure that benefits are distributed based upon actual need, including definitive limits on net worth, restrictions on whether assets may be transferred as a means to reduce net worth for purposes of establishing eligibility, or look-back periods for the transfer of assets. As noted above, VA has broad authority to administer the pension program consistent with congressional intent and is already working on proposed regulations to address these issues.

Deferred Rent Arrangements for Residential Care Facilities

VA has received reports of assisted-living facilities offering to defer rent on residential contracts while a Veteran's or survivor's pension claim is pending. In a recent example we reviewed the contract provided that the facility would defer a portion of the monthly rent until the resident received a decision on their pension claim. So long as the resident kept the facility informed as to the status of the claim, the contract provided that the resident would not have to pay the deferred amount if VA denied the claim.

VA recognizes that there may be opportunities for unethical or misleading business practices. If an individual or organization lures a Veteran or survivor into signing a contract for services based on promises that VA will grant pension, or that they can expedite pension claims, such promises are patently misleading and may be subject to consumer enforcement actions outside VA's jurisdiction. If a VA-accredited attorney or agent were to make such promises, such conduct could potentially result in the suspension or cancellation of accreditation. However, if conducted in a fair and ethical manner, a facility's offer of deferred or reduced rent on a residence at which a Veteran or survivor receives needed care could be beneficial by providing a valuable resource until VA adjudicates the pension claim.

Related to the issue of deferred rent is the issue of whether some or all of the expenses associated with residence in a facility constitutes a deductible medical expense for purposes of establishing eligibility for pension. For those Veterans or survivors with a demonstrated need to be in a protected living environment in a home, assisted-living facility, or other institution, as certified by a physician or as indicated by a VA award of pension at the A&A or housebound rate, VA allows deductions for medical and nursing expenses and room and board. "Medical services" includes activities such as physical therapy, changing of sterile dressings, and the placement of catheters. "Nursing services" includes assistance provided to an individual with bathing, feeding, and dressing, or other activities of daily living.

Before the GAO issued its report, VA recognized that greater clarity in the pension regulations as to what types of living arrangements qualify as valid medical expense deductions for purposes of VA pension would assist VA adjudicators, claimants, pension beneficiaries, and facility operators. As a result, proposed regulations will include provisions that would define the unreimbursed medical expenses, which may be deducted from income for purposes of pension eligibility.

Challenges

Throughout the report, GAO compares VA's pension program to other federal needs-based programs, specifically the Department of Health and Human Services' Medicaid program and the Social Security Administration's Supplemental Security Income (SSI) program. However, as GAO's report correctly notes, unlike Medicaid and SSI, the statutes governing VA's pension program lack provisions addressing the effects of transfers of assets on eligibility for program benefits, e.g., a look-back and penalty period. Although VA is working to prescribe such provisions in regulations, it will have to follow the rulemaking procedures required by Congress in the Administrative Procedure Act and the resulting regulations will be subject to challenge in the U.S. Court of Appeals for the Federal Circuit.

Despite the need to impose additional program integrity measures, which may add complexity to the pension adjudication process, VA remains committed to delivering this needs-based benefit as quickly as possible to wartime Veterans and their survivors. To offset the potential for added complexity, VA has also been working on ways to expedite the adjudication of pension claims, to include permitting a family member to submit verification of income and eligibility information to VA on behalf of an elderly claimant and developing an automated rules-based processing system for pension claims.

Conclusion

In conclusion, I want to affirm VA's commitment to improving customer service for our pension beneficiaries, while also improving the integrity of the program. Before GAO issued its report, VA began work to revise the program integrity measures needed to

ensure that only those Veterans and their survivors with demonstrated financial need receive the benefits and services they have earned. The interest in our program expressed by GAO and this committee reflects the importance of this effort.

Mr. Chairman, this concludes my prepared remarks. I would be happy to address any questions or comments regarding my testimony here today.

GAO

United States Government Accountability Office
Report to Congressional Requesters

May 2012

VETERANS' PENSION BENEFITS

Improvements Needed
to Ensure Only
Qualified Veterans and
Survivors Receive
Benefits

**G A O**

Accountability • Integrity • Reliability



Highlights of GAO-12-540, a report to congressional requesters

Why GAO Did This Study

The VA pension program is intended to provide economic benefits to wartime veterans and survivors with financial need. GAO was asked to examine (1) how the design and management of VA's pension program ensure that only those with financial need receive pension benefits and (2) what is known about organizations that are marketing financial products and services to enable veterans and survivors to qualify for VA pension benefits. GAO's study included a review of VA's policies and procedures, site visits to VA's three Pension Management Centers, and online research and interviews of organizations that market financial and estate planning services to help veterans and survivors qualify for VA pension benefits.

What GAO Recommends

Congress should consider establishing a look-back and penalty period for pension claimants who transfer assets for less than fair market value prior to applying, similar to other federally supported means-tested programs. VA should (1) request information about asset transfers and other assets and income sources on application forms, (2) verify financial information during the initial claims process, (3) strengthen coordination with VA's fiduciary program, and (4) provide clearer guidance to claims processors assessing claimants' eligibility. In its comments on this report, VA concurred with three of GAO's recommendations and concurred in principle with one, citing concerns about the potential burden on claimants and recipients of verifying reported financial information. VA agreed to study the issue further.

View GAO-12-540. View related video clip. For more information, contact Daniel Bertoni at (202) 512-7215 or bertoniid@gao.gov.

May 2012

VETERANS' PENSION BENEFITS

Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits

What GAO Found

The Department of Veterans Affairs' (VA) pension program design and management do not adequately ensure that only veterans with financial need receive pension benefits. While the pension program is means tested, there is no prohibition on transferring assets prior to applying for benefits. Other means-tested programs, such as Medicaid, conduct a look-back review to determine if an individual has transferred assets at less than fair market value, and if so, may deny benefits for a period of time, known as the penalty period. This control helps ensure that only those in financial need receive benefits. In contrast, VA pension claimants can transfer assets for less than fair market value immediately prior to applying and be approved for benefits. For example, GAO identified a case where a claimant transferred over a million dollars less than 3 months prior to applying and was granted benefits. Also, VA's process for assessing initial eligibility is inadequate in several key respects. The application form does not ask for some sources of income and assets such as private retirement income, annuities, and trusts. As a result, VA lacks complete information on a claimant's financial situation. Also, the form does not ask about asset transfers—information VA needs to determine whether these assets should be included when assessing eligibility. In addition, VA does not verify all the information it does request on the form. For example, VA does not routinely request supporting documents, such as bank statements or tax records, unless questions are raised. VA's fiduciary program, which appoints individuals to manage the financial affairs of beneficiaries who are unable to do so themselves, collects financial information that may affect some pension recipients' eligibility, but VA pension claims processors do not have access to all this information. Further, guidance on when assets should be included as part of a claimant's net worth is unclear, and VA claims processors must use their own discretion when assessing eligibility for benefits, which can lead to inconsistent decisions.

GAO identified over 200 organizations that market financial and estate planning services to help pension claimants with excess assets meet financial eligibility requirements for these benefits. These organizations consist primarily of financial planners and attorneys who offer products such as annuities and trusts. GAO judgmentally selected a nongeneralizable sample of 25 organizations, and GAO investigative staff successfully contacted 19 while posing as a veteran's son seeking information on these services. All 19 said a claimant can qualify for pension benefits by transferring assets before applying, which is permitted under the program. Two organization representatives said they helped pension claimants with substantial assets, including millionaires, obtain VA's approval for benefits. About half of the organizations advised repositioning assets into a trust, with a family member as the trustee to direct the funds to pay for the veteran's expenses. About half also advised placing assets into some type of annuity. Some products and services provided, such as deferred annuities, may not be suitable for the elderly because they may not have access to all their funds for their care within their expected lifetime without facing high withdrawal fees. Also, these products and services may result in ineligibility for Medicaid for a period of time. Among the 19 organizations contacted, the majority charged fees, ranging from a few hundred dollars for benefits counseling to \$10,000 for establishment of a trust.

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Abbreviations

EVR	Eligibility Verification Report
IVM	Income Verification Match
PMC	Pension Management Centers
SSA	Social Security Administration
SSI	Supplemental Security Income
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration

View GAO Components

Video: Examples of Messages from Companies about Transferring Assets to Qualify for VA Pension Benefits

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United States Government Accountability Office
Washington, DC 20548

May 15, 2012

The Honorable Patty Murray
Chairman
The Honorable Richard Burr
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Herb Kohl
Chairman
Special Committee on Aging
United States Senate

The Honorable Ron Wyden
United States Senate

The Department of Veterans Affairs' (VA) pension program is intended to provide economic benefits to wartime veterans with financial need. It is available to veterans who are age 65 and older or who have disabilities that are unrelated to their military service, as well as to their surviving spouses and dependent children. To be eligible for VA pension benefits, a claimant must meet certain income and asset requirements. Recently, concerns have been raised that some organizations are marketing financial products and other services to enable claimants whose assets exceed the pension program's financial eligibility thresholds to qualify for these benefits. Also, these organizations may charge substantial fees for products and services that may not always be in claimants' best long-term interests.

At your request, we reviewed VA's pension program. Specifically, we examined (1) how the design and management of VA's pension program ensure that only those with financial need receive pension benefits, and (2) what is known about organizations that are marketing financial products and services to veterans and survivors to enable them to qualify for VA pension benefits. To address our first objective, we reviewed relevant federal laws and regulations, as well as policies and procedures regarding how VA assesses financial eligibility for pension benefits. We interviewed officials from VA headquarters, as well as staff at VA's three Pension Management Centers (PMC) to determine how these policies and procedures are applied. We also reviewed a nongeneralizable random sample of 85 pension claims that were entered into VA's electronic case file system in fiscal year 2010, in which VA had to formally

determine if the claimant met asset thresholds.¹ To address our second objective, we conducted internet research and interviews with veterans' advocacy groups, VA officials, and state and local officials to identify organizations that market financial and estate planning services to help veterans and surviving spouses qualify for VA pension benefits. We contacted some of these organizations to obtain their views on the types and suitability of the products and services they provide. In addition, we judgmentally selected 25 organizations to contact where our investigative staff posed as the son of an 86-year-old veteran, to obtain first-hand information about the types of products and services provided, and associated costs for a potential pension claimant. The 25 organizations were judgmentally selected to achieve geographic dispersion and include both financial planners and attorneys. Based on availability, we had discussions with representatives of 19 of these organizations.

We conducted this performance audit from July 2011 to May 2012 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Additional information on our scope and methodology is provided in appendix I.

Background

In fiscal year 2011, VA provided about \$ 4.3 billion in pension benefits for about 517,000 recipients. These benefits are available to low-income wartime veterans who are age 65 and older, or who are under age 65 but are permanently and totally disabled as a result of conditions unrelated to their military service.² Surviving spouses and dependent children may also be eligible for these benefits. At the end of fiscal year 2011, about

¹Our sample was nongeneralizable because not all pension claims where VA had to determine if the claimant met asset thresholds had been entered into VA's electronic case file system in fiscal year 2010.

²VA currently administers three pension programs, commonly referred to as Improved Law Pensions (Pub. L. No. 95-588, 92 Stat. 2497), Prior Law Pensions (Pub. L. No. 86-211, 73 Stat. 432), and Old Law Pensions (Pub. L. No. 73-2, 48 Stat. 8). About 95 percent of all pension recipients are under the Improved Pension program, and new beneficiaries can only accede to this program. We will focus on the Improved Pension program in this report. For veterans with service-connected disabilities, VA provides cash benefits through its disability compensation program.

314,000 pension recipients were veterans and about 203,000 were survivors. Also, about 329,000 recipients were over 65 and the average age was 71 for veterans and 79 for survivors. Average annual payments in fiscal year 2011 were \$9,669 for veterans and \$6,209 for survivors.

VA provides pension benefits through its Veterans Benefits Administration (VBA), and accredits representatives of veterans' service organizations, attorneys, and claims agents to assist claimants with the preparation and submission of VA claims at no charge.³ To become accredited, an individual must meet certain requirements set forth in federal law.⁴ Claims processors assess claims at VBA's three Pension Management Centers (PMC) in Philadelphia, Penn.; Milwaukee, Wis.; and Saint Paul, Minn. As part of the pension program, VA provides enhanced pension benefit amounts to veterans and surviving family members who demonstrate the need for aid and attendance, or who are considered permanently housebound.⁵ For pension beneficiaries who are deemed unable to manage their affairs due to mental impairments, VA appoints a fiduciary to manage the beneficiary's finances.

To qualify for pension benefits, claimants' countable income must not exceed annual pension limits that are set by statute. These income limits are also the maximum annual pension payment that a beneficiary may receive. Such limits may vary based on whether claimants are veterans or survivors and their family composition, as well as whether claimants need aid and attendance or are considered housebound. For example, to qualify for pension benefits in 2012, a veteran with no dependents and who is in need of Aid and Attendance benefits cannot have income that exceeds \$20,447, while a surviving spouse in similar circumstances

³See 38 U.S.C. §§ 5901-5904.

⁴*Id.*

⁵Veterans may be eligible for Aid and Attendance benefits if they demonstrate an inability to perform everyday personal functions such as bathing, dressing, eating, adjusting prosthetic devices, and protecting themselves from hazards or dangers in their daily environment. They may also be eligible for these benefits if they are a patient in a nursing home, bedridden, or are blind or nearly blind. Veterans may be eligible for Housebound benefits if they have a disability rated at 100 percent and, as a result, are permanently or substantially confined to their homes, or have a disability rated at 100 percent and at least one other disability rated at 60 percent or more (although these individuals are legally classified as housebound, they may be able to leave their homes). See GAO, *VA Enhanced Monthly Benefits: Recipient Population Is Changing, and Awareness Could Be Improved*, GAO-12-153 (Washington, D.C.: Dec. 14, 2011).

cannot have an income that exceeds \$13,138. In determining if a claimant's income is below program thresholds, VA includes recurring sources of income such as the Social Security Administration's (SSA) retirement and disability benefits, but not income from public assistance programs such as Supplemental Security Income (SSI). VA also allows some expenses, such as certain unreimbursed medical expenses that exceed 5 percent of the maximum pension amount the claimant is eligible for, to be deducted from a claimant's countable income. The annual amount pension beneficiaries receive is the difference between their countable income and the maximum pension amount they would be eligible for (see table 1).⁶

Table 1: 2012 Maximum Annual Pension Benefit Limits

Type of benefit	Limit for veteran with no dependents	Limit for veteran with one dependent	Limit for surviving spouse with no dependents	Limit for surviving spouse with one dependent
Pension without Aid and Attendance or Housebound benefit	\$12,256	\$16,051	\$8,219	\$10,759
Pension with Housebound benefit	14,978	18,773	10,046	12,582
Pension with Aid and Attendance benefit	20,447	24,239	13,138	15,673

Source: GAO analysis of information from VA website.

VA's policy manual specifically states that the pension program is not intended to protect substantial assets or preserve an estate for a beneficiary's heirs. In assessing financial eligibility for pension benefits, VA also considers net worth or the total value of claimants' assets, such as bank accounts, stocks, bonds, mutual funds, and any property other than the claimant's dwelling, a reasonable lot area, a vehicle, and personal belongings.⁷ There are no thresholds on the value of a

⁶Certain veterans who receive nursing home or domiciliary care at the government's expense are only eligible for no more than \$90.00 per month in pension benefits.

⁷See 38 C.F.R. § 3.275. For claimants who are veterans, VA also assesses the net worth of the veteran's spouse to determine financial eligibility.

claimant's assets that are defined in statute.⁸ However, according to VA's procedures manual, claims processors are generally required to formally determine if claimants with assets worth over \$80,000 have financial resources that will last a reasonable period of time to pay for their basic expenses. In making this determination, claims processors consider net worth, income, expenses, age, and life expectancy to determine if claimants' financial resources are sufficient to pay for their expenses without assistance from VA. Ongoing eligibility for pension recipients who previously reported any income other than, or in addition to, Social Security income is also assessed. These recipients must complete an annual Eligibility Verification Report (EVR), which requests information on income and assets, that is used to determine if recipients continue to be financially eligible for the pension program.⁹

Potential VA pension recipients may also be eligible for other means-tested programs. For example, they may be eligible for Medicaid, a joint federal-state health care financing program that provides coverage for long-term care services for certain individuals whose income and resources do not exceed specific thresholds. Each state administers its Medicaid program and establishes specific income and resource eligibility requirements that must fall within federal standards, but we reported in 2007 that in most states, an individual must have \$2,000 or less in countable financial resources to be eligible.¹⁰ Similarly, the SSI program provides cash benefits to individuals who are age 65 or older, blind, or disabled, and who have limited income and whose financial resources are \$2,000 or less (\$3,000 if the individual lives with their spouse).¹¹

⁸The relevant statute states that a veteran's pension shall be denied "when the corpus of the estate of the veteran or, if the veteran has a spouse, the corpus of the estates of the veteran and of the veteran's spouse is such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance." 38 U.S.C. § 1522(a).

⁹38 C.F.R. § 3.277.

¹⁰GAO, *Medicaid Long-Term Care: Few Transferred Assets before Applying for Nursing Home Coverage; Impact of Deficit Reduction Act on Eligibility Is Uncertain*, GAO-07-280 (Washington, D.C.: Mar. 26, 2007).

¹¹Individuals in some states who require long-term care services can become eligible for Medicaid benefits through participation in the SSI program.

VA Pension Program Design and Management Do Not Ensure Only Those with Financial Need Receive Benefits

Program Allows Claimants to Transfer Assets Prior to Applying, Unlike Other Means-Tested Programs

We found several potential vulnerabilities in the VA pension program's design, as well as in VA's policies and procedures, that hinder the department's ability to ensure that only those in financial need receive benefits. More specifically, the program allows claimants to transfer assets prior to applying for benefits, and VA lacks complete information on claimants' finances, relies on self-reported information, and does not utilize all opportunities for coordination within the agency. Additionally, guidance that claims processors use may be unclear. Despite being means-tested, the program currently permits VA pension claimants to transfer assets and reduce their net worth prior to applying for these benefits.¹² Federal regulations state that, when evaluating financial eligibility for pension benefits, assets gifted to someone that does not reside in the claimant's household will reduce the claimant's net worth if all rights of ownership and control of the assets have been relinquished.¹³ As a result, prior to applying for benefits, claimants can transfer excess assets to someone outside their household to meet the financial eligibility criteria for VA pension benefits and be approved, as long as they no longer retain ownership or control of the assets.¹⁴ For example, we identified a case involving a pension recipient who transferred over a million dollars in assets into an irrevocable trust less than 3 months prior to applying for these benefits.¹⁵ VA was aware of the asset transfer when

¹²38 C.F.R. § 3.276(b).

