UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

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MARCH 15, 1982

The Honorable Alan Cranston
United States Senate

Dear Senator Cranston:

Subject: VA Forfeiture Decisions Highlight the Need to Strengthen the Procedural Protections Afforded Filipino Veterans and Their Survivors Residing in the Philippines (HRD-82-46)

Pursuant to your request as Chairman, Senate Committee on Veterans' Affairs, we reviewed a 5-year sample of Veterans Administration (VA) forfeiture decisions to determine whether Filipino veterans and their survivors were afforded procedural due process.

Over the 5-year period ended December 1980, VA rendered about 1,200 forfeiture decisions because of alleged fraud or treason. Forfeiture is an administrative penalty that revokes entitlement to gratuitous benefits, such as pension or disability compensation benefits, which an individual may be receiving or would have received in the future. Virtually all VA forfeitures are based on cases from the Philippines.

While it has not been established that Filipino veterans and their survivors residing in the Philippines are entitled to a constitutional right to due process, VA acknowledges an obligation to afford "all fundamental fairness" to such Filipinos.

Our review of past forfeiture cases from the Philippines shows that questionable procedures and practices have sometimes resulted in unfair treatment. For example:

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--Forfeiture decisions were not timely, taking in some cases more than 2 years after benefit payments were stopped.

--Letters offering personal hearings contained statements that could discourage requests for forfeiture hearings.

--Insurance benefits, which are not gratuitous benefits, were withheld to offset debts without prior notification of such offsets.

--Gratuitous benefits were suspended quickly without providing prior notification and an opportunity to respond to the charge leading to forfeiture.

The timeliness of forfeiture decisions has significantly improved over the 5-year period ended December 1980. Further, as a result of a 1980 U.S. Federal Court review of a case involving a Filipino's discontinued insurance benefits, expressed congressional concern over VA's handling of that case, recent legislation, and our discussions with VA officials, VA has revised some procedures and is in the process of revising others which, if properly implemented, should improve the treatment of Filipino veterans and their survivors residing in the Philippines. However, VA needs to do more to meet its obligation of "all fundamental fairness" because the following exceptional treatment continues in the Philippines:

--Permitting certain forfeiture decisions without an independent review of case file evidence.

--Dismissing conflicting evidence involving testimonial information not in support of forfeiture recommendations without documenting the rationale for such dismissal.

--Using qualifications on correspondence relating to personal hearing rights and statements having a negative connotation relating to hearing rights before the Board of Veterans Appeals.

Accordingly, to improve the nature and extent to which Filipino veterans and their survivors residing in the Philippines are afforded fundamental fairness, we are recommending to the Administrator of Veterans Affairs that certain procedures be revised and a determination be made, in consultation with VA's General Counsel, of the need for practices unique to the Philippines.

Our review is discussed in detail in enclosure I.

As requested by your office, we did not obtain written comments from VA on the matters discussed in this report. However, we discussed the report's contents with the responsible officials in VA's Department of Veterans Benefits, Office of General Counsel, and Board of Veterans Appeals, and have considered their comments in preparing this report.

As agreed with your office, this report is being made available for general distribution. Also, copies are being sent to the Administrator of Veterans Affairs.

Sincerely yours,

Gregory J. Ahart
Director

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ENCLOSURE I

VA FORFEITURE DECISIONS HIGHLIGHT THE NEED TO STRENGTHEN THE PROCEDURAL PROTECTIONS AFFORDED FILIPINO VETERANS AND THEIR SURVIVORS RESIDING IN THE PHILIPPINES

At the request of Senator Alan Cranston, as Chairman of the Senate Committee on Veterans' Affairs, we reviewed a representative sample of all Veterans Administration (VA) forfeiture decisions for the last 5 years to determine whether Filipinos (residing in the Philippines) were afforded procedural due process.

This report addresses the results of our review of Philippine forfeiture cases for the 5-year period ended December 1980 and, as requested, our analysis of questionable procedures and practices--both past and present.

According to the VA Acting General Counsel, it has not been established that Filipino veterans and their survivors 1/ have a constitutional right to procedural due process. Rather, VA acknowledges an obligation to afford "all fundamental fairness" to such Filipinos.

Our review of past forfeiture cases from the Philippines shows that questionable procedures and practices have sometimes resulted in unfair treatment. Further, a U.S. Court decision in late 1980 was highly critical of a VA forfeiture decision and led to reinstatement of a Filipino's benefits. Although VA has acted to improve the treatment afforded veterans and their survivors in forfeiture cases, it has not always met its obligation of "all fundamental fairness" because exceptional treatment--which is not fair in some cases and questionable in other cases--continues in the Philippines.

To afford fundamental fairness to Filipino veterans and their survivors, we are recommending that VA revise certain procedures and determine the need for other practices unique to the Philippines. (See p. 20.)

BACKGROUND

VA was established in 1930 to administer laws providing benefits for veterans and to exercise leadership in the field of veterans' affairs. Title 38 of the United States Code (38 U.S.C.) authorizes compensation, pension, and education benefit programs which provide financial assistance to veterans and their survivors. In addition, 38 U.S.C. provides for life insurance coverage for veterans.

1/As used in this report, the terms "Filipino" and "veterans and their survivors" generally refer to Filipino nationals residing in the Philippines who are entitled to VA benefits.

VA's Department of Veterans Benefits (DVB) administers these programs--which comprised $14.9 billion of VA's $22.5 billion appropriation for fiscal year 1981--through 2 insurance centers and 58 regional offices, including the Manila Regional Office (MRO) in the Philippines.

Compensation benefits are available to disabled veterans whose earning capacity has been impaired due to military service and to surviving spouses, children, or dependent parents of veterans who died from service-connected causes. Pension benefits are available to needy veterans who are permanently and totally disabled from non-service-connected causes, or who are age 65 or older, and to needy surviving spouses and children of veterans who died of non-service-related causes. Education benefits are available to veterans, the dependents of veterans who are totally disabled as a result of a service-connected cause, or the survivors of veterans whose death was service connected. VA administers five life insurance programs which provide, on behalf of participating veterans, life insurance proceeds to the beneficiaries of deceased veterans.

Compensation, but not pension and education, benefits and the National Service Life Insurance (NSLI) program--established in 1940 to handle the insurance needs of World War II veterans--are generally available to Filipinos who served with, but not in, the U.S. Armed Forces primarily during World War II. Compensation benefits for these veterans and their survivors 1/ are paid at rates which are half those payable to American veterans. Filipinos who actually served in the U.S. Armed Forces, and their survivors, are entitled to the full range and rates of VA benefits available to American veterans.

