



Testimony
Before the Subcommittee on Disability
Assistance and Memorial Affairs,
Committee on Veterans' Affairs, House
of Representatives

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VETERANS BENEFITS

GAO's Proposed Role in Reviewing Efforts to Protect Veterans from Financial Exploitation

Statement of Elizabeth Curda, Director, Education,
Workforce, and Income Security

Accessible Version

GAO Highlights

Highlights of [GAO-17-804T](#), a testimony before the Subcommittee on Disability Assistance and Memorial Affairs, Committee on Veterans' Affairs, House of Representatives

Why GAO Did This Study

The proposed Veterans Care Financial Protection Act of 2017 seeks to address the financial exploitation of aging and disabled veterans who are eligible for certain VA benefits. VA pension benefits are available to certain wartime veterans and their surviving spouses with limited means. Those who need additional assistance with everyday living activities may also be eligible to receive VA Aid and Attendance benefits, which increase the amount of the monthly pension they receive from VA.

GAO was asked to provide input on the proposed Veterans Care Financial Protection Act of 2017, which is being considered by the House and Senate. This legislation, as proposed, would require the development of federal and state standards for protecting individuals eligible for pension and Aid and Attendance benefits from dishonest, predatory, or unlawful practices.

In this statement, GAO discusses (1) its prior work related to VA pension benefits, and (2) its observations on certain provisions within the proposed legislation as currently drafted. This statement is based on prior GAO work on veterans' benefits and GAO's review of the proposed legislation.

View [GAO-17-804T](#). For more information, contact Elizabeth Curda at (202) 512-7215 or curdae@gao.gov.

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GAO's Proposed Role in Reviewing Efforts to Protect Veterans from Financial Exploitation

What GAO Found

In prior work, GAO has found that veterans who applied for Department of Veterans Affairs (VA) pension benefits could be targeted for financial exploitation. For example, in 2012, GAO identified over 200 organizations, such as financial planners, that marketed their services to help veterans qualify for needs-based VA pensions. GAO found that some organizations offered veterans products and services that could adversely affect them by transferring their assets to lower their net worth. For example, some organizations sold veterans deferred annuities that might limit access to funds during their expected lifetimes. Additionally, in 2013, GAO reported shortcomings in VA's process for ensuring that representatives approved to assist veterans with the VA claims process were adequately knowledgeable about the process and were of good moral character, as required by law. GAO made 8 recommendations to VA to address these and other shortcomings and a matter for congressional consideration to establish a look-back and penalty period for veterans who transfer assets before applying for pension benefits. VA has implemented all 8 of these recommendations and is taking actions to establish a look-back and penalty period.

As currently drafted, the proposed Veterans Care Financial Protection Act of 2017 contains three provisions that GAO will comment on today: (1) VA would be required to develop and submit standards that protect veterans from dishonest and predatory practices to the Senate and House Committees on Veterans' Affairs within 180 days of enactment. (2) GAO would be required to submit a report to those committees containing standards that GAO determines would be effective in protecting individuals should VA not meet this deadline. (3) GAO would be required to complete a study on the standards implemented under the proposed act. GAO's observations on each of these three proposed requirements follow.

- The proposed legislation does not clearly specify whether the standards are intended to be legally binding. Clarifying whether the standards are intended to be legally binding is important for determining what steps VA would need to take and whether completing these steps within 180 days is feasible.
- If VA does not meet the 180 day deadline, the proposed legislation requiring GAO to report on standards is problematic because it could hamper GAO's ability to meet the audit standards by which GAO conducts its audits. These audit standards require GAO to maintain independence and identify and mitigate threats to its independence. For example, threats include GAO reviewing a service or work that it has previously performed for an agency; in this case, recommending standards. If GAO develops standards that VA then implements, this could hamper GAO's ability to audit in an independent manner subsequent VA efforts in this area. In addition, it would be inappropriate for GAO to set these types of standards for VA, an executive agency. Thus, GAO recommends removing this proposed provision.
- The proposed legislation would also require GAO to conduct a study on the standards VA implemented to protect these veterans. By itself, this requirement is an appropriate role for GAO.

