FILIPINO VETERANS EQUITY COMPENSATION FUND: INQUIRY INTO THE ADEQUACY OF PROCESS IN VERIFYING ELIGIBILITY

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

THURSDAY, NOVEMBER 20, 2014

Serial No. 113–93

Printed for the use of the Committee on Veterans' Affairs

Available via the World Wide Web: http://www.fdsys.gov

U.S. GOVERNMENT PUBLISHING OFFICE

96–136 WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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FILIPINO VETERANS EQUITY COMPENSATION FUND: INQUIRY INTO THE ADEQUACY OF PROCESS IN VERIFYING ELIGIBILITY

Thursday, November 20, 2014

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:05 a.m., in Room 334, Cannon House Office Building, Hon. Jon Runyan [chairman of the subcommittee] presiding.

Present: Representatives Runyan, Lamborn, and Titus.

Also Present: Representative Heck.

OPENING STATEMENT OF CHAIRMAN JON RUNYAN

Mr. RUNYAN. Good morning, and welcome everyone. This oversight hearing of the Subcommittee on Disability Assistance and Memorial Affairs will now come to order. Today's hearing will focus on the process of verifying eligibility for the Filipino Veterans Equity Compensation Fund benefits. We will seek information on the claims approval process, the status of this program, and the system designed for the program's eligibility and determination processes.

During World War II, hundreds of thousands of Filipino soldiers and guerrilla fighters served alongside American forces in the fight against the Japanese conquest. In recognition of their service to the United States during the war, Congress established the Filipino Veterans Equity Compensation Fund in 2009. This fund provided for one-time payments of $15,000 for eligible Filipino veterans living in the United States, and $9,000 to those eligible veterans living in the Philippines. Under the VA's processes for determining eligibility, almost 19,000 claims have been approved, but nearly 24,000 claims have been denied. In the process, some Filipino veterans voiced concern over the eligibility process, including concerns that some have been improperly denied and a benefit that they should have been eligible to receive.

To look into the matter in 2012, the White House created the Filipino Veterans Equity Compensation Fund Interagency Working Group, where the process and the documentation gathering was reviewed. Although the working group report provided more transparency to the process than ever, some Filipino veterans still have concerns about whether the documentation used to determine the eligibility are adequately inclusive.

In the statements submitted for the record at this hearing, the American Coalition for Filipino Veterans represents that the process is flawed, partly because the government only relies on the Army's records from a 1948 study.

It is suggested that the VA should expand what it previously accepted as verification of service to include U.S. Government documents other than those in the records from the Army's 1948 study. So in today's hearing, we will hear from the VA, the Army, and the NARA, which will seek information on the process that was employed to determine the eligibility for compensation from Filipino Veterans Equity Compensation Fund. Determination deemed acceptable and the justification of or for the limitations that were used.

At this time I ask unanimous consent for participation of a member guest from the Third District of Nevada, Dr. Joe Heck to sit in on the hearing. Hearing no objection, so ordered.

With that, I will begin with the introductions of the witnesses. First, we have Mr. Brad Flohr, who is a Senior Advisor for Compensation Service at the Veterans Benefits Administration, U.S. Department of Veterans Affairs.

Seated next to Mr. Flohr is Brigadier General David MacEwen, the 59th Adjutant General of the U.S. Army.

Our third witness will be Mr. Kevin Pratt, the Assistant Director for Military Records for the National Personal Records Center, National Archives and Records Administration.

I thank all of you for being with us today. I look forward to hearing your testimony, and I will now yield to the ranking member, Ms. Titus, for her opening statement.

OPENING STATEMENT OF RANKING MEMBER DINA TITUS

Ms. TITUS. Thank you, Mr. Chairman, and thank you for agreeing to have a hearing on this important topic. I also want to say how much we appreciate our witnesses being with us today and taking time to provide needed information. And thanks to our Filipino veterans who have come to show support for this issue.

It is important that we get together to discuss the Filipino Veterans Equity Compensation Fund because the Philippines have a long and distinguished history of associating and being part with the United States, including fighting alongside of us in military campaigns and wars. We are very grateful for their action on behalf of our Nation. I am proud to have a very active group of Filipino veterans who live in District One in Las Vegas, and I thank them for their service and for their guidance on this issue.

The fund, as many of you know, was established to compensate and thank these veterans who served so bravely alongside the American Army in the South Pacific in World War II. As part of the stimulus that was passed in the 111th Congress which I proudly voted for, we finally took actions to provide additional benefits for these Filipino veterans.

Nevertheless, I continue to hear concerns from my Filipino veteran constituents in Las Vegas, who believe that while the program was well intended, there are still problems with it, and there may be veterans who are being denied the benefits that they earned. So it is critical that Congress, as well as the administration, work to

ensure that in some cases we look to additional evidence for facts when necessary.

Earlier this year, the appropriators directed the VA to consider all forms of evidence of service, not just those originally considered. And I agree with this statement and look forward to working with my colleagues on the committee to ensure that Filipino veterans are being treated fairly.

Now, I understand we are in a challenging situation needing to verify veteran services that are more than 70 years old. However, we can't simply apply the principle of one-size-fits-all approach to the claims. Most of our World War II Filipino veterans are already in their 90s, so we are limited in the amount of time we have to get this right. Any impediments to veterans who might show clear and irrefutable evidence that they should be granted benefits, should be considered. But we need to act fast. Nonetheless, we must be careful to ensure that we are being good stewards of resources.

Lastly, I hope that we can put to rest any notion that the Department of Defense is withholding information that could positively impact these veterans' claims. After some 70 years, all of the information that is available should be made public. I hear too often from our veterans from the Philippines and their advocates that the DOD is not being transparent, and is failing to provide necessary information. Part of this, perhaps, is a lack of communication and so this hearing is important to maybe put that aside and get that communication out there.

The men and women that we are discussing today fought on behalf of our Nation and they should receive the same benefit of the doubt that U.S. servicemembers receive when they are asking for benefits that they earned.

So I look forward to hearing how this process is working, what information is available, how to solve some of the communication problems and clear up some of the transparency issues. So I thank you again, and I yield back.

Mr. RUNYAN. I thank the gentlelady, and again, welcome the witnesses. And we will hear from each of you for your oral testimony and we will start with Mr. Flohr. You are recognized for 5 minutes for your oral testimony.

STATEMENTS OF BRAD FLOHR, SENIOR ADVISOR FOR COMPENSATION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; BRIGADIER GENERAL DAVID K. "MAC" MACEWEN, 59TH ADJUTANT GENERAL OF THE U.S. ARMY, DEPARTMENT OF THE ARMY; AND KEVIN PRATT, ASSISTANT DIRECTOR FOR MILITARY RECORDS, NATIONAL PERSONNEL RECORDS CENTER, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

STATEMENT OF BRAD FLOHR

Mr. FLOHR. Chairman Runyan, Ranking Member Titus, and subcommittee members, thank you for the opportunity to provide testimony today and an update on the VA's administration of the Filipino Veterans Equity Compensation Fund. In 1941, as you said, more than 260,000 Filipino soldiers responded to President Roo-

sevelt's call to arms and fought under the American flag during World War II. Many served as both soldiers in the U.S. Armed Forces as well as guerrillas afterwards during the occupation of Japan. Later, many of these brave individuals became proud United States citizens.