As of April 1981, the Philippines had an estimated veteran population of 472,000. The number of Filipino veterans and survivors receiving monetary benefits from VA was about 52,000. VA disbursements in the Philippines for fiscal year 1980 amounted to $114 million and were projected at $115 million for fiscal year 1981.

VA forfeiture authority

Forfeiture is an administrative penalty that results in the termination of entitlement to gratuitous 2/ benefits which

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1/While education benefits are not available to Filipino veterans who served with, but not in, the U.S. Armed Forces, such benefits are available to their dependent children.

2/"Gratuitous" is used by VA and in this report to designate those VA benefits that are not contractual. Most insurance benefits are contractual.

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an individual may be receiving or would have received in the future. Forfeitures are limited by 38 U.S.C. 3503 to cases from foreign countries, and almost all VA forfeitures are based on cases from the Philippines.

Prior to 1959, VA's authority to declare gratuitous benefits forfeited because of fraud, treason, or un-American activities included residents of the United States. In 1959, with enactment of Public Law No. 86-222, the Congress eliminated VA's authority to declare forfeiture with regard to individuals residing in the United States. In considering this legislation, both the Senate Committee on Finance and the House Committee on Veterans' Affairs emphasized that (1) there were adequate penalties for fraud available under U.S. criminal laws, (2) VA forfeiture decisions had been arbitrary and inequitable, (3) no other Federal program included such a penalty, and (4) forfeiture of veterans' benefits was inherently unfair because of the wide variation in amount of benefits potentially subject to forfeiture. Thus since 1959, VA's authority to declare forfeiture has been limited to veterans or their survivors residing outside the United States and beyond the reach of U.S. criminal laws.

Of approximately 1,200 forfeitures declared by VA in calendar years 1976 through 1980, all but about 30 were cases from the Philippines--73 percent were based on fraud and the remainder on treason.

In a previous report 1/ we discussed the disparity between VA benefits and the prevailing level of income in the Philippines. The report related this disparity to the many program abuses as follows:

> "Because the benefits are so lucrative, many abuses of the programs occur, such as fraudulent claims by widows, adopting and siring illegitimate children to increase benefits, prolonging illness to extend benefits, and attending school for income. The availability of false documents and the use of claims fixers--individuals who prepare and submit claims on behalf of claimants--contribute to these abuses being widespread. Since the programs are administered under U. S. laws, VA can do little to curb these abuses."

Officials at VA's central office in Washington, D.C., and MRO confirmed that these abuses still occur and that the primary cause is that VA benefits continue to be lucrative in comparison to the level of income in the Philippines.

1/"Veterans Administration Benefits Programs in the Philippines Need Reassessment" (HRD-78-26, Jan. 18, 1978).

VA forfeiture policies, procedures, and practices

The three VA organizations responsible for making determinations regarding forfeiture of benefits in cases from the Philippines are MRO, the Compensation and Pension Service (C&PS), and the Board of Veterans Appeals (BVA)--C&PS and BVA are located at VA's central office in Washington, D.C. C&PS has authority for making forfeiture decisions recommended by MRO. BVA is responsible for reviewing forfeiture decisions appealed by a veteran or survivor.

An MRO recommendation that forfeiture be considered generally takes the form of an administrative decision approved by the MRO adjudication officer. In fraud cases, for example, this decision requires a determination that the individual knowingly and intentionally committed a fraudulent act which was material to a claim for benefits. This determination is generally supported by one or more field examinations conducted by MRO.

Current procedures require that, before recommending forfeiture to C&PS, the veteran or survivor be notified by MRO of the charge along with a statement of the evidence supporting the charge. At the time of notification, the veteran or survivor is given 60 days to request a hearing, submit additional evidence, or provide a statement of denial of the charge and is informed that any benefits being paid could, depending on any additional new evidence, be suspended at the end of that period. If a hearing is held, evidence submitted, or a denial received, a determination is made whether the additional information warrants a change in the forfeiture recommendation. Otherwise, the recommendation and usually the case file, containing supporting evidence, are forwarded to C&PS at the end of the 60-day period and, at that time, any benefits being paid are suspended.

In those cases where forfeiture is declared, C&PS prepares a written decision, the veteran or survivor is notified of the forfeiture and informed of the right to disagree. Any veteran or survivor who disagrees with a forfeiture decision is provided a detailed statement of the case and the necessary form to file an appeal.

All veterans or survivors have the right, within 1 year from the date of a forfeiture decision, to initiate an appeal with BVA and challenge the decision. BVA has the authority in reviewing a forfeiture decision to overturn it, to affirm it, or to remand the case for further development. Except for certain determinations affecting insurance benefits, which can be reviewed by a U.S. Court, BVA decisions are generally final. However, reconsideration of a BVA decision may be accorded under certain circumstances, including an allegation of error in fact or law, or an administrative review authorized by the Chairman of the BVA.

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OBJECTIVE, SCOPE, AND METHODOLOGY

The purpose of this review was to assess VA Philippine forfeiture decisions by reviewing case files to determine the occurrence of questionable procedures and practices similar to those cited in the de Magno case--a recent case involving VA insurance benefits in which a U.S. Court of Appeals was highly critical of a VA Philippine forfeiture decision. 1/

Because VA forfeitures are limited to cases from foreign countries, and the Philippines is the only foreign country in which VA administers comprehensive benefits programs, most forfeiture cases are from the Philippines. We sampled MRO forfeiture case files for decisions made during 1976 through 1980. We did not review files where a decision was made that the individual had not forfeited his right to VA benefits. In addition, we excluded forfeiture decisions made in 1981 to avoid problems in locating files--under current procedures, files transferred to C&PS from MRO are held for 90 days after a forfeiture decision in case a notice of disagreement is filed. These files would not have been available for review in MRO at the start of our fieldwork in March 1981.

Our random sample of 100 cases was based on an MRO listing of 927 forfeitures for the 5-year period ended December 1980. This sample gave us the capability to estimate attributes of the 927 case universe with a maximum sampling error of 12 percent at the 95-percent confidence level. Although C&PS records showed 1,247 forfeitures during our sample period, the only listing by name and file number was that provided by MRO. The difference of 320 forfeitures between the MRO and C&PS listings was primarily the result of an MRO practice of not listing C&PS forfeiture decisions in those instances where the case file was not submitted to C&PS. (See p. 19.) In addition, VA estimates that there were about 30 cases included in the C&PS listing which came from countries other than the Philippines.