Chairman Bost, Ranking Member Esty, and Members of the Subcommittee:

I am pleased to be here today to discuss our views on the proposed veterans' benefits legislation that you are considering. My remarks will focus on the proposed Veterans Care Financial Protection Act of 2017.¹ This proposed legislation seeks to address the financial exploitation of veterans eligible for the Department of Veterans Affairs' (VA) pension benefits at the increased Aid and Attendance rate.

As you know, VA pensions are a needs-based benefit that provides certain veterans and their survivors with a minimum level of income.² Specifically, these pensions provide benefits 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.³ In addition, VA Aid and Attendance benefits help those who need the regular assistance of another person to perform everyday living activities—such as bathing, feeding, and dressing—as well as those who are in nursing homes due to mental or physical incapacity, and those meeting certain limited eyesight criteria.

Veterans and surviving spouses who are eligible for a VA pension may also be eligible to receive Aid and Attendance benefits, which increase the amount of the monthly pension they receive from VA. In fiscal year 2016, VA paid an estimated \$3.2 billion in enhanced pension benefits—pensions and Aid and Attendance benefits—to over 243,000 recipients.

To help protect individuals eligible for enhanced pension benefits from dishonest, predatory, or otherwise unlawful practices, a provision in the proposed Veterans Care Financial Protection Act of 2017 would require VA to work with federal and state agencies and experts VA considers

¹H.R. 3122, 115th Cong. (2017). Currently, an identical bill is under consideration in the Senate (S. 1198).

²Eligibility for VA pension benefits is subject to income and net worth limitations. The annual payment for a veteran without a spouse or child receiving a pension is \$12,907, but is \$21,531 for a pension recipient without dependents requiring Aid and Attendance.

³Veterans whose disabilities were caused or aggravated as part of their military service can receive disability compensation benefits. These veterans may also be eligible to receive Aid and Attendance, which increases their monthly disability compensation payments.

appropriate to “develop and implement” standards that protect these individuals from such practices. If VA fails to submit the standards to the Senate and House Committees on Veterans’ Affairs within 180 days of enactment, the proposed legislation would mandate that GAO submit a report to those committees containing standards that GAO determines would be effective in protecting these beneficiaries. In addition, GAO would be required to complete a study on the standards implemented under the act as currently drafted.

Today, I will discuss (1) our prior work related to VA pension benefits, and (2) our observations on certain provisions within the proposed Veterans Care Financial Protection Act of 2017 as currently drafted. This statement is in part based on several reports issued since May 2012 as well as our review of the proposed legislation. More detailed information on our objectives, scope, and methodology for that prior work can be found in the issued reports we cite in this statement. We conducted the work upon which this statement is based 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.

Our Prior Work on VA Pension Benefits

In our prior work, we have identified potential threats to the financial security of veterans who applied for pension benefits. For instance, in 2012, we identified over 200 organizations throughout the country—such as financial planners—that marketed their services to help veterans qualify for pension benefits by transferring their assets to lower their net worth.⁴ We found that sometimes these organizations offered veterans products and services that could adversely affect them. For example, some organizations sold deferred annuities that would make the recipient unable to access funds in the annuity during their expected lifetime without facing withdrawal fees. In 2013, we also reported on shortcomings in VA’s process for ensuring that representatives approved

⁴GAO, *Veterans’ Pension Benefits: Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits*, [GAO-12-540](#) (Washington, D.C.: May 15, 2012).

to assist veterans with the claims process were adequately knowledgeable and in good moral character as required by law.⁵

GAO made 8 recommendations to VA to address these and other shortcomings and a matter for congressional consideration to establish a look-back and penalty period for veterans who transfer assets before applying for pension benefits. VA has implemented all 8 of these recommendations and is taking actions to address the matter for congressional consideration. Specifically, VA developed proposed regulations that would establish a look-back and penalty period for veterans who transfer assets before applying for pension benefits, and increased training requirements for representatives.⁶ Our prior work has focused more generally on issues related to gaining access to VA pension benefits for veterans, but did not specifically examine the potential vulnerabilities of veterans in need of Aid and Attendance. Individuals receiving the increased benefit from VA's Aid and Attendance could be vulnerable to dishonest, predatory, or otherwise unlawful practices, which the proposed legislation aims to address.