In 1946, Congress passed the Rescission Act, determining that Filipino World War II service does not qualify for the full range of benefits available to the United States veterans. Congress and this administration recognizes the extraordinary contribution made by Filipino veterans. The American Recovery and Reinvestment Act of 2009, enacted on February 17 of 2009, included a provision creating the Filipino Veterans Equity Compensation Fund. Eligible veterans who are U.S. citizens receive a one-time payment of $15,000. Eligible veterans who are not U.S. citizens receive a one-time payment of $9,000. Philippine veterans were required under the law to file a claim by February 16th of 2010.

To qualify for the FVEC payment, an individual must have served before July 1, 1946, in the Philippine Commonwealth Army, including recognized guerrillas, or in the New Philippine Scouts. In determining whether claimants are eligible for any VA benefit, including the FVEC, VA is bound by U.S. military service department determinations as to whether the claimant has qualifying service in accordance with our regulations at Title 38 CFR 3.203. Less than 2 months after the law was passed, VA established an adjudication process, a payment system, an accounting system, and a payment delivery system, to successfully issue the first FVEC payment on April 8, 2009.

VA conducted numerous successful outreach programs to inform veterans and their families about this benefit. This outreach continued until February 16, 2010, which was the last day of the filing period for this benefit.

VA's Manila regional in office established a dedicated team of employees who solely processed these claims. The Manila regional office also sent letters to all veterans found eligible for the FVEC benefit, advising them of their potential eligibility for VA disability compensation benefits. The Manila regional office received 42,755 claims for FVEC between February 2009 and February 2010. As of October 31 of 2014, the regional office has granted 18,929 of these claims, totaling $225,668,204.

Currently there are 23,826 claims that have not been granted due to ineligibility. All original claims have received a decision, but there are 15 reopened claims and 10 appeals pending at the Manila regional office. Approximately 32 appeals of these decisions are pending with the Board of Veterans Appeals, and another nine appeals are before the United States Court of Appeals for Veterans Claims.

If all individuals with reopened claims or pending appeals are found to be eligible for this payment, the Manila regional office would pay additional funds of approximately $1 million out of the appropriation. This assumes that all pending claims and appeals, if granted, would be paid at the maximum $15,000. In addition, $17.1 million has been returned to the Treasury for returned checks, which resulted when a veteran dies without a surviving spouse claimant.

A total of $56.4 million remains in the FVEC appropriation. The primary reason for denial of claims is the inability of these individuals to establish qualifying service required by Section 1002(d) of the Recovery Act. The denied claimants include individuals from all walks of life who exercised their right to make an application to VA, including children, grandchildren, and other family members of alleged veterans, widows of long-deceased alleged veterans, and thousands of duplicate claims.

Unless VA has a genuine document issued by the U.S. military service department containing needed information to establish eligibility, VA regulations applicable to all claimants require that VA request verification of military service from the appropriate military service department. For claims based on Philippine service in World War II, the U.S. Army is a relevant military service department, and request for such verification are sent to the NPRC, which since 1998, has acted as the custodian of the U.S. Army's collection of Army and guerrilla records.

This concludes my testimony, Mr. Chairman. I would be happy to address any questions you or the other members of the committee may have.

Mr. RUNYAN. Thank you, Mr. Flohr.

[The prepared statement of Mr. Flohr appears in the Appendix]

Mr. RUNYAN. And with that, we will now hear from Brigadier General MacEwen. General, you are now recognized for 5 minutes.

STATEMENT OF BRIGADIER GENERAL DAVID K. MACEWEN

General MACEWEN. Chairman Runyan, Ranking Member Titus, distinguished members of this committee, I thank once again for the opportunity to appear before you on behalf of America's Army, to discuss the Filipino Army veterans' verification process.

I sit before you today as has been the case with Army Adjutant Generals over many years with great confidence knowing that the Army's process of verifying Filipino Army service is sound and adequate. For the 3 years post-World War II, the Filipino Government worked in conjunction with the U.S. Army to establish guerrilla and Philippine Army unit rosters and to capture relevant service data. This is the same data the Army uses today in its role of verifying Filipino service as we support the Veterans Administration in its role of providing benefits.

Verifying Filipino service today is based on the very same process established in 1948 in conjunction with the Philippine Government. When I use the term "verify," I don't use it arbitrarily. Verify is the most appropriate term because the service determinations have already been made. The people on the ground after the war, both American and Filipino, conducted years of research interviewing commanders and leaders at various organizational levels and gathered and stored massive amounts of authoritative documents. They turned over every stone possible and imaginable to us, to leave us with the system and documents we use today with the understanding and the foresight to know that we would not be able to make a more fair, adequate, or auditable service determination today without them.

By the end of the war, of the nearly 1.3 million claims reviewed, the Army, through its collaborative effort with the Filipino govern-

ment recognized and approved approximately 260,000. I ask you to keep three points in mind: First, accepted historical documentation makes it clear Filipino service within recognized units did not approach a figure anywhere near 1.3 million claims submitted.

Second, these determinations were made by people on the ground at that time only after extensive research was completed. And unfortunately, a majority of the time they were presented with the very unpleasant task of having to deny a claim, the same as we must do today.

Third, claims were denied then as they are today for very legitimate and justifiable reasons. Changing the service verification process by accepting non-verifiable service documentation for Filipino army and guerrilla veterans may result in a significant number of faulty service verifications. Over the years, the Department of the Army has been requested to establish different processes for Filipino veterans to prove their service. However, we continue to be confident that our process is adequate and it was sound. We will continue to work closely with the National Personnel Records Center and the Veterans Administration, to provide the best possible service to our Filipino veterans.

Chairman Runyan, Ranking Member Titus, and members of the subcommittee, we wish to thank you for your continued support which has been vital to sustaining our all-volunteer Army through unprecedented periods of continuous combat operations which continue to be vital to ensure the future of our Army. I look forward to answering your questions today.

Mr. RUNYAN. Thank you, General.

[The prepared statement of General MacEwen appears in the Appendix]

Mr. RUNYAN. With that, I recognize Mr. Pratt for 5 minutes for his testimony.

STATEMENT OF KEVIN PRATT

Mr. PRATT. Thank you. Good morning Chairman Runyan, Ranking Member Titus, and members of the subcommittee. Thank you for calling this hearing and for your continuing efforts to recognize the extraordinary contributions of Philippine veterans, including those who served in guerrilla units, for the service they provided in support of the United States during World War II. I am delivering testimony on behalf of the National Personnel Records Center that is similar to a statement entered by the NPRC Director Scott Levins in a hearing before the House Armed Services Committee earlier this year.

As one of many veterans that work at NPRC, I am pleased to appear before you today to discuss the work the Center does to serve those who have served. We appreciate your interest in this important work. The NPRC is an office of the National Archives and Records Administration located in two facilities in the St. Louis, Missouri area, the Center stores and services over 4 million cubic feet of military and civilian personnel, medical, and related records dating back to the Spanish American War. Included in the NPRC holdings are claim folders pertaining to Philippine nationals that were adjudicated by the U.S. Army after World War II and unit

rosters created by the U.S. Army in conjunction with its postwar recognition program.

In 1998 NARA entered into an agreement with the Department of the Army to accept the physical transfer of these records though they remain in the legal custody of the Department of Army. Also, as part of the agreement, beginning in fiscal year 1999, NPRC assumed the responsibility for referencing these records, consistent with the procedures previously established by the Army.

In doing so, NPRC reviews its holdings to authenticate service determinations previously made by the Department of Army. NPRC does this by examining claim folders, finding aids in a variety of rosters compiled by the Army during its postwar recognition program. Most often this is done in response to requests from the Department of Veterans Affairs, regarding compensation claims. Recognizing the urgency of these requests, NPRC strives to respond to these requests in 10 business days or less. The technical instructions applied by NPRC technicians in referencing these records and responding to such requests, has been furnished to the American Coalition for Philippine Veterans and has been posted online for public viewing. The instructions are consistent with the long-standing policies and practices of the Department of Army, and were applied by the Army staff prior to the transfer of the reference function to NPRC. On multiple occasions since the establishment of the Filipino Veterans Equity Compensation Fund, officials from the Department of Army have visited NPRC, reviewed its technical instructions, examined its work process, and confirmed that NPRC was providing reference services consistent with the long-established policies and practices of the Department of Army.

NARA has also preserved records of historical value documenting events that transpired in the Philippines during and after World War II. Included are records describing actions taken by the U.S. Army to recognize the service of Philippine nationals who supported the United States Army forces in Far East, including those who served in guerrilla units. These records are available for public review at the National Archives building in College Park, Maryland.

NARA is pleased to work with the subcommittee, the Army, and the VA, and other stakeholders to ensure Filipino veterans, including those who served in recognized guerrilla units, are recognized for their extraordinary service in support of the United States during World War II. We have briefed interested congressional staff and other stakeholders on NARA's role in this process, and we actively participated in an interagency working group established by the White House to analyze the process, and we have shared with Filipino veteran advocacy groups to help provide greater understanding of the reference process we employ to authenticate service determinations made by the Department of Army.

Working with the Department of the Army we modified our response letters to provide more specific details regarding our reference results in instances where we were unable to positively authenticate prior service determinations. And at the suggestion of the White House Interagency Working Group we digitized and posted online a report entitled: U.S. Army Recognition Program of the Philippine Guerrillas. We again extend our thanks to the sub-

committee for expressing such great interest in the role that NPRC provides in this important process. I am happy to answer any questions you might have.

Mr. RUNYAN. Thank you, Mr. Pratt.

[The prepared statement of Mr. Kevin Pratt appears in the Appendix]

Mr. RUNYAN. With that, we will begin a round of questions. And my first question is going to be for General MacEwen, and thank you for coming today and your distinguished service.

I understand that there are still many questions in the Filipino veteran community regarding eligibility, though I do believe that the interagency working group did affect positive changes, particularly as it relates to transparency of the process. But I believe there is still a concern. You noted that at the end of the war, there were 1.3 million individuals who made claims, but only 260,000 were approved. Clearly, the type, length and nature of service that qualified for consideration even at the time was confusing. Could you tell us a bit more about the service that qualifies for the FVEC claims?

General MACEWEN. Thank you, Mr. Chairman. The basic criteria that was used by the Army in conjunction with the Filipino government from that postwar period is what is called the five points. So it was understood that there were many people that served, but whether it was qualifying service is what was the determination. And those five points, that type of unit that—what is called maintenance, whether it was under Government—under U.S. Government control; whether it was organized in a manner consistent with the Filipino army, or the U.S. Army; whether it had adequate controls and measures in place; continuity of service as well as being full-time.

So while there are people who clearly, patriotic citizens who performed wonderfully, that did not rise to the level and make the threshold of qualifying service.

Mr. RUNYAN. Thank you. Mr. Flohr, thank you for coming today and for your testimony. Your testimony noted that the VA is legally bound to adjudicate eligibility for the FVEC fund according to the military service department determination. The American Coalition for Filipino Veterans notes that the VA has the authority under Title 38 U.S. Code, to determine eligibility using evidence submitted by claimants.

Could you respond because I think it is an important point of contention that the VA would request that the Army verify the authenticity of relevant documents that are submitted by a claimant?

Mr. FLOHR. Thank you, Mr. Chairman. The basic process for determining eligibility for any veteran's claim when we receive a claim, whether it be a U.S. veteran, or a Philippine veteran, is eligible, qualifying service; someone who served honorably, was discharged under other than dishonorable conditions, and had valid service. If a U.S. veteran files a claim, does not have a DD-214 they submit with their claim and we are not able to find that on line we will go to the service department and ask for verification of service. Same is true in Philippine cases with an important difference being that the Philippines is a long way away, and the records of service during the period of time of World War II, either

in the Philippine army or as a guerrilla, as General MacEwen stated, was basically adjudicated after the war, and those records are with the Army and then were transferred to NPRC. So when we need to verify service, that is where we are required by our own regulations to go.

Mr. RUNYAN. Thank you. Mr. Pratt, again, thank you for providing your testimony today. As you likely know, about 54 percent of the claims for compensation were denied by the VA. Many were denied because they did not qualify for the fund under the law as it was written and the VA testimony noted that thousands of others were duplicate claims. However, in some cases, the VA denied the benefit based on the NPRC's inability to find the name in a roster, perhaps due to spelling differences and incorrect or assumed American names. Later though, the veteran found the records confirming the service to the United States by doing their own research or using an advocate to conduct research at the NPRC. What measures has the NPRC taken to mitigate the possible errors of things like this happening?

Mr. PRATT. Thank you, Mr. Chairman. What we have done in the training that we use with our technicians is that we recognize that there are a lot of name variations that occurred as the information was transcribed in the record when the guerrilla or the Philippine army member filled out the claim folder. And so we actually have the same technician that responds to the correspondence also do the searching for the records, and we have cross-references in the file system to ensure that that information has been accurately captured and looked up. The other thing that we have done since the interagency working group is, we have a second look. Any negative response that is done, a second technician takes a look at that to ensure that they have accurately done the cross-referencing in terms of the alphabet and they have done the work before we provide a negative response to the VA.

Mr. RUNYAN. Thank you, Mr. Pratt. With that, I will yield to the ranking member, Ms. Titus.

Ms. TITUS. Thank you. Mr. Flohr, I would ask you about the appeals process. If a Filipino veteran applies for some of the benefits and is denied because maybe they can't find the records or some of the problems described by the chairman, what is the appeal process? How can they appeal? Do you give enough information to the veteran so they know how to appeal? Do you think the time period for both application and appeal is long enough? And are you getting a lot of appeals which might indicate there is some problem?

Mr. FLOHR. Thank you for your question, Ranking Member Titus. The appeal process is set up through our regulations and in statute and is similar for claims from any veteran, or surviving spouse, or any other eligible person who is denied a benefit. It starts with simply a letter stating, I don't agree with your decision. At that point, we recognize that as what we call a Notice of Disagreement. And we are by law then required to send a statement of the case, which provides a history of the claim from the time we received it, the actions we took in determining the claim and making the decision, and then we send what is—we ask them to complete a Form 1–9 included with a statement of the case. The 1–9 is a certifi-

cation to the Board of Veterans' Appeals. They have to complete that, return it to us within a certain time like a year, I believe. And then it gets sent to the Board of Veterans Appeals and it goes on their docket.