Because the de Magno case involved the withholding of NSLI benefits to offset an overpayment of another VA benefit, we reviewed--in addition to our sample--16 case files available in MRO where NSLI benefits were similarly withheld.

We examined VA forfeiture policies, regulations, procedures, and related correspondence and interviewed officials of VA's Office of General Counsel, MRO, C&PS, BVA, Washington regional office, and Philadelphia insurance center.

We performed our review in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

1/de Magno v. United States, 636 F. 2d 714 (D.C. Cir. 1980).

VA HAS NOT AFFORDED FUNDAMENTAL FAIRNESS IN FORFEITURE DECISIONS FROM THE PHILIPPINES

According to the VA Acting General Counsel, it has not been established that Filipino veterans and their survivors residing in the Philippines have a constitutional right to due process. However, VA maintains that it is obligated to afford "all fundamental fairness" to such Filipinos. In response to our May 1, 1981, letter (see enc. II) requesting information concerning VA forfeiture procedures, the VA Acting General Counsel responded on May 19, 1981 (see enc. III), as follows:

> "* * * If your question is whether it would withstand a 5th amendment [right to due process] challenge, our prediction is that it would, although we concede this is not a settled question."
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> * * * * *
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> "We have found no court decisions precisely in point, i.e., involving nonresident aliens in the gratuitous benefit context. * * *"
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> * * * * *
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> "We do not consider the current practices [relating to Filipino forfeitures] to be either controlled by the 5th amendment or deficient when measured against it. We do, however, as an agency with a benevolent mission, acknowledge an obligation to afford our beneficiaries all fundamental fairness. * * *"

A recent U.S. Court of Appeals decision--involving contractual VA insurance benefits--was highly critical of a VA forfeiture decision and prompted reinstatement of a Filipino's benefits previously denied by VA. Further, our review of past forfeiture cases from the Philippines shows that questionable procedures and practices have resulted in unfair treatment. Although VA has acted to improve the treatment afforded veterans and their survivors in forfeiture cases, it still permits exceptional treatment--which is not fair in some cases and questionable in other cases--to Filipino veterans and their survivors. VA needs to change some procedures and determine the need for other practices unique to the Philippines.

VA forfeiture decision subject of a recent Federal Court review

Mrs. Magno, a 70-year-old resident of the Philippines, was the widow of a Filipino who died in a prisoner of war camp during World War II, while in the U.S. Armed Forces. VA ruled that she forfeited her gratuitous benefits on the basis of fraud. The

decision was appealed to BVA but the forfeiture was upheld. Mrs. Magno then turned for relief to a U.S. District Court, seeking to have her insurance benefits resumed and the forfeiture removed. In January 1981, the court approved a settlement between her and VA which restored Mrs. Magno's benefits.

In December 1973, Mrs. Magno's gratuitous VA benefits--consisting of monthly compensation payments--had been suspended on the basis of fraud because MRO contended that she knowingly gave false testimony in support of another individual's claim for VA benefits. Mrs. Magno was also receiving an annuity from her husband's NSLI policy, which was not subject to the forfeiture.

In September 1974--10 months after her gratuitous benefits had been suspended--VA notified Mrs. Magno of the charge against her as well as her right to a hearing. The charge letter, however, contained the following postscript:

> "If you have no new evidence to present, either written or by witnesses, a hearing will serve no useful purpose. You may submit written statements which will be given the same weight as if given at a hearing."

While Mrs. Magno did not request a hearing, she filed an affidavit of disagreement. After a field investigation, MRO transmitted Mrs. Magno's file with a forfeiture recommendation to C&PS in June 1975.

In April 1976--almost 2-1/2 years after her gratuitous benefit payments had been suspended--C&PS declared Mrs. Magno's compensation benefit to have been forfeited at the time of the fraudulent act in September 1972. Since these benefit payments--made from the time of the fraudulent act to the date of suspension--represented an overpayment, VA decided to withhold Mrs. Magno's NSLI annuity payments as an offset against the overpayment. Mrs. Magno filed an appeal with BVA but the forfeiture decision was upheld in December 1977.

Mrs. Magno then turned for relief to the U.S. District Court for the District of Columbia, seeking to have her insurance benefits reinstated and the forfeiture removed. While the District Court held that it lacked jurisdiction over both the underlying forfeiture decision and the offset of insurance benefits, the U.S. Court of Appeals for the District of Columbia Circuit held, in September 1980, that the Congress specifically granted the district courts jurisdiction to hear cases relating to NSLI matters. Further, the Court of Appeals, in making its decision stated:

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"We have read and reread the administrative record and the briefs of the parties, and confess ourselves mystified at the action taken by the VA in this case. Either the VA is withholding, both from us and from de Magno [Mrs. Magno] all evidence which would justify its conduct, or this woman has been the victim of wholly arbitrary administrative ineptitude, leaving her impoverished for nearly four years."

On January 5, 1981, the U.S. District Court for the District of Columbia, pursuant to an agreement between the parties, ordered Mrs. Magno be paid $23,848 in benefits previously withheld and her right to future benefits restored.

While VA has not consistently afforded fundamental fairness in the past, improvements have been made, but more is needed

Our review of (1) forfeiture decision cases for 1976-80 and (2) available cases where insurance benefits were used to offset a debt disclosed procedures and practices which were inconsistent with fundamentally fair treatment:

--Forfeiture decisions were not always timely.

--Notification letters could have discouraged some individuals from seeking a forfeiture hearing.

--Correspondence regarding hearings on appeals may have discouraged such hearings.

--Gratuitous benefits were suspended without prior notice and an opportunity to respond to the forfeiture charge.

--Insurance benefits were withheld to offset a debt without prior notification.

--Documented evaluations were not made of why testimonial evidence not supporting forfeiture decisions was dismissed while supporting testimonial or other evidence was accepted.

--Forfeiture decisions were sometimes made without an independent review of the evidence in the case files.

VA officials believe that the excessive delays we identified resulted from the large number of forfeitures processed during the 1970s, and that this processing time has now been reduced. We found that processing time has consistently improved over the 5-year period ended December 1980.

