

STATEMENT OF
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FOR THE RECORD

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

WITH RESPECT TO

**Honoring Our Promise: Reviewing the Effectiveness of Services for
Dependents and Survivors**

Washington, D.C.

February 8, 2022

Chair Luria, Ranking Member Nehls, and members of the subcommittee, 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 views on this important subject.

VFW accredited service officers from across the country have reported common themes that reveal the difficulties survivor spouses and dependents face when attempting to access Department of Veterans Affairs (VA) benefits. Common survivor issues pertain to a lack of proper education and understanding of their entitled benefits, limited and confusing communications from VA, and missed opportunities for effective outreach.

What is a survivor? To which benefits are they entitled? The answer to both questions is, it depends. Generally, a survivor is a spouse or dependent of a service member who died while serving in the military or of a veteran who died from a service-connected injury or illness. For the purposes of accessing VA survivor benefits and services, the eligibility requirements are even more specific, differ between benefits, and require precise documentation for approval. On the homepage for VA's Office of Survivors Assistance (OSA) there is little explanation or introduction for how to navigate the process of applying for benefits. There is simply a list of links and attachments, including a PDF titled, "Survivor Quick Guide." This not-so-quick, 50-page document includes an overview of the eligibility requirements for VA survivor benefits which, in fact, vary depending on the benefit.

For example, according to the Survivor Quick Guide, a survivor is entitled to Dependency and Indemnity Compensation (DIC), when the veteran's death "resulted from one of the following causes: A disease or injury incurred or aggravated in the line of duty while on active duty or active duty for training; an injury, heart attack, cardiac arrest, or stroke incurred or aggravated in the line of duty while on inactive duty for training; or a service-connected disability or a

condition directly related to a service-connected disability. DIC also may be paid to certain Survivors of Veterans who were totally disabled from service-connected conditions at the time of death, even if their service-connected disabilities did not cause their deaths.”

The Survivors Pension, which may be granted to low-income, surviving spouses and children has different eligibility requirements. National Cemetery Administration (NCA) services, which include burial in VA national cemeteries, burial allowances, burial flags, military funeral honors, and bereavement counseling at Vet Centers or at Veterans Health Administration (VHA) facilities, all have varying requirements to access these benefits. Other benefits may include the VA Home Loan Program, funding for education and job training, and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

VA will process DIC claims automatically for survivors of veterans rated 100 percent disabled for 10 years or more, upon notification of the death. Apart from these cases, VA benefits and services are not automatically awarded to survivors. There is a bureaucratic process that requires specific forms and documentation necessary for each of the different benefits. A survivor may go through the process to arrange the burial of the veteran, but will have to go through a completely separate process to apply for DIC and another process to access the Post-9/11 GI Bill.

Lack of Understanding Entitled Benefits

In addition to trying to maneuver a complicated claims process, survivors often have not received clear information about the benefits to which they are and are not entitled. Veterans who receive VA disability compensation or health care may assume that VA will automatically award benefits to their surviving spouse or children when they die without identifying the important and necessary paperwork in advance. VFW service officers report that very often surviving spouses do not realize that when their veteran dies, the VA disability payments they were receiving will stop and they will need to take the steps to apply for DIC. They also typically expect that DIC payments will be as much as the previous disability payments. In fact, DIC is significantly less. Without anticipating this change in compensation, a survivor can suddenly find themselves in a difficult financial situation.

A VFW service officer in Mississippi reports, “One particular spouse came in with her two children after her husband passed away the week prior. Like every spouse I have spoken to, she was visibly upset and felt extremely overwhelmed because she didn’t work, and the family’s only source of income was the veteran’s disability. She was clueless that these payments stopped when the veteran passed, so hearing this information was not only shocking but life-altering.”

The stories continue. In Nevada, one VFW service officer reports, “I’ve had spouses call me in a panic because the veteran’s disability had stopped. They didn’t realize this had happened until the end of the month, when no money was deposited.” And in Washington, “I have encountered surviving spouses who have had to sell property because they could no longer afford the payments. One spouse had to sell her only vehicle and another one had to sell her house,” the service officer said.

When an active duty service member dies, the Department of Defense assigns a Casualty Assistance Officer to assist the survivor with the preparation and submission of necessary claims for VA benefits. When a veteran who is no longer in the military dies, VA needs to be informed of the death and then will attempt to contact the spouse or dependents informing them that they can apply for survivor benefits. Unfortunately, the language used and information provided in VA's letters to survivors can be confusing and frustrating. The wording can be unfamiliar to civilians and lack sufficient explanation. Survivors may not understand how the veteran's time in service equates to benefits and some are then surprised when certain service dates "don't count" toward certain benefits. Benefit denial letters also do not explain well why the survivor did not qualify for a benefit. The lack of clear and effective communication with survivors regarding benefits can add further distress to an already distressing situation.