And that is the basic process for all claims. But we do send them notice when we deny a claim. We provide them with a form. If they want to complete a form and fill it out and send it back to us, or as I said, they could just send us a letter saying they disagree. So they do get information about the appeal process, yes.

Ms. TITUS. And when the Board of Appeals considers their case, do they just look at the issue of whether or not they were on that original list that dates back to 1948, or can additional evidence be presented about the individual's service?

Mr. FLOHR. That is a good question. The Board of Veterans' Appeals, unlike, say, the Court Appeals for veterans claims which simply reviews the evidence before VA when they made a determination. The Board of Veterans' Appeals has a de novo review authority. They can return a file or an appeal to a regional office asking for additional information. In some cases maybe a medical opinion or an examination, or to go out to a physician, a private physician, and get evidence, or they can do that themselves and sometimes they do. And there was a law recently, a regulation change which allowed the Board to consider in the first instance new evidence submitted directly to the Board as part of an appeal.

So they can. They are allowed to submit new evidence, get new evidence, and review it, yes.

Ms. TITUS. And how long does this usually take, because we are talking about people who are in their 90s.

Mr. FLOHR. The Board decisions, I don't have the numbers right immediately as to how long it takes on average. It is fairly lengthy, particularly if someone requests to appear before the Board in a hearing. That takes time to schedule. And I know while our Manila regional office is expediting and has been expediting these claims since day one, the Board is statutorily required to review appeals based on the date they are received at the Board. Now, whether they are expediting any of these appeals, I do not know at this time. However, I could find that out.

Ms. TITUS. That would be something we ought to look into and work on that. I appreciate that. Thank you.

Mr. FLOHR. Okay.

Ms. TITUS. And General, let me ask you, are there any documents classified or otherwise that the Army holds that might help some of the remaining veterans with their appeals, and deal with the whole transparency issue, and the general lack of trust?

General MACEWEN. Ma'am, thank you for that question. I think that everything related to the Filipino veterans claims process has been declassified. Whether there are other classified information, I wouldn't know. But all of the stuff that was in the Adjutant General's responsibility in 1948 that is continued in under our authority, has been declassified.

Ms. TITUS. And the person who is trying to get information about their own individual case can access that online, or through the Archives?

Mr. PRATT. Ma'am, there are really two groups of records. The first group of records that is actually—that I mentioned in my testimony that is available to the public, really is about the process that the Army went through in adjudicating to ensure that these people are on a roster or not on a roster. The claim folders that we maintain for the Army are not open to the public. However, since the White House working group, if there is an individual that wants to see their claim folder, what happens is they write us and then we, in turn, talk to the Army because they are considered organizational records for the Army and they are still in the Army's legal custody, then we would, if the Army gives approval, send those to the veteran. And that has happened on several occasions since that time and we want to be very transparent in the process and let the veterans understand the documents that we are looking through to make those decisions.

Ms. TITUS. So that process is not a problem. If I ask for my record, I could get it?

Mr. PRATT. Yes, ma'am. In fact, I talked to a group this morning and offered that to them. They just need to write us a letter and we will be happy to work with the Army to get that information to them.

General MACEWEN. And ma'am, we are committed to allowing those on a case-by-case basis.

Ms. TITUS. Thank you. Thank you, Mr. Chairman.

Mr. RUNYAN. Thank you, Ms. Titus. With that, I will recognize Dr. Heck.

Mr. HECK. Thank you, Mr. Chair, for holding the hearing and thank you panel members for coming back and providing additional information. A couple of things, facts that I just want to make sure are clear. Mr. Flohr, you stated that there is $56.4 million remaining in the FVEC account, the appropriated funds. That is correct? That is the number that is there? But there has been some discussion amongst committees and staff members that there really is no money in the account. So there is $56.4 million there?

Mr. FLOHR. That is what I was provided, yes.

Mr. HECK. Okay, and you also stated that there was 23,826 FVEC claims that had not been granted, and then you said, but some may be due to dependents, or surviving spouses, or those that—other than the veteran. Do you know exactly how many of those claims that were denied were specifically filed by the veteran themselves, not a dupe, or a surviving spouse or a dependent?

Mr. FLOHR. Congressman, I don't know exactly the number. Manila did not actually start tracking these until the second year, or after 2010.

Mr. HECK. Okay.

Mr. FLOHR. So a lot of them were denied. There was 9,800 that have been denied because they had no valid military service, failure to prosecute was 1,296, previous forfeitures, 148.

Mr. HECK. But we don't know how many of those were actually filed by the veteran versus a family member, or——

Mr. FLOHR. I do not know, but I will attempt to talk with our folks in Manila to see if they can provide me at least a good estimate.

Mr. HECK. Okay. You know, I would ask then just hypothetically, do you think it would be unreasonable to believe that in 1948, in postwar Philippines, after a country has been ravaged by combat for 4 years, that there could possibly be somebody who had qualified service who didn't make it on the list? Unreasonable to think that that couldn't happen?

Mr. FLOHR. Not to me, no.

Mr. HECK. Okay. So I would guess, you know, with the remaining funds that are appropriated and if everybody—if we were to reopen the period, and everyone that re-applied would get the maximum benefit of $15,000, that would allow about 3,760 more claims to be paid. I would ask each of you, do you think it would be unreasonable to approach this, to reopen the period for another year, to allow it only within the amount of appropriated funds, but to accept an AGO-23 as proof of service to be able to pay a claim? Because many of those Filipino vets that are being denied have an AGO–23, the Philippine form that has been certified, that was developed—I mean, this one is stamped 1948. I don't think we are going to find many 90 to 100-year old Filipino veterans trying to come in with forged documents. Do you believe that reopening the period within the confines of appropriated funds for 1 year and taking the AGO-23 as proof of service would be unreasonable? Mr. Flohr?

Mr. FLOHR. I wouldn't say it would be unreasonable. I think we would go through some of the same things we did in 2009, 2010, when we would get a lot of claims from children.

Mr. HECK. Understanding that, but if a veteran, if a Filipino veteran was alive today and reopened his claim, and had the AGO-23 that was contemporaneously certified back in 1948, I mean—I understand that we can't go into the surviving spouse issue or child filing on behalf—but for those veterans that are still alive.

Mr. FLOHR. For VA, for my purposes, I would be glad to work with the Department of the Army and NPRC to determine if that would be acceptable, yes.

Mr. HECK. General MacEwen, your opinion on that?

General MACEWEN. Sir, my opinion is I am not so sure that that is fair overall in that determinations that were made in 1948 and determinations that have been made for others, and the book was, you know, frankly closed. I mean, in 1949, 9 August 1949, the President, the President of the United States wrote a letter to the president of the Philippines and said, the program is definitely closed. We have concluded the verification process.

And while there may be some that had service, whether it rose to the level of qualifying service would be the part that would concern me. I don't doubt that there are plenty of people that served honorably, patriotically, but whether it was qualifying service.

Mr. HECK. But wouldn't that be reflected on their AGO–23?

General MACEWEN. Sir, there may be other information that was available to that investigation committee at the time that would make that not valid.

Mr. HECK. Well, I appreciate that. Look, in my District, we have the group called The Mighty Five. Unfortunately, three of them, Augusto Oppus, Romeo Barreras and Silverio Cuaresma have all died. Mr. Cuaresma was 100 years old. I have two left, Edilberto

Briones and Anastacio Sumajit. I am hoping that we get some resolution on their behalf soon. Thank you, Mr. Chair, I yield back.