¹³*Id.*

¹⁴Assets gifted to a family member in the pension claimant's household do not reduce the claimant's net worth.

¹⁵An irrevocable trust is one that cannot be terminated by the individual who set up the trust once it is created. Black's Law Dictionary (8th ed. 2004).

this pension claim was approved and did not count the trust as part of the claimant's net worth. Although these types of transfers are generally permitted under law for the pension program, this practice is not consistent with other federal means-tested programs and weakens the pension program's goal of supporting those with financial need.

In contrast, for Medicaid—another means tested program—federal law explicitly restricts eligibility for coverage for long term care for certain individuals who transfer assets for less than fair market value prior to applying.^{16,17} As a result, when an individual applies for Medicaid coverage for long-term care, states conduct a look-back—a review to determine if the applicant transferred assets for less than fair market value prior to applying. Individuals who transfer assets for less than fair market value during the 60 months prior to applying may be denied eligibility for long-term care coverage for a period of time, known as the penalty period.¹⁸ For example, gifting assets would generally be considered a transfer of assets at less than fair market value and would result in a penalty period. Also, under the SSI program, claimants who transfer assets for less than fair market value prior to applying may become ineligible for these benefits for up to 36 months.¹⁹

¹⁶42 U.S.C. § 1396p(c).

¹⁷An asset transfer at less than fair market value would occur when the claimant gifts or sells a resource and gets in return an amount that is less than the value of the resource on the open market at the time of the transfer.

¹⁸The penalty period is calculated by dividing the uncompensated dollar value of the assets transferred by the average monthly cost of private nursing home care in the state (or in the community, at the option of the state). The penalty period generally begins on the later of (1) the first day of the month during or after which the individual transferred assets at less than fair market value, or (2) the date on which the individual would have been eligible for Medicaid coverage for long-term care if it were not for these asset transfers. Certain asset transfers are exempt from Medicaid penalty provisions such as a home transferred to an individual's spouse or disabled child. Asset transfers would also not be penalized if the individual can demonstrate that the transfer was carried out exclusively for purposes other than qualifying for Medicaid, or when the state determines that the penalty would result in undue hardship. 42 U.S.C. § 1396p(c).

¹⁹42 U.S.C. § 1382b(c)(1)(A).

VA Lacks Complete Information on Claimants' Finances

VA lacks complete information on claimants' finances because the forms used to assess financial eligibility do not prompt applicants to report certain types of income and asset information. While the instructions on the pension application forms ask claimants to report all income sources and assets they own,²⁰ the forms do not provide spaces for claimants to report some types of income and assets. For example, even though elderly pension claimants may receive private monthly retirement income, such as income from a company's retirement plan, the application forms do not specifically provide space for claimants to report such income. According to SSA, in 2009, 9 percent of the aggregate income of those age 65 and older consisted of private pension income.²¹

The application forms do provide a space to report other income sources not specifically itemized on the forms. However, some claims processors we spoke with said claimants who report an amount in that space do not usually specify the source of this income, or if this amount represents a single or a combination of income sources. As a result, they have to follow up with the claimant to obtain this information, which delays the processing of these claims.

Similarly, although the application forms specifically ask claimants to report assets such as bank accounts, stocks, and real property, the forms do not ask about other common assets such as annuities and trusts, which need to be considered when VA assesses claimants' financial eligibility. (See figure 1 to view the section of the application form pertaining to income and assets.)²² We found cases where claimants did not report assets that they are not specifically asked to report. For example, in one case a claimant did not report a trust with assets valued at about \$575,000. In another case, a claimant did not report a trust worth

²⁰VA has one pension application form for veterans and another form for surviving spouses and dependents.

²¹Social Security Administration, *Fast Facts and Figures about Social Security 2011* (Washington D.C.: August 2011).

²²An annuity is a financial instrument that provides income over a defined period of time for an initial payment of principal. An immediate annuity provides income immediately after the initial lump-sum payment. For a deferred annuity, the initial investment accumulates interest over a specified period of time before payments begin to be received. A trust is an arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or certain designated individuals.

about \$612,000. In contrast, we reviewed several state application forms for Medicaid long-term care benefits that specifically asked individuals to report information about annuities and trusts they may own, as well as retirement income.

Figure 1: Section of Application Form Pertaining to Income and Assets

VA form 21-526 (page 8)

PART VII. INCOME INFORMATION (Provide the income you received during the last month.)

NOTE: Report the total income before deductions for taxes, insurance, etc. If you do not receive any payments from one of the sources listed on the left, write "0" or "NONE" in the space. If you are receiving monthly benefits, give us a copy of your most recent award letter. This will help us determine the amount of benefits you should be paid. Payments from any source will be counted, unless the law says that they don't need to be counted.

MONTHLY INCOME - Provide the income that you and your dependents receive every month. For items 35A-35F, if none, write "0" or "NONE".

ITEM NO.	INCOME SOURCE	DATE	AMOUNT	VE
35A	Wages or salary			
35B	Retirement			
35C	U.S. Civil Service			
35D	U.S. Railroad Retirement			
35E	Military Retired Pay			
35F	Other (Interest, dividends, or one-time payments)			

PART VIII. NET WORTH INFORMATION (Provide the net worth you received during the last month.)

NOTE: Net worth is the total value of all property and rights in any kind of property other than real estate, including any mortgages or other claims against the property. However, net worth does not include the house you live in or a recreational area of land if you do not own it. Net worth also does not include the value of pension plans such as your vehicle, clothing, and furniture.

NET WORTH - Provide the net worth that you and your dependents have at the end of the month. For items 37A-37F, if none, write "0" or "NONE".

ITEM NO.	NET WORTH SOURCE	DATE	AMOUNT	VE
37A	Cash, non-interest-bearing bank accounts			
37B	Interest-bearing bank accounts, certificates of deposit (CDs)			
37C	Retirement accounts (IRAs, Keogh Plans, etc.)			
37D	Stocks, bonds, and mutual funds			
37E	Value of business assets			
37F	Real property (not your home)			

Form 21-526 seeks financial data on five specific sources of monthly income and six sources of the applicant's net worth, but it makes no mention of private retirement income, annuities, or trusts.

Source: GAO analysis of VA documents.

VA's application forms also do not provide a specific space for claimants to report asset transfers, even though the instructions on the veterans' application form ask claimants to disclose this information. Asset transfers to someone outside the claimant's household are allowed under the pension program, as long as the claimant relinquishes ownership and control of the asset. However, VA still needs to know about any asset transfers when assessing a claimant's financial eligibility because,

consistent with VA's regulations, the department must determine whether the claimant retains ownership and control of the transferred asset and if this asset should be counted as part of the claimant's net worth. Without a designated space to report this type of information, claimants may not report asset transfers on the application forms. For example, we saw one case where a veteran transferred assets worth about \$500,000 into an irrevocable trust 2 weeks prior to applying and did not report this on the application. VA learned of this asset transfer because the claims processor inquired about how the claimant's medical expenses were being paid. If the claims processor had not identified these assets and determined that they should be included in the claimant's net worth, because the claimant had not relinquished all ownership and control, the claim could have been approved. Application forms that do not specifically request information about certain income sources and assets, as well as asset transfers, may prevent VA from obtaining complete information about claimants' financial situation to properly assess their eligibility for pension benefits.

VA Relies on Self-Reported Information, and Verification Processes Are Incomplete

When assessing pension claimants' eligibility, VA relies primarily on self-reported financial information that, unlike other means-tested programs, is not independently verified.²³ VA does not require claimants to submit documents that corroborate self-reported financial information with their application, such as bank statements and tax returns. VA also does not require receipts to verify some types of claimed deductible expenses, even though these expenses may be a factor that enables some pension claimants to qualify for benefits. Without independent verification of self-reported financial information, VA will have difficulty detecting fraudulent claims. We identified cases where VA found individuals were advised by third parties to claim expenses they did not incur related to assistance with everyday living activities. For example, we saw one claim that was prepared by a financial planner in which \$1,700 in monthly caregiver payments to a daughter were claimed. The claimant subsequently stated to VA that he did not pay his daughter any caregiver fees. In another case, a pension recipient claimed an attorney advised him to claim he was paying his son \$1,000 per month for services that were not being provided in order to be eligible for a higher pension rate. The recipient

²³We reported a similar finding in GAO, *Veterans Benefits: Improved Management Would Enhance VA's Pension Program*, GAO-08-112 (Washington D.C.: Feb. 14, 2008).

subsequently withdrew this claimed medical expense. Most claims processors we spoke with said they accept self-reported financial information unless questions arise, and in those cases, supporting documentation may be requested. In contrast, some state Medicaid programs and the SSI program require applicants to submit documents that support some reported financial information, such as bank statements and tax returns.

VA also does not make use of existing opportunities to verify self-reported financial information during the initial eligibility determination. For example, VA conducts computer matches to verify reported income from SSA benefits during the initial claims assessment process but is not using this type of technology to verify the accuracy of other self-reported financial information. Additional automated systems may be available that would enable VA to independently verify financial information during the initial eligibility assessment. For example, while VA performs a data match with Internal Revenue Service and SSA data to assess ongoing eligibility, it does not perform this match at the time of the initial claims assessment. In addition, for the SSI program, SSA recently implemented the Access to Financial Institutions system that allows the program to electronically request and receive records from financial institutions and verify an applicant's or recipient's financial information. Similarly, Medicaid requires states to implement an asset verification system for assessing applicants' and recipients' financial eligibility.²⁴

VA's efforts to verify ongoing eligibility for pension benefits also have some shortcomings. Pension recipients who have previously reported income in addition to, or other than, Social Security income must annually complete an EVR. However, like the application forms, the EVRs do not provide spaces for claimants to report private retirement income, annuities, trusts, or asset transfers, and self-reported financial information is not independently verified unless the claims processor has questions. In addition, because not all pension recipients complete an EVR, VA may not be able to identify potential changes in the financial situation of recipients that may affect their ongoing eligibility for these benefits.

Other efforts to verify ongoing eligibility may not be effective in identifying ineligible pension recipients. VA's Income Verification Match (IVM)

²⁴42 U.S.C. § 1396w.

program uses a computer match to compare income reported to VA by pension recipients for a given year with SSA earned income data and IRS unearned income data for that year, to determine if these recipients have any unreported income. However, there is about a 15-month lag between when a pension recipient reports income and when the IVM can be conducted, and the delay may be even longer. For example, in 2011, VA was completing IVMs for income information that was reported in 2007. As a result, improper payments may be made to ineligible pension recipients for at least over a year, but possibly several years, before the error is detected. In one case we reviewed, a beneficiary, who was approved for benefits in 2004 and reported \$900 in net worth when he applied, had stocks worth over \$162,000 at that time, which was only identified through the IVM process in 2007. This created an overpayment of over \$18,000 that VA eventually waived.²⁵ In addition to the IVM not being conducted in a timely manner, the match does not identify any assets that do not generate income, such as deferred annuities for which payments have not begun. Therefore, the IVM would not be effective in identifying these types of assets. Ultimately, delays in the IVM process prevent VA from promptly detecting improper pension payments and increase the magnitude of these payments.

Opportunities for Internal Coordination Are Not Maximized

Opportunities for coordination between VA's pension and fiduciary programs to identify ineligible pension recipients are not always maximized.²⁶ According to VA officials, over half of VA beneficiaries in the fiduciary program are pension recipients. Field examiners in this program visit beneficiaries and fiduciaries, and prepare reports that may contain financial information of some pension recipients. Claims processors had access to these reports, but VA issued guidance in July 2011 that restricts pension claims processors from accessing them in VA's electronic case file system. VA determined that claims processors did not need to review fiduciary program reports as part of their daily work. This guidance was issued due to concerns about the privacy of fiduciaries' personal information, and concerns that pension recipients in the fiduciary

²⁵VA regulations set forth that overpayments will not be collected when it is determined that collection would be "against equity and good conscience." 38 C.F.R. § 1.962.

²⁶VA's fiduciary program appoints and monitors third parties to help manage and protect the funds of VA beneficiaries who are unable to manage their own affairs due to mental impairments. Fiduciaries can be a spouse or other family member, or an entity such as a law firm, hospital, or nursing home. See 38 U.S.C. § 5502.

program were being put under greater scrutiny. However, fiduciary field exam reports may contain information on beneficiaries' finances that could be useful for claims processors in assessing eligibility for pension benefits. While safeguarding fiduciaries' personal information is important, access to these reports allows claims processors to obtain a more accurate picture of a beneficiary's financial situation. As a result, critical information to identify potentially ineligible individuals is not received, which may result in improper payments. Fiduciary program staff must notify the pertinent PMC when they identify information that may affect the ongoing eligibility of a pension recipient for these benefits, such as changes in a recipient's income and assets. Claims processors generally rely on notification from fiduciary program staff about possible financial ineligibility of pension beneficiaries, since these claims processors no longer have direct access to those documents. A VA official from one of the PMCs told us that when claims processors had access to field exam reports prior to the issuance of the new guidance, cases of asset transfers or unreported assets were identified from reviews of these reports, even when there was no prior notification from fiduciary program staff. In addition, as part of our case file review, we identified cases of asset transfers or unreported assets that were identified in fiduciary field exam reports. Without access to field exam reports from the fiduciary program, claims processors may not have all available information to assess an individual's financial eligibility.

**Unclear Guidance on
Assessing Financial
Eligibility May Lead to
Inconsistent Decisions**

VA's guidance to claims processors on assessing financial eligibility for VA pension benefits is unclear about when certain assets should be counted as part of an applicant's net worth. As a result, claims processors may make inconsistent eligibility decisions. For example, VA's procedures manual states that the value of any property owned by pension claimants must be considered when assessing financial eligibility for benefits, but the manual does not specifically discuss when or under what circumstance annuities or trusts should count as part of net worth. According to VA officials, and consistent with VA regulations, the decision as to whether an asset should be counted in a claimant's net worth depends on whether the claimant has ownership and control of the asset. However, VA has not adequately defined the concept of ownership and control of assets in either its regulations or internal guidance and policy documents. As a result, VA cannot ensure that claims processors are making fully informed eligibility decisions that are consistent with VA policy.

Several claims processors we spoke with confirmed that guidance on assessing net worth is unclear, and that it is difficult to determine when to count certain assets. For example, one claims processor expressed uncertainty whether to count trusts established for children residing outside of a claimant's household when the funds are being used to pay for claimant's expenses, since VA's regulations do not directly address these types of cases. A VA official acknowledged that guidance on what constitutes ownership and control of an asset could be improved. We were provided local training material from one PMC on when to count assets in a trust and found that it seemed inconsistent with VA's regulations regarding when to count assets. For example, the PMC training material stated that a claim involving assets transferred into a trust a claimant cannot access would likely be denied due to excess net worth. However, as we noted earlier, VA regulations indicate that assets gifted to someone outside a claimant's household should not be counted as part of net worth if ownership and control of the asset has been relinquished. Also, according to VA officials we spoke with, claims processors do not have access to VA attorneys who could assist them in examining trust agreements and other documents to determine if a claimant has ownership and control of an asset.

Unclear or disparate guidance about counting assets as part of net worth may also lead to different decisions in similar cases. For example, we saw two separate cases in which, just prior to applying, claimants transferred excess assets into trusts to which they did not have access. One of the claims was approved, but the other was denied. For the approved claim, VA determined the claimant did not have ownership and control of the trust and therefore did not count it in the veteran's net worth. For the denied claim, VA also determined that the claimant did not have access to the trust, but the claim was denied because the claims processor felt the applicant was attempting to manipulate assets to qualify for benefits. The denial letter to the claimant explained that VA's income programs are not intended to protect substantial assets or build up the beneficiary's estate for heirs.

Further, we found that VA also lacks specific guidance on how to determine whether or not a claimant's financial resources are sufficient to meet their basic needs without the pension benefit. VA's procedures manual states that pension claims should be denied if a claimant's financial resources are sufficient enough to pay for their living expenses for a "reasonable period of time," but it does not define this term. As a result, claims processors must use their own discretion to determine what period of time is reasonable for claimants to use their assets before

needing the assistance of the VA pension. Among case files we reviewed, we found inconsistent claims decisions for claimants whose financial resources would last about the same amount of time and who had similar life expectancies. For example, two veterans whose net worth was projected to provide for their needs for 2 years received different decisions on their claims based on this net worth. In this instance, a 90-year-old with a life expectancy of 4.4 years was denied benefits, while a 94-year-old with a life expectancy of 3.2 years was approved. Also, when we presented a hypothetical scenario of a claimant whose financial resources would last a specific amount of time, different processors at the same PMC gave differing opinions about whether the claimant should be approved for benefits.²⁷

Many Organizations Help VA Pension Claimants Transfer Assets to Qualify for Benefits

Over 200 Organizations Market Services to Help Qualify Veterans and Surviving Spouses for VA Pension Benefits

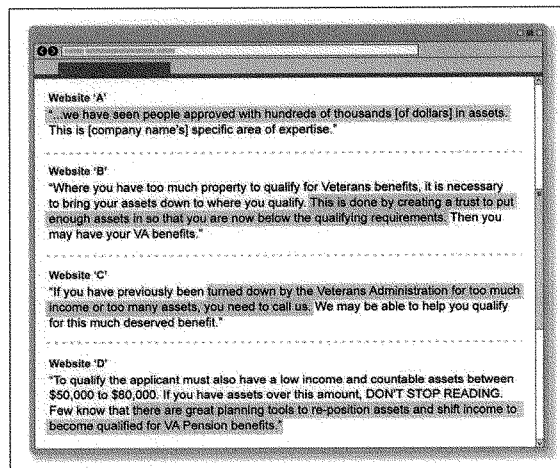
We identified over 200 organizations located throughout the country that market their services to help veterans and surviving spouses qualify for VA pension benefits by transferring or preserving excess assets.²⁸ These organizations consist primarily of financial planners and attorneys offering products and services such as annuities and the establishment of trusts, to enable potential VA pension claimants with excess assets to meet financial eligibility criteria for VA pension benefits. For example, one organization marketed on its website that it develops financial plans which include various insurance products, and that its specific area of expertise is to help VA pension claimants with hundreds of thousands of dollars in assets obtain approval for these benefits. Also, a law firm we identified marketed transferring excess assets into special trusts to enable VA pension

²⁷We asked claims processors at VA's three PMCs whether they would approve or deny a claim involving an applicant with a life expectancy of 10 years whose net worth would be depleted in 5 years.

²⁸See appendix I for an explanation of how we identified these organizations.

claimants to qualify for these benefits. These services being marketed and provided by these organizations are legally permissible under program rules because current federal law and regulations allow VA pension claimants to transfer assets and reduce their net worth prior to applying for benefits. (See figure 2 for excerpts from websites of organizations that offer to transfer assets to help claimants qualify for pension benefits.)