As a direct result of the court decision in the de Magno case, congressional concern over VA's handling of Mrs. Magno's forfeiture, and recent legislation, forfeiture procedures have been or are in the process of being revised. For example, instructions were revised to provide individuals a statement of the charge against them and 60 days to respond before benefits are suspended. Also, notification letters will no longer contain the postscript which could have discouraged individuals from seeking a hearing. In addition, conflicting instructions were revised when we brought them to the attention of VA officials.

However, more can be done to strengthen the procedural protections afforded Filipino veterans and their survivors. For example, VA correspondence to Filipinos regarding hearings on appeals before BVA still contains statements that could be misinterpreted as an attempt to discourage such individuals from exercising their right to a hearing. Also, a procedure still exists which permits making forfeiture decisions without an independent review of the evidence in case files.

Improvements have been made to reduce excessive delays in processing forfeiture decisions

In the de Magno case, C&PS took 10 months to render a forfeiture decision after the case file and recommendation were forwarded from MRO. In 31 percent of the cases we reviewed, C&PS required more than 1 year to reach a forfeiture decision. Further, 14 percent of the cases reviewed took more than 2 years from the time MRO submitted the case file to the date of C&PS' decision. In the Acting General Counsel's letter of May 19, 1981, he said:

> "We are advised by the Compensation and Pension Service that the sometimes lengthy delays in adjudication of forfeiture cases which occurred in the mid-1970's * * * is now a thing of the past. Determinations are now made in Central Office [C&PS] within a very few months of receipt. Because benefits are under suspension until a favorable decision is made, the VA does acknowledge an obligation to complete review in a timely fashion, and is committed to this end."

Of the 927 forfeiture decisions in our universe, the number of cases decreased from 414 and 354 in calendar years 1976 and 1977, respectively, to 46 cases in 1980. After eliminating two cases (these are discussed below) from the analysis, the average number of months for C&PS to issue a decision decreased from 14 months for cases decided in 1976 to 2 months for cases decided during calendar years 1979 and 1980.

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The two cases eliminated from our figures exceeded 4 years as follows:

--C&PS intentionally delayed a forfeiture decision for 52 months because the beneficiary was believed to be responsible for several other fraudulent claims. MRO suspended a $150 monthly pension in January 1973, recommended forfeiture, and forwarded the file to C&PS in September 1973. The forfeiture decision was finally issued in January 1978.

--A file forwarded by MRO for forfeiture consideration was lost by C&PS and 68 months elapsed before the decision was issued. In October 1973, the claimant submitted, in support of his claim for service-connected disability, X-rays which were later found to be fraudulent. MRO recommended forfeiture and forwarded the file to C&PS in November 1974. In June 1979, MRO followed up on the file and found it had been misplaced--C&PS attributed the loss to an employee who was subsequently discharged. The forfeiture was declared in July 1980.

The excessive delays in one of the above two cases would appear to be attributable to inadequate case file control by both MRO and C&PS. The intentional delay of a forfeiture decision for 52 months, while inconsistent with VA's obligation to afford "all fundamental fairness" and to provide a complete review in a timely fashion, does not appear to be a typical occurrence. Further, we believe the 2-month average to make a forfeiture decision in 1980 is a significant improvement over the 14-month average in 1976. Also, a VA official said that improved C&PS forfeiture file controls were implemented in October 1980.

In June 1981, we found in our sample a case where an appeal of a forfeiture decision had not been submitted to BVA 4 years after being initiated by the appellant. According to the MRO adjudication officer, C&PS must have inadvertently returned the file to MRO instead of sending it to BVA. After bringing this to the attention of VA officials, the file was submitted to BVA through C&PS and the appellant was notified in August 1981 that a review was being scheduled. In December the case was reviewed by BVA and remanded to MRO for redevelopment of the evidence presented.

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Negative letters which could discourage requests for personal hearings have been toned down, but more could be done

The postscript used on Mrs. Magno's charge letter (see p. 7) was used in 99 of the 100 cases in our sample--the one individual who did not receive the postscripted charge letter both requested and received a hearing. Of the remaining 99 individuals, 9 initially requested a hearing, and only 5 of them ultimately obtained it.

Of the nine individuals who received the postscripted charge letter and also requested a hearing, two obtained hearings based on those requests. The other seven received an additional letter--with similar negative connotations toward a hearing. The additional letters included paragraphs identical or similar to either or both of the following:

> "Hearings are not necessary and if you have no new evidence or argument to present, either written or by testimony, will serve no useful purpose. All evidence of record, including any statements or affidavits submitted by you or in your behalf, receive the same thorough consideration whether or not a hearing is held."
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> "If you still desire a personal hearing under these conditions, please notify this agency and we will schedule your hearing at the earliest date."
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> (Another paragraph advised the individual that the hearing would be conducted in Manila, in rooms provided by VA, and that all other expenses--transportation, lodging, food--could not be paid by VA.)

Of the seven individuals who received the second letter, only three ultimately obtained a hearing. In two of these seven letters, the second paragraph above also scheduled a date for the hearing and in both cases a hearing was held. In the other five cases, the second paragraph was as shown above and required the individual to submit another request for a hearing. Only one of these individuals subsequently requested and obtained the hearing.

As previously mentioned, Mrs. Magno was charged with providing false testimony in support of another individual's claim. We reviewed the case file of the other individual, who also forfeited her benefits, and found that, in addition to the postscripted charge letter, she received a second letter from MRO in response to her initial request for a hearing as follows:

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> "Hearings are not necessary and should not be requested unless you intend to make a personal appearance before a hearing agency in Manila at your own expense. All the evidence of record, including any statement or affidavit submitted by you or on your behalf, receive the same thorough consideration whether or not a hearing is held. If a hearing is requested, review will necessarily be delayed pending completion of arrangements and other action required in connection with a personal appearance."
>
> "If you wish to submit further statements and/or affidavits, you may do so by mail. If you still desire a personal hearing, please let us know. If we do not hear from you within thirty days from the date of this letter, the records in your case will be referred to the Director, Compensation and Pension Service, Washington, D.C. for decision."

In response to her second request for a hearing, the individual received still another letter with statements similar to those contained in the paragraphs on the preceding page, except the second paragraph also scheduled a hearing date. In this case, the individual received three letters with negative connotations toward a hearing before one was held.

