

At What Cost? - Ensuring Quality Representation in the Veteran Benefit Claims Process

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Statement Of

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Committee on Veterans' Affairs
Subcommittees on Disability Assistance and Memorial Affairs & Oversight and
Investigations

With Respect To

“At What Cost? - Ensuring Quality Representation in the Veteran Benefit Claims Process”

Washington, D.C.

Chair Luria, Chairman Pappas, Ranking Member Nehls, Ranking Member Mann, and members of the subcommittees, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on the issue of predatory practices in veteran benefit claims representation.

For years, the VFW has been concerned that bad actors have been preying on veterans seeking to access their earned benefits through the Department of Veterans Affairs (VA).

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The VFW has proudly provided high-quality representation in this benefit process for more than one hundred years. Through our accreditation with VA, the VFW's global network of more than two thousand advocates represents more than 550,000 veterans who received more than 10.2 billion dollars in earned benefits in 2021.

With a world-class training program subject to periodic VA audit, the VFW is proud of the Lifetime of Advocacy our accredited representatives provide to veterans and the innovations we are seeking to make based on lessons we all learned during the COVID-19 pandemic about the needs of our claimants. When the COVID-19 pandemic brought the global economy to a screeching halt in March 2020, the VFW was poised to move to remote benefits assistance, ensuring that our veterans continued to receive high-quality representation no matter where they were physically located. Thanks to our work with VA, we had the technology in place and we continue to innovate today.

Tragically, when the COVID-19 pandemic struck, non-accredited consulting groups that the VFW calls "Claim Sharks," viewed the chaos as an opportunity to exploit veterans. These groups aggressively advertised online for veterans to increase their ratings and finally get the benefits they deserved. What is worse is that some of these groups were invited to join us for this hearing today. This is problematic for the VFW. In our opinion, any group that fails to adhere to VA's well-established standards of accreditation and fee arrangements should be greeted at the door by Capitol Police, not offered a seat at the same table as VA-accredited representatives who are held to certain professional and ethical standards. Nevertheless, the VFW invites this opportunity to have this critical discussion on what can be done to clamp down on predatory actors who seek to make a quick buck off veterans who are in dire need of benefits and care.

In flashy lobbying materials, it may look like some of these companies want to "clean up" the system and offer veterans more "choice." These buzz words are meaningless when you quickly read between the lines. Certain predatory companies have used the confusion created by the COVID-19 pandemic to infiltrate networks of veterans in need, and have grown by more than six hundred percent in the last two years alone. Worse, others have changed their names in what we see as an attempt to obscure the dozens of complaints filed by veterans through the Better Business Bureau. Now that they have been exposed through public information campaigns like last year's story in *VFW Magazine* and the recent op-ed in *Military Times* that the VFW co-authored with Wounded Warrior Project, and because of increased scrutiny from VA, the Federal Trade Commission, and state attorneys general, they are mustering their ill-gotten gains to seek legitimacy for their predatory practices.

The bottom line for the VFW and for many of our Veterans Service Organization (VSO) partners is that if these companies want a seat at the table, their staffs should first seek accreditation with VA as accredited agents or attorneys, and appropriately file all required powers of attorney, contracts, and fee agreements with the VA Office of General Counsel

(OGC) to ensure that they abide by professional and ethical standards. If you want to do this work, you need to follow the rules the same way that accredited VSOs, attorneys, and agents have done for decades.

In the VFW's opinion based on what we have seen from these companies over the years, they clearly indicate that they are unwilling to do so. Instead of discussing ways to change the VA accreditation system to benefit Claim Sharks, this committee should instead reinstate penalties for companies that clearly violate VA policies. Legislation to reinstate these penalties almost made it through the last Congress as part of the Roe-Isakson omnibus package, but it was removed at the last minute. Reinstatement of these penalties to hold bad actors accountable must be paramount for your committees.

First, many of these companies enter into contracts well beyond the scope of what VA allows under law, which is clearly why these companies do not file powers of attorney, consulting agreements, or fee agreements with the VA OGC. Under VA regulations, fees are capped and usually only include a percentage of retroactive benefits. However, many of these predatory consulting agreements include a commitment by the veteran to pay the Claim Shark all or a portion of their increased benefits. The VA OGC should look at whether this is a violation of the prohibition on the assignment of VA benefits under title 38, United States Code, Section 5301. If so, VA should work with veterans to ensure that these contracts are voided at such time that these predatory companies seek to collect.