Figure 2: Excerpts from Websites of Organizations That Offer to Transfer Assets to Help Claimants Qualify for VA Pension Benefits



Source: GAO display of excerpts from company websites accessed December 2011 and April 2012.

During our investigative calls to 19 organizations, all of them correctly pointed out that pension claimants can legally transfer assets prior to applying. These organizations indicated that it is possible to qualify for VA pension benefits despite having excess assets, and almost all provided information on how to transfer these assets. (See figure 3 for transcript

excerpts of calls with organizations on services they provide to qualify for VA pension benefits.)²⁹

Figure 3: Transcript Excerpts of Calls with Organizations Providing Products and Services to Help Claimants Qualify for VA Pension Benefits

A GAO investigator phoned multiple companies on behalf of a fictitious father, who was portrayed as a veteran seeking VA pension benefits, to learn about the services provided by the companies. Below are excerpts from three calls in which a company representative told the investigator that VA beneficiaries may qualify for benefits by transferring assets.

Call 1
Company representative:
"...I will just tell you this: The VA allows you to qualify, regardless of what your assets are. And I've had people with over a million dollars qualify for this benefit."

Call 2
Company representative:
"It is a means-tested and an asset-tested benefit, but essentially there are legal work-arounds. And if you know, it's basically you have to put together a good presentation for the Veterans Administration. And that's what we do. We help people position assets and coordinate the presentation effort to the VA."
Later in the call:
"Yeah, I've qualified people with that — beyond \$700,000 worth of liquid assets. So that's not the issue."

Call 3
Company representative:
"What that means is basically repositioning the assets to where again, the software tells us what we can and can't do. But I'm just going to give you kind of a hypothetical: For example, you may be able to reposition, reallocate those funds into a trust... And we're allowed to apply for VA benefits the day after, by reallocating those funds, so that dad can qualify."

For a complete transcript of all three phone calls, see appendix II.

Source: GAO and company representatives.

Note: To hear additional audio excerpts from the three phone calls, go to http://www.gao.gov/multimedia/video#video_id=590696.

A number of different strategies may be used to transfer pension claimants' excess assets so that they meet financial eligibility thresholds. Among the 19 organizations our investigative staff contacted, about half advised transferring excess assets into an irrevocable trust with a family member as the trustee to direct funds to pay for the veteran's expenses. About half

²⁹Representatives' quotes in figure 3 are not from organizations whose websites are quoted in figure 2.

also advised placing excess assets into some type of annuity. Among these, several advised placing excess assets into an immediate annuity that generates income for the client. In employing this strategy, assets that VA would count when determining financial eligibility for pension benefits are converted into monthly income. This monthly income would fall below program thresholds and enable the claimant to still qualify for the benefits. About one-third of the organizations recommended strategies that included the use of both annuities and trusts. For example, one organization we contacted advised repositioning some excess assets into an irrevocable trust, with the son as the trustee, and placing remaining excess assets into a deferred annuity that would not be completely accessible, since most of the funds could not be withdrawn without a penalty. In addition, several organization representatives we interviewed also told us they may advise using caretaker agreements to enable a client to qualify for VA pension benefits. Organizations told us this strategy generally involves the pension claimant transferring assets to family members as part of a contract, in exchange for caretaker services to be provided by these family members for the remainder of the claimant's lifetime.

Some organization representatives we interviewed told us that transferring assets to qualify for VA pension benefits is advantageous for elderly pension claimants because it enables them to have more income to pay for care expenses and remain out of a nursing home for a longer period of time. For example, representatives from one organization said the use of immediate income annuities allows pension claimants to increase their monthly income that, combined with the VA pension, could help pay for assisted living or in-home care costs. Other financial planners and attorneys said if claimants do not conduct financial or estate planning to qualify for the VA pension and instead spend down their assets prior to applying, the monthly amount of the pension benefit they eventually receive may be insufficient to pay for their long-term care. They said that, as a result, these claimants may decide to seek Medicaid coverage for nursing home care because of their lack of financial resources, when they could have remained in an assisted living facility or at home with the aid of the VA pension. Some of these organizations told us that nursing home care financed by Medicaid is more costly for the government than if the veteran had received the VA pension benefit and obtained care in a lower-cost assisted living facility.

Many organizations we identified also conduct presentations on VA pension benefits at assisted living or retirement communities to identify prospective clients. According to attorneys and officials from state attorneys general offices we spoke with, managers of assisted living facilities or

retirement communities may have an interest in inviting organization representatives to conduct presentations on VA pension benefits because these benefits allow them to obtain new residents by making the costs more affordable. For example, we obtained documentation indicating that one retirement community paid an organization representative a fee for a new resident he helped the facility obtain. Another community in another state paid organization representatives fees to assist residents in completing the VA pension application.

**Some Products and
Services May Adversely
Affect Claimants**

Some products may not be suitable for elderly veterans because they may lose access to funds they may need for future expenses, such as medical care. To help elderly clients become financially eligible for VA pension benefits, some organizations may sell deferred annuities, which would make the client unable to access the funds in the annuity during their expected lifetime without facing high withdrawal fees, according to some attorneys we spoke with. An elderly advocacy organization representative we spoke with also noted that elderly individuals are impoverishing themselves by purchasing these products when they may need the transferred assets to pay for their long-term care expenses. As part of our investigative work, one organization provided a financial plan to qualify for VA pension benefits that included both an immediate annuity as well as a deferred annuity for an 86-year-old veteran that would generate payments only after the veteran's life expectancy.

Some organizations that assist in transferring assets to qualify people for VA pension benefits may not consider the implications of these transfers on eligibility for Medicaid coverage for long-term care. Individuals who transfer assets to qualify for the VA pension may become ineligible for Medicaid coverage for long-term care services they may need in the future. For example, asset transfers that may enable someone to qualify for the VA pension program, such as gifts to someone not residing in a claimant's household, the purchase of deferred annuities, or the establishment of trusts, may result in a delay in Medicaid eligibility if the assets were transferred for less than fair market value during the 60-month look-back period. According to several attorneys we spoke with, some organization representatives are unaware or indifferent to the adverse effects on Medicaid eligibility of the products and services they market to qualify for the VA pension. As a result, potential pension claimants may be unaware the purchase of these products and services may subsequently delay their eligibility for Medicaid.

In addition to the potential adverse impact of transferring assets, we heard concerns that marketing strategies used by some of these companies may be misleading. According to several attorneys we spoke with, some organization representatives market their services in a way that leads potential pension claimants and their family members to believe they are veterans advocates working for a nonprofit organization, or are endorsed by VA. As a result, they may fail to realize these representatives are actually interested in selling financial Products. For example, some organization representatives may tell attendees during presentations at assisted living facilities that their services consist of providing information on VA pension benefits and assisting with the application, and do not disclose they are insurance agents selling annuities to help people qualify for these benefits. One elder law attorney we spoke with said that many attendees at these presentations may have Alzheimer's disease or dementia, and are not in a position to make decisions about their finances. Therefore, they are vulnerable to being convinced by these representatives that they must purchase a financial product to qualify for these benefits.

Concerns have also been raised that VA's accreditation of individuals to assist with applying for VA benefits may have unintended consequences. According to attorneys and officials in one state, organization representatives use their VA accreditation to assist in preparing claims as a marketing tool that generates trust and allows them to attract clients. Claimants may not understand that this accreditation only means that the individual is proficient in VA's policies and procedures to assist in preparing and submitting VA benefits claims, and does not ensure the Products and services these individuals are selling are in claimant's best interests.

Finally, some organizations may provide erroneous information to clients, or fail to follow through on assisting them with submitting the pension application, which can adversely affect pension claimants. For example, one veteran said he was told by an organization representative to sell his home prior to applying for the VA pension and that he did not have to report the proceeds from the sale on the application. He followed this advice, but VA identified these assets, which caused him to incur a debt to VA of \$40,000 resulting from a benefit overpayment. Organizations may also promise assistance with the application process to any interested pension claimant but, unbeknownst to the claimant, may not follow through in providing this service if the claimant does not want to transfer assets. For example, the daughter of a veteran we spoke with, who sought application assistance from an organization representative,

told us the representative never submitted her father's pension claim to VA as promised. She learned of this about a year after she thought the claim was submitted and had to reapply through a county veterans service officer. Her father was approved 2 months later but passed away less than a month after his approval. She believes her father could have received benefits for a year if the representative had submitted the claim, and believes he did not do so because she did not want to use his services to transfer assets.

Costs for Services to Transfer Assets Varied, but Some Organizations May Be Charging Prohibited Fees

The costs of services provided by these organizations to assist in qualifying for VA pension benefits varied, but organizations may be charging prohibited fees. Among the 19 organizations our investigative staff contacted for this review, about one-third said they did not charge for their services to help claimants qualify for VA pension benefits. For example, financial planners told us that, generally, there are no direct costs associated with transferring assets into an annuity, but that costs would be included in the terms of the annuity, such as the commission earned by the insurance agent. Among organizations that did charge for services, fees ranged from a few hundred dollars for benefits counseling to up to \$10,000 for the establishment of a trust. Also, although federal law prohibits charging fees to assist in completing and submitting applications for VA benefits, representatives from veterans advocacy groups and some attorneys we spoke with raised concerns that these organizations may be charging for fees related to the application, or find ways to circumvent this prohibition, such as by claiming they are charging for benefits counseling. For example, one organization our investigative staff contacted charged \$850 to have an attorney work on the application process, a \$225 analysis fee, and \$1,600 for the establishment of a trust. Another organization representative indicated he charged a "long-term planning fee" of \$1,200 to be paid prior to services being provided. The organization representative asked that someone other than the veteran pay this fee, claiming that only disinterested third parties can be charged fees but not the veteran. In addition, concerns have been raised that fees charged may be excessive for the services provided. In July 2011, California enacted a law generally prohibiting unreasonable fees from being charged for these services.³⁰

³⁰See Cal. Civ. Code § 1770(a)(24). An "unreasonable fee" is defined as a fee that is exorbitant and disproportionate to the services performed.

Conclusions

The VA pension program provides a critical benefit to veterans, many of whom are elderly, who have only limited financial resources to support themselves. Current federal law allows veterans to transfer significant assets prior to applying for a VA pension and still be approved for benefits, but this arrangement seems to circumvent the intended purpose of the program and wastes taxpayer dollars. Without stronger controls over asset transfers, similar to other means-tested programs like Medicaid's look-back and penalty period, VA cannot ensure that only those with financial need receive pension benefits. As a result, VA pension claimants who have sufficient assets to pay for their expenses can transfer these assets and qualify for this means-tested benefit. Moreover, because VA's policies and procedures for assessing the initial financial eligibility of pension claimants do not adequately ensure that only veterans and surviving spouses who meet financial eligibility requirements are granted benefits, the program is vulnerable to abuse. In particular, claims processors' reliance on unverified self-reported information when assessing eligibility means that VA cannot be assured that it is obtaining all relevant financial information from claimants, including information on asset transfers, trusts, annuities, and other forms of retirement income. Without all this information, claims processors may improperly grant pension benefits to claimants who do not meet financial eligibility requirements. In addition, while safeguarding fiduciaries' personal information is important, the lack of adequate coordination between VA's pension and fiduciary programs may result in missed opportunities to identify financially ineligible pension claimants, further undermining program integrity. Finally, because VA's guidance concerning when assets should be counted as part of a claimant's net worth and how to evaluate a claimant's net worth in determining eligibility lack sufficient clarity, the program remains vulnerable to inconsistent interpretation and payments to ineligible individuals. Ultimately, in this era of constrained financial resources, VA has a responsibility to manage limited funds wisely, and help ensure continued public support for this important program.

**Matter for
Congressional
Consideration**

To ensure that only those in financial need are granted VA pension benefits, Congress should consider establishing a look-back and penalty period for claimants who transfer assets for less than fair market value prior to applying, similar to other means-tested programs.

Recommendations for Executive Action

To improve VA's ability to ensure that only veterans and surviving spouses with financial need receive VA pension benefits, the Secretary of Veterans Affairs should direct the Undersecretary for Benefits to take the following four actions:

1. Modify pension application forms, as well as EVR forms, to include space for claimants or recipients to report asset transfers, and to specify annuities, trusts, or private retirement income. For assets, such as annuities and trusts that are reported, forms should also request related documentation to enable claims processors to determine if claimants or recipients retain ownership and control of these assets.
2. For all claimants, verify financial information during the initial claims assessment process. This may include requesting supporting documentation such as bank statements and tax returns, or using automated databases that can verify financial information.
3. Strengthen coordination between pension and fiduciary programs to identify pension claimants or recipients who have transferred or unreported assets, such as allowing claims processors access to fiduciary field exam reports for these cases.
4. Revise the VA procedures manual to better define the concept of ownership and control to help claims processors determine when specific types of assets such as annuities and trusts should be counted as part of net worth, and establish a more specific criteria for what is considered a reasonable period of time for pension claimants to use up their financial resources before becoming eligible for pension benefits.

Agency Comments and Our Evaluation

We provided a draft of this report to the Secretary of Veterans Affairs for review and comment. In its comments (see app. III), VA generally agreed with our conclusions, concurred with three of our recommendations, and concurred in principle with one other recommendation.

The agency concurred with our recommendation to modify pension application and eligibility verification forms to include a space for claimants or recipients to report asset transfers, to specify annuities, trusts, and private retirement income, and to request related supporting documentation.

VA concurred in principle with our second recommendation that the department verify financial information during the initial claims process. VA noted, however, that conducting this verification would add additional time to adjudicate pension claims. VA said it expects to complete an analysis by November 1, 2012 of whether financial information can be verified without placing undue burdens on claimants and recipients. We acknowledge that rigorous verification processes can sometimes entail additional time during the initial claims phase, but we continue to believe that such verification is an important part of ensuring that VA adequately balances its stewardship responsibilities with its service activities. We support the analysis VA is undertaking.

Regarding our recommendation to strengthen coordination between the pension and fiduciary programs, VA concurred and noted that it has established a workgroup that is developing procedures to further enable fiduciary program staff to share income information with pension program staff.

VA also concurred with our recommendation that the procedures manual be revised to better define the concept of ownership and control of assets and to establish a more specific criteria for what is considered a reasonable period of time for claimants to use their financial resources before becoming eligible for pension benefits. VA stated that it is drafting regulations that would address the effect on eligibility of transferring assets prior to applying for pension benefits. They noted these regulations would address and clarify the various factors VA uses to determine whether a claimant's net worth precludes eligibility for pension benefits and would provide a more consistent set of rules for adjudicating claims. They added that upon completion of the rulemaking proceeding VA will amend its manual provisions consistent with the new regulations and provide the procedures to implement them. They expect to complete this revision by December 1, 2013.

While VA did not directly comment on GAO's Matter for Congressional Consideration related to establishing a statutory look-back and penalty period, VA did note that "unlike Medicaid and SSI, the statutes governing VA's pension program lack provisions addressing the effects of transfers of assets on eligibility for program benefits, e.g., a look-back and penalty period." VA asserted that after identifying gaps in VA's regulations on this point, it has begun drafting regulations to address the issue. VA noted in its comments that any regulations it promulgates on this issue will be subject to challenge in the U.S. Court of Appeals for the Federal Circuit. While we commend VA's efforts in this area, having a clearer statutory

basis for this regulatory effort may help ensure that the regulations, should they be finalized, would be more likely to withstand potential legal challenges in the courts.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Veterans Affairs, and other interested parties. The report is also available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff members have any questions concerning this report, please contact me at (202) 512-7215 or bertonid@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Staff members who made key contributions to this report are listed in appendix IV.



Daniel Bertoni
Director, Education, Workforce,
and Income Security Issues

Appendix I: Objectives, Scope, and Methodology

The objectives of our review were to examine (1) how the design and management of the Department of Veterans Affairs' (VA) pension program ensure that only those with financial need receive pension benefits and (2) what is known about organizations that are marketing financial products and services to veterans and survivors to enable them to qualify for VA pension benefits.

To determine how the design and management of VA's pension program ensure that only those with financial need receive pension benefits, we reviewed relevant federal laws and regulations, as well as VA's policies, procedures, and guidance regarding how VA assesses financial eligibility for pension benefits. We examined VA's pension application forms and other documents VA uses to collect financial information from pension claimants or recipients. Also, we visited VA's three PMCs in Philadelphia, Milwaukee, and St. Paul, and interviewed staff and officials from these locations as well as from VA's central office. To verify how VA assesses the net worth of pension claimants, we conducted a review of a nongeneralizable random sample of 85 of the total of 3,196 fiscal year 2010 pension claim files completed by each of the PMCs that were entered in VA's electronic case file system, in which VA had to formally determine if the claimant's assets were excessive to be approved for pension benefits. We also reviewed pension claims files VA provided us that involved asset transfers or unreported income and assets. In addition, we reviewed past GAO reports on VA's pension program, Medicaid coverage for long-term care, and the Supplemental Security Income program, as well as relevant federal laws and regulations to learn how these other means-tested programs assess financial eligibility of claimants.

To determine what is known about organizations that are marketing financial products and services to veterans and survivors to enable them to qualify for VA pension benefits, we conducted an Internet search and interviews with stakeholders to identify organizations that market financial products and services to help veterans and surviving spouses meet the eligibility criteria for VA pension benefits. For our Internet search, we used the following search terms "Veterans Affairs and Pension Benefits," "Veterans Affairs and Aid and Attendance Benefits," and "Veterans Affairs and Pension and Aid and Attendance Benefits." We applied three criteria when we examined the content of the websites obtained from our results to develop a list of organizations that market these services. To be included in our list, the organization's website must indicate they provide services to help someone qualify for VA pension benefits or assess eligibility for VA benefits, and either indicate they provide products such

as annuities or trusts to transfer assets or indicate they provide services to protect or preserve assets. In addition to our Internet search, we also included in our list several organizations that met these criteria that we identified through interviews with veterans advocacy groups, state officials, and attorneys. In applying these criteria, we developed a list of over 200 organizations that market these services. We used a methodology where two analysts had to agree that the organization met the criteria.

Our investigative staff contacted a judgmental sample of 25 of the organizations on our list posing as the son of an 86-year-old veteran with over \$300,000 in countable assets who is interested in applying for VA pension benefits. The 25 organizations were judgmentally selected to achieve geographic dispersion and include both financial planners and attorneys. For these calls, we sought to identify the types of products being marketed, their terms and costs, and the effect on the veterans' access to their assets. The addresses for the main offices of the companies selected represent 13 different states that encompass about one-half of the veteran population age 65 and older. These states also include three states that represent one-fourth of the veteran population age 65 and older. Of the 25 companies contacted, our investigative staff was able to have a discussion with a representative for 19 of these organizations. For the other six companies, we either did not receive a response to a phone message or our phone calls to the organization were not answered.

