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January 16, 2009

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

Dear Secretary Peake:

I was recently contacted by a constituent concerning VA's practices with respect to the correct amount of VA payments to be made to a veteran who received special separation benefits ("SSB") from the Department of Defense pursuant to section 1174a of title 10, United States Code. These benefits are subject to offset when the veteran becomes eligible for service-connected disability compensation benefits from VA.

SSB involves special nondisability retirement benefits that were offered to servicemembers beginning on December 5, 1991, and ending on December 31, 2001. When the program was initially established, the full amount of any SSB pay (including amounts which the veteran did not actually receive because of withholding or payment of income taxes on the retirement benefit) was deducted from VA benefits if the veteran later qualified for service-connected compensation. Public Law 104-201 changed the formula to provide that the offset would apply only to after tax dollars effective for SSB paid after September 30, 1996.

In 1998, Public Law 105-178 changed the effective date set forth in the earlier law to require use of after tax amounts to compute offsets of SSB payments made during "the period beginning on December 5, 1991, and ending on September 30, 1996." Since the SSB program was established on December 5, 1991, the result of this change was that after tax dollars must be used to compute all SSB offsets.

Based on the information obtained in identifying the issues involved in the constituent's case, I learned that VA has not promulgated changes to the regulations at section 3.700 of title 38, Code of Federal Regulations to meet the requirements of PL 105-178 to use after tax dollars for all SSB payments.

Although one section of the current VA Manual (section B (8) (f) of Part III, Subpart v, Chapter 4 of the VA M21-1MR) was amended on January 12, 2007, to correctly set forth the law concerning the offset provision, other sections of the same manual (such as section B (6) (d) of the same Chapter) contain contradictory information and cross-references. As a result of VA's failure to make timely and accurate regulatory and manual changes to implement PL 105-178, many veterans may have had their benefits incorrectly computed, resulting in their being paid fewer benefits than the law requires.

In the case brought to my attention, the Honolulu Regional Office computed the offset

using pre-tax amounts rather than after tax amounts, based on the regulation which did not incorporate the most recent amendments to the law. This veteran estimates that this will cost him over \$10,000 in compensation benefits unless the law is correctly applied. While Committee staff has notified the Veterans Benefits Administration and the VA Regional Office in Honolulu of this error and will be working with their staffs to address that veteran's specific claim, actions need to be taken to ensure that all veterans who received SSB between December 5, 1991, and September 30, 1996, have had and will have their benefits for service-connected compensation benefits computed in conformity with applicable law.

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

1. Amend the relevant regulation at section 3.700 (a) (5) to state that all SSB paid under section 1174a are offset using after tax dollars.
2. Ensure that all provisions of VA's Manual reflect current law so as to ensure that VA employees have consistent guidance on the use of after tax dollars to compute the SSB offset.
3. Identify all veterans who have had compensation benefits offset as the result of receiving SSB during the period beginning on December 5, 1991, and ending on September 30, 1996.
4. Notify such veterans that their SSB offset should have been determined using after tax dollars and that if the veteran believes the offset was incorrectly computed, the veteran should request correction of the offset amount and payment of any benefits which may be found to be owed.
5. Pay any veteran whose SSB offset was incorrectly computed using pre-tax rather than after tax dollars the amount of benefits owed.

Thank you for your efforts to provide all of our Nation's veterans and their families with the benefits that Congress has mandated.

Sincerely,

A handwritten signature in black ink that reads "Daniel K. Akaka". The signature is written in a cursive, flowing style.

Daniel K. Akaka
Chairman