Mr. RUNYAN. Thank you, Dr. Heck. I have one more question kind of addressed—if each of you at the panel could touch on it, and after hearing your testimony and going through the statements that were submitted, based on your preparation for the hearing today and your expertise in all of your areas, do you have any recommendations either in your collaboration, communication, regulation, or even perhaps legislation that you believe would improve the outcomes in the process, in the administration of the program? Mr. Flohr, start with you.

Mr. FLOHR. Mr. Chairman, I am not, off the top of my head, I am not sure that I know of what could be done differently than what we do now. As has been stated, the Department of the Army, and the NPRC as custodian of the records, they were complete as of 1948 and whether or not—I think it would take legislation, perhaps, to change the validity of service. We are bound by our regulations and our statutes for determining eligibility, and for Philippine claimants, it is through the Department of the Army.

Mr. RUNYAN. General.

General MACEWEN. Sir, I have thought about this quite a bit because this is the second time that I have been here to discuss this, and as I have prepped for it, I think that second-guessing those decisions made by those who conducted the investigations, had firsthand knowledge and ability, and made this careful approval, went through a very deliberative process, would probably be counterproductive. So I don't see anything along that line. I think the collaboration among the agencies has improved, especially since the White House working group that you discussed in your opening statement. But I don't see anything additional that would be helpful, overall, from my view.

Mr. RUNYAN. Mr. Pratt, do you have anything to add?

Mr. PRATT. Just one thing, Mr. Chairman. We have been working collaboratively with the VA and the Army within the current process to provide greater transparency to the veterans and to improve the speed at which we approve the process. So under the existing process, I think we will continue to work with the Army and with the VA to provide better information to the veterans so they can understand why these decisions were made and that will help provide a little bit of better understanding of the program, and, certainly, if the program changes because of legislation, we are certainly prepared to make an adjustment so that we can continue to serve the veterans.

Mr. RUNYAN. Thank you. Any more?

Ms. TITUS. Yes.

Mr. RUNYAN. Sure. Yield to the ranking member.

Ms. TITUS. Thank you, Mr. Chairman. We all want this system to be fair. There is no question about that. You said it, General. This committee has been devoted to providing benefits to our veterans who have earned them, and deserve them. And that is the least that we can do. And we want that to include our Filipino veterans as well. So if we can just focus on getting the information out there so that there is transparency and there is a better understanding and deal with the trust issue, if we make time sensitivity

something that we are aware of since these people are in their 90s, and we want to do right by them before they pass on, and if the appeal process works fairly, I think those are all keys to making this work under existing provisions and existing statutes so that we can be fair to the people that my colleague mentioned who live in Nevada and beyond. And I appreciate you all working with us to make that happen. Thank you, Mr. Chairman.

Mr. RUNYAN. Dr. Heck, anything further?

Mr. HECK. No.

Mr. RUNYAN. Again, I want to thank the witnesses. Appreciate your attendance today. Your complete and written statements will be entered into the hearing record. We appreciate your time and attention that went into preparing your remarks for today. I ask unanimous consent that all members have five legislative days to revise and extend their remarks and include any extraneous material. Hearing no objection, so ordered. And this hearing is now adjourned.

[Whereupon, at 11:47 a.m., the subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF BRAD FLOHR

Chairman Runyan, Ranking Member Titus, and Subcommittee Members, thank you for the opportunity to provide an update on the Department of Veterans Affairs' (VA) administration of the Filipino Veterans Equity Compensation (FVEC) fund.

Overview

To remedy what some saw as an injustice caused by the limited VA benefits available to Filipino World War II Veterans, Congress established the FVEC Fund through the enactment of The American Recovery and Reinvestment Act of 2009 (Recovery Act). The FVEC provision authorized a one-time payment of $15,000 for qualified U.S. citizens and $9,000 for qualified non-U.S. citizens who filed within the one-year filing deadline. To qualify for the FVEC payment, an individual must have served before July 1, 1946, in the Philippine Commonwealth Army, including recognized guerrillas, or in the New Philippine Scouts. In determining whether claimants are eligible for any VA benefit, including FVEC, VA must have verification from the U.S. military service department as to whether the claimant has qualifying service in accordance with 38 C.F.R. § 3.203.

Less than two months after the law was passed, VA established an adjudication process, payment system, accounting system, and payment delivery system to successfully issue the first FVEC payment on April 8, 2009. VA conducted numerous successful outreach programs to inform Veterans and their families about this benefit. This outreach continued until February 16, 2010, the end of the filing period. VA's Manila RO established a dedicated team of employees who solely processed FVEC claims. The Manila RO also sent letters to all Veterans found eligible for the FVEC benefit advising them of their potential eligibility for VA disability compensation benefits. Numerous Filipino World War II Veterans have subsequently been found eligible for recurring monthly disability compensation payments.

Update on Disposition of Claims Received

The Manila RO received 42,755 claims for FVEC between February 2009 and February 2010. As of October 31, 2014, of the 42,755 claims received, the Manila RO granted 18,929 FVEC payments, totaling $225,668,204. Currently there are 23,826 FVEC claims that have not been granted due to ineligibility. All original claims for FVEC have received a decision, but there are currently 15 reopened claims for FVEC and 10 appeals pending with VBA. Approximately 32 appeals of FVEC decisions are pending with the Board of Veterans' Appeals, and another 9 appeals are before the United States Court of Appeals for Veterans Claims. If all individuals with reopened claims or pending appeals are found to be eligible for the FVEC payment, the Manila Regional Office would pay additional funds of approximately $1.0 million out of the FVEC fund. This assumes that all reopened and appealed claims, if granted, would be granted the maximum $15,000. In addition, $17.1 million has

been returned to the Treasury for returned checks, which result when a Veteran dies without a surviving spouse claimant. A total of $56.4 million remains in the FVEC appropriation.

The primary reason for denial of claims was the inability of these individuals to establish qualifying service required by section 1002(d) of the Recovery Act. The denied claimants included a variety of individuals, who exercised their right to make an application to VA. They included children, grandchildren, and other family members of alleged Veterans, widows of long-deceased alleged Veterans, and thousands of duplicate claims.

In October 2012, the White House Initiative on Asian Americans and Pacific Islanders, in collaboration with the Office of Management and Budget and the Domestic Policy Council, created the Filipino Veterans Equity Compensation Fund Interagency Working Group (IWG) comprised of representatives of the Department of Veterans Affairs, the Department of Defense, and the National Archives and Record Administration to address the concerns of Filipino Veterans who believe that their claims were improperly denied, or that they did not receive a satisfactory explanation as to why their claims were denied.

The IWG's goal was to increase transparency and accelerate processing of claims within the existing framework. Some highlights of the IWG's efforts include:

- VA created a special team dedicated to FVEC appeals and obtained copies of certain Philippine Army documents from the Adjutant General of the Philippines.
- The Army developed more detailed response letters for requests for service determination that explain why an application was denied.
- NARA decreased the response time for service determination requests to 10 days or less.