To learn more about the types of products and services that may be provided to enable someone to meet the financial eligibility criteria for VA pension benefits, we also interviewed attorneys and financial planners, as well as representatives from the National Association of Insurance Commissioners. To identify the implications of transferring assets to qualify for VA pension benefits, we spoke with attorneys, representatives of veterans and elderly advocacy groups, state and local government officials, and family members of pension claimants that we were referred to who used the services of organizations to apply for these benefits. To learn about any investigations involving the practices of some of these companies, we spoke with officials from VA's Office of Inspector General and officials from state attorneys general offices in California, Iowa, Montana, Oregon, Pennsylvania, Texas, and Washington.

Appendix I: Objectives, Scope, and Methodology

We conducted this performance audit from July 2011 to May 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Full Transcript of Selected Calls with Organizations Providing Products and Services to Help Claimants Qualify for VA Pension Benefits

The Department of Veterans Affairs (VA) provides pension benefits to eligible veterans and surviving spouses whose income and assets are below program thresholds. However, current VA regulations permit claimants to transfer excess assets prior to applying. Organizations market financial Products and services to help prospective pension claimants transfer excess assets and become financially eligible for these benefits. An investigator from our Forensic Audits and Investigative Service team had phone conversations with representatives from 19 of these organizations to learn if the organization would transfer a claimant's excess assets, the types of services provided, and any fees charged. (See appendix I for more information on our scope and methodology.) Because VA's pension benefits are meant for claimants with financial need, we selected portions of three of these calls that show organizations transfer significant assets to help claimants qualify for the benefits, and the types of services they provide to do so. The full transcripts of these three calls are provided below.

Call 1: Caller is a GAO investigator phoning on behalf of his fictitious 86-year-old father who was a veteran, seeking VA pension benefits, who wants to learn about the services provided by the company. The company representative describes how his father can qualify for these benefits, despite having significant assets.

(Whereupon, an outgoing call was placed by the GAO investigator to a company representative.)

COMPANY REPRESENTATIVE: [name].

GAO INVESTIGATOR: Hello?

COMPANY REPRESENTATIVE: Hello, this is [name].

GAO INVESTIGATOR: Hey, [name], this is [name].

COMPANY REPRESENTATIVE: Hey, [name], how are you doing?

GAO INVESTIGATOR: I'm doing good. I got your messages. I'm sorry, it's just been a little nuts.

COMPANY REPRESENTATIVE: Not a problem.

GAO INVESTIGATOR: You still there?

COMPANY REPRESENTATIVE: Yeah, I'm here. Yes.

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GAO INVESTIGATOR: I was calling — it's your brother or your brother-in-law that I spoke to?

COMPANY REPRESENTATIVE: My brother-in-law.

GAO INVESTIGATOR: Yeah, I'm trying to make a decision here with my father. We are going to have to, you know, make some decisions on what we're going to do with him. And I just wanted to see, you know, before we go draining all his resources, what our options are.

COMPANY REPRESENTATIVE: Okay. You don't — he's not in a community yet or he is?

GAO INVESTIGATOR: He's not, he's still living at his house.

COMPANY REPRESENTATIVE: Okay.

GAO INVESTIGATOR: But, you know, he's got a lot of, you know, physical limitations, he's got difficulty hearing, and he can't really move around, so you know —

COMPANY REPRESENTATIVE: Did his doctor say he needs assistance from another person on a regular basis?

GAO INVESTIGATOR: Well, I imagine. I mean, I didn't ask that question, specifically, but I'm sure he would. I mean, right now, you know, we're kind of trying to take care of him ourselves, and you know, we've got somebody helping, but we're going to need something more full time.

COMPANY REPRESENTATIVE: Yeah. You guys are helping out with cooking, cleaning. Is he still able to drive or no?

GAO INVESTIGATOR: No.

COMPANY REPRESENTATIVE: Okay. So he needs transportation. You know, these are the things they are looking for. Did you say his vision is an issue?

GAO INVESTIGATOR: No, his hearing, is what I said.

COMPANY REPRESENTATIVE: (Laughter) I'm sorry.

GAO INVESTIGATOR: And his, not yours.

COMPANY REPRESENTATIVE: (Laughter) Well, maybe mine, a little bit. Anyhow, yeah, the VA kind of looks at, you know, daily activities — the activities of daily living. And if he can't do some of those things, he needs assistance, you know, then he can qualify for the benefit.

They don't mean if somebody is completely bedridden or handicapped, they just mean if somebody needs assistance and help with some parts of their life.

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What we would be able to do — we have people that are still able to drive and live at home, but they can't do certain — they can't carry the bags from the car if they go grocery shopping, because they don't have the dexterity or the strength.

GAO INVESTIGATOR: All right.

COMPANY REPRESENTATIVE: So, you know, the VA looks at it and says, they can't even go shopping for themselves, they can't carry the bags from the car, they can't lift them, you know, how are they going to get them into the house?

GAO INVESTIGATOR: Well, I'm sure that's not a problem. I mean, he definitely is, you know, he needs help with just going to the bathroom, getting in and out of bed and stuff like that.

COMPANY REPRESENTATIVE: Yeah. He needs help getting in and out of bed, getting to the bathroom, those are the things they're looking at. Absolutely, he needs this assistance, and he can qualify for the benefit.

And everything else is just about preparing yourself for the benefit, doing the paperwork and so forth.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: And that a process, in and of itself. What I would suggest is get together, you know. This is — this doesn't— this isn't like a one-time sit-down and it's all done, you know. This can take several weeks, and sometimes even up to six weeks, to get all the paperwork completed.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: So you know, but it's a matter of getting started. You know, and that's what I — you know, if your dad needs assistance, and he was a wartime Veteran, we can get him the benefit. All right?

GAO INVESTIGATOR: Okay. Well, you know what, my big concern — [inaudible] yeah, you know, which I mentioned to your brother-in-law is, um — you know, he's got some assets, and I don't know how that affects things.

COMPANY REPRESENTATIVE: You know, the assets come into play, and that's part of the process. We would explain all that to you — what, what — where you need to go, how — what needs to be done.

Ideally, an accredited attorney that we — that we work with, he'll have that conversation with you. He'll explain that to you in more detail.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: But anyone — and I will just tell you this. The VA allows you to qualify, regardless of what your assets are. And I've had people with over a million dollars qualify for this benefit.

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GAO INVESTIGATOR: Wow.

COMPANY REPRESENTATIVE: So you know, you'll hear you can only have this much money, you can do this. You'll even be told you don't qualify.

GAO INVESTIGATOR: And how do you do that, though, I mean, that's what I don't understand.

COMPANY REPRESENTATIVE: Well, you have to reposition the assets, that's all. You know, like I said, that's — that's part of what the attorney will talk about.

From a process standpoint, I'll gather all the information that we need from you, what will go on the VA application. And we will get a letter back from our VA-accredited attorney, and he will outline and tell you you do or you don't qualify.

Some people qualify immediately; other people, like in your situation, if your family has some assets, you may have to jump through some hoops in order to get the benefit.

But the VA outlines it and says, this is what you're allowed to do, in order to qualify.

And, you know, we'll share that with you. We'll show you exactly what you need to do, how to do it, because it has to be done a certain way in order to qualify.

Look at this as kind of something you're going to do one time, all right? This isn't like doing your taxes, you know, where you need to remember it to understand it for next year.

You are going to do this once, and it's going to be out of your life.

GAO INVESTIGATOR: Okay. Here's a question that I have. Does he still have control of the assets?

COMPANY REPRESENTATIVE: Your family will.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: Yeah, your family will. I mean, all his money, his monthly money, will go right into his checking account, just like it probably does, Social Security, pension, whatever. The VA benefit will go right into his checking account. All that money will keep going right into his account, and he will have access to that.

GAO INVESTIGATOR: Okay, all right. Okay, just so I understand it, so you're just talking about putting it under a different name or are you putting it in a special account?

COMPANY REPRESENTATIVE: [name], here's the thing. I can't get into all that with you over the phone.

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GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: It will get so complicated and so confusing. This conversation that I need to have with you will take about an hour, just to get the process started, and then we will get into all that stuff.

Every person I have tried to help with this benefit, when they try to get to the — like into the high school level questions, before understanding the kindergarten and grade school level questions, they never get the benefit, because they can't — they can't under — they get so confused.

So it's almost like, once you've seen a dead body you can't unsee it, and you can't focus on anything else. And so what I'm trying to share with you, you know, if you just, you know, take a bite at a time, you know, like the old saying, you can't eat an elephant in one bite, we need just a bite of your time.

You will get through this and you'll get the money.

But if we try to jump ahead, you know, I'll tell you, it's never been successful.

GAO INVESTIGATOR: Okay. What —

COMPANY REPRESENTATIVE: And I hope you understand. I'm just giving you my expertise and experience in this.

We do over — we submit over four hundred apps a month, and everybody gets the benefit, so we know how to do it, we know how to get it done.

And nothing is going to be a surprise to you. Everything is going to be here, this is your option. If you want this, you've got to do this.

And then it's up for you to decide. But it's just a matter of getting you to that point where you have all the facts, so you can make a decision.

And so the questions you're asking are all valid, you know, they are all the questions that we'll be delving into very deeply. If you need a CPA involved, we have a CPA on our team. We have our attorney on our team that I use, [name]. He'll be a part of all the conversations if we need, so all throughout.

And none of that is costing you any money, because that's part of my fee.

But what I'm saying is, all those questions that you have now, when you are ready for the answers, we'll have those conversations. But right now, you're not ready for the answers. It's difficult to understand this, why this, what that?

All those answers you are going to get from me right now are going to create more and more questions, and things are going to get so confusing for you.

GAO INVESTIGATOR: Okay.

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COMPANY REPRESENTATIVE: This process is already confusing enough, I've got to tell you.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: There are some three hundred to four hundred thousand applications a month — I mean, I shouldn't say a month. The VA has over — between three hundred and four hundred thousand applications backlogged, sitting there, because people didn't do the process right, and it will take them up to two years to get approved.

You know, that — that's — it is difficult. It has to be done a certain way, and I'll get you there. I promise, I'll get you there, but you just have to go through it step-by-step.

GAO INVESTIGATOR: Okay. Well, the only other question I have then is the cost. What is the cost involved?

COMPANY REPRESENTATIVE: If there is any cost, it would be with the attorney. They charge — they'll charge a fee for setting up certain documents, and we'll get to that, as well.

The worst case, let's say your dad, he has a house, and you're not able to sell the house. See, while he's living in it, they don't care that he owns a home, but when he's out of the house, they consider it an asset.

We have to — we'll have to do something with the house, as well. If you were planning on selling it, fine.

If you weren't planning on selling it, that's fine, too, but we'll have to address it.

The worst case scenario would be about fourteen hundred bucks. That's a worst case scenario.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: And when you understand what that all entails, you'll be like, geez, fourteen hundred bucks, let's find out tomorrow. That's another thing, you know, when you understand everything that you get with that.

And he'll make sure everything is done the right way so that the VA can never come back at you, seeing that the house is protected, your mother is protected, you know.

I'm just saying, there's a whole lot to it, and to try to answer it over the phone is more than tough.

GAO INVESTIGATOR: Okay. All right. So there's no — that's just an attorney fee? I mean, there's no fee for you?

COMPANY REPRESENTATIVE: Exactly.

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GAO INVESTIGATOR: There's no fee for you, at all?

COMPANY REPRESENTATIVE: No, not at all.

GAO INVESTIGATOR: Does the VA pay you or something?

COMPANY REPRESENTATIVE: Hang on a second. Let me do this. I hate to try to get you — are you busy during the day?

GAO INVESTIGATOR: Ummm.

COMPANY REPRESENTATIVE: Is there like an hour of time that you and I can get together and get the process started, so I can show you how — how it all works?

GAO INVESTIGATOR: Yeah, I mean, probably, but probably not until, you know, after the holidays.

COMPANY REPRESENTATIVE: Okay. Then let's do this. If you have your schedule, my schedule is tied up until the second week of January, already filled with seminars and things to — so people can come and see me. The second week I have at least two seminars, and I usually have thirty to forty people at each seminar.

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: And then about half of those people sit down with me and want to go to the next step.

GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: So if I do two or four presentations, I mean, I've got thirty to fifty appointments during the second week of January. So if you and I can get together in the first week, I can get you started before all that mess starts.

GAO INVESTIGATOR: Okay. Well, I wonder if it wouldn't be beneficial to go to one of the seminars?

COMPANY REPRESENTATIVE: Well, the seminar is in [name].

GAO INVESTIGATOR: In where?

COMPANY REPRESENTATIVE: In [name], but really, what I do there is more of a blanket meeting.

If you already know you have a situation, you already know you have an interest, I go over that same information that I go over in the seminar. But the seminar, it's just information, and I will be giving that to you face-to-face, and be able to collect the information and get started on the process.

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GAO INVESTIGATOR: Okay. Yeah, I mean, I don't have a lot of questions, you know, I just want to know what types of Products : you're talking about that we would — where the assets would go, how — I mean, are we talking about —

COMPANY REPRESENTATIVE: It all depends on your dad's needs. Right now we don't know — I don't know anything about your situation. I don't know what your costs are, I don't know what his expenses, his needs are. I don't have any idea what the cash flow management requirements will be —

GAO INVESTIGATOR: Yeah.

COMPANY REPRESENTATIVE: — this year, next year, five years down the road. You know, as a financial advisor, you know, I come from the banking industry, where I worked in the trust department, and my clients were all multi, multi-millionaires. And all I did for them was identify what their needs were going to be year in and year out, into the future —

GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: — protecting their assets, so that they knew that money was going to be there (unintelligible). Like your dad, the last thing he wants to do is have his nest egg at risk.

GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: He's going to need — he's going to need income from it to maybe offset some of the cost of his retirement community, perhaps.

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: I don't know, you know, I don't have any answers, at this point, because I don't know what his needs are, what your family needs are, you know, how many kids are there, who all is involved.

GAO INVESTIGATOR: I mean, basically, it's just him. I mean, he's got his Social Security, and then, if he qualifies for the VA Pension, he would have that. So I imagine that would be enough income for him. So it's just a matter of doing something with the assets, so he doesn't lose it. So —

COMPANY REPRESENTATIVE: Exactly. And that's something you and I will discuss and work on. Are you — are you handling his affairs now?

GAO INVESTIGATOR: Yeah, uh-huh.

COMPANY REPRESENTATIVE: So you take care of all of his bills?

GAO INVESTIGATOR: Yeah.

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COMPANY REPRESENTATIVE: So you are the person who understands best, you know, what your parents, you know, what the family, you know, your father, your mother, your parents, what their requirements are.

Now your mother has passed; is that correct?

GAO INVESTIGATOR: Yes, uh-huh.

COMPANY REPRESENTATIVE: Okay, so we're just talking about your dad here.

GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: So here's — the VA just increased the payment to the Veteran, single Veteran, to right around seventeen hundred a month, tax-free, so it's a pretty substantial benefit, that's over twenty thousand dollars a year.

If you are looking at his — looking at what his Social Security is —

GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: — you add that, plus his VA, it may cover his long-term care facility.

GAO INVESTIGATOR: Uh-huh, yeah, his Social Security is twelve hundred, so you're talking about somewhere close to almost three thousand dollars a month.

COMPANY REPRESENTATIVE: Yeah, exactly, so that's not bad, that's not bad. Now it depends on what kind of community he would be looking at, but you know, that's .

You know, the hardest part is getting started, and then once you get to a certain point, you'll be like, yeah, I get it, I get it, now I understand, this is what we do.

Let me ask you, is Tuesday the 3rd or is Wednesday the 4th a better day for you?

GAO INVESTIGATOR: Well, probably Wednesday will be better for me.

COMPANY REPRESENTATIVE: And you're in [state]?

GAO INVESTIGATOR: Yes.

COMPANY REPRESENTATIVE: Okay. How does 10 a.m. work?

GAO INVESTIGATOR: Are you talking about coming down to me or where?

COMPANY REPRESENTATIVE: Yeah, absolutely, I'd come to you.

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GAO INVESTIGATOR: That sounds good, tentatively. I've got to check and make sure that — I have to check a couple things here, but I mean, it sounds good.

COMPANY REPRESENTATIVE: What address is the best place to meet you?

GAO INVESTIGATOR: Well, you know, I'm guessing that it might be just as good to do it at the office. I'll tell you what, are you going to be around this afternoon?

COMPANY REPRESENTATIVE: Yeah, do you want to give me a call back?

GAO INVESTIGATOR: Yeah, let me give you a call back. Let me check the schedule and make sure it's good. I think it would probably be easier just to do this at the office.

COMPANY REPRESENTATIVE: Okay. What city is it?

GAO INVESTIGATOR: I'm sorry?

COMPANY REPRESENTATIVE: What city is your office in?

GAO INVESTIGATOR: In [city].

COMPANY REPRESENTATIVE: That sounds so familiar. As you are going down 83, that's

GAO INVESTIGATOR: Near [city].

COMPANY REPRESENTATIVE: Near [city], okay, (unintelligible). All right, good. Give me a call back just to confirm if 10 a.m. works. If I don't answer, just leave a message. I may go out and do some shopping (unintelligible).

GAO INVESTIGATOR: All right. I'll just leave a message on your voicemail.

COMPANY REPRESENTATIVE: Yeah, and — good.

GAO INVESTIGATOR: Sounds good.

COMPANY REPRESENTATIVE: All right, [name].

GAO INVESTIGATOR: Thanks for your time, I appreciate it.

COMPANY REPRESENTATIVE: Nice talking to you.

GAO INVESTIGATOR: Alright, Bye.

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Call 2: Caller is a GAO investigator phoning on behalf of his fictitious 86-year-old father who was a veteran, seeking VA pension benefits, who wants to learn about the services provided by the company. The company representative describes how his father can qualify for these benefits, despite having significant assets.

(Whereupon, an outgoing call was placed by the GAO investigator to a company representative.)

COMPANY REPRESENTATIVE: Hello? Hello?

GAO INVESTIGATOR: Hi.

COMPANY REPRESENTATIVE: Hi. This is [name]. Did somebody call this number?

GAO INVESTIGATOR: Yeah, I did. I did. I was trying to get some information on VA benefits.

COMPANY REPRESENTATIVE: Okay. What can I help you with?

GAO INVESTIGATOR: Well, I'm just trying to figure out my — this is for my father.

COMPANY REPRESENTATIVE: Uh-huh.

GAO INVESTIGATOR: And, you know, he's not currently getting benefits. He gets Social Security.

COMPANY REPRESENTATIVE: Right.