In our view, the negative connotation of the postscripted charge letter followed by additional letters containing similar negative statements demonstrates a practice which could have discouraged an individual from pursuing the right to a hearing. VA officials in Washington, D.C., told us that no qualification on forfeiture or any other hearing rights was used on correspondence to veterans or their survivors in countries other than the Philippines. The adjudication officer in MRO said that the postscript on the charge letters was used only on correspondence for Philippine forfeiture cases--it was not used on letters notifying individuals of their right to a hearing for nonforfeiture matters.

The MRO adjudication officer also told us that the additional letters are no longer used. Of the cases we reviewed, we found no instance where the additional letters were used after April 1977. In addition, the postscript used on the charge letters was revised in April 1981 as a result of the de Magno court decision and congressional concern over VA's handling of that case.

VA's Acting General Counsel explained the basis for using the postscript as follows:

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> "This addition [the postscript] was intended to dispel confusion which had arisen among some Filipinos, who misunderstood the offering of a right to a hearing as either denoting required attendance or at least suggesting that it would be in their interest to attend (regardless of whether they had new evidence to submit). It was found that many claimants requested hearings and entered appearances unnecessarily at considerable personal expense and inconvenience. When the language chosen to rectify the problem was brought to the Chief Benefits Director's attention, a decision was made that, in view of its potential chilling effect, it should no longer be used. A substituted phrase, which makes clear that VA does not require a hearing for its determination and is not authorized to reimburse for travel expenses, is now in use.
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> "We do not consider any confusion resulting from the discontinued language (and we have no empirical knowledge that any did) to have been a result of a breach of VA regulations regarding the availability of hearings."

The Deputy Chief Benefits Director, in a March 1981 directive to change the postscript, however, had described it as inappropriate and having "a negative connotation." He believed the postscript could "be misinterpreted as an attempt to discourage a claimant from exercising the very valuable procedural right to a hearing."

While MRO complied with the March 1981 directive and deleted the postscript from the charge letter, the revised letter continues to emphasize the submission of written evidence as a less expensive and equal alternative to a personal hearing as underscored below:

> "You have a right to a hearing within the 60-day period, with representation by counsel, if desired. Such hearings are for the purpose of receiving contentions, oral arguments and testimony and may be held before the Director, Compensation and Pension Service, Washington, D.C., or before qualified personnel of the Veterans Administration Regional Office, Manila. Expenses incurred by you, your counsel, or your witnesses incident to attendance at a hearing will <u>not</u> be paid by the United States Government. <u>If you do not desire to incur the expenses of a hearing but prefer to mail us your written statement together with any other evidence, the written evidence will be given equal weight to that presented in a hearing</u>. If you desire a hearing you may make arrangements by writing to this office and you will be advised of a date and time to report." (underscoring added)

By contrast, forfeiture charge letters involving residents of other countries do not contain the above emphasis, but rather the following:

> "You have the right to submit a statement or evidence within sixty (60) days from the date of this letter, to rebut the charges or to explain your position. Also, within the sixty day period you have the right of a hearing upon the charges. You may be represented by counsel and present evidence and witnesses in your behalf. No expense of your defense will be paid by the Government."

In addition, a qualifying statement is included on correspondence to veterans or their survivors in the Philippines regarding hearings on appeals before BVA. The statement--which is to be used for all types of appeals in the Philippines--is as follows:

> "A hearing on appeal should not be requested unless the claimant actually intends to make a personal appearance before a hearing agency at Manila. Any expense involved in connection with a hearing, including expenditures for transportation to and from Manila, lodging, food, etc., may not be borne by the Government. Hearings are not necessary. All the evidence of record including any statements or affidavits submitted by the claimant or in his or her behalf, receives the same thorough consideration, whether or not a hearing is held. If a hearing is requested, appellate review will necessarily be delayed pending completion of arrangements and other action required in connection with a personal appearance."

While we were told the rationale for the qualification on correspondence regarding hearings on appeals before BVA was to discourage Filipinos from incurring the inconvenience and expense of a hearing when in fact they had no new information to present to VA, an assistant to the Chairman, BVA, said that BVA has historically disagreed with DVB's use of the qualification. The BVA official noted that although the statement did not actively discourage Filipinos from requesting a hearing, he believed the final sentence, which specifically warned of delays resulting from the hearing process, was questionable in its impact on the individual.

While DVB officials initially maintained the qualification statement regarding hearings on appeals before BVA was factual and did not constitute a negative connotation which could discourage hearing requests, a DVB official subsequently informed us that the final sentence of the hearing qualification is being deleted. The official also noted that a similar qualification

regarding delays in the appeals process was included on correspondence to non-Filipinos. We discussed the qualification provided to non-Filipinos with officials from BVA who explained that it referred to delays which could result from appellant requests for information on the status of their appeals, not from requests for personal hearings. The BVA officials also suggested a change in the qualification statement to non-Filipinos to clarify its intent.

While VA has toned down or plans to remove statements having a negative connotation in letters notifying Filipino veterans and their survivors of their hearing rights, we believe:

--VA is not affording equal treatment to such Filipinos through the continued use of qualifying statements on correspondence only to residents of the Philippines.

--VA's qualifying statement on correspondence regarding hearings on appeals before BVA--even after the removal of the last sentence--carries a negative connotation similar to the postscript used on Mrs. Magno's charge letter (and the discontinued additional letters) which could be misinterpreted as an attempt to discourage an individual from exercising the very valuable procedural right to a hearing.

Accordingly, we believe the practice of using such qualifying statements should be examined in light of (1) VA's obligation to afford "all fundamental fairness," (2) BVA's overall objections to one of the statements, and (3) VA's regulations which state that

> "The purpose of such a hearing is to permit the claimant to introduce into the record in person any evidence available to him which he may consider material and any arguments * * * he may consider pertinent." (underscoring added)

Benefits are no longer suspended without prior notification

Mrs. Magno's monthly compensation payments were suspended (1) without any prior notification and (2) 10 months before she was provided a written statement of the charge against her.

In our sample of 100 forfeiture cases, all individuals forfeited entitlement to future VA benefits. Of these, 22 were also receiving VA benefits at the time forfeiture was considered. In 17 cases, benefits were suspended without informing beneficiaries that suspension was imminent and giving them a chance to respond. In the remaining five cases, notifications were sent 15 days before suspension. In addition, while it took an average of 4 months from suspension of benefits to provide a statement of

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the charge, 3 of the 22 beneficiaries were not provided the charge until 12 or more months after benefits were suspended.

