



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

September 6, 2018

The Honorable Johnny Isakson
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

By this letter, the Department of Veterans Affairs (VA) is providing deliverables from the Committee's legislative hearing on August 1, 2018, and reiterating our opposing views on House Resolution (H.R.) 299.

We know it is incredibly difficult to hear from Blue Water Veterans who are ailing and ill, and we have great empathy and compassion for these Veterans and their families. However, we urge the Committee to consider the scientific evidence, impact on other Veterans, and costs associated with this legislation:

- Science Does Not Support the Presumption that Blue Water Navy Veterans Were Exposed to Agent Orange.

In 2011, the Institute of Medicine (IOM), now the National Academy of Medicine, reviewed all available scientific evidence and concluded that exposure among Blue Water Navy Veterans "cannot reasonably be determined." The IOM's report indicated that Agent Orange was destroyed by sunlight within hours of application and any that survived would rarely make it out to the South China Sea because of the major dilution factor.

Media and several Veterans Service Organizations supporting the legislation have relied on an Australