

# Congress of the United States

Washington, DC 20515

September 14, 2023

The Honorable Denis R. McDonough  
Secretary of Veterans Affairs  
810 Vermont Ave. NW  
Washington, DC 20420

Dear Secretary McDonough,

We write today to inquire about the Department of Veterans Affairs' (VA) enforcement of existing protections for veterans seeking assistance with filing initial claims for benefits and what resources are needed to enhance protections at the federal level. With the *Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022* providing the largest expansion of veterans' benefits in decades, veterans are increasingly becoming the targets of predatory, quasi-legal claims consultants. The Department must exercise every enforcement tool at its disposal and request those it needs to better protect veterans from bad actors looking to take advantage of them.

Veterans are increasingly facing more scams targeting them and their hard-earned VA benefits. The Federal Trade Commission (FTC) testified during an April 19, 2023, Senate Veterans' Affairs Committee hearing *Veterans Consumer Protection: Preventing Financial Exploitation of Veterans and their Benefits*, its reporting network received more than 150,000 complaints of fraud and illegal business practices in 2022, resulting in more than \$414 million in damages. This was an increase of more than 50 percent from the previous year. Additionally, VA testified more than 40 percent of all complaints received by veterans from 2018 to 2022 were against unaccredited individuals. We passed the *PACT Act* last year to provide toxic-exposed veterans their earned VA care and benefits. We did not expand benefits as a way for unaccredited scammers to profit from veterans.

While veterans should never have to pay to get the benefits they have earned, we are faced with the reality that many veterans are choosing to pay for assistance filing for benefits. Consequently, VA needs to clarify its position and what protections are afforded to veterans in contracts for assignment of future benefits. Recently, VA's Office of General Counsel (OGC) provided views to the Senate Committee staff articulating a contract between a veteran and individual, based on the increase in benefits, is an assignment of benefits, in violation of section 5301 of title 38. Specifically, OGC suggested that in a scenario where a veteran enters into a contract for four times the monthly increase in future benefits, it would be a violation of section 5301(a)(3)(C) specifically, which states "*Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.*" Furthermore, VA provided technical views on H.R. 1822, the *Preserving Lawful Utilization of Services (PLUS) for Veterans Act of 2023*, stating VA is opposed to a fee structure calculated as a product of five times the monthly increase of future benefits. However, VA did not mention in its technical assistance whether it considered this fee

structure a violation of the assignment of benefits, as it did in its response to the Senate Committee staff. This is a discrepancy in an interpretation that must be made clear.

As VA testified at the April 19, Senate Veterans' Affairs Committee hearing, and an April 27, 2022, House Veterans' Affairs Committee hearing, *Ensuring Quality Representation in the Veteran Benefits Claims Process*, VA has oversight over non-accredited individuals assisting with claims but few enforcement authorities to protect veterans. For the past few years VA has asked for re-instatement of criminal penalties for those who assist with claims outside VA's accreditation scheme. We have attempted to pass these enforcement mechanisms, but efforts have stalled the last three Congresses. Furthermore, VA argues the only redress is to send a cease-and-desist letter to the individual or company informing them of their non-compliance with statute and refer the case to state law enforcement. However, we would like to know if there is anything else, short of re-instating criminal penalties, which can be done to help protect veterans and help keep their earned benefits where they belong, in the pockets of veterans.

Our mission is to protect veterans and ensure they are not paying unqualified individuals to receive their benefits. As co-sponsors of the *Governing Unaccredited Representatives Defrauding (GUARD) VA Benefits Act* to re-instate criminal penalties, we believe VA must enforce the law and protect veterans from unaccredited individuals looking at veterans as a payday. Veterans shouldn't have to turn to outside consultants to work through the initial claims process. We want to know what, if anything, VA is doing to ensure veterans are not overwhelmed filing initial claims. We do not want to limit a veteran's ability to seek help, we are simply trying to guarantee, when a veteran seeks assistance, they can trust that the individual meets the highest ethical and professional standards and they will not have to give up their hard-earned benefits to access VA.

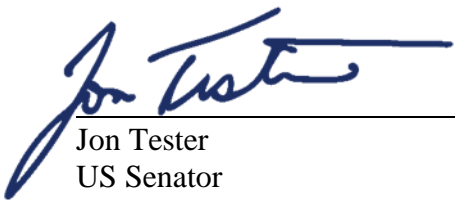
Given the current state of affairs where unaccredited individuals continue to charge veterans for assistance, we respectfully ask VA to respond to the following inquiries no later than October 30, 2023.