Process for Verifying/Determining Service

In determining whether a claimant is eligible for a VA benefit, including FVEC, VA is legally bound under its regulations by military service department determinations as to service [38 C.F.R. § 3.203(a), (c)]. Currently, unless VA has a genuine document issued by a U.S. military service department containing needed information to establish eligibility, VA regulations, applicable to all claimants, require that VA request verification of military service from the appropriate military service department. For claims based on Philippine Service in World War II, the U.S. Army is the relevant military service department. VA requests verification from the National Personnel Records Center (NPRC) which, since 1998, has acted as the custodian of the U.S. Army's collection of Philippine Army and guerrilla records.

This concludes my testimony, Mr. Chairman. I would be happy to address any questions you or the other Members of the Subcommittee may have.

PREPARED STATEMENT OF DAVID K. MACEWEN

Chairman Runyan, Ranking Member Titus, Distinguished Members of this Committee, I thank you once again for the opportunity to appear before you on behalf of America's Army to discuss the Filipino Army Veterans verification process. I sat before the Oversight and Investigations Subcommittee of the House Armed Services Committee a few months ago, in June, providing similar testimony. As previously mentioned in prior testimony, this issue is very personal for me because my father served in the Philippines during World War II. Therefore ensuring accuracy and adequacy in the verification process of our Filipino Army Veterans is important to me. I sit before you today, as has been the case with Army Adjutants General over many years, with great confidence knowing that the Army's process of verifying Filipino Army service is sound and adequate.

For the three years post WWII, 1945–1948, the Filipino government worked in conjunction with the U.S. Army to establish Guerilla and Philippine Army unit rosters and to capture relevant service data. This data is currently located in the National Personnel Records Center, National Archives Records Administration. If you visit the National Personnel Records Center, you will find thousands, almost 10,000 cubic feet, of claim folders which are Philippine Army and Guerilla claim files. You will find cabinets of Finding Aids, which is approximately 1.3 million cards; 30 cubic feet of various Philippine Army rosters and records, and 15 cubic feet of Guerilla rosters. I could go on, as the list continues, but I believe you can imagine the enormity of the amount of information in these files.

In 1998, the Army transferred the Filipino Veteran service verification process to the National Personnel Records Center. With this transfer, we obtained efficiencies and improved timeliness of verification. Although the National Personnel Records

Center actually executes the hands-on work to verify service, they do so in accordance with procedural guidance established and maintained by the Army.

Since the signing of the 2009 American Investment Recovery Act, the Army has supported the Department of Veterans Affairs role in compensating WWII Filipino Veterans by verifying Filipino service in the Philippines based on the very same process for service verification established in 1948 in conjunction with the Philippine Government.

When I use the term "verify," I don't use it arbitrarily. "Verify" is the most appropriate term because the service determinations have already been made. Although it is a fairly simple process to review the records to see what determination was made, the process that got us to that point was very complex. The people on the ground after the war, both American and Filipino, conducted years of research, interviewing Commanders and leaders at various organizational levels, and gathered and stored massive amounts of authoritative documents. They turned over every stone possible and imaginable to leave us with the system and documents we use today, with the understanding, and somehow the foresight, to know that we would not be able to make fair, adequate, and auditable service determinations today without them.

By the end of the war, of the nearly 1.3 million claims (requests for recognition of Filipino service) reviewed, the Army, through its collaborative effort with the Philippine Government, recognized and approved only 260,000. I ask that you keep three points in mind. First, accepted historical documentation makes it clear that Filipino service within recognized units did not approach a figure anywhere near the 1.3 million claims submitted. Second, these determinations were made by the people on the ground at that time, only after extensive research was completed, and unfortunately, a majority of the time they were presented with the very unpleasant task of denying a claim, the same as we must do today. Third, claims were denied then, as they are today, for very legitimate and justifiable reasons. Changing the service verification process by accepting non-verifiable service documentation for Philippine Army and Guerilla Veterans may result in a significant number of faulty service verifications.

The Army set specific criteria and a threshold for what we would consider as service. While many Filipinos feel that they served, they did not meet or reach the threshold for service. Using the specified criteria, the determinations were made. Today, it's just a matter of us reviewing the record and retrieving the determination. Second guessing what is already in the record is neither reasonable nor feasible, as we cannot conduct better research than what was conducted in the years immediately following the war, by the individuals actually on the ground at the time. Today, the process is fairly simple:

1) The Department of Veterans' Affairs submits Veterans' Affairs (VA) Form 3101 or VA Form 9 to the National Personnel Records Center, who retrieves and authenticates the service determination from the archived files. If sufficient documentation is not found in the file, the National Personnel Records Center works with the Department of Veterans Affairs, who in turn works with the Philippine government, to obtain additional information. Once the National Personnel Records Center has matched evidence with unit rosters and is able to authenticate service, they complete National Personnel Records Center Test Form 02–03 and forward it to the Department of Veterans Affairs. These rosters and reference lists serve only as a quick reference to what is actually in more than 1,600 boxes of well-documented case files and supporting material stored in the National Archives building in College Park, Maryland. If unable to match evidence with unit rosters, the National Personnel Records Center annotates the VA Form 3101 accordingly and returns it to the Department of Veterans' Affairs. Although the National Personnel Records Center executes this function, they follow the Army's procedures and program guidelines, and do not deviate from U.S. Army policy.

2) The National Personnel Records Center informs the Department of Veterans' Affairs of the final determination.

3) The Department of Veterans' Affairs delivers or denies the benefit.

The National Personnel Records Center follows the same rigorous process established by the Army to ensure that no claimant is unfairly excluded from earned benefits by denying creditable service, and that all who have served are properly recognized for their contributions to U.S. Army efforts in WWII and to the Nation.

The Army has long-standing and close working relationships with both the National Personnel Records Center and the Department of Veterans' Affairs, and together we are committed to sustaining an efficient claims processing program for the Filipino Veterans.

The issue of service verification has remained constant over the years. The Army has spent significant time and resources to continually review our service

verification policy. Though we have complete confidence in the final service determinations already made, as with any other Army program, a review or study is periodically conducted to ensure that we are in compliance with the spirit and letter of applicable laws and regulations.

As published on the White House website, in October 2012, the White House Initiative on Asian Americans and Pacific Islanders, in collaboration with the Office of Management and Budget and the Domestic Policy Council, created the Filipino Veterans Equity Compensation Fund Interagency Working Group comprised of the Department of Veterans Affairs, the Department of Defense, and the National Archives and Record Administration. The working group was tasked with analyzing the process faced by Filipino veterans in demonstrating eligibility for compensation in order to ensure that all applications received thorough and fair review.

The working group increased transparency and concluded that, after a thorough accounting of the process to verify valid military service for Filipino World War II veterans, the process is sound. All organizations involved in the verification process were brought together to improve the process from start to finish. In addition to clarifying the claims process, the working group digitized and made available online for the first time a report titled, U.S. Army Recognition Program of Philippine Guerrillas. This crucial report explains how the recognition process was developed at the close of World War II, and, most importantly, the Army's careful reasoning behind the current policies on service verification. I will highlight some of the Army's more significant results of that Interagency Working Group:

The Army reviewed and revalidated the retrieval and authentication procedures used by the National Personnel Records Center, and made the procedures electronically available.

The Army recognized the need to return to more detailed responses to requests for service determinations. As a result, we fielded several more specific response letters which state: the individual's service authentication, whether or not the individual's claims folder and/or corresponding unit rosters were located, and what the next appropriate steps are for individuals with questions regarding service authentication.