Outreach: Connecting Survivors with Accredited Service Officers

Since the eligibility and documents required to apply for survivor benefits vary and the process is often very confusing, the VFW recommends that VA expand outreach to survivors to connect them with VA-trained and accredited claims representatives for assistance. An accredited representative can help a survivor during the incredibly difficult moment following the death of their loved one by listening to their situation, informing them of the benefits to which they are eligible, and identifying the necessary paperwork to accompany a claim. VFW service officers report that when they submit a complete file for DIC, with all of the correct documentation, VA can typically provide a decision very quickly.

There is a link to a FAQ page on the OSA website. One of the questions is, "Is there someone that can help me file my claim?" Survivors are first advised to contact their local VA regional office. Then there is a brief mention that survivors can seek assistance from veteran service officers and county service officers. However, there is no mention that those services are provided free of charge or which organizations offer them. Survivors can be vulnerable to claims consultants that charge high fees to assist with filing DIC claims.

One VFW claims representative in Washington reported that, "In our rural area I am encountering more and more people who are putting themselves out as 'claims assistants' with no affiliations. They are also asking for up-front fees for their services. Then, when the claim is denied, the surviving spouse seeks my help."

VA needs to make veterans and their families aware of predatory claims consultants. The FAQ page previously mentioned does not provide information on how a survivor can contact a service officer in their area. One simple fix would be to add a link to the current VA Office of the General Counsel's list of accredited claim representatives. More needs to be done, apart from cross-referencing webpages which already exist on VA's website, to create awareness of the advantages of seeking assistance from VA-accredited service officers. Predatory consultants operate without VA oversight, using loopholes to charge veterans and their survivors unreasonable fees.

It is important the VA provides information to survivors at every possible touchpoint within the VA system, using different forms of communication. For example, if a veteran applies for a pre-need determination of eligibility for burial in a VA cemetery—a process intended to make burial planning easier for families—then VA should also send the veteran information on benefits to which their spouse or children may be entitled in the future.

There are many opportunities for VA to reach out to families and survivors, and every effort should be made to provide information and support to survivors of veterans already identified through VA's benefits, health care, and cemetery components. Technology should also be taken into consideration. Outreach should include clear and understandable information via VA's website, emails, and social media platforms, incorporating content with videos, blogs, and podcasts. Letters and phone calls will continue to be important forms of communication, particularly for survivors who are older and not proficient with online and digital tools.

Claims for Survivor Benefits

VA must not overlook oversight and quality control in the accurate processing of claims for survivor benefits. This remains important even as VA shifts to a more automated claims process where certain claims, like those for DIC, are reviewed and assessed by IT programs designed to identify required criteria and quickly make a grant or denial determination. Automation has shown to greatly shorten the processing time for DIC claims, and VFW service officers have taken notice. Several have reported observing quicker decision times for both DIC and survivors pension claims over the last year, mentioning decisions for many claims available in one to two weeks.

However, when a DIC claim goes through the automated process, if the program does not find all of the required documentation and determines the claim should be denied, it is supposed to then be reviewed by a VA staff member for a thorough examination of the claim. When VA piloted the automation for DIC claims in 2018, the VFW found that some denials were being made without a final review by VA staff. In some cases, those denials were inaccurate, yet decision letters were generated and sent to surviving spouses. When the VFW brought this to VA's attention, these issues were quickly addressed and resolved, but it does point to the fact that while automation is a good thing and can significantly speed up the claims process, VA must closely monitor and assess these processes.

The VFW continues to urge VA to be more deliberate and transparent with claims quality control. We also continue to urge VA to reinstate a pre-decisional review period for accredited service officers and VA staff to catch errors and simple mistakes in claims before final adjudication. This can prevent a survivor from having to go through the lengthy appeals process and wait even longer for their much-needed benefits.

One recurring issue that VFW service officers report points to the difficulties faced when a veteran's death certificate does not include the service-connected condition as a cause or

contributor to the veteran's death. This is not a new issue but was highlighted particularly in 2020 during the first year of the COVID-19 pandemic. The effects of the COVID-19 virus are known to be more severe and potentially life-threatening in individuals with pre-existing conditions. In the case of a veteran who becomes ill and dies from COVID-19 and had a service-connected condition that was a contributing factor in their death, that condition should also be listed on the death certificate. If a veteran dies in a non-VA medical facility, the medical provider may not be aware of how important it is to include this information in order for survivors and dependents to apply for VA benefits.

During the claims process, VA will look at the death certificate and the stated cause of death, but should always get a medical opinion regarding how any service-connected disabilities contributed (or not) to the veteran's passing. Nevertheless, VA will typically not take this additional step without a claim representative insisting that it take place. Even when VA does provide a medical opinion, the doctor is often still unwilling to determine that any service-connected condition contributed to the death, and so the risk of a denial of the claim remains. VFW service officers express that they do all they can to encourage survivors to request that the veteran's medical provider correct the death certificate, knowing that this will be the best chance for a favorable claim outcome.

