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December 5, 2008

The Honorable James B. Peake
Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary Peake:

I was recently contacted by a constituent concerning VA's practices with respect to payments to a survivor for the month of the veteran's death. Based on the information obtained in identifying the issues involved in the constituent's case, I learned that VA has never adjusted the benefits payment system to recognize the requirements of section 506 of Public Law 104-275 which amended section 5310 of title 38, United States Code, so as to provide that the check issued for the month of a veteran's death "shall be treated for all purposes as being payable to a surviving spouse. . . ." This provision was to be effective "with respect to the death of compensation and pension recipients occurring after December 31, 1996."

As a result of VA's failure to make the necessary computer changes to implement this law, when VA receives a "First Notice of Death," that information is entered into the compensation and pension computer system (BDN or VETSNET) and benefits are stopped as of the first day of the month of death. An indicator is then set in the computer system that permits the processing of burial and death claims, but **prohibits the processing of the payment for the month of death.** If the payment has been made, an overpayment of benefits is assessed.

VBA, in the case brought to my attention, has paid the widow the compensation owed her. However, with over 3 million veterans receiving compensation and pension benefits and older veterans dying at the rate of almost 1,000 per day, I expect that thousands of other widows and a small number of widowers have been deprived of benefits to which they were lawfully entitled in the 12 years since the law was passed. In those cases where the surviving spouse files for Dependency and Indemnity Compensation benefits, or death pension, within one year of the veteran's death, the payment for the month of death is taken into account in the award and no harm results.

However, in cases in which the surviving spouse does not file a claim for survivor benefits, VA either wrongly fails to issue a check to the survivor for the month of death, or, as appears to more often be the case, erroneously determines that an overpayment of benefits has been made and requests that the check be returned. If the check is not returned, money may be directly withdrawn from the surviving spouse's bank account, which may result in overdraft fees and other losses.

I am therefore requesting that you direct that the following actions be taken promptly:

1. Stop the practice of terminating the record prior to the first day of the month following the month of death when the veteran leaves a surviving spouse;

2. Identify all surviving spouses where a veteran died after December 31, 1996, and the record was terminated because of the death of a veteran;

3. Identify all surviving spouses who did not receive a payment for the month of death of as required by the changes made by Public Law 104-275, or who received a payment which was then erroneously determined to be an overpayment of benefits; and

4. Pay all surviving spouses who did not receive benefits due for the month of death of the veteran.

I recognize that the length of time that this benefit has been withheld from surviving spouses may make this task difficult. However, one possible approach would be for VA to use its existing authority to match benefits with the Social Security Administration so as to identify potential beneficiaries.

I look forward to working with you to ensure that all of our Nation's veterans and their families receive the benefits that Congress has provided.

Sincerely,

Daniel K. Akaka
Chairman