GAO INVESTIGATOR: But, you know, I was — I'm trying to see if maybe he could qualify for benefits. But the problem is he's got, you know, some assets, and I'm not sure, you know, if that precludes him from getting benefits or not. So I wanted to talk to somebody —

COMPANY REPRESENTATIVE: No. No. Is he — does he need some help around the house or has he got some medical or physical impairments —

GAO INVESTIGATOR: Yeah.

COMPANY REPRESENTATIVE: — right now?

GAO INVESTIGATOR: Yeah. I mean, he's 86. I mean, mentally he's fine. But, you know, physically he needs a lot of help in just, you know, walking and getting in and out of bed.

COMPANY REPRESENTATIVE: Okay.

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GAO INVESTIGATOR: And, I mean, yeah, he needs help.

COMPANY REPRESENTATIVE: Sure. If you will — if you will do me a favor, I'm going to send you — do you have an e-mail address?

GAO INVESTIGATOR: Well, not really. But, I mean, I can probably get something. But what do you need?

COMPANY REPRESENTATIVE: Well, I was going to send you a little form, and if you can just spend a few minutes and fill it out, then I can tell you if your father is available for benefits or not.

GAO INVESTIGATOR: Okay. I mean, I mean, basically I'm assuming he —

COMPANY REPRESENTATIVE: I probably could do this — I could do this over the phone, too. But right now I'm just going and jumping on a conference call. So I can call you back and I can ask you the questions I need to ask you, if you want. Maybe in — I'd say within a couple of hours I can get back with you.

GAO INVESTIGATOR: Okay. Yeah, that might work.

COMPANY REPRESENTATIVE: Okay. It is a means-tested and an asset-tested — uh, benefit, but — um, essentially there are legal work-arounds. And if you know, it's basically you have to put together a good presentation for the Veterans Administration. And that's what we do. We help people um — position assets and coordinate the presentation effort to the VA. So there's really not many kinds — if, in fact, your father has lost some of the activities of daily living, then we really can't get him qualified. So I'll just —

GAO INVESTIGATOR: Yeah.

COMPANY REPRESENTATIVE: — make a short explanation like that.

GAO INVESTIGATOR: Yeah. And just to kind of make it short, I mean, his income isn't the thing, because he's only getting Social Security. But he's got assets that are probably — between his house and some savings and stuff, he's probably, you know, a little bit over \$500,000.

And I'm wondering if that precludes him from qualifying.

COMPANY REPRESENTATIVE: No. No, it doesn't, especially if he's got a little bit of uh — flexibility. How much is the house worth? The house is really not an issue at all.

GAO INVESTIGATOR: Yeah, that's probably about 200,000.

COMPANY REPRESENTATIVE: Oh, so you have 300 in other stuff? Okay. Yeah, I've qualified people with that — beyond \$700,000 worth of liquid assets. So that's not the issue. But sometimes the older folks, you know, your father being 82 —

GAO INVESTIGATOR: Eighty-six.

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COMPANY REPRESENTATIVE: Eighty-six, I'm sorry. Sometimes they — oh, they're not — what would be the word? They're sometimes control freaks, meaning sometimes what we have to do is retitle assets. He would still be totally in control of them, but not under his direct purvey.

So if he can understand the strategy, he could understand that, you know, he's entitled to the benefit. It could be — he's single right now?

GAO INVESTIGATOR: Yeah, yeah. His wife is dead.

COMPANY REPRESENTATIVE: Okay. So, you know, basically he performed for his country. If he was able to get aid and attendance, he would get real close to — actually, this year is \$19,736 per year. And if that means something to him, then we can help him out. If it doesn't, then

he'll just have to go through spend-down and spend it.

So we can — we can make it work, but he's got to be willing to help us. Okay? We can't force people to do something that they're not wanting to do.

GAO INVESTIGATOR: I got it.

COMPANY REPRESENTATIVE: Okay. It's real simple —

GAO INVESTIGATOR: What sorts of things are you talking about? I mean, where do we put it?

COMPANY REPRESENTATIVE: Well, for instance, do you have power of attorney for him right now?

GAO INVESTIGATOR: Well, I don't. But, you know, he's pretty — he's pretty lucid. I mean, I — I can probably get it.

COMPANY REPRESENTATIVE: Well, typically speaking, for people that have had a child or relative assigned a power of attorney, then they've kind of realized that, you know, if something happens, they may need some help. Somebody acting in their financial capacity if they get in a situation where they can't perform or somebody to make some medical decisions for them.

So at that point in time, they've kind of acquiesced to the fact that, you know, at this point in my life, I need a little bit of help.

So I was going to say, if he'd already given you power of attorney, then essentially what he said is, you know, he trusts you.

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: And if that's the case, then essentially it's going to be that type of a relationship where things may be put into special types of trusts where

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he is still — where you would have a fiduciary responsibility to him. So it's a contractual obligation. It's — all the money is for the benefit of him, but it's not under his direct control.

Now, that's not necessarily the only way it can be done. There are also what we call care contracts where essentially he can kind of prepay in a contractual manner for his future care. It gets it out of his immediate possession and would help qualify for those types of benefits.

So there's a myriad of strategies. I work with an attorney. We'll make sure it works for you. But he just has to understand that either he wants to get the benefit or he doesn't. If he does, we can make it work. If he doesn't, then that's okay, too.

GAO INVESTIGATOR: Right. Well, I mean —

COMPANY REPRESENTATIVE: It's up to him.

GAO INVESTIGATOR: — I don't think he wants to lose his assets. And, you know, you know, we don't want him to lose his assets. And that's — that's the biggest concern now.

COMPANY REPRESENTATIVE: Right. There's — there's a — yeah, well, he will if he needs the care. Then the other issue you have coming up, too, of course, is sometimes folks that mostly qualify for the benefit will essentially possibly qualify for Medicaid, too. And what that means is that, yes, I mean, if his expenses go to \$6-7-8-9-10,000 a month, then he will lose his assets unless he does something to protect them. So we can help out in that regard, too.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: It's — you really don't have — you don't have an e-mail address really?

GAO INVESTIGATOR: Well, I can get one for you, yeah. I'm not real computer — I'm not a computer guy. That's all.

COMPANY REPRESENTATIVE: Okay. Well, I can appreciate that. We probably — I'm thinking here — is this your cell number?

GAO INVESTIGATOR: Uh-huh. Uh-huh.

COMPANY REPRESENTATIVE: You wouldn't be able to print it if I gave it to you so —

GAO INVESTIGATOR: Do you have something on your web site?

COMPANY REPRESENTATIVE: I don't have a — I don't have the form embedded. Let's just talk in a couple of hours. I'll ask you the question. You know, I can tell pretty much right now that I can help you out. It's just a matter to the extent where you need to ask your father — well, probably before you talk to me again. Say, Hey, Dad, you know, I talked to an accredited VA application guy, and he says that, you know, we can

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get you the benefit but there is some strategy involved. And if you want to hear it, fine. If not, that's okay, too.

You know, that's just really what you need to do with this.

GAO INVESTIGATOR: All right. What do you guys charge for that?

COMPANY REPRESENTATIVE: Well, for the — there's two ways. Let's just leave it at a thousand — \$1,050, okay?

GAO INVESTIGATOR: Just a straight fee?

COMPANY REPRESENTATIVE: Yeah, \$1,050. Of course, what we really want to do is to be able to — we can give you the recommendations and turn you loose, and you go out there on the street and try to implement it.

But, you know, you probably really want to kind of go through us and let us help you in the full way. I will send you enough information and the attorney's information so that you'll understand that we really are a full-fledged service organization and can really help you through this mix.

And then, you know, once we help you out, you can either go down to the local VA office and have them fill out the paperwork. Is your father — is your father in the same town as you or is he — where is your father?

GAO INVESTIGATOR: Yeah, he's not that far away. About, you know, seven, eight miles away.

COMPANY REPRESENTATIVE: Okay. Where — where are you located?

GAO INVESTIGATOR: I'm actually in north [state].

COMPANY REPRESENTATIVE: Oh, are you? What part?

GAO INVESTIGATOR: Well, are you familiar with [city] at all?

COMPANY REPRESENTATIVE: Yes. I went to [college] so —

GAO INVESTIGATOR: Oh, no kidding.

COMPANY REPRESENTATIVE: Yeah. And my sister lives in [city] right now, actually.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: And actually we lived in [city] for a few years when I was real young. Yeah, I'm familiar with [state]. I'm a native of [state]. So, yeah, we can help out. So I wish you had some kind of an e-mail.

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GAO INVESTIGATOR: Well, let me see if I can do something. I mean, you know, my brother might have something that I can — I can use.

COMPANY REPRESENTATIVE: Okay. Yeah, because, really, this is a family discussion. You know, all the kids — how many kids are there besides you?

GAO INVESTIGATOR: Just me and my brother.

COMPANY REPRESENTATIVE: All right. So you guys are really going to need to put your heads together and say, hey, this makes sense for us or it doesn't. You know, dad is going to have to cooperate or he's not. And, you know, sometimes, to be honest with you — I deal with older folks, you know — they just don't give a rat's fanny. And so you can't make the horse drink, you know.

GAO INVESTIGATOR: I don't think —

COMPANY REPRESENTATIVE: But if he wants to protect his asset —

GAO INVESTIGATOR: Yeah, I mean, he's — you know, mentally he's fine. I don't think that's going to be a problem. I mean, he —

COMPANY REPRESENTATIVE: All right. Well, if he wants to protect his assets —

GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: Most of the time — most of the time they want their kids to wind up with the money. And sometimes, you know, they don't care as much. But I can't get in your father's head, so you need to kind of ask him if that's the case. If he wants to protect the money, you can have him protect the money.

GAO INVESTIGATOR: Okay. All right.

COMPANY REPRESENTATIVE: Okay?

GAO INVESTIGATOR: Sounds good. All right. I appreciate it. Well, let me see if I can get an e-mail address and give you a buzz back.

COMPANY REPRESENTATIVE: All right. Hey, let me do this. Let me give you my cell number, please, so you should be — because I'm in and out so much. It's [telephone number] —

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: — [telephone number].

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: [telephone number].

GAO INVESTIGATOR: Okay. All right. Got it.

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COMPANY REPRESENTATIVE: All right, buddy. Take care.

GAO INVESTIGATOR: I'm sorry. What did you say your name — what did you say your name was again? I'm sorry.

COMPANY REPRESENTATIVE: [name]—

GAO INVESTIGATOR: [name]. Oh, that's right, [name].

COMPANY REPRESENTATIVE: [name], [name]. Yeah. All right.

GAO INVESTIGATOR: Okay. Thank you.

COMPANY REPRESENTATIVE: Okay. Thank you. Bye now.

Call 3: Caller is a GAO investigator phoning on behalf of his fictitious 86-year-old father who was a veteran, seeking VA pension benefits, who wants to learn about the services provided by the company. The company representative describes how his father can qualify for these benefits, despite having significant assets.

(Whereupon, an outgoing call was placed by the GAO investigator to a company representative.)

SPEAKER ONE: [company name], [name], can I help you?

GAO INVESTIGATOR: Yeah, I hope so. I want to talk to somebody about possibly getting VA benefits for my father.

COMPANY REPRESENTATIVE: Okay. And your name?

GAO INVESTIGATOR: My name is [name].

COMPANY REPRESENTATIVE: Hi, [name]. Can you tell me a little bit about your dad's situation?

GAO INVESTIGATOR: Well, he's a World War II veteran.

COMPANY REPRESENTATIVE: Okay.

GAO INVESTIGATOR: He's 86 years old. Are you there?

COMPANY REPRESENTATIVE: What is the nature of his illness?

GAO INVESTIGATOR: I'm sorry?

COMPANY REPRESENTATIVE: Can you tell me about his illness, please.

GAO INVESTIGATOR: Well, you know, aside from getting old?

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COMPANY REPRESENTATIVE: Yeah.

GAO INVESTIGATOR: He's having a lot of — he can't walk too well.

He's got a lot of, you know, joint problems and stuff like that.

So he can't — he needs a lot of help getting in and out of bed, taking baths and stuff like that.

He's also got — he doesn't hear very well.

COMPANY REPRESENTATIVE: And how old is your dad?

GAO INVESTIGATOR: He's 86.

COMPANY REPRESENTATIVE: God bless him.

GAO INVESTIGATOR: I mean, mentally he's fine, but physically he's, you know, I guess just wearing out.

COMPANY REPRESENTATIVE: Where does he live? Is he living with you or is he in a facility?

GAO INVESTIGATOR: No, he's got a place, he's got a house.

COMPANY REPRESENTATIVE: Ok. Are you planning on leaving him at the house, staying at the house?

Is he going to have any in-home health care coming in?

GAO INVESTIGATOR: Yeah, I mean, in-home, I would think, because I mean, mentally he's fine.

COMPANY REPRESENTATIVE: Have you checked with an in-home health care agency to come to the house?

GAO INVESTIGATOR: Well, yeah, he's got people coming in already.

COMPANY REPRESENTATIVE: He does. Okay.

GAO INVESTIGATOR: I mean, that's kind of why I'm —

COMPANY REPRESENTATIVE: I see. The reason why I ask those questions is that in order to get VA benefits, called Aid and Attendance, which is a benefit that the government will pay up to nineteen fifty per month, tax-free, and the government usually pays that 9 months out from the time we apply.

And you get also a retroactive, so it would be 8 months on top of that.

GAO INVESTIGATOR: Okay.

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COMPANY REPRESENTATIVE: It's that they need to have something in place like in-home health care already being used or about to be used, or he lives in an assisted-living facility or a nursing home.

And those are key. One of those three things have to be in place or about to be in place.

GAO INVESTIGATOR: He is getting help already at the house. I mean, that's one of the things.

I mean, we're spending a lot of money.

And you know, he's got — he's got some assets, but I mean, as far as income, all he's got is his Social Security.

COMPANY REPRESENTATIVE: Tell me about his Social Security. What is coming in per month, as far as income?

GAO INVESTIGATOR: He's got eleven fifty coming in a month.

COMPANY REPRESENTATIVE: Okay. Anything else?

GAO INVESTIGATOR: Well, no, because he's got some — you know, he owns his own house.

COMPANY REPRESENTATIVE: Right. I'm just asking; I don't know your situation.

But eleven fifty a month in Social Security. No other income is coming in.

No savings?

GAO INVESTIGATOR: No, he's got some savings and stuff, but I mean, I'm concerned, again, he's going to lose all that.

COMPANY REPRESENTATIVE: Right.

See, how we work — first of all, I'm accredited by the VA. And what we do is we plug into the software to see what dad qualifies for.

And what we plug into the software is money going in, money going out, money saved, illnesses, what his illness issues are, in other words, what the home health care agency is doing for dad.

All of that plays a major role in crunching the numbers to see what dad qualified for.

And in most cases, [name], it's not a matter of if he qualifies, it's a matter of how much.

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GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: That's going to have to be our next conversation.

I'm just trying to get a little information to see if I can guide you in the right direction.

My question to you regarding the home health care, do you have an idea what they're charging you per month?

GAO INVESTIGATOR: Well, you know, it's probably around a little over two thousand, maybe twenty-five hundred a month.

COMPANY REPRESENTATIVE: Okay. And so here's what you have, [name]. You have more money going out than coming in, as far as income.

GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: So you have a shortfall of about fourteen hundred dollars, thirteen fifty, a month going out for care.

And that's a good thing, when it comes to applying for the VA benefits.

There's other factors, I'm just giving you kind of an overview.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: And it could be, you know, dad may qualify for up to the full nineteen fifty a month.

I don't care if twenty-five hundred is coming in, and twenty-five hundred is going out the door, the software, with all of the bells and whistles of what we have to plug into it, it may kick out that dad needs nineteen fifteen a month.

GAO INVESTIGATOR: Okay, but here's the problem.

COMPANY REPRESENTATIVE: He may have a shortfall of fourteen hundred.

GAO INVESTIGATOR: Yeah, but here's my concern though, is that he's got — he owns his own house, and then he's got like a mutual fund and he's got some savings.

And of course, that's not going to last very long with this negative, you know, income that he's got going on.

COMPANY REPRESENTATIVE: Correct.

GAO INVESTIGATOR: But how is he going to qualify for anything with those assets?

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COMPANY REPRESENTATIVE: Well, the VA has different scenarios.

For example, the VA will allow us to do estate planning to reposition the assets so he can qualify.

The VA may be able to allow him to keep a certain amount.

How much money are we talking about in savings or stocks or bonds or mutual funds total?

Just off the top of your head. You don't have to be exact.

GAO INVESTIGATOR: I'm guessing he's got maybe ninety thousand in savings and about two hundred — about a quarter of a million, probably, in mutual funds.

A little over two fifty, two sixty maybe.

COMPANY REPRESENTATIVE: All right. So if he's not opposed, there's like several scenarios.

So let's just talk about money. Those with assets of which we would call your dad.

Is he opposed to repositioning the assets to where — are you the power-of-attorney, [name]?

GAO INVESTIGATOR: Like I say, he's got his mental facilities, so I'm not.

I mean, I could be, but I mean, at this point, he's still able to function for himself.

COMPANY REPRESENTATIVE: Well, your issues here are you have about a quarter of a million dollars plus cash.

The government is going to want him to use his money first, if we don't do estate planning, which we're allowed to do, according to the VA parameters.

GAO INVESTIGATOR: Okay, so what does that mean? Where — what would you do?

COMPANY REPRESENTATIVE: What that means is basically is repositioning the assets to where — it may — and I don't — again, the software tells us what we can and can't do.

But I'm just going to give you a — kind of a hypothetical.

Uh — For example, you may be able to reposition, reallocate those funds into a trust that [name], Jr. — if you're a Jr. — I'll just — [name], you —

GAO INVESTIGATOR: [Inaudible].

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COMPANY REPRESENTATIVE: — would be the trustee of.

And we're allowed to apply for VA benefits the day after, by reallocating those funds, so that dad can qualify.

And he may get nineteen fifty a month, tax-free, plus retroactive, for the 8 months waiting.

So he may get a full check of about almost twenty something thousand dollars, and the funds thereafter come each month to you tax-free.

Does he want that? I don't know.

Those are some of the scenarios that the software will kick out, and let us know what we can and can't do.

But the bottom line is, if you went to the VA directly and told them — because you would have to be forthright, and tell them that you had this money — they would reject you immediately, until you spend down to your last fifteen hundred dollars.

Or there are options that you could do.

And that's where an accredited VA claims agent comes in, myself, because we work with attorneys that do estate planning that are able to do these type of things.

So those are the questions you want to talk to your dad about, even though he may have his faculties, and he may be able to make decisions.

Is he willing to pull the trigger and let you make the decisions? Because that's what he may have to do.

GAO INVESTIGATOR: Well, I'm just —

COMPANY REPRESENTATIVE: I'm just giving you one of the scenarios.

But our niche is that we deal with people with assets, if they are willing to let the power-of-attorney make those decisions, then we can apply for VA benefits without a hiccup.