Some of these companies will argue that this is America and that they should be able to earn money through the services they provide. No one is arguing against this notion. However, VA already provides for this through its accreditation system. It is naive to think that some veterans' agents and attorneys have not made a profitable living helping veterans access their benefits. Thankfully for the veterans they work with, these agents and attorneys are held to high ethical and professional standards with clear recourse for veterans who feel they were harmed.

Second, many of these companies purport to provide "medical consultation," promising faster results for veterans, ignoring that VA has the duty to provide medical examinations and render medical opinions for claimants at no cost to the veteran. Many times, these private consultations result in out-of-pocket fees for veterans for medical opinions to which VA will no longer assign weight in rating the claim.

The VFW recently started working with a veteran who filed a claim using one of these medical consultations. Since we are fully accredited and have access to the veteran's claim file, we clearly saw that the veteran had a medical opinion that was acquired through a consultant. However, VA also ordered an examination that easily refuted the questionably acquired medical opinion, and ultimately denied the veteran the benefit he sought.

Last year, VA updated its benefits processing manual to more clearly explain how it weighs

private medical evidence, with careful consideration of whether a physician is the veteran's treating physician. This change was the result of an Office of Inspector General report that pointed to the questionable quality of private provider opinions, alluding to the problems we now see with Claim Sharks. The VFW's concern here is not only that veterans are wasting time, money, and effort acquiring these opinions, but that VA may find veterans are unintentionally party to benefit fraud as it looks back on certain claims. Considering that the VFW views these veterans as victims of a much larger fraudulent scheme, we ask that VA and this committee ensure that the companies that perpetrated these schemes are penalized before creating potential unnecessary hardships for veterans.

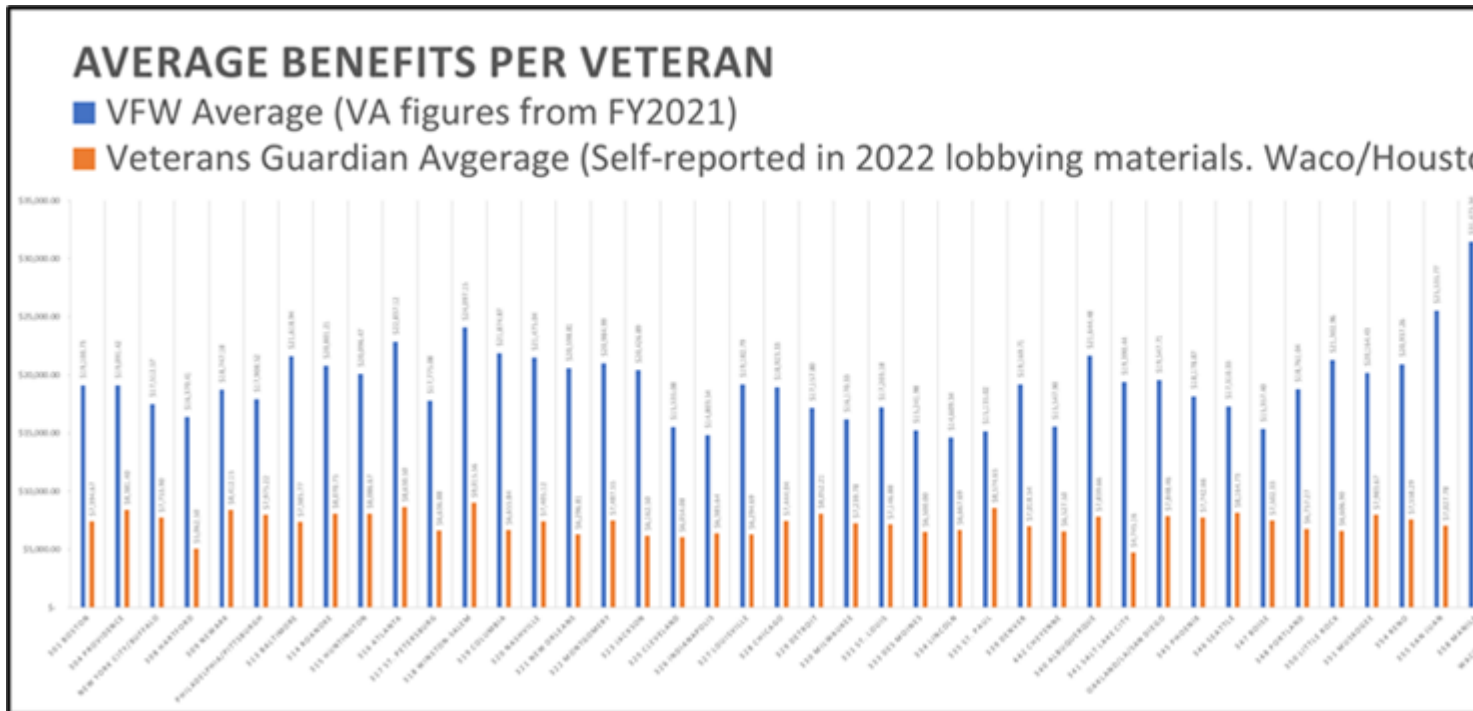
Third, the VFW believes that many of the marketing practices of these companies are considered predatory by regulatory and consumer protection entities because of promises of no-cost consultations or guarantees of increases in benefits. The VFW recommends that both the Department of Justice and VA examine the marketing schemes and consultant agreements of these companies for potential violations under the *Program Fraud Civil Remedies Act of 1986*.