According to VA officials, suspensions were implemented quickly to minimize overpayments which are generally uncollectible in the Philippines. However, as a result of congressional concern expressed over VA's handling of the de Magno case, VA revised its procedures in April 1981 to require that (1) beneficiaries be provided a notification of the charge before benefit payments are suspended and (2) benefits not be suspended until 60 days after the notification.

Despite these improvements the suspension of benefits without notification was still permitted in cases from the Philippines at the time of our review. The following VA instruction was specifically applicable to Philippine forfeiture cases:

> "When letters, anonymous or signed, are received alleging that a payee is not entitled to the benefit being paid, consideration will first be given to the question of whether payment should be interrupted.
>
> "If the letter contains specific assertions of fact and not mere generalities and it appears that the writer has knowledge of the circumstances, payments will be suspended and a field examination requested."

This instruction conflicted with VA's April 1981 revision requiring notification 60 days before benefits are suspended. However, as a result of our discussions with VA officials in September 1981, this instruction was revised thereby conforming it to the April instructions.

Insurance benefits were withheld without prior notification, but corrective action has been initiated

The de Magno case involved an overpayment of nearly $3,000 created by gratuitous benefit payments from the time of the alleged fraud until the suspension of benefits. To recover this overpayment, VA began withholding Mrs. Magno's monthly NSLI annuity payments. However, VA did not notify Mrs. Magno of this offset until nearly 3 months after the withholding began. To determine if this was common practice, we reviewed all current and recently terminated cases, for which the files were available in MRO, involving an NSLI offset against a debt owed VA.

Of 16 NSLI offset cases reviewed, 13 were based on a debt created as a result of a fraudulent act and 3 involved excessive

income. 1/ While all but 2 of the 16 beneficiaries had received one or more collection letters prior to the offset, we found that in 13 cases there was no indication the beneficiary had been notified by VA that insurance benefits would be withheld to offset the overpayment. These beneficiaries first learned that their benefits were being withheld after they failed to receive their monthly checks.

The failure to notify beneficiaries of the withholding is due to the absence of a specific procedural requirement and a misunderstanding by MRO of action taken by the finance division at the Philadelphia insurance center. Because there is no specific directive to notify beneficiaries, MRO told us they assumed the notification was provided by the insurance center since it is responsible for all insurance matters. Officials at the insurance center told us, however, that they do not notify the beneficiary of the NSLI withholding.

We discussed the absence of a procedure to notify beneficiaries of offsets prior to the actual withholding with officials in VA's General Counsel's and Controller's offices. We were told that, while there were as yet no regulations or procedures specifically requiring such notification, prior notice was certainly implied in existing VA policies and procedures on overpayments and collections. One official believed such notification to be an accepted function of the collection process.

In 1980, with enactment of Public Law No. 96-466, 2/ beneficiaries are to be given prior notification of offsets. The requirement had been incorporated into draft regulations, and we were told that procedures would likely be revised as well, in light of the change in the law.

1/Some VA benefits are dependent on need which is related to the income of the beneficiary. In these three cases, VA found social security benefits which caused the beneficiary's income to exceed a certain threshold, thereby reducing the VA benefit payment. The payment of these benefits from the time of receipt of the social security benefits until the date of suspension created an overpayment.

2/Pub. L. No. 96-466 was enacted, in part, to preclude benefit overpayments from being recouped from current or future benefit payments without first notifying the debtor of the indebtedness and also of certain waiver, hearing, and appellate rights.

While improvements have been made in dealing with conflicting evidence, more needs to be done

As a result of congressional concern expressed over VA's handling of Mrs. Magno's forfeiture, BVA reviewed the text of all appellate forfeiture decisions since July 1977. Based on this initial review, 13 case files were obtained from MRO for further review. 1/ In addition, BVA guidelines were issued to ensure that future appellate reviews address the procedural protections afforded veterans or survivors. These guidelines include verifying that the appellant was properly notified and reviewing field examination reports for completeness. In particular, the revised BVA guidelines require a statement of the rationale for accepting one individual's statement over that of another's conflicting statement or over other conflicting evidence.

We believe BVA's requirement for a statement of the rationale for accepting some evidence and dismissing other evidence is necessary for a thorough examination of the support for a forfeiture decision. However, DVB's revised instructions for Filipino forfeitures do not include a similar requirement. During our review of sample cases at MRO, we followed up on six forfeiture cases--four fraud and two treason--which contained information that conflicted with the evidence supporting forfeiture but no documented explanation of why the other evidence was not considered credible. When we discussed specific cases of this type with the MRO adjudication officer, he was generally able to explain his rationale for discounting the conflicting information. However, C&PS forfeiture decisions are made without the benefit of documented rationales for dismissing evidence that conflicts with the MRO recommendation.

In those cases where a forfeiture was declared for fraud, we found affidavits on the current marital status of widows which conflicted with testimony obtained during field examinations. In these cases, the files contained no documentation of why the evidence which supported the widow's claim that she was not remarried was not considered credible.

We also could not determine how VA had evaluated conflicting evidence in cases where C&PS declared forfeiture for treason. Treason is defined as an act of mutiny, sabotage, or rendering assistance to an enemy of the United States or its allies. VA procedures state that membership in a pro-Japanese organization

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1/An assistant to the Chairman, BVA, determined that 4 of these 13 appellate forfeiture decisions were properly handled and 9 were to be reconsidered by BVA. As of December 1981, one case was upheld, one was allowed prospective benefits, and seven were still under recommendation.

on or after December 7, 1941, until the U.S. return was imminent, is sufficient evidence to justify submission for forfeiture. We found affidavits which showed that claimants actively assisted Filipino guerrillas while members of the pro-Japanese organization. The MRO adjudication officer said affidavits stating that an individual actively supported the guerrillas were evaluated and, if not sufficiently persuasive, forfeiture was recommended. These evaluations, however, were not documented in the case files we examined.

We concur with the BVA requirement to provide a statement of the rationale for accepting some evidence and dismissing other evidence as part of its decision process. We believe that C&PS decisions should, where applicable, be based on a similar requirement. In our view, forfeiture decisions made by C&PS without knowing what rationale MRO used to discount conflicting testimonial evidence contained in the case files does not meet the obligation to afford "all fundamental fairness" to Filipino veterans or their survivors.