GAO INVESTIGATOR: Okay, all right.

COMPANY REPRESENTATIVE: So those are the questions that I probably would talk to my dad about.

GAO INVESTIGATOR: He's pretty reasonable.

COMPANY REPRESENTATIVE: Because quite frankly, there is a gap.

And dad, who knows, can get worse, and then you may have to put him into a nursing — an assisted-living facility, which is twice what you're paying now.

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And now it becomes a do or die situation, where do you want to preserve the Estate, or do you want to spend it down?

And those are the questions — those are hard questions to ask.

GAO INVESTIGATOR: Yeah. You know, what I'm seeing now is that those assets are — are dwindling because —

COMPANY REPRESENTATIVE: The economy.

GAO INVESTIGATOR: Yeah, and we're putting out more than, you know, he's only got a little bit coming in with the social security. That's not covering it.

COMPANY REPRESENTATIVE: No, that's right. And what these types of estate planning devices, that's allowed, according to the VA, it's real simple.

I mean, they make it very clear that the — by the way, are you the power-of-attorney?

GAO INVESTIGATOR: I don't have a power-of-attorney, but I can probably get one.

COMPANY REPRESENTATIVE: I would do that yesterday. I would — forget whether we met each other or not. You need to get that done.

What I would suggest — can I make a suggestion?

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: Go to Office Depot —

GAO INVESTIGATOR: Yes.

COMPANY REPRESENTATIVE: — get a general power-of-attorney in place. Have a notary notarize it, which will make it legally binding that day of notary.

And now you have a power-of-attorney in place, so that if anything happens to dad, God forbid, he has a stroke and he becomes mentally incapacitated, you've already got something in writing where you can make decisions for him, and you don't have to go through the court system.

GAO INVESTIGATOR: That makes sense.

COMPANY REPRESENTATIVE: So I would do that immediately. And I would tell dad. He wouldn't be opposed to that, would he?

GAO INVESTIGATOR: I don't think so, no. But by the same token, he can still make his own decisions, so I want him to —

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COMPANY REPRESENTATIVE: That's doesn't change. I mean, he still makes his own decisions, even with the power-of-attorney in place.

The power-of-attorney is only in case he does become incapacitated.

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: Okay. You are basically doing preventive medicine. And that's what we're suggesting here.

If the software kicks out — and I don't know until I get a fact-finder filled out by you in detail, and it's an 8-page fact-finder, it takes me about 7 hours with the attorney to go through all this.

And we don't charge to fill out the VA forms.

We do not charge to represent dad for the VA benefits, but we do charge a flat rate to do the seven hours, eight hours of due diligence to figure out what is going to be the right avenue, because they are only going to have one scenario that's going to fit dad's situation, once we get that fact-finder in.

Because once we get that fact-finder in, the software tells us exactly what we can and can't do.

GAO INVESTIGATOR: All right. And how much is that? What's the cost of that?

COMPANY REPRESENTATIVE: Fifteen hundred dollars.

GAO INVESTIGATOR: Fifteen hundred, okay.

COMPANY REPRESENTATIVE: But it's not a matter of if dad qualifies, it's a matter of how much.

I will tell you, because he's a living vet, our experience from the software, the software will kick back between sixteen to nineteen hundred dollars that he would qualify for, because he's a living vet, whereas if it was mom, and dad was dead, the surviving spouse always gets less.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: Now if dad qualifies for the nineteen fifty — let's just use that as an example — times, ah, he'll get a check on the ninth month, if we apply for it yesterday, and got everything in place, he would get a check from the government for seventeen thousand five hundred fifty dollars, tax-free.

And then, each month thereafter, he would get nineteen fifty coming in, each month, tax-free.

GAO INVESTIGATOR: Whoa.

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COMPANY REPRESENTATIVE: That's how that works. I'm here to tell you, that for fifteen hundred dollars, you'll get your money back on the first month that you apply, basically.

GAO INVESTIGATOR: Yeah, yeah.

COMPANY REPRESENTATIVE: But once we do what we need to do, and if he's not objected — objecting to the reallocating and repositioning of those funds, because quite frankly, at 86, I know he has two hundred and fifty thousand in mutual funds, but you know, that's a concern to me right there, because of the loss and what's going on in the economy.

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: So is he willing to pull the trigger and get it out of harm's way, so that he would get between 4 to 6 percent, and not — and not at any risk?

Because if we do reposition the funds, it's very likely that it has to be an account that cannot go backwards.

GAO INVESTIGATOR: All right. So what type of thing are you talking about?

COMPANY REPRESENTATIVE: It could be CDs, it could be annuities, but the point is, it has to be an account that's protected, that can't go backwards.

There's not an attorney, that I know that's accredited, that would will take any case that's going to be tied into stocks, bonds, or mutual funds, because they can lose their base, they can lose their principal, they can lose their gains.

And the attorney signs off on that stuff, when he represents the VA.

GAO INVESTIGATOR: Okay. And if he's putting it into something, and he's getting 4 to 6 percent, does that money go to him or where does that go?

COMPANY REPRESENTATIVE: If it stays into the account, it goes to him.

How it works, basically, [name], it's that the power-of-attorney is the decision maker with dad.

You become the trustee.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: You are the pivot, you are the person we go to.

Because everything has to be reallocated out of dad's name, titled to the trust, so that [name] controls it, [name] cuts the checks.

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Dad's allowed to keep money in his account, that's not a question. It's a question of how much is he allowed to keep in his account.

That depends on the software coming back and telling us what he's allowed to keep, what he's not allowed to keep.

GAO INVESTIGATOR: Uh-huh, uh-huh.

COMPANY REPRESENTATIVE: Do you follow?

GAO INVESTIGATOR: If I use any of that money for him or for me, I have to count that as income?

COMPANY REPRESENTATIVE: Great question. Let's talk about for him first.

If you use the money for him — first of all, the Trust will Dad has what? — am I correct by saying he has over two fifty, combined, like three forty?

GAO INVESTIGATOR: Yeah. Well, like I say, he's got about ninety in savings and another two — maybe about two sixty in a mutual fund.

COMPANY REPRESENTATIVE: So three fifty he has total.

GAO INVESTIGATOR: Okay, yeah.

COMPANY REPRESENTATIVE: So what would happen, in this Trust account, visualize it as there's a checkbook access.

In the checkbook access, you're able — you're going to have up to three fifty, what's going to be liquid is going to be roughly about close to a hundred and fifty thousand dollars, or a hundred thousand minimum.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: So that's for incidentals, for dad's needs, for whatever. It doesn't make a difference.

I don't have to know what it's for.

GAO INVESTIGATOR: Okay. But if I use that, does somebody, either I or him, have to count that as income?

COMPANY REPRESENTATIVE: Well, if he cashes in his — are these IRAs? Do you know?

GAO INVESTIGATOR: Well, no. I mean —

COMPANY REPRESENTATIVE: Okay. If they're not IRAs, and they're just non-IRAs, non-401(k)s, non-retirement plans —

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GAO INVESTIGATOR: Right.

COMPANY REPRESENTATIVE: — then, no, you could use them into the account —, and they could be taxable— for whatever, it's not countable as income.

But if they are IRAs, then you would have to cash in the IRAs and then it would become income.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: But the other account, when it's put into the put and keep account — let's say you have three hundred and fifty thousand.

A hundred to a hundred fifty goes into the checkbook access.

The other two hundred or whatever goes into a put and keep account earning four to six percent.

GAO INVESTIGATOR: Is that like an annuity or something?

COMPANY REPRESENTATIVE: That doesn't earn any interest. That's accessible dollars, liquid dollars, when you need it for emergency.

The other account will earn 4 to 6 percent.

So it depends on what you want to put into that other account, and how much you want to keep liquid.

GAO INVESTIGATOR: Okay. Well, the account that's earning 4 to 6 percent, what is that in? Is that an annuity or what is that?

COMPANY REPRESENTATIVE: It would be an annuity that has accessibility to it, but it's tax-free, it's not being — it's not being taxed.

GAO INVESTIGATOR: Okay. All right. But I wouldn't have access to that money?

COMPANY REPRESENTATIVE: You will have access to that money. Each year you have access to it, up to 10 percent free withdrawal, with no penalty.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: And if — but that's why we want to keep some of that money out in the Trust account checkbook, that is basically accessible, totally liquid.

So the software will kick out what we can and can't do.

I'm projecting that probably a hundred and fifty of it, up to a hundred and fifty, could be liquid.

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Now you may not need a hundred and fifty liquid. So the more you put into the annuity, the more interest you're going to earn on those funds.

GAO INVESTIGATOR: Uh-huh.

COMPANY REPRESENTATIVE: That's a decision you have to make with dad.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: But from my experience on the software, I've seen between, - a hundred and fifty or a hundred thousand go into the annuity — checking account, and the rest goes into the annuity.

GAO INVESTIGATOR: Uh-huh.

Well, hopefully, you're talking this VA thing.

Is that really — the nineteen or whatever that he would qualify for, is that a pension or what is that?

COMPANY REPRESENTATIVE: It's — it's — I'm sorry. It's going to be considered what is called Aid and Attendance.

GAO INVESTIGATOR: Okay.

COMPANY REPRESENTATIVE: It's aiding him with him attendance for his care, and that is the home health care.

Remember, I mentioned that there's three things that have to be in place in order for us even to apply for the VA benefits called Aid and Attendance.

And that he is already getting aid, you know, from a home health care, or assisted-living or in a nursing home.

GAO INVESTIGATOR: Uh-huh. All right.

COMPANY REPRESENTATIVE: And so we're applying for specifically that. That's all I deal with.

I don't deal with any of the other benefits that the VA has.

GAO INVESTIGATOR: Okay. All right, all right.

COMPANY REPRESENTATIVE: But you do have some obstacles. You have some issues that you need to discuss with dad.

If you're interested, I believe that it's a fit.

It's not a matter of if he qualifies, it's a matter of how much. But the computer will tell us what we can and can't do.

Appendix II: Full Transcript of Selected Calls
with Organizations Providing Products and
Services to Help Claimants Qualify for VA
Pension Benefits

And then, if you like, I can e-mail you the fact-finder and the information. There's two forms I would send to you that you would send back to me, signed, with a check, and the address is on the fact-finder.

If you like, I can e-mail it to you, if you have an e-mail address.

GAO INVESTIGATOR: I'll tell you what, I want to talk to him about it first.

COMPANY REPRESENTATIVE: Okay, great. Just keep us in mind. You have our number; give us a call.

GAO INVESTIGATOR: Okay. I'm trying to think if I have any other questions for you. I was just trying to write down a couple things here.

All right, I mean, I guess that's it.

COMPANY REPRESENTATIVE: The problem that you have right now is that you have assets.

We have to definitely — I know, from experience, that if you have assets, there may be a strong possibility of repositioning some of those assets.

And there's a way to reposition some to the trust and there's a way to reposition some to dad, and there's a way to reposition to [name].

GAO INVESTIGATOR: Right, right.

COMPANY REPRESENTATIVE: That all comes from the software, once it kicks it out.

GAO INVESTIGATOR: All right. And you said that the cost is fifteen hundred bucks for the —

COMPANY REPRESENTATIVE: Flat rate, yeah, no extra costs.

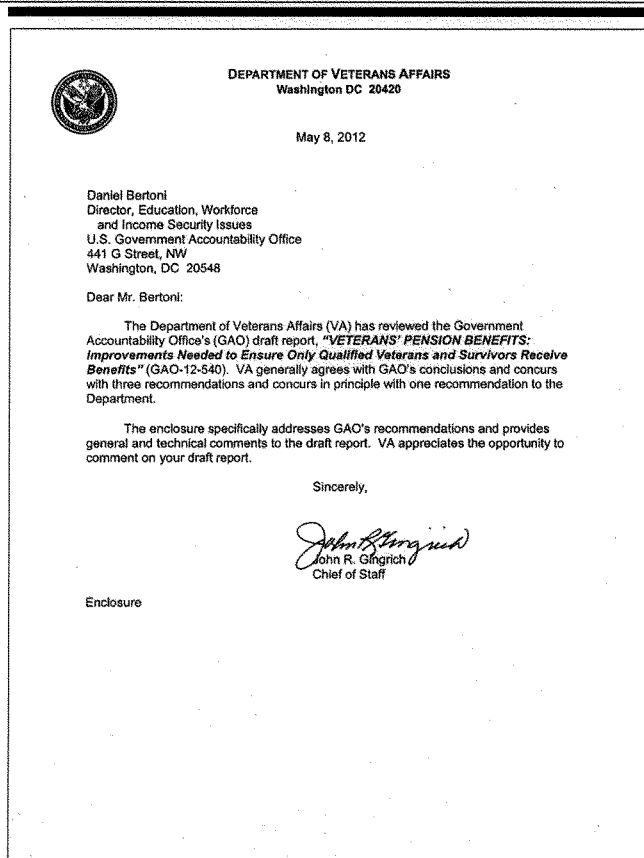
GAO INVESTIGATOR: All right. Well, let me talk to him and I'll get back to you.

COMPANY REPRESENTATIVE: All right. Nice meeting you, [name].

GAO INVESTIGATOR: Thank you for your time.

COMPANY REPRESENTATIVE: Bye bye.

Appendix III: Comments from the Department of Veterans Affairs



Appendix III: Comments from the Department
of Veterans Affairs

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report:
***"VETERANS' PENSION BENEFITS: Improvements Needed to Ensure
Only Qualified Veterans and Survivors Receive Benefits"***
(GAO-12-540)

VA's General Comments: Before addressing GAO's specific recommendations, VA offers comments regarding GAO's conclusion that the design and management of the pension program fails to ensure that this needs-based benefit is being provided to only those Veterans and survivors with a demonstrated need. VA's improved pension program was designed by Congress to provide economic security to financially disadvantaged wartime Veterans and their survivors without undue delay. Accordingly, from the program's inception in 1979, VA's implementation has focused on paying pension benefits quickly and without the extensive development of evidence often required in VA's disability compensation program. Operating under this framework, VA paid in fiscal year 2011 over \$4.2 billion in pension benefits to over 313,000 Veterans and 203,000 survivors. During that year alone, VA completed nearly 50,000 original claims for Veterans' pension and over 60,000 claims for survivors' pension, while maintaining an accuracy rate of nearly 98%.

Because of their financial need and often advanced age, pension recipients are among the Department's most vulnerable beneficiaries. These beneficiaries comprise more than 50% of the individuals in VA's fiduciary program for beneficiaries who cannot manage their VA benefits as a result of injury, disease, or the infirmities of age. Recognizing this, last year the Secretary of Veterans Affairs authorized a reorganization within the Veterans Benefits Administration (VBA) to establish a new office to more directly control and administer the Department's pension program. In April 2011, VBA established the Pension and Fiduciary (P&F) Service, led by a VA Senior Executive, to focus, in part, on the unique needs of the pension program and pension beneficiaries. This reorganization has allowed VBA to increase the staff responsible for pension policy and procedures, and to establish a separate staff responsible for all aspects of pension quality, training, and program oversight.

One of the first tasks undertaken by the new P&F Service in January 2012, was to identify gaps in VA's pension regulations, particularly with respect to program integrity measures. P&F Service identified gaps in VA's regulations, including a lack of a proscribed look-back period for asset transfers, and a lack of specific regulations addressing the use of trusts and annuities for purposes of reducing net worth and creating pension eligibility. The Service noted that the forward-looking nature of the pension application process, combined with the lack of specific rules governing asset transfers, produced circumstances in which one claimant could transfer substantial assets to another person before applying for pension and still receive the benefit, while a similarly-situated pension beneficiary in possession of the same assets would not be eligible for pension due to excessive net worth. Accordingly, P&F Service began drafting regulations to address these and other issues related to the integrity of the pension program.

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Despite the need to impose additional program integrity measures, which may add complexity to the pension adjudication process, VBA remains committed to delivering this needs-based benefit as quickly as possible to wartime Veterans and their survivors. To offset the potential for added complexity, VBA has also been working on ways to expedite the adjudication of pension claims, to include permitting a family member to submit verification of income and eligibility information to VA on behalf of an elderly claimant and developing an automated rules-based processing system for pension claims.

Throughout the report, GAO compares VA's pension program to other Federal needs-based programs, specifically the Department of Health and Human Services' Medicaid program and the Social Security Administration's Supplemental Security Income (SSI) program. However, as GAO's report correctly notes, unlike Medicaid and SSI, the statutes governing VA's pension program lack provisions addressing the effects of transfers of assets on eligibility for program benefits, e.g., a look-back and penalty period. Although VBA is working to prescribe such provisions in regulations, it will have to follow the rulemaking procedures required by Congress in the Administrative Procedure Act and the resulting regulations will be subject to challenge in the U.S. Court of Appeals for the Federal Circuit. VA notes that the GAO report also recommends that Congress enact legislation to establish a look-back and penalty period for pension claimants who transfer assets in an attempt to create eligibility.

GAO Recommendation: To improve VA's ability to ensure that only veterans and surviving spouses with financial need receive VA pension benefits, the Secretary of Veterans Affairs should direct the Undersecretary for Benefits to take the following actions:

Recommendation 1: Modify pension application forms, as well as eligibility verification report forms, to include space for claimants or recipients to report asset transfers, and to specify annuities, trusts, or private retirement income. For assets, such as annuities and trusts that are reported, forms should also request related documentation to enable claims processors to determine if claimants or recipients retain ownership and control of these assets.

VA Response: Concur. As part of the ongoing pension improvement initiatives described above, VBA is revising pension forms to ensure they provide the necessary space for pension applicants and beneficiaries to report assets, asset transfers, and retirement income. While VBA agrees that the forms need additional space and instructions, VBA also recognizes that lengthy and complex benefit application forms may have the unintended effect of deterring Veterans and survivors from applying for

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pension. Accordingly, in revising the current forms, VBA will balance the need for program integrity with the need for forms that do not impose an undue burden on these often-elderly claimants. In addition, VBA will revise the instructions for pension-related forms to direct claimants and beneficiaries to provide additional evidence for purposes of enabling VA to determine ownership and control of assets transferred using annuities and trusts.

Recommendation 2: For all claimants, verify financial information during the initial claims assessment process. This may include requesting supporting documentation such as bank statements and tax returns, or using automated databases that can verify financial information.

VA Response: Concur in principle. VBA notes that GAO did not provide any data regarding the costs or benefits associated with additional up-front verification of a claimant's financial information. Because VA's goal is to decide claims within 125 days, while maintaining a high-level of accuracy, and because verification of financial information during the initial adjudication process will add to the time required to decide pension claims, VBA will analyze the issue and determine how best to conduct an up-front verification of financial information. This analysis will consider whether VA can exclude applicants who do not have the need prescribed by Congress without adding undue burden to genuine pension claimants and beneficiaries, many of whom are advanced in age. Anticipated completion date is November 1, 2012.

