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## DEPARTMENT SERVICE OFFICER NEWSLETTER

VOLUME 18, ISSUE 1

JUNE 15, 2009

### DEPARTMENT SERVICE OFFICE BUSINESS

**HOURS:** The Department Service Office will be open each Monday through Friday from 8:00 AM until 4:00 PM. Appointments are not necessary for visits. You may contact the Department Service Office by calling (603) 222-5784, faxing (603) 222-5787; or by using the following e-mail address:

[Gary.Wayman@VBA.VA.GOV](mailto:Gary.Wayman@VBA.VA.GOV).

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**VA BLUE WATER CLAIMS – UPDATE:** A bill in Congress provides a seemingly straightforward answer to a question that has vexed tens of thousands of Americans who served in the U.S. military. Who is a Vietnam veteran? The answer is vitally important to Navy personnel who served in Vietnam's territorial waters. For now, the Department of Veterans Affairs' definition of a Vietnam veteran does not include these men and women. Legislation introduced in the House would change that, clearing the way for Navy veterans to get disability payments and free health care for ailments linked to the herbicide Agent Orange, from type II diabetes to a variety of cancers. At stake: \$3 billion in benefits. The VA says the pool of veterans who would become eligible for benefits under the bill is 800,000, a number critics accuse the VA of exaggerating to inflate costs that may scare Congress. Before 2002, sailors with the Vietnam Service Medal — given to those who served in the theater of war on land or sea — automatically got benefits, whether they were ground troops or in the Navy. But the VA, which did not return repeated calls for comment, changed its policy in 2002, saying common sense dictated that Agent Orange was used on land alone and therefore couldn't harm Navy personnel.

Bart Stitchman, co-director of the National Veterans Legal Services Program, said the VA simply changed its definition of who was eligible without notice. The VA is required to advertise any rule change impacting

benefits in the Federal Register, allowing a period of public comment before making a change. The VA, Stitchman said, violated federal law by ignoring that requirement. In a 2005 article in the Journal of Law and Policy, Dr. Mark Brown, director of Environmental Agents Service at the VA, made a surprising admission: Science did not back up the VA's policy on the Navy. Calling Navy veterans "non-Vietnam veterans," reflecting the VA's policy that sailors don't qualify, he wrote, "There is no obvious scientific or public health basis for excluding these non-Vietnam War veterans" from the presumption that their illnesses are caused by Agent Orange. To address that "apparent inequity," Brown wrote, the VA paid benefits to those Navy veterans who could prove they were exposed to Agent Orange, which ground troops need not do. But proving exposure 40 years after the fact is often an impossible hurdle, Navy veterans say.

in 2004, a Navy veteran appealed the VA's denial of his Agent Orange claim in a veterans court set up to handle appeals of VA cases. The case became a precedent-setter. In 2006, that court ruled in favor of the veteran, saying the VA's exclusion of Navy veterans was too restrictive. But last year, the VA won the case on appeal to a higher court, which decided its rules on Agent Orange were reasonable. The VA then changed its rules one more time, closing another avenue for Navy veterans seeking benefits. After long holding that Navy veterans who served on inland waterways, like harbors and rivers, could get benefits, the VA decided a harbor did not qualify. The VA has argued it was not the intent of Congress to include the Navy when it adopted a law in 1991 providing compensation for Agent Orange. Rep. Bob Filner (D-CA), chairman of the House Committee on Veterans Affairs, has introduced the Agent Orange Equity Act of 2009 (H.R.2254) to include Navy veterans. He has more than 40 co-sponsors. "These guys have suffered long enough," Filner said. "It's going to cost money.

But that's the cost of going to war. We're spending trillions bailing out everybody else. Let's bail out Vietnam veterans." The chances for passage are uncertain. Filner said lawmakers may be reluctant to add costs to the federal budget in an economic crisis. A similar bill introduced last year failed.

In the interim on 30 MAY the Texas House and Senate passed the Restore Agent Orange Presumptive Diseases to "Blue Water" Navy Veterans [SCR 38] memorializing Congress to restore the presumption of a service connection for Agent Orange exposure to veterans who served on the inland waterways, territorial waters, and in the airspace of the Republic of Vietnam. This is not a law as such. The Texas Legislature is telling the U.S. Congress that Texas wants the US Congress to force the VA to recognize Agent Orange as a medically causal chemical for Navy personnel who were in the theater of Viet Nam.

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**VA FRAUD:** A 58-year-old woman who collected 18 months' worth of veterans' benefits sent to her dead aunt must pay back the government and serve a short prison sentence, according to her sentence imposed 8 JUN in federal court. U.S. District Judge John Woodcock sentenced Lorraine Rich, who now lives in Bradenton, Fla., but who lived in Waterville when the crime occurred, to four months in prison and three years of supervised release. She also was ordered to repay \$27,675, the amount of veteran spouse benefits she collected illegally. Her aunt Cora Thompson was given surviving spouse benefits from the Department of Veterans Affairs after her husband, Vernon Thompson, a veteran, died, according to court documents.