Our Views on Proposed Legislation

As currently drafted, the Veterans Care Financial Protection Act of 2017 contains three provisions that we will comment on today. First is the proposed requirement for VA to develop and submit standards to the Senate and House Committees on Veterans' Affairs within 180 days of enactment. Second is the proposed requirement to have GAO submit a report to those committees containing standards that GAO determines would be effective in protecting individuals should VA not meet the deadline in the proposed legislation. Third is the proposed requirement for GAO to complete a study on the standards implemented under the proposed legislation. Our observations on each of these proposed requirements follow.

⁵GAO, *VA Benefits: Improvements Needed to Ensure Claimants Receive Appropriate Representation*, [GAO-13-643](#) (Washington, D.C.: Aug. 1, 2013).

⁶More generally, GAO has a body of work on elder abuse, including financial exploitation. We have found that preventing exploitation by individuals—such as financial services providers, power of attorney agents, and in-home caregivers—is difficult. See, for example, GAO, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, [GAO-13-110](#) (Washington, D.C.: Nov. 15, 2012) and GAO, *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults*, [GAO-17-33](#) (Washington, D.C.: Nov. 16, 2016).

- Protecting veterans from financial exploitation is vital, and developing a set of standards could help VA combat such practices. However, this proposed legislation does not clearly specify whether the standards to protect veterans are intended to be legally binding, because for example, it does not include an enforcement mechanism. Agencies may issue guidance that is not legally binding but may help agencies interpret regulations or disseminate suggested practices. Establishing legally binding regulations require procedures established in the Administrative Procedure Act, such as requiring agencies to publish a notice of proposed rulemaking in the Federal Register, among other steps.⁷ Clarifying whether the standards are intended to be legally binding is important for determining what steps VA would need to take and whether completing these steps within 180 days is feasible.
- As currently drafted, if VA is unable to meet this 180 day timeframe, section 2(b) of the proposed legislation, entitled “Conditional Recommendation by Comptroller General,” would require GAO to submit a report to the Senate and House Committees on Veterans’ Affairs on effective standards for the program. It would not be appropriate for GAO subsequently to audit standards that GAO had recommended. We follow Generally Accepted Government Auditing Standards (GAGAS), which require us to maintain independence, and identify and mitigate threats to our independence, for our audits. For example, one such threat to independence that GAGAS identifies is the “self-review threat,” which results from auditors reviewing a service or work that they have provided to an agency that is the subject of the audit. In addition, it would be inappropriate for GAO to set these types of standards for VA, an executive branch agency. Thus, we recommend removing the proposed provision requiring GAO to submit a report containing standards.
- The legislation, as proposed, would also require GAO to conduct a study on the standards VA implemented to protect these veterans. By itself, this proposed requirement is an appropriate role for GAO. However, if this requirement is combined with the provision that requires GAO to submit a report that recommends standards, then under GAGAS we would be unable to audit subsequent VA efforts in this area. This is because we would be auditing the effectiveness of

⁷See GAO, *Regulatory Guidance Processes: Selected Departments Could Strengthen Internal Control and Dissemination Practices*, [GAO-15-368](#) (Washington, D.C.: April 16, 2015).

the standards that we had established, and therefore, we would not be independent.

Although it is inappropriate for GAO to set standards for a VA program, there are other ways that we could support the legislative priorities of Congress for this VA program. For example, we have extensive experience with setting guidance in the form of auditing standards for the purpose of our own mission that could be useful to VA. In developing auditing standards, we employ a deliberative and inclusive process for periodically revising GAGAS. In revising GAGAS, proposed changes undergo an extensive deliberative process internally and externally, which includes key stakeholders. Internally we follow sound project planning practices, which include creating a project time line and meeting with all relevant, internal stakeholders enterprise-wide to obtain and document agreement with the engagement plan. Externally, we collect public comments and input from experts drawn from the private and public sectors as well as academia on our auditing standards, and we thoroughly consider the views of all parties when finalizing revisions.⁸

In conclusion, enhanced pension benefits provide a critical support to veterans with disabilities, many of whom are elderly and have limited financial resources to care for themselves. Individuals who seek to exploit these veterans can cause real financial harm. Our continued ability to conduct audits in this area by maintaining independence and mitigating threats to that independence will help Congress, VA, and the public assess program performance.

Chairman Bost, Ranking Member Esty, and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

⁸GAO, *Government Auditing Standards: 2011 Revision*, [GAO-12-331G](#) (Washington, D.C.: December 1, 2011).

GAO Contact and Staff Acknowledgments

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