Recommendation 3: Strengthen coordination between pension and fiduciary programs to identify pension claimants or recipients who have transferred or unreported assets, such as allowing claims processors access to fiduciary field exam reports for these cases.

VA Response: Concur. VBA currently conducts more than 70,000 fiduciary field examinations annually. According to VBA's Adjudication Procedures Manual, M21-1MR, Part XI.4.C.11.a, fiduciary program personnel must immediately provide Pension Management Center (PMC) personnel with information that may establish a basis for adjusting a beneficiary's pension benefit. This process ensures program integrity without requiring PMC personnel to review every field examination report generated by VBA's fiduciary activities. It also allows VBA's fiduciary field examiners to assess the credibility of information they obtain from multiple sources, to include incompetent beneficiaries and their family members and other acquaintances, and determine whether it could affect pension eligibility. VBA has effective procedures in place for coordination between the pension and fiduciary programs regarding benefit adjustments and other benefit matters. In addition, VBA has established a pension-fiduciary

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workgroup, which meets monthly to discuss methods for improving program coordination. This group is establishing procedures to further facilitate the receipt of income information from fiduciary to pension personnel to strengthen coordination. Based on all of our current efforts and the refinement of income information transfer, we recommend that GAO close this recommendation.

Recommendation 4: Revise the VA procedures manual to better define the concept of ownership and control to help claims processors determine when specific types of assets such as annuities and trusts should be counted as part of net worth, and establish a more specific criteria for what is considered a reasonable period of time for pension claimants to use up their financial resources before becoming eligible for pension benefits.

VA Response: Concur. However, rather than initially revising its Adjudication Procedures Manual, which is not binding on claimants, VBA is drafting proposed regulations that would address the effect of pre-filing asset transfers on pension eligibility. These regulations would also address and clarify the various factors VA uses to determine whether excessive net worth precludes eligibility for pension, e.g., life expectancy, income, expenses, and liquidity of assets, and generally provide a more consistent set of rules for adjudicating pension claims. Upon completion of the rulemaking proceeding, VBA will amend its manual provisions consistent with the new regulations. The amended manual will interpret the regulations and provide the procedures required to properly implement them. Anticipated completion date is December 1, 2013.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Daniel Bertoni, (202) 512-7215 or bertonid@gao.gov.

Staff Acknowledgments

In addition to the contact named above, individuals making key contributions to this report were Jeremy Cox, Assistant Director; James Bennett; Susannah Compton; Paul Desaulniers; Shelia Drake; Alex Galuten; Douglas Manor; Nelson Olhero; Martin Scire; Wayne Turowski; Walter Vance, and Gregory Whitney

Related GAO Products

VA Enhanced Monthly Benefits: Recipient Population Is Changing and Awareness Could be Improved. GAO-12-153. Washington D.C.: December 14, 2011.

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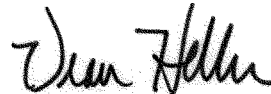
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Senator Heller Statement for the Record, Committee on Aging 6.6.2012

I would like to thank Chairman Kohl, Ranking Member Corker, and Senators Wyden and Burr for their leadership on this important issue regarding veterans. I share your strong concern that our retired service members in Nevada and across America are being manipulated by scam artists and believe that it warrants Congressional action.

Mr. Chairman, we just recognized Memorial Day, a time when the nation pauses to reflect on the cost of freedom, to memorialize those who have perished preserving it, and to thank those who have served to spread it. Today, we are continuing in that vein by working together to protect our most vulnerable veterans and ensure that those in need receive the benefits they were promised and deserve.

Over the last year, my office has been made aware of instances where organizations claim to be affiliated with the Department of Veterans Affairs (VA) and promise VA Aid and Attendance (A&A benefits) to those who are well over the VA pension income limit by promising to "divert" their assets.

My staff in Nevada have attended three so-called "seminars" where some individual or company touts a financial, insurance, estate planning, or legal service to elderly seniors and promises them that they are 95% likely to receive a maximum monthly allotment for the A&A benefits in addition to or in lieu of VA Survivor Benefits.

Seminars are conducted at senior living facilities as a marketing tactic to recruit elderly veterans to move into their facilities. It is not uncommon that these veterans cannot afford to live in these facilities without the help of a potential A&A monthly stipend, but the retirement home provides a prorated rate to allow the senior to move in until receiving payment from the VA.

These individuals or financial organizations often falsely promise that everyone is eligible to receive this benefit when they are not. If a veteran moves into a home with the understanding that they will receive additional A&A benefits and those benefits are denied, then he or she is responsible for all the back fees previously incurred.

A veteran can lose a substantial amount of money if they fall victim to this cycle of manipulation. I have personally known of two instances in my state where individuals lost everything they had because they had to repay all the back fees and are unable to afford to stay in the retirement home, which in turn causes them to lose their deposits and incur moving costs to find a new place to live.

However, this is only half of the issue. The individuals and companies are targeting elderly and disabled veterans who just want to manage their finances responsibly. They lure seniors in with

promises of increasing their monthly benefit and ask for access to personal financial records in order to alter assets in a manner that will help the veteran qualify for A&A benefits.

I have been informed that one individual in Nevada lost a significant amount from a financial portfolio while the company profited over \$200,000.

The practice of poaching our nation's most vulnerable elderly veterans must stop.

I support the efforts of Senators Wyden and Burr to provide the VA with the ability to "look-back" at applicants who transfer or hide assets in the years before applying for pensions. Protections such as this will ensure that benefits are provided to our nation's most vulnerable veterans and not to those who are receiving misleading advice from shady manipulators and financial predators.

Thank you again, Mr. Chairman, for holding this hearing. I look forward to working with all of you to stop this practice.

**STATEMENT OF
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
HEARING ON
THE AID AND ATTENDANCE PROGRAM
OF THE DEPARTMENT OF VETERANS AFFAIRS
JUNE 6, 2012**

Mr. Chairman, Ranking Member Corker, and Members of the Committee, thank you for the opportunity to discuss the Department of Veterans Affairs (VA) Aid and Attendance (A&A) program and Office of Inspector General (OIG) investigations of allegations of criminal violations in charging for certain services and in hiding assets. Due to the limitations in current Federal law, OIG investigations have not resulted in prosecutions in these areas. However, the OIG continues to investigate fiduciaries who prey on the most vulnerable veterans through embezzlement, fraud, theft, and conspiracy, and veterans who make false statements in connection with these benefits.

BACKGROUND

VA's pension program provides a financial benefit to wartime veterans with limited or no income, who are age 65 or older; or under 65 and are permanently and totally disabled, a patient in a nursing home, or receiving Social Security disability benefits. Pension benefits for disability involve non-service connected disabilities; disabilities resulting from military service are compensated through VA disability compensation, which is not means-based. Veterans who are more seriously disabled may qualify for additional A&A or housebound benefits. Surviving spouses and dependent children may also receive pension benefits. Many VA pensioners have been determined to be incompetent and thus have fiduciaries appointed to manage their financial affairs. Although the OIG was asked to discuss specifically A&A benefit issues, the following discussion applies to all VA means-based pension benefits.

Veterans seeking a pension apply for benefits using VA Form 21-526, *Veteran's Application for Compensation and/or Pension* online, which requires the veteran to self-report sources of recurring monthly income, such as Social Security, civil service, railroad retirement, military retirement pay, etc., and other income in the form of cash, bank accounts, interest, retirement accounts, stocks, bonds, value of business assets, investment real estate, and other assets. As VA states on its public Website: "All net worth should be reported and VA will determine if a Veteran's assets are of a sufficient amount that the claimant could live off these assets for a reasonable period of time. The Pension benefit is a needs-based program and is not intended to protect substantial assets or build up an estate for the benefit of heirs." (VA Website, (<http://www.vba.va.gov/bln/21/pension/vetpen.htm>), Veterans Pension Program, "What about Net Worth?") However, despite being a means-tested program, VA pension programs currently have no look-back or penalty provisions that prohibit veterans from

hiding assets prior to applying for, or qualifying for, benefits. In contrast, Medicaid, another Federal means-based benefits program, has such provisions to prevent claimants from diminishing their income and assets to establish eligibility for benefits.

The instructions for the pension application form state:

You must disclose all financial transactions that involve a transfer of assets, even if the transaction occurred prior to the date of your application for VA pension. A gift of property or a sale below the property's value to a relative residing in the same household does not reduce net worth. Likewise, a gift of property to someone other than a relative residing in your household does not reduce net worth unless it is clear that you have relinquished all rights of ownership, including the right to control the property. (Instructions for VA Form 21-526, p. 4.)

The form itself, however, does not ask for anything beyond current income or net worth, using present tense and providing no spaces to include transferred assets. For purposes of this statement, we will refer to disposing assets for less than fair market value for whatever reason as "hiding" assets. Consequently, a veteran could honestly complete a VA benefits application immediately after hiding assets in order to demonstrate to VA he or she had insufficient means. Without a look-back provision and an accompanying penalty provision to delay or reduce benefits of veterans who have hidden assets, veterans have a financial incentive to hide assets to obtain VA benefits and still maintain a corpus in their estate to support them or leave to their heirs. Analogously, individuals or companies who counsel, advise, assist, or charge veterans to enable hiding assets have not broken any laws and are not subject to criminal prosecution.

In addition to the applicable pension law, VA's administration of the program introduces additional variables as to whether the program meets the intended purposes of providing support to the appropriate veterans. VA relies on the self-reported income and net worth of veterans who apply for pension benefits and performs limited verification of the reported information. VA does not require corroboration of information reported on the application, such as bank statements or tax returns. In addition, VA only requires verification of ongoing eligibility for pension benefits in limited circumstances. Only recipients who have previously reported income other than Social Security income must complete an annual Eligibility Verification Report (EVR). The EVR form, like the application form, does not contain spaces to report private retirement income, asset transfers, trusts, etc., and VA does not routinely seek independent verification of the EVR. VA's Income Verification Match¹ (IVM) only identifies some income and the information returned is generally years old. Due to concerns over privacy, claims processors of pension applications do not have access to fiduciary field

¹ The IVM is an annual computer match conducted by VA to compare Internal Revenue Service (IRS) and Social Security Administration (SSA) earned income and unearned income data with income reported by certain pension recipients to determine whether the recipients have any unreported income that impacts their eligibility for VA benefits.

exam reports in VA's electronic case management system, which may reveal asset transfers or unreported assets. Ambiguities in policy guidance provided to employees administering the pension program on what constitutes ownership and control of an asset can also contribute to inaccurate and inconsistent eligibility determinations.

OIG INVESTIGATIONS

On March 16, 2012, the OIG provided the Committee documents related to investigations conducted on the A&A program. During the past 12 years, OIG's Office of Investigations has opened fewer than 20 investigations involving criminal allegations of charging for certain services, charging illegal fees, and hiding assets in the A&A program. None of the cases has resulted in criminal prosecution because of current Federal law. The cases involve four common patterns of allegations:

- The veteran has been solicited or charged fees from an outside entity for financial planning or management, often with the express goal of hiding assets from VA to establish eligibility for pension benefits. Companies openly market these services. In a typical arrangement, for a fee, a financial planner establishes an irrevocable trust—so the veteran can honestly state that he or she has relinquished control over the funds in the trust—for the purpose of providing support to the veteran. Since the trustee, usually a family member or friend, has control over the trust assets, the veteran has no entitlement to, for example, a monthly payment from the trust that he or she would have to report on the VA pension application. Another method of hiding assets is to give them away or sell them at less than fair market value prior to applying for VA benefits. As these practices are not illegal, there is no criminal violation for the OIG to investigate or pursue. Allegations of excessive charges and unfulfilled service promises are private matters between the veteran and the company, over which OIG has no jurisdiction.
- Individuals or companies may charge veterans fees for completing VA applications or other paperwork. While this practice is illegal under Title 38 United States Code, Section 5905, it is rarely prosecuted because it is a misdemeanor offense, the low dollar amounts (usually in the hundreds of dollars) are below prosecutive thresholds and other cases create higher demands for prosecutive resources. In addition, the perpetrators are usually clever enough to disguise these fees among other fees for planning, management, and care services. OIG has not obtained prosecution of any illegal fees in A&A program cases.
- The veteran is alleged to have hidden assets from VA. Since the current law permits this practice, which we have confirmed with the VA Office of General Counsel, there is no illegal or criminal conduct for OIG to pursue.

- Veterans agree to pay companies or individuals to provide home care or similar services for them and the provider fails to provide the required services or overcharges for services. VA does not choose, pay, or monitor the provider, and has no authority to do so. This purely private contractual dispute between the veteran and the provider is also outside the OIG's jurisdiction to investigate and seek prosecution. The veteran has private remedies under contract law, and may even have criminal fraud recourse with state or local authorities, but there is no nexus to OIG oversight jurisdiction.

The OIG has jurisdiction to investigate and seek criminal prosecution of criminal violations involving VA programs and operations, including the pension and A&A programs. The OIG regularly investigates allegations of, and has obtained successful prosecution of, false statements and fiduciary fraud. For example, if a veteran knowingly and willfully falsifies, omits, or under-represents his or her income or net worth on the application for VA benefits, this is a criminal violation of Title 18 United States Code, Section 1001.

The OIG also focuses on fraud by fiduciaries. A fiduciary, appointed to protect an incompetent veteran's assets and utilize those assets for the benefit of the veteran, who abuses that trust and preys on the most vulnerable veterans, will be charged with criminal embezzlement, conspiracy, theft, or fraud. The difference between these cases and the discussion above is that in the latter a clear standard for criminal misconduct exists that can be used for investigation and prosecution. The OIG will continue to work these cases and will include other areas involving VA benefits as the law allows.

CONCLUSION

Due to the limitations of current law in not providing look-back or penalty provisions for hiding assets, the OIG cannot investigate or seek prosecution of any criminal violations in the A&A program because hiding assets and charging veterans for assistance in hiding assets are not illegal acts. While some individuals or companies may be charging illegal fees for applying for VA benefits, the misdemeanor offense and low dollar amounts involved have not produced prosecutions. Finally, overcharging or not performing privately contracted home care services to veterans receiving A&A or housebound benefits or any veteran is not a program or operation of VA within the oversight jurisdiction of OIG.

Thank you, Mr. Chairman, for the opportunity to submit this statement.

June 1, 2012, 2012

From: Terry Schow, Executive Director Utah Department of Veterans Affairs
To: The Honorable Herb Kohl – Chairman, U.S. Senate Special Committee on Aging
The Honorable Bob Corker
The Honorable Ron Wyden
The Honorable Orrin Hatch
Subject: Testimony

Chairman Kohl, Ranking Member Corker, Senator Wyden, Senator Hatch and Members of the Committee.

My name is Terry Schow and I am the Executive Director of the Utah Department of Veterans Affairs and past President of the National Association of State Directors of Veterans Affairs.. Thank you for the opportunity to present written testimony concerning this egregious practice of turning assistance to Veterans into a profit center by those who would take advantage of our elderly Veterans.

I share the deep concern of my counterparts around the country about this practice and hope my comments will enlighten the Committee.

Enclosed, for the U.S. Senate's Special Committee on Aging, is testimony regarding the ongoing, pervasive and unethical practice in Utah whereby retirement homes and assisted living facilities sponsor veterans "services"/financial planning seminars which – at their core – work to compel veterans to transfer financial assets in order to "become eligible" for federal VA Pension and Aid and Attendance benefits. This issue is not unique to Utah; rather, it exists nationwide and is growing in its sophistication and negative consequences including running ads in major newspapers offering "free" Veterans benefit information.

I greatly appreciate the Special Committee on Aging taking an active role in investigating and formally addressing this issue. The bottom line is that veterans are being emotionally and financially hurt by these unscrupulous practices, which are unchecked due to the federal VA's policy of no "look-back" regarding transfer of past financial assets.

Resolutions have been filed on this topic at the local; and state level for consideration at the national conventions of the American Legion, Disabled American Veterans and Veterans of Foreign Wars.

If further information is requested, I can be reached at 801 326 2372 or tschow@utah.gov

Listed below is a recap of some of the complaints received from Veterans and their families.

Predatory Organizations/Individuals Skirt Laws to Take Advantage of Veterans

The Utah Department of Veterans Affairs has been tracking a serious problem affecting Veterans and their spouses. Reports and complaints began to emerge in the Fall of 2009 where private companies began targeting elderly Veterans giving the impression that they are representatives of the Federal Veterans Administration. Some of these groups are even using names like "Veterans Benefits Foundation" to mask the private nature of their companies.

Currently, our Department has come to believe there over 20 different companies or agents working the various Senior Centers and Nursing and Assisted Living Homes in the State of Utah. This number does not include the numbers that work on a national level.

Although the following examples are anecdotal, they show some of the damage and in some cases, outright fraud that is occurring in our State.

Case A

A widow of a World War II Veteran makes a claim for a Death Pension and Aid and Attendance. An agent comes to her home and assists with the paper work. She pays him \$900. The agent does not turn the paper work into the VA until 11 months later. No "Date of Claim" is established and as such, the widow loses 11 months of benefits that are estimated to be in excess of \$16,500.00.

Case B

A World War II Veteran takes a phone call from someone who tells him that a mutual friend gave him the referral to call. This “someone: who helps fill out VA forms says he has an inside connection at the VA and can get the forms through the “system” faster than anyone else. The Veteran believes the caller, arranges the meeting, fills out forms, pays \$300. Months later the Veteran cannot contact the “someone”, finds out that no forms have been submitted, and the friend, made no referral.

Case C

A Veteran arranges with an agent to assist with the paperwork for a claim. The paper work is filled out and payment made. A first installment payment is made for \$250.00. The Veteran has second thoughts about the service that was offered. He contacts the agent who refuses to return the money for the service. The Veteran requests the papers that he provided back from the agent. These papers included copies of his military documents. The agent refused to return them stating that they belonged to him. The agent refused to return the \$250.

Case D

An agent tells a World War II widow that he needs her to provide some information in order to complete the benefits application. He provides a check list of needed documents and gives her some worksheets that requests information about finances etc. The widow works very hard to get the needed documents and information on the work sheets. She provides them to the agent. A week later, the agent comes back to widow with the completed forms, has her sign them, he then puts them in an envelope, seals it and charges her \$250.00. Later, the widow had the opportunity to see the forms she signed. It became very clear that the information she provided was the only information that the forms required. There was no expertise in the process provided by the agent. He simply moved the information from the worksheets that duplicated the forms almost exactly. She stated that if she would have seen the forms, she could have filled them out herself (she essentially did). The “bluff and hook” by the agent was suggesting that the forms were so complex and confusing that only an expert could navigate them. He hides the forms from her by giving her worksheets.