The Army placed a priority on requests for service determinations received from the Department of Veterans Affairs for Filipino veterans, and also asked the National Personnel Records Center to ensure the requests receive prompt servicing.

Over the years, the Department of the Army has been requested to establish a different process for Filipino Veterans to prove their service. The facts are that we have a process; it is adequate and it is sound. We will continue to work closely with the National Personnel Records Center and the Department of Veterans' Affairs to provide the best possible service to our Filipino Veterans. The Army is well-positioned and committed to meeting the claims processing needs for Filipino Veterans.

Chairman Runyan, Ranking Member Titus, and members of the subcommittee, we wish to thank all of you for your continued support, which has been vital in sustaining our All-Volunteer Army through an unprecedented period of continuous combat operations, and which will continue to be vital to ensure the future of our Army. I look forward to answering your questions today.

PREPARED STATEMENT OF KEVIN PRATT

Good morning Chairman Runyan, Ranking Member Titus, and members of the Subcommittee. Thank you for calling this hearing and for your continuing efforts to recognize the extraordinary contributions of Filipino veterans, including those who served in guerrilla units, for the service they provided in support of the United States during World War II. I am delivering testimony on behalf of the National Personnel Records Center (NPRC or Center) that is similar to a statement delivered by the NPRC Director, Scott Levins, in a hearing before the House Armed Services Committee earlier this year. As one of many veterans that work at the NPRC, I am pleased to appear before you today to discuss the work that the Center does to serve those who have served. We appreciate your interest in this important work.

The NPRC is an office of the National Archives and Records Administration (NARA). Located in two facilities in the St. Louis, Missouri area, the Center stores and services over 4 million cubic feet of military and civilian personnel, medical and related records dating back to the Spanish-American War.

History of NPRC's Military Records Program

In the mid 1950s, the Department of Defense (DoD) constructed the Military Personnel Records Center in Overland, Missouri. In the years that followed, military personnel, medical, and organizational records of each military service department

were relocated to this facility. In 1960, the Center's functions were consolidated and transferred to the General Services Administration (GSA), to be managed by the National Archives, which at that time was a part of GSA. The Archives managed the Center as a single program, leveraging economies of scale to improve efficiency and offering a central point of access for military service records.

In spring 2011, the NPRC began moving its military records into a new building designed to meet updated facility standards for storing permanent Federal records. The facility is located in North St. Louis County, approximately 15 miles from the Overland location. The relocation of records into the new facility was completed in 2012.

NPRC holds approximately 60 million official military personnel files. Its holdings also include service treatment records, clinical records from military medical treatment facilities, auxiliary records such as pay vouchers and service name indexes, and organizational records such as morning reports and unit rosters. NPRC stores these records in both textual and micrographic formats.

NPRC's military records facility receives approximately 4,000 correspondence requests each day from veterans, their next of kin, various Federal agencies, members of Congress, the media, and other stakeholders. Nearly half of these requests come from veterans seeking a copy of their separation statement (the DD–214) because they need it to pursue a benefit. The Center responds to over 90% of these types of requests in ten business days or less.

In addition to the correspondence work discussed above, the Center normally receives between 5,000 and 10,000 requests each week from the VA and other Federal agencies requiring the temporary loan of original records. These requests are normally serviced within 2–3 business days.

Philippine Army Records

Included in the NPRC's holdings are claim folders pertaining to Filipino nationals that were adjudicated by the U.S. Army after World War II, and unit rosters created by the U.S. Army in conjunction with its post-war recognition program. In 1998 NARA entered into an agreement with the Department of the Army to accept the physical transfer of these records though they remain in the legal custody of the Department of the Army. Also as part of the agreement, beginning in FY 1999, NPRC assumed the responsibility for referencing these records consistent with procedures previously established by the Army. In doing so, NPRC reviews its holdings to authenticate service determinations previously made by the Department of the Army. NPRC does this by examining claim folders, finding aids, and a variety of rosters compiled by the Army during its post-war recognition program. Most often, this is done in response to requests from the Department of Veterans Affairs regarding compensation claims. Recognizing the urgency of these requests, NPRC strives to respond to these requests in ten business days or less.

The technical instructions applied by NPRC technicians in referencing these records and responding to such requests have been furnished to the American Coalition for Filipino Veterans and has been posted online for public viewing at *http://www.archives.gov/st-louis/military-personnel/memo-1865125.html.* The instructions are consistent with the longstanding policies and practices of the Department of the Army and were applied by Army staff prior to the transfer of the reference function to NPRC. On multiple occasions since the establishment of the Filipino Veterans Equity Compensation Fund, officials from the Department of the Army have visited NPRC, reviewed its technical instructions, examined its work process, and confirmed that NPRC was providing reference services consistent with the long established policies and practices of the Department of the Army.

NARA has also preserved records of historical value documenting events that transpired in the Philippines during and after World War II. Included are records describing actions taken by the U.S. Army to recognize the service of Filipino nationals who supported the United States Army Forces in the Far East, including those who served in guerrilla units. These records are available for public review at the National Archives building in College Park, Maryland.

Conclusion

NARA is pleased to work with the Subcommittee, the Army, the VA, and other stakeholders to ensure Filipino veterans, including those who served in recognized guerrilla units, are recognized for their extraordinary service in support of the United States during World War II. We have briefed interested congressional staff and other stakeholders on NARA's role in this process, we actively participated in an Interagency Working Group established by the White House to analyze the process, and we have shared information with Filipino veterans advocacy groups to help provide greater understanding of the reference process we employ to authenticate service determinations made by the Department of the Army. Working with the De-

partment of the Army, we modified our response letters to provide more specific details regarding our reference results in instances where we are unable to positively authenticate a prior service determination, and, at the suggestion of the White House Interagency Working Group, we digitized and posted online a report titled, "U.S. Army Recognition Program of Philippine Guerrillas." This report, which can be found at *http://research.archives.gov/description/6921767*, explains how the recognition process was developed at the close of World War II.

We again extend our thanks to the Subcommittee for expressing such great interest in the role that NPRC provides in this important process. I am happy to answer any questions you may have.

FOR THE RECORD

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VA Secretary's Duty to Comply With FVEC Law, Congressional Directives and Court Decisions By:

Eric Lachica, ACFV Executive Director

On behalf of our officers and members of the American Coalition for Filipino Veterans, a national nonprofit advocacy organization, may I extend our deepest appreciation to your subcommittee for holding this timely hearing on the adequacy of the process in verifying eligibility of claimants for the Filipino Veterans Equity Compensation (FVEC) benefit.

It is our coalition's view that the VA Secretary and his department FAILED to adequately comply with the FVEC law and congressional directives in addressing the 4,554 appeals of elderly Filipino veteran claimants before the VA and the US Court of Appeals on the denials of recognition of their US service in World War II.

The 2009 FVEC law is very clear: "The Secretary may make a payment from the compensation fund to an eligible person who . . . submits to the Secretary a claim for benefits . . . [for those who] served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States." *http://www.gpo.gov/fdsys/pkg/PLAW–111publ5/html/PLAW–111publ5.htm*

There are FIVE major shortcomings of the FVEC eligibility determination process as administered by the VA Secretary.