1. What is VA's official position on contracts in which a veteran agrees to pay a product of the increase in future benefits?
2. If the above contracts are a violation of the assignment of benefits under section 5301 of title 38, what if any remedy or enforcement is there? Is it limited to civil enforcement by the veteran?
3. If VA believes these contracts are a violation of assignment of benefits, why is VA not enforcing that law on existing contracts?
4. Has VA ever sent a cease-and-desist letter to an individual or company for assignment of benefits in a contract?
5. Without re-instating criminal penalties for violating VA's accreditation scheme, what else can VA do aside from sending a cease-and-desist letter and or referring it to a state law enforcement agency?
6. Is there anything VA can do without further legislation to enforce its accreditation?
7. What is VA's definition of preparation, presentation, and prosecution of claims?
8. At what point does third party medical evidence become preparation of a claim?

9. Do medical providers need to become accredited if they are assisting with medical evidence as part of an initial claim?
10. What consequences does VA see if Congress authorized accreditation for assistance with initial claims?
11. Does VA believe the above consequences outweigh continuing without criminal penalties?
12. How many letters has VA sent to unaccredited individuals and companies since January 2023?
13. Have any of those letters resulted in the ending of an illegal practice?
14. What resources short of re-instatement of penalties does VA need to prevent unaccredited individuals from contracting with veterans?


Maintaining the current status quo is not an option for our veterans who risked their lives to defend our country. We cannot allow un-accredited individuals to target veterans offering them access to VA benefits for a price. Every day we continue to allow this market to flourish, veterans are losing money. We appreciate your attention to our request, and look forward to working with VA on solutions to help protect veterans and keep their hard-earned benefits where they belong.

Sincerely,




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Jon Tester  
US Senator




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John Boozman  
US Senator



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Richard Blumenthal  
US Senator



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Lindsey O. Graham  
US Senator



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Chris Pappas  
US Representative



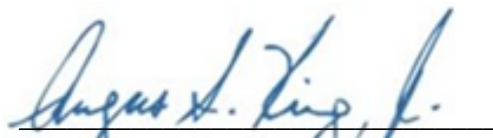
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Brian Fitzpatrick  
US Representative



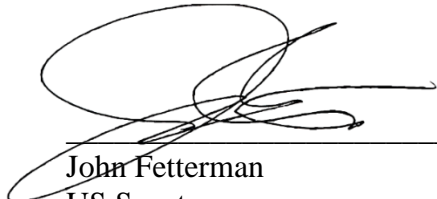
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Mark Takano  
US Representative




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Angus King  
US Senator



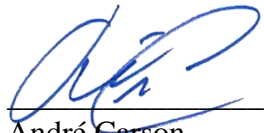
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John Fetterman  
US Senator



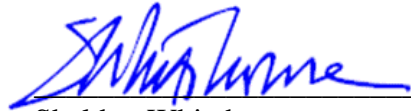
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Jacky Rosen  
US Senator



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André Carson  
US Representative



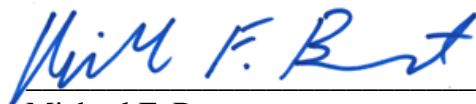
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Sheldon Whitehouse  
US Senator



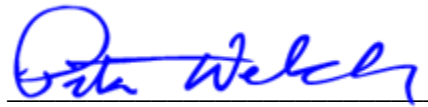
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Ruben Gallego  
US Representative



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Michael F. Bennet  
US Senator



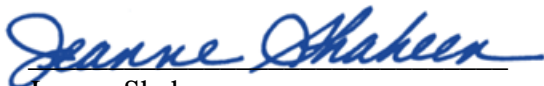
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Peter Welch  
US Senator



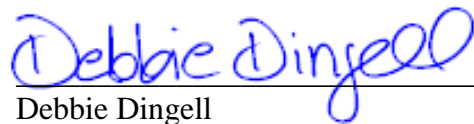
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Sherrod Brown  
US Senator



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Jeanne Shaheen  
US Senator



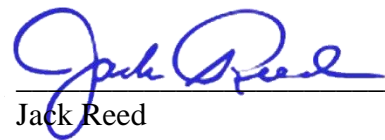
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Debbie Dingell  
US Representative



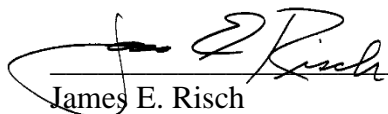
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John Hickenlooper  
US Senator




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Jack Reed  
US Senator




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James E. Risch  
US Senator




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Mike Crapo  
US Senator


  
Zoe Lofgren  
US Representative


  
Ron Wyden  
US Senator


  
Mark Kelly  
US Senator


  
Lucy McBath  
US Representative

  
Ben Ray Lujan  
US Senator

  
Bernard Sanders  
US Senator

  
Elizabeth Warren  
US Senator

  
Mike Braun  
US Senator

  
Margaret Wood Hassan  
US Senator