Case E

In one of the worst cases reported to this office, a Veteran contracts with an agent to give his first check from the VA (for aid and attendance) for assistance in making a claim. The Veterans thought that a payment for a little under \$2,000 wasn't such a bad deal in as much as no money was coming out of his pocket. The Veteran also thought that at this point he was not getting any money and any money coming in at a latter date would be better than none. The date of claim was made upon submission to the VA of his paperwork. It took the VA about 10 months for the first check to be issued. The first check was just over \$16,000.00. The Veteran thought the agent would take the first months check (about \$1,600.00) as payment for services, however, the agent was holding the Veteran to the contract to take the first check from the VA (the entire \$16,000.00). This office was never able to determine how the case ended, but the Veteran had a big bill with the nursing home in which he was staying and was depending on the money to catch up with the bill.

Case F

A Veteran and his wife comes to believe that he would not be able to qualify for needed benefits because of assets he and his wife have worked for over a lifetime (mostly in a home that has been paid-off). An agent convinces them that he can "hide" the assets by allowing him to put them into a series of schemes that is of no worth to Veteran or his wife. This is all done under the guises of "financial planning". Since the agent is not "charging" the Veteran for filing out the forms (he does that for free, he only charges for the financial planning services) it is in fact legal. The problem is the home is not considered to be an asset (because the wife will continue to live in it while the Veterans is in a nursing home) and "hiding" it isn't even an issue. The agent either does or does not know this, however, the point still is to sell worthless services and policies.

Case G

A Veteran is convinced to enter into an agreement to have an agent assist with his "financial planning" so that he is able to get assistance with his need to go into a nursing home. The "planning is paid for with part of it that is "at no charge" for filing out papers /forms for VA benefits (the intent in the first place). The claim is denied by the VA because the Veteran is not a "war time veteran". The Veteran feels that he has been taken advantage of because the agent didn't even ask about eligibility issues.

There are sure to be many other cases that go unreported. In this office's attempt to get some of these cases to be heard at the State Attorney General level have difficult as these older Veterans are embarrassed and also un willing to make a formal complaint.

We urge the U.S. Department of Veterans Affairs and Congress to take action to stop these practices.

May 30, 2012

STATEMENT OF
DONALD J. SMITH, ASSISTANT COMMISSIONER
TENNESSEE DEPARTMENT OF VETERANS AFFAIRS
SUBMITTED TO
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
WITH RESPECT TO
VETERANS AID AND ATTENDANCE BENEFIT

CHAIRMAN HERB KOHL, RANKING MEMBER CORKER AND MEMBERS OF
THE COMMITTEE:

On behalf of Tennessee's half million veterans and 1.5 million family members and survivors, I would like to thank the committee for the opportunity to submit written testimony regarding the veteran's aid and attendance benefit.

The first point I would like to emphasize is that there is no "aid and attendance benefit". The benefit that it refers to is non-service connected (NSC) pension as provided by PL95-588.

The next five paragraphs provide a brief explanation of the purpose of the NSC pension and how a beneficiary's entitlement is determined. This is provided for clarification of how our veterans are being taken advantage of and how the intent of the benefit is being circumvented, essentially defrauding the government and using tax payers dollars for purposes not intended by Congress.

NSC pension is an income based benefit that is available to our war time veterans and their survivors and is intended to afford beneficiaries a minimum level of security so they can maintain a reasonable standard of living. It is however, not intended to protect substantial assets or build up the beneficiaries estate for the benefit of heirs.

There are three monetary levels of NSC pension benefits available to beneficiaries. Standard pension; for those that are unable to maintain substantially gainful employment or are age 65. Housebound (HB); for beneficiaries essentially confined to their home due to medical reasons, and Aid and Attendance (A&A); for beneficiaries that require

assistance attending to the normal needs of daily living. The third level of NSC pension is what the “aid and attendance benefits” refers to.

With each succeeding level of benefit, from standard to A&A, the beneficiary is eligible for an increased amount of pension due to the increased costs associated with the requirement for more medical care. For a single veteran, it ranges from \$1,021 a month at the standard rate to \$1,706 a month at the A&A rate.

As I indicated earlier, NSC pension is an income based benefit and the amount beneficiaries are entitled to, is the difference between their countable income for VA purposes (IVAP) and the maximum allowable pension rate for the level of pension they qualify for. IVAP is determined by subtracting the beneficiary’s out of pocket medical expenses from their income.

In addition to considering a beneficiaries income, the VA also considers net worth. If it is determined that a beneficiary has sufficient assets to maintain a reasonable standard of living, entitlement to pension is denied due to net worth.

Because of the income and net worth limits, many of our veterans do not become entitled to receive NSC pension benefits until their health deteriorates to the point that they are required to move to an assisted living facility or nursing home. And the vast majority of them do not realize that their deteriorating health and increased medical expenses now qualify them for benefits.

Because of their deteriorating health they often qualify for the A&A level of pension and the full cost of an assisted living facility or nursing home, including the amount paid for room and board, may be considered a deductible medical expense for VA purposes. That combination can make them eligible for the maximum amount of benefit and it is at a time in their lives when they desperately need the help. This has created the perfect environment for our veterans to be taken advantage of.

If you watch late night television you will see ads from companies soliciting veterans to take advantage of their aid and attendance benefits. If you google ‘aid and attendance benefits’ you will find a list of hundreds of them. They use names such as American Veterans Aid and Purple Heart Legal to appeal to the veteran community and make a profit at the expense of our veterans.

Because NSC pension benefits are income based, by definition, eligible beneficiaries have very limited income and federal regulations prevent charging a veteran a fee to file an original claim to obtain their benefits. These are our war time veterans, our nation’s heroes, and they should not have to pay to get the benefits they have earned.

Companies like American Veterans Aid and Purple Heart Legal are getting around the law by labeling their fee as a consultation fee, which is usually around \$700.00. They openly solicit the fee and require payment up front before they will file a claim on behalf of a veteran. I have addressed this issue with the VA General Counsel and have been

informed there is nothing they can do because our veterans are not being billed for a filing fee. While the practice of calling it a consultation fee as opposed to a filing fee may not be illegal, it is certainly immoral.

As mentioned earlier, Congress did not intend for NSC pension to be used to protect or build up assets for the benefit of heirs. If a veteran has assets that would bar them from entitlement to benefits, these companies will charge the veteran a fee to have their assets placed in a trust or annuity, essentially hiding the assets from the VA in order to establish entitlement to benefits. This is wrong on two levels. They are taking money out of the pockets of our veterans and then establishing eligibility for them to receive benefits for purposes other than what Congress intended. I understand the desire to leave something behind for ones heirs but it should not be done at the expense of the taxpayers.

Another serious area of concern is the lack of ongoing support once a beneficiary starts receiving benefits. Because income and net worth change, the VA requires pension recipients to submit an annual earnings verification report. If it is not submitted in a timely manner their benefits are stopped. Many of our veterans, especially those in assisted living facilities and nursing homes, do not understand how to complete these forms or the consequences of failing to submit them. To the best of my knowledge, none of these companies provide any follow up assistance to their clients for continued maintenance of their claim. And if they did, I'm sure it would be at the expense of our veterans.

There are accredited service officers across the country, trained and available to assist veterans and their survivors, at no cost, in applying for and obtaining the benefits they are entitled to. They also provide the necessary follow up for the continued maintenance of their claim. While these service officers reach a large number of our veterans and assist them, there are many of them that they do not because of several factors.

In Tennessee, the Tennessee Department of Veterans Affairs has 12 field offices located across the state staffed with 23 Veterans Benefits Representatives. There are also County Veteran Service Officers in 81 of our 95 counties. We have a half million veterans and 1.5 million family members. There are 379 assisted living facilities with 21,190 beds and 393 nursing homes with 40,377 beds. It's simply a manpower issue. We do not have sufficient staff to be able to visit every facility on a regular basis.

Another factor is the education of our veterans and their family members and the staffs at the facilities.

Many of our veterans have inquired about NSC pension benefits earlier in their lives and were told they were not eligible for benefits because at that time their income was a bar to benefits. Having been denied once, they do not ask again. It is necessary to reach out to them on a continual basis to ensure they are aware of what they are entitled to.

Educating the staffs at the assisted living facilities and nursing homes is another ongoing challenge. The companies discussed above send representatives to these facilities that

introduce themselves as veteran's benefits advisors. They develop relationships with the staff and convince them to refer any veterans or survivors to them for assistance. The facility staff members believe they are doing the right thing to help veterans and are not aware that these companies are taking advantage of them. Due to the constant turnover of personnel in these facilities it requires a continuous effort to keep them informed.

Legislation making it more difficult to hide assets in trusts and annuities and preventing companies from disguising filing fees as consultation fees are necessary to put an end to their ability to make a profit at the expense of our war time veterans.

Barring any legislative changes, our only defense is to get to our veterans before they do. In the past year, the Tennessee Department of Veterans Affairs has increased outreach efforts to these facilities with more on site visits. We have sent letters directly to the administrators of every assisted living facility in the state and we have expanded our education efforts through the use of social networks.

All of these efforts will reduce the number of veterans vulnerable to these companies, but it will not eliminate the problem and it is a nationwide problem. With sufficient manpower and a focused effort we could eliminate the problem in Tennessee. But these companies, like any predator, would simply move on to other hunting grounds and lay in wait, to move back in if we ever let our guard down.

This is an issue that should be addressed on a national level to ensure that all of our veterans receive the benefits they have earned and so richly deserve without having to pay a fee to access them.

Once again, I thank you for the opportunity to submit testimony and I applaud the Committee for your concern for our veterans.

Statement for the Record
Debbie Burak
Founder, VeteranAid.org

June 6, 2012

Honorable Chairman and Members of the Committee:

I respectfully submit this statement for the record as the proud daughter of a WWII veteran, as well as a daughter who knows what it is to be desperate, out of hope, options, resources, and money to care for aging parents. I faced this challenge for 9 years with my Mom and Dad.

I am also the Founder of VeteranAid.org, a non-profit organization I founded in 2005 that is the #1 nationally ranked website dedicated to the VA's Improved Pension with a primary focus on the Aid and Attendance level. The site was founded based off my personal experience of having filed for the pension for my mother as the widow of a veteran, who died in 2005, without ever receiving a penny from her approved application. The impact of our family not knowing about this pension benefit during my parent's time of need is that there would have been over \$160,000 to offset the extraordinary cost of their monthly care over those 9 years, which my parents nor we as a family could afford.

There were no seminars being held back in 1996, and finding information on this pension was a futile effort. According to the VA, it did not exist, when in fact it has been an entitlement for the past 61 years sitting idle, unknown, and hidden while millions upon millions of older veterans and their widows have done without or were forced to live in sub-standard care facilities where none of us would want our loved one to lay their head down. A converted Holiday Inn that reeked of urine is where my parents called "home" after being displaced from a house fire leaving them homeless and in the care of others. The difference of having this pension for my parents would have provided dramatically better options. So for me, my being present at this hearing is personal, very personal.

On that note, I have self-funded the undertaking of VeteranAid.org, and I am not affiliated with any group or agency. I am simply the daughter sharing information and insights about this pension with a mission to give other sons and daughters better choices than we had, and doing what I believe is honoring the sacrifice of service. I am humbled to say that my efforts have changed the lives of tens of thousands of veterans and their widows over the past 7 years.

I have traveled to Washington, DC in the past to meet with various Senators and the staff of the Republican Senate Sub-Committee on Veteran's Affairs asking for assistance in bringing this pension to light, to put a Bill before Congress, and to address the influx of individuals and companies who have exploited this pension for the sole purpose of duping our veterans and widows for their own financial gain. To address the very reason why this investigation has taken place, and why we are here today. I can only hope that some government official or agency will step up to champion any of my efforts in making this pension as common knowledge as Social Security, Medicare, and Medicaid.

The silence on the VA's part regarding the Improved Pension is exactly what has created the opportunity for individuals, companies, and corporations to leverage themselves to sell financial products, move assets, set up trusts, charge fees, hold seminars, and make false promises. Relationships have been developed between individuals, corporations and facilities to sell financial products in order to fill beds. The financial planning that is done is often done with the salesperson's commission in mind and not what is in the best interest of the veteran long-term.

It is the VA's silence and misinformation about this pension that has let a fox into the hen house, and it is our veterans and their families who are paying the price. The combination of greed and silence rarely results in a positive outcome.

The Improved Pension is a “needs based” benefit and is essentially a Veteran’s Welfare program, and is not intended for those who are fortunate enough to have assets and resources to pay for care and services. Yet most of the companies or individuals who are the exploiters of this pension have created business models that allow them to capture those with excessive assets for their own advancement. The VA has allowed the creation of this market by not informing our veterans and their families that this financial resource is available for those in need. The VA is not in the business of protecting assets, and yet those whose livelihood is based on doing so, see it otherwise.

I would invite you to attend one of these seminars given by a financial company who pass themselves off as veteran advocates to learn first-hand the tactics they employ, and be sure to notice the number of brochures and photographs displayed implying how other veterans are receiving their pension. But the most important thing to notice is the veteran or widow that will be ignored once it is learned there is no money or assets to move, and no commission to be made. The very veteran or widow the pension is intended for, the veteran whose daughter has taken out a 2nd mortgage to pay for their parent’s care, who has gone through that money and is now desperate, will not be getting any help from the financial advisor or so called “veteran’s advocate”.

I come before you with a unique perspective as someone who has witnessed the growth of infringements on this pension over the past 7 years through the thousands and thousands of emails and forum postings on VeteranAid.org. Emails and postings that I have personally responded to. The biggest area of concern I have noted is corporations who have seized this pension as a means to fill a building.

Approximately three years ago an individual who has been using this pension as a calling card to sell annuities to seniors for years, approached one of the largest Senior Living companies. They started by charging \$950 to process an application. The communities hung up the “Welcome Veterans” sign and allowed the financial planners access to the veteran population in the hopes of filling beds. It had nothing to do with “caring” for or honoring our veterans or their widows. In cases where an applicant did not meet the criteria medically, the paperwork was fudged – often claiming the applicant needed and received services they did not.

As examples of how this often does not work out in the veteran’s or widows’ long-term best interest, I offer you the following examples that are true stories.

Carl is a veteran in Independent living who was introduced by that facility to an annuity salesman to get the VA’s Aid and Attendance benefit. He was told to put \$135,000 into a retirement annuity for his nephew, all but \$12,000 of his assets, and was told if he needed additional money, his nephew could withdraw it. Carl was denied the pension because the VA did not give him a deduction for the Independent Living fee. Carl’s nephew tried to make a withdrawal from the retirement annuity, but was informed he cannot withdraw from this type of annuity until he is 59. Carl’s nephew is only 50. Carl is 86, and Carl will be out of money and homeless in 10 months.

Mary, a veteran’s widow, moved into another property owned by the same company with the “promise” that their property qualified for the VA pension. When the VA called to talk with the facility manager to validate the services being provided, Mary was informed that her residence did not qualify her for the pension. Mary received a letter from the corporate office a week later informing her she owed over \$10,000 in deferred rent, and they wanted payment in full that month. Mary had left a subsidized apartment that she had waited 2 years to move into because she was promised this money was there for her to live in a much nicer place. She had to leave her state and move to NC where she found subsidized housing without a waiting list.

Patrick, is in an AZ property also owned by the same corporation, has only a ¼ of his heart function and 9 stints. Patrick’s application has never even been submitted, and no one has his records although he was assured it was being handled.

William has a freeze on his bank account because he cannot pay for his cost of care, and cannot afford any personal items due to having no money and also in a property owned by the same corporation.

In many cases involving Retirement properties working with financial and estate planners, the VA has approved the applications, only to discover months later upon completion of the VA's annual Eligibility Verification Report, the applicant was never entitled, so the VA stops the pension, and demands a full repayment of all monies paid. The veteran or widow now owes several thousand dollars back to the VA, has nowhere to go, has incurred a huge debt, and does not have the pension award. But the Retirement Community received the payment and no one is asking them to return it.

Our "Greatest Generation" is for these companies and individuals nothing more than a "target market". The VA has left them to be victimized by their silence, and the responsibility for these groups and individuals preying on our elderly veteran's Service rest solely at the front door of the VA.

I offer this analogy to make that point.

If you can legally walk into a liquor store and purchase a bottle of whiskey, what would be the point in chasing down a Moonshiner?

These companies have built fortresses around themselves staffed with attorneys, annuity salespeople, and application processors. They hold weekly seminars around the country always looking for the next victim that has too many assets to qualify for the pension. If there was access to clear, accurate and professional advice, there would be no room for those whose goal is "monetizing the senior".

My greatest fear is that the findings of this committee will be to recommend evoking a "look back" period as in Medicaid to thwart these financial groups from exploiting our veterans, which will only be putting yet another additional "burden of proof" upon the veteran who already faces enough challenges when dealing with the VA. These companies and individuals who have thrived in this market will simply revamp their business model to become "Veteran Pension Planners" in the same way those who acclimated to Medicaid fraud became Medicaid Planners. It won't change the landscape of things, it will simply go by another name and give them another door to come through and hang out their sign.

At one time the application for Aid and Attendance was only 4-pages. After the demands for the pension increased, the VA saw fit to increase it into a 17-19-page application not counting supporting documentation. The completing of this application is a daunting task, and most seniors would be overwhelmed with the complexity of doing so. Since the VA makes it difficult to hire competent help, those who offer their services for "free" if you invest in a financial product is extremely attractive – and a lot of times the senior doesn't understand they have bought a financial product or what it means for future access to the funds or Medicaid benefits.

If the application and the processing of it were as simple as the three basic requirements of eligibility for this pension, most veterans or their families would feel capable to take the task on. But instead the application is so complicated that families turn to the only people making them aware of the benefit, those with other agendas. When the veteran stands in front of the VA defenseless with discharge papers in hand, the prospect of having someone on your side makes for an easy sale.

It seems to me that a simpler solution would be to allow a veteran or widow the right to pay a nominal fee for assistance in completing complicated applications the same as they can pay an accountant or tax-return company to ensure that the IRS has a full financial accounting of the taxpayer. In this scenario there would be no selling of financial

products or the restructuring of assets. You either qualify or you don't. It would simply mean the veteran got it right the first time, and the oath they took to defend this country would be honored as it should be.

It is my belief that many of these companies have at best violated the truth in submitting applications misrepresenting the services they provide, Physicians' Statements being falsified signed by others than the Physician themselves, and medical fees in excess of what was actually being paid. If it is the findings of this Committee that these individuals or corporations are guilty of exploiting this pension and our Veterans for financial gain, it is my hope as the daughter whose parents did without, that they will be prosecuted to the fullest extent that the law will allow.

Respectfully,

Debbie Burak – Founder

VeteranAid.org