Forfeiture decisions can be made without an independent review of the evidence

C&PS is responsible for making forfeiture decisions based on an independent review of the case file evidence associated with an MRO forfeiture recommendation. However, VA has a current procedure whereby MRO case files need not be submitted to C&PS for consideration in making certain forfeiture decisions. The authority for this procedure is contained in a December 9, 1975, memorandum from the Director, C&PS, to the Director, MRO, as follows:

> "When a widow who has applied for restoration of benefits under PL 91-376 1/ submits either false testimony or other false evidence, submission for forfeiture will be considered. The folder will no longer be transferred to Central Office [C&PS] following the preparation of an administrative decision and the usual notice of charges to the claimant. Instead, a letter to the claimant and a Forfeiture Decision will be prepared in Manila * * *. The letter and decision, in original and 4 copies, will be sent with a copy of the Administrative Decision [MRO recommendation] to the Director, Compensation and Pension Service * * *."

1/Pub. L. No. 91-376 was enacted in 1970 and allowed a veteran's widow to qualify for VA eligibility if she terminated any marital relationship entered into after the veteran's death.

According to the MRO adjudication officer, this procedure was approved because of the large number of fraudulent claims under Public Law No. 91-376. He said the law resulted in an influx of 4,000 to 5,000 claims and estimated that as many as 300 individuals were forfeited under this procedure.

In those cases where this procedure was followed, the Filipinos affected were not afforded equal treatment, because forfeiture had been made in the absence of an independent C&PS review of the evidence supporting the decision. We believe this instruction should be revised.

CONCLUSIONS

In the past, VA, in making forfeiture decisions, has not consistently afforded "all fundamental fairness" to Filipino veterans and their survivors residing in the Philippines.

The timeliness of forfeiture decisions has significantly improved. Further, as a result of the de Magno Federal Court case, congressional concern over VA's handling of Mrs. Magno's forfeiture, recent legislation, and our discussions with VA officials, VA has revised or is revising procedures which, if properly implemented, should improve the treatment of Filipino veterans and their survivors residing in the Philippines. However, more needs to be done to meet VA's obligation of "all fundamental fairness" because the following exceptional treatment continues in the Philippines:

--Permitting certain forfeiture decisions without an independent C&PS review of case file evidence.

--Dismissing conflicting testimonial evidence not in support of an MRO forfeiture recommendation without documenting the rationale for such dismissal.

--Using qualifications on correspondence relating to personal hearing rights and statements having a negative connotation relating to appellate hearing rights before BVA.

RECOMMENDATIONS TO THE ADMINISTRATOR OF VETERANS AFFAIRS

To improve the nature and extent to which Filipino veterans and their survivors residing in the Philippines are afforded fundamental fairness, we recommend that the Administrator instruct the Chief Benefits Director to revise procedures to

--eliminate the provision permitting certain forfeiture decisions without providing case file evidence to C&PS for an independent review and

--include documenting the rationale for dismissing conflicting testimonial evidence not in support of an MRO forfeiture recommendation.

We also recommend that the Administrator instruct the Chief Benefits Director to determine, in consultation with VA's General Counsel, the need for and fundamental fairness of qualifying correspondence only to Filipino veterans and their survivors residing in the Philippines giving consideration to

--BVA's objections to the qualifying statement used in notifying an individual of appellate hearing rights and

--the equity in using any qualifying statements pertaining to forfeiture hearing rights.

ENCLOSURE II

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

MAY 1 1981

Robert E. Coy, Esq.
Acting General Counsel
Veterans Administration

Dear Mr. Coy:

Pursuant to a congressional request, our Office is reviewing the process and procedures by which the Veterans Administration (VA) renders so-called forfeiture decisions under 38 U.S.C. §3503. Our initial efforts on this review have raised several questions regarding the nature and extent of procedural due process afforded to Filippino beneficiaries by the Manila Regional Office (MRO). We have generally discussed our questions with VA officials in the MRO, Board of Veterans' Appeal (BVA), Office of General Counsel, and Compensation and Pension Services (C & P). We wish, however, to obtain the formal agency position on the issues raised.

Our audit staff has preliminarily identified some VA procedures and/or practices, relative to forfeiture, which could be viewed as adversely impacting upon the due process rights of the beneficiaries. Thus, we would like your analysis of whether, and if so to what extent, the following agency procedures are legally appropriate:

--the current procedure authorizing the interim suspension of benefit payments before a final forfeiture decision is made by C & P.

--the prior MRO practice of notifying a Filippino that "If you have no new evidence to present either written or by witnesses, a hearing will serve no useful purpose. You may submit written statements which will be given the same weight as if given at a hearing."

--the lengthy time lapses, sometimes exceeding 2 years in the past, between the suspension of a beneficiary's payments, the notification of the charge by MRO, and the actual forfeiture decision by C & P.

--the absence of a current procedure or practice to notify Filippino beneficiaries that VA's final administrative action is subject to review by U.S. courts when insurance benefits are withheld and used to offset overpayments of gratuitous benefits.

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Finally, please provide a statement of the VA position on whether, if any of the above practices are considered inappropriate, corrective action is warranted. If so, please provide the VA position on what the action should consist of and how it could be achieved. For example, would there be a basis for reopening closed case files for review? If corrective action is not warranted, please provide the rationale.

To insure timely completion of our review, we would appreciate your response within 15 days. Thank you for your cooperation.

Sincerely yours,

Henry R. Wray

Henry R. Wray
Assistant General Counsel

ENCLOSURE III

VETERANS ADMINISTRATION
OFFICE OF GENERAL COUNSEL
WASHINGTON, D. C. 20420

MAY 19 1981

Mr. Henry R. Wray
Assistant General Counsel
United States General
Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Wray:

This is in response to your May 1, 1981 request for information concerning VA forfeiture procedures, a matter currently under GAO review.

You first asked whether the current VA practice, authorized by 38 C.F.R. § 3.669(a), of suspending benefit payments upon referral of a case to VA Central Office for a "final" decision, is "legally appropriate." If your question is whether it would withstand a 5th amendment challenge, our prediction is that it would, although we concede this is not a settled question.

Since VA forfeitures are, by law (38 U.S.C. § 3503(d)), currently restricted to claims arising outside the territorial United States, the first phase of the analysis would require a determination as to the standing of a foreign national to invoke the protections of the U.S. Constitution in connection with a claim for gratuitous (noncontractual) VA benefits. It is, after all, not the constitution of the world but that of the United States.