Fourth, some of these companies ask veterans for sensitive usernames and passwords for their eBenefits or VA.gov accounts. This access would allow these companies to circumvent VA policies restricting access to veterans' sensitive information. It also implies that these companies will take actions on their behalf. Veterans with which the VFW has worked have raised this as a major red flag. The VFW believes this is a likely violation of several statutes and regulations, especially since VA's eBenefits platform is built on the Department of Defense (DOD) DS Logon system and includes a clear Consent to Monitor statement indicating that unauthorized access and use could be subject to criminal, civil, or administrative penalties. The VFW asks that VA works with its partners in DOD to enforce these penalties against companies when such unauthorized access and use is uncovered.

Finally, recourse is minimal for veterans who believe they were scammed. Many of these contracts include binding arbitration clauses designed to compel payment. Some even go so far as to include clauses that prohibit veterans from disclosing terms of the agreements or even speaking negatively about a company or their experiences. The example language that we have seen reads as follows: "For purposes of this Agreement, "disparage" shall mean any negative statement, whether written or oral, about Consultant or any of its officers, directors or employees. The Parties agree and acknowledge that this non-disparagement provision is a material term of this Agreement, the absence of which would have resulted in Consultant refusing to enter into this Agreement." The VFW views this clause as unenforceable, but certainly threatening enough to prevent veterans from speaking out. Thankfully, veterans *are* speaking out and the VFW continues to stand ready to assist them.

We are proud of our legacy of service and will continue to provide our advocacy free of charge and on the record with VA. After all, when an organization like the VFW takes power

of attorney for our claimants, we then have access to their full claim file to best advise them on how to attain their earned benefits, as well as rigorous training requirements that VA has the authority to audit. We honestly do not know how a company can claim to provide consultation without access to this information, and based on the lobbying materials that some of these companies are circulating, we know that the results for our claimants are better:



ABOVE: Comparison of average benefits per VFW claimant (blue) compared to Veterans Guardian reported benefits per claimant (orange). VFW data according to VA Power of Attorney summary for FY2021. Veterans Guardian data according to self-prepared lobbying materials.

The work ahead will be challenging as new Claim Sharks seem to be popping up both on the national scale and locally. This is where consumer information and consumer protection will be paramount. If a company asks a veteran to sign a contract but will not file a power of attorney with VA, then the veteran should not comply. We are working with VA to ensure that consumer information to veterans consistently reinforces this message to weed out bad actors, and ensure that veterans are steered to quality, professional, and VA-accredited claims representation. We ask for this committee's support to reinforce this consumer protection message.

Chair Luria, Chairman Pappas, Ranking Member Nehls, and Ranking Member Mann, this concludes my remarks. I am prepared to answer any questions you or the subcommittees

may have at this time.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2022, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.