In 1999, Rich became Thompson's fiduciary federal payee and agreed to notify the VA when her aunt died, which occurred on 27 APR 04. "Ms. Rich did not notify the VA of the death, and the VA continued to make the monthly beneficiary payments," the court documents state, adding later that Rich withdrew the funds and spent them. The VA stopped making payments SEP 06. Thompson also failed to report the funds to the Waterville Housing Authority, which supplied her with subsidized housing.

Rich pleaded guilty SEP 08 to theft of government property and making a false statement back. She faced a sentence of up to 10 years in prison and a \$250,000 fine for the theft and an additional five years and another \$250,000 fine for lying on her application for housing assistance.

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**VA WOMEN VETERANS PROGRAMS:** Momentum is gathering to expand health care services for female veterans, with one of the few remaining disputes (i.e. over the numbers of days of neonatal care for those receiving maternity care at Veterans Affairs Department facilities) now resolved. Two similar bills, one passed by the Senate Veterans' Affairs Committee on 21 MAY and the other by the House Veterans' Affairs Committee's health panel 4 JUN, try to make VA more accessible and relevant to women, the fastest-growing segment of the veteran population. Lawmakers agree on the key details, including:

- More access to mental health counseling.
- A three-region pilot program in which women who are primary caregivers could use VA employee child care centers while receiving outpatient treatment.
- Internal and external reviews of VA programs to determine whether women face any barriers to care.

The Senate committee included women's initiatives in a larger veterans health bill, S.252, while the House is working on a freestanding women's health bill. The original House bill, H.R.1211, included the promise of up to 14 days of neonatal health care from VA, either directly or by contract, for female veterans receiving VA maternity care. The number of days was scaled back to seven under an amendment sponsored by Rep. Steve Buyer of Indiana, ranking Republican on the full House Veterans' Affairs Committee, based on input from VA showing that 95% of women are released from the hospital within seven days after birth and that most private health insurance plans cover only 48 hours of post-maternity hospitalization. The Senate bill also provides seven days of care. Rep. Michael Michaud, D-Maine, chairman of the House health panel, said he believes studies of health care for female veterans called for in the legislation are among the most important provisions because they will look at whether the stigma of seeking mental health services, clinic operating hours, the distance of care and low gender sensitivity are factors discouraging women from getting the treatment they have earned. Michaud said their needs should not "fall by the wayside as we explore ways to improve health care for our veterans."

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 – STIMULUS UPDATE:**

The Department of Veterans Affairs (VA) has begun the notification process for veterans regarding one-time “stimulus payments” to eligible veterans provided for by the American Recovery and Reinvestment Act of 2009. Certain veterans meeting the eligibility requirements listed below will begin to receive their payments in June.

The payment will amount to \$250 and will be issued separately, *not* as an inclusion in the regular benefit payment. The method of delivery of payment will be via the same method the veteran currently receives payment, for example: a veteran who regularly receives their monthly benefit payment through Direct Deposit will also receive the one-time payment through Direct Deposit to the same account.

The Payment will *not* affect the sum of the veteran’s regular VA benefit, nor will it be considered taxable income. However, for those individuals with debts to State or Federal agencies that require offset payments, the individual’s payment will be offset to pay those debts and a separate notice will be sent through the Department of the Treasury.

Eligible veterans who have not received their benefit by July 10, 2009 should contact VA through one of the following methods:

By Internet—Send electronic inquiries through: <https://iris.va.gov/>

Written mail—includes full name and VA File number and mail to your local VA Regional Office

Telephone—Call 1-800-827-1000 or for Telecommunications Device for the Deaf (TDD) call 1-800-829-4833

- The criteria for eligibility are listed as follows:

(iii) *VETERANS BENEFIT-* A benefit payment described in this clause is a compensation or pension payment payable under—

(I) section 1110, 1117, 1121, 1131, 1141, or 1151 of title 38, United States Code;

(II) section 1310, 1312, 1313, 1315, 1316, or 1318 of title 38, United States Code;

(III) section 1513, 1521, 1533, 1536, 1537, 1541, 1542, or 1562 of title 38, United States Code; or

(IV) section 1805, 1815, or 1821 of title 38, United States Code,

to a veteran, surviving spouse, child, or parent as described in paragraph (2), (3), (4)(A)(ii), or (5) of section 101, title 38, United States Code,

The law specified that the group eligible for these payments would be defined by those veterans in receipt of compensation and pension benefits during any of the months of November or December 2008, and/or January of 2009, as the law specified a three month period of eligibility.

The legislation also provides this benefit to citizens in receipt of certain Social Security benefits as well as those receiving benefits under the Railroad Retirement Benefit. Citizens are not entitled to receiving this benefit from multiple sources. If a veteran is also in receipt of one of these other benefits, the \$250 payment will only be issued once.

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