VFW representatives say that getting a death certificate corrected is one of the most distressing and difficult things for survivors to do. In some cases, doctors are resistant or unwilling to take the time to review the requests. There may also be time constraints. One VFW representative stated, "In Washington state, if the certificate is corrected within 30 days of death, then the attending physician can complete the back of the death certificate and that is submitted. Beyond 30 days, it has to go to the state and that takes six months to a year to be corrected."

Survivors also have difficulty gathering other records for claims, including the service records and divorce decrees from any prior marriages. This could be avoided if more information were provided to veterans and families with pre-planning opportunities, not only for burial services, but to prepare the necessary documentation for future survivor benefits.

VFW Recommendations

To address some of the issues mentioned and to ensure that surviving spouses and dependents receive their benefits in a smooth and dignified manner, the VFW has several recommendations. First, we strongly recommend an increase in the rate of DIC payments to survivors. It is an injustice that the DIC benefit has only been minimally increased since it was created in 1993. Currently, DIC is paid at 43 percent of 100 percent permanent and total disability while all other federal survivor programs are paid at 55 percent. The VFW supports H.R. 3402 / S. 976, *Caring for Survivors Act of 2021*, which would increase DIC to 55 percent, finally reaching parity with other federal agencies. The VFW also supports H.R. 746 / S. 89, *Ensuring Survivor Benefits During COVID-19 Act of 2021*, which would require the Secretary of Veterans Affairs to secure medical opinions for veterans with service-connected disabilities who die from COVID-19 to

determine whether their service-connected disabilities were the principal or contributory causes of death.

In addition, it is also time for legislation to update the definition of “surviving spouse” found in title 38, United States Code, to reflect modern legal and social realities. The last time the definition was updated was in 1962, however, much has changed in the last sixty years. The current definition is outdated with its reference to marriage being between people of the opposite sex and to the undefined “holding oneself out to be married” clause. The VFW supports updating this language to ensure the definition of survivor is fair and in alignment with marriage requirements of the current era.

Second, the VFW has and will continue to highlight the need for the Veterans Benefits Administration (VBA) and VHA to share data. This should also include NCA data. When VA is informed that a veteran has died, this should trigger communications from VA to the spouse and dependents identified in the VA records. Much of the required information to effectively reach and communicate with survivors already exists in one of VA’s many IT systems, though some survivors still fall through the cracks. Upgrades required to facilitate information sharing across existing platforms are long overdue. Investments in these critical technology upgrades or to move to a single IT system will take dedicated staff, planning, and funding. These improvements are critical to ensure the efficiency and accuracy of claims processing for veterans and their survivors.

Veterans and their families need more information and education on their VA benefits. This can occur during service or at the very least during the Transition Assistance Program (TAP). Information could also be made available to families through video tutorials and be referenced at any time. VA could improve its outreach with participants of the Caregiver Support Program, as it already has contact information to effectively communicate with this population. Caregivers can be at a higher risk of financial hardship when the veteran dies, as providing full-time care is often a barrier to employment. There is also a lack of clear communications sent to veterans and their families to understand their options when considering nursing home care or deciphering Social Security, Medicare, and Medicaid benefits and how they impact VA benefits.

Pre-planning is key. Veterans and their families need to receive clear and continuous communications informing them of future benefits and the documentation needed to ensure that survivors are supported in the event of the veteran’s passing. The NCA has an extensive pre-planning document intended for any veteran to gather all important information in advance of their death. This is extremely useful information that VA should share as widely as possible throughout its three administrations.

VA also needs to be sensitive to survivors in the language, tone, and information they use. One survivor reported to the VFW she receives bereavement counseling from a Vet Center. Before each weekly session, staff from the Vet Center call the survivor to confirm the appointment, but they address her by using her late husband’s last name. She never legally took her spouse’s last

name, even while married, which is information that VA would already have. Being addressed in this way has caused the survivor unnecessary pain. This is one example of how training and awareness is necessary to ensure compassionate communications with survivors. Additionally, there must be sensitivity with VA letters, including better explanation when VA stops benefits, denies a claim, or removes funds during the month of the veteran's death.

Lastly, the VFW recommends that improvements be made to VA's website and the pages dedicated to survivors. It could have more consolidated information that is user-friendly, including language and explanations for civilians less familiar with VA and military jargon.

The VFW provides important information regarding VA benefits to veterans and their families throughout the country. Service officers and VFW leaders have found opportunities for engagement through their local Post meetings, events, and gatherings. One VFW Post in Idaho provides a "Final Arrangement" binder explaining the various documents needed for survivor benefits. It also provides briefings to surviving spouses at local and state level conventions. A VFW service officer in Washington conducts an information session for veterans and their spouses throughout the year to better inform families of what to expect if the veteran dies.

While Veterans Service Organizations can help deliver VA's message, VA must also do its part. Many of the suggested improvements involve existing VA data and processes. The survivors of our nation's heroes deserve compassionate support during one of their most difficult times of need.

Chair Luria, Ranking Member Nehls, this concludes my statement. I am prepared to answer any questions you or the subcommittee members may have.

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.