We have found no court decisions precisely in point, i.e., involving nonresident aliens in the gratuitous benefit context. However, "[t]raditionally the courts have held that the United States Constitution only operates within our territorial boundaries." Reyes v. Secretary of HEW, 476 F.2d 910, 915 n.8 (D.C. Cir. 1973). See generally, 3 Am. Jur. 2d Aliens and Citizens, § 6 et seq. (1962). While it is clear that until July 4, 1946, when the Philippines became a sovereign nation, they enjoyed the protections of the U.S. Constitution [(In re 68 Filipino War Veterans, 406 F. Supp. 931 (N.D. Cal. 1975)], it has also

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been held that no special status has existed since that time by virtue of their historical relationship and treaties with the United States; Filipinos residing in the Philippines have no preferred constitutional status vis-a-vis other nonresident aliens. Rabang v. Boyd, 353 U.S. 427 (1957).

Different considerations come into play when nonresident aliens have property situated within the United States, at which time "they may well be entitled to due process protection." Pfizer, Inc. v. Lord, 522 F.2d 612, 619 (8th Cir. 1975). However, where the only property interest is in receipt of a gratuitous benefit payment, we would expect a court to turn to the often-employed touchstone of whether there is physical presence within U.S. territorial boundaries. Johnson v. Eisentrager, 339 U.S. 763 (1950); see Ralpho v. Bell, 559 F.2d 607, 618 n.65 (D.C. Cir. 1977); De Tenorio v. McGowan, 510 F.2d 92 (5th Cir. 1975). (You are, no doubt, aware that this question was not reached in the D.C. Circuit Court decision which prompted Senator Cranston's inquiry to you concerning VA forfeiture decisions.)

Even if, arguendo, the constitution would be held to afford protections to nonresident aliens contesting entitlement to VA benefits, we consider it probable that the current VA practice of suspension in suspected fraud cases would pass muster.

Due process is a flexible concept which calls for such procedural protections as the particular situation demands. Morrissey v. Brewer, 408 U.S. 471, 481 (1972). The constitutional sufficiency of administrative procedures is determined by balancing the governmental and private interests affected. Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961).

Because running monthly awards of VA benefits are forfeited effective the day preceding the date of the fraudulent act (38 C.F.R. § 3.500(k), based upon 38 U.S.C. §§ 3503(a), 3012(a)), as a practical matter an overpayment has virtually always occurred by the time fraud is discovered. Fraud in the Philippines in connection with VA benefits claims is a serious problem, as was underscored in GAO report HRD-78-26

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(January 18, 1978). Further, it is essential that overpayments there be minimized, since, as was recognized in that report, collection is infeasible. These real dangers to the Federal fisc constitute an important interest against which the current practice must be viewed.

The recommendations by the Manila Regional Office for referral to VA Central Office for a forfeiture determination originate with a trained adjudicator and require the concurrence of a supervisory "authorizer" and the Adjudication Officer. These determinations follow development of all pertinent evidence, through correspondence or, if necessary, field investigation. Thus, only after it is apparent, in the judgment of at least 3 experienced individuals, that a fraud has been committed, is the case referred and benefits suspended. It is critical to an understanding of the validity of these initial determinations to know that in a very large percentage of referred cases, forfeitures are declared, and of these there are few reversals by the Board of Veterans Appeals. Hence, suspension at the time of referral preserves undeserved Government dollars which would otherwise be paid to persons who have committed fraud. We believe, upon balancing all interests affected, that the Constitution would not require VA to create larger overpayments by delaying the suspension of benefits until the second (Central Office) determination.

We do not consider the current practices to be either controlled by the 5th amendment or deficient when measured against it. We do, however, as an agency with a benevolent mission, acknowledge an obligation to afford our beneficiaries all fundamental fairness. In March of this year the Chief Benefits Director issued instructions to provide that claimants suspected of committing fraud will be afforded notice and a reasonable time (60 days) in which to submit evidence in rebuttal, and notified of the right to a personal hearing, prior to referral of a case to Central Office. Any decision to refer the case to Central Office will be deferred until all such evidence, including that adduced at any requested hearing, is analyzed. (These instructions are currently being prepared for inclusion in a Department of Veterans Benefits manual.)

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Your second inquiry involves a typed postscript which was for a time added to the "charge letters" at the Regional Office in Manila. This addition was intended to dispel confusion which had arisen among some Filipinos, who misunderstood the offering of a right to a hearing as either denoting required attendance or at least suggesting that it would be in their interest to attend (regardless of whether they had new evidence to submit). It was found that many claimants requested hearings and entered appearances unnecessarily at considerable personal expense and inconvenience. When the language chosen to rectify the problem was brought to the Chief Benefits Director's attention, a decision was made that, in view of its potential chilling effect, it should no longer be used. A substituted phrase, which makes clear that VA does not require a hearing for its determination and is not authorized to reimburse for travel expenses, is now in use.

We do not consider any confusion resulting from the discontinued language (and we have no empirical knowledge that any did) to have been a result of a breach of VA regulations regarding the availability of hearings.

We are advised by the Compensation and Pension Service that the sometimes lengthy delays in adjudication of forfeiture cases which occurred in the mid-1970's (as a result of an influx of cases for review following enactment of section 4 of Pub. L. No. 91-376) is now a thing of the past. Determinations are now made in Central Office within a very few months of receipt. Because benefits are under suspension until a favorable decision is made, the VA does acknowledge an obligation to complete review in a timely fashion, and is committed to this end.

I am surprised at your final question regarding legal sufficiency, which appears to be whether VA has an obligation to tell certain claimants, who have forfeited entitlement, that they can sue us. Most assuredly, there is no such obligation.

I have indicated where VA procedures have been modified to address the concerns raised in your letter. No "corrective action," such as reopening previously considered cases, is warranted, as no valid purpose would be served by so doing. For example, in cases finally decided, either (1) forfeiture

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has been declared and not overturned by the Board of Veterans Appeals, in which case the prior suspension was of benefits not deserved, or, (2) no forfeiture was declared (or the Board overturned such a declaration), in which case all withheld benefits were refunded. Even if a claimant were "chilled" by the prior charge letters into declining to request a hearing, that would not have affected the right to a full hearing on appeal at the Manila office. See 38 C.F.R. §§ 19.109 et seq.

I hope that the foregoing proves helpful.

Sincerely yours,

ROBERT E. COY
Acting General Counsel