First: Former VA Sec. Shinseki erred and should have followed the congressional directive of the FVEC law and the FY 2014 Appropriations Act (H.R. 2216) that "directed the VA to consider ALL forms of evidence of service and not just those originally considered." (My emphasis)

Moreover, the House Appropriations Committee stated, it "looks forward to VA execution of this directive." (House Appropriations Committee Report; H.R. 4416 passed April 30, 2014)

Second: The former VA Secretary relied solely on the National Personnel Record Center (NPRC) of the National Archives to verify and determine US Army military service.

The recent August 26, 2014 decision and findings by a three-judge panel of the U.S. Court of Appeals on Veteran Claims further clarified this issue. The court ruled against VA Secretary's denial of the appeal of Mrs. Juliet T. Tagupa, a Filipino veteran's widow, for solely relying on the NPRC to determine US Army service of her husband. The court remanded to the VA to directly "seek verification service from the Department of the Army." They found the NPRC was a "reference service" and not a "service department" of the US Army to issue determinations. (pages 8 & 12 *http://law.justia.com/cases/federal/appellate-courts/cavc/11–3575/11–3575–2014–08–26.html*

Third: The former VA Secretary failed in his "duty to assist a claimant in obtaining evidence necessary to substantiate a claim" of Mrs. Tagupa in particular (and to the thousands of FVEC claimants). "This duty includes making reasonable efforts to obtain all records held by a governmental entity that are relevant . .. if the claimant provides the Secretary information sufficient to locate such records," the above Appeals Court panel cited the relevant Code of Federal Regulations. Moreover, the VA Secretary and the VA Manila Regional Office did not "attempt to seek alternative means of verifying service." (page 8–9).

The Court also listed several possible sources for the VA. Certain Philippine Commonwealth Army records and their World War II guerrilla service rosters, honorable discharge documents or certifications should have been accepted as sufficient proof.

Fourth: Former VA Secretary Shinseki failed to exercise administrative discretion under his FVEC authority to accept genuine WW II honorable service documentation of the Philippine Commonwealth Army and the USAFFE guerrilla service, as presented by the veteran claimants. The above Appeals Court cited the "plain language" of the VA regulation that "uses the term 'may' and thus give the VA discretion to determine whether the evidence submitted to establish service is itself sufficient without additional service verification." (page 6)

Fifth: The former VA Secretary and the VA Board of Appeals failed to comply with the VA Adjudication Procedures in their manual. They did not consider the possibility of "*Unrecognized* guerrilla service and 'that this is service ' under a recognized commissioned officer, who was a former member of the U.S. Armed Forces or the Commonwealth Army'," as pointed out by the Appeals Court panel in their decision. (p. 12, my emphasis)

Solution: In light of above failed actions, we respectfully urge the House VA Committee to remind the new VA Secretary Robert McDonald to comply with the FVEC law, congressional directives and Court of Appeals decisions. FVEC compensation benefits should be granted to deserving claimants based on alternative documents provided by other U.S. official government sources including the Philippine Government's Adjutant General's Office who have PH Commonwealth Army records, authenticated WWII guerrilla rosters and individual letters of recognition.

In an earlier precedent in 2011, the VA Board of Appeals approved the award of FVEC benefits to Gaudencio Pablo, a Filipino WWII guerrilla, who was previously denied official recognition by the NPRC in St. Louis MO. He provided copies of US Army documents he found in the National Archives College Park Maryland. (No. 10–17 727 BVA decision January 31, 2011).

If needed to expedite the eligibility review, the VA Secretary should directly request the US Army and the NPRC to provide copies of documents, if any, in the veteran claimant's folder or from rosters of WWII service from the NPRC in St. Louis MO or from the National Archives.

Unfortunately, US Army considers these documents as "classified." The Army has instructed the NPRC not to release the relevant documents without their permission, despite expiration of the 50-year secrecy limitation.

In response to our earlier complaint, the U.S. Army on 2 May 2012 released to congressional staff the two-page "Information Paper AHRC–PDR Subject: Records for World War II Filipino Veterans" prepared by LTC Curriera who was the Chief, Army Personnel Records Division, Human Resources Command in Fort Knox KY. (see attachment)

She wrote: "The Philippine Army records in question are classified by NPRC as Philippine military 'organizational records' used to establish identity of Missing Persons Act (MPAP) status regarding Philippine Army personnel and recognized Guerrillas. These records are NOT Official Military Personnel Files (OMPF), and at NO time has the U.S. Army produced individual personnel records of OMPF's for Philippine Army Veterans and/or eligible Guerillas." (my emphasis)

In her Army memorandum, Curreira confirmed that "the NPRC does not have the authority to release organizational or claim records without the appropriate permission."

As background on why the US Army has been uncooperative in this regard, the secret 1949 "U.S. Army Recognition Program of Philippine Guerrillas" report declassified in 1988, but only released in July 2013 by the White House Interagency Working Group, would be helpful. The nameless US Army authors of the report frankly describe the convoluted and unjust treatment faced by Filipino WWII veterans in pursuing their claims.

Sadly, four American military officers were accused by the US Army of engaging in erroneous recognition of guerrillas. As a result of their dispute, the US Army quietly revoked en masse 37,190 guerrillas who were earlier recognized in 1946 and who were paid by the US Army for their service and given honorable discharge documents. (pages 159, 160, 197 and 213 in *http://research.archives.gov/description/6921767*)

Thus six decades later, many deserving patriotic Filipino veterans were blacklisted by the US Army after their names were secretly "deleted by roster reconstruction" from the USAFFE guerrilla rolls in 1948. (page 160) Their mistake: they belonged to guerrilla units led by these four US Army officers. This may be a major factor why there are still 4,554 remaining appeals from FVEC claimants today.

The Philippine Commonwealth Government and the Filipino People of 16 million (Census estimate, all were US nationals) were faced with the overwhelming task of

rebuilding after a devastating war that killed 60,000 Commonwealth soldiers and guerrillas as well as one million Filipino civilians who died due to war-related causes, according to the US State Department.

In conclusion, the new VA Secretary should respectfully be compelled to promptly award FVEC compensation to these elderly Filipino veterans with honorable service when they meet the conditions established by the FVEC law, Congressional directives and Court of Appeals decisions:

1) Philippine Commonwealth Army service documentation; or,

2) Guerrilla service documents when they were recognized by U.S. Army officers as certified by the Philippine Government's Army Adjutant General Office; and

3) No derogatory information such as disloyalty or fraud to the United States.

On behalf of thousands of our members and supporters throughout the United States and in the Philippines, we again thank your committee for holding this crucial hearing to find solutions for our heroes.

Eric Lachica
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Patrick Ganio Sr., ACFV President
Franco Arcebal, Vice-president Membership
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Over the past two decades, our coalition has lobbied Congress with our champions, Senators Daniel Inouye and Daniel Akaka and their colleagues in the House: Representatives Benjamin Gilman, Bob Filner, Darrell Issa and Joe Heck. We were assisted by sympathetic White House staff under the Clinton, Bush and Obama Administrations.

Our goal is to win full official recognition and equitable benefits for our WWII veterans. With our allies: the VFW, American Legion, D.A.V. and community partners like the National Federation for Filipino American Association, we won veterans' burial benefits in 2000, full war-related disability compensation in 2001, VA healthcare in 2003, and Filipino Veterans Equity Compensation law in 2009. Our organization does not receive federal funds or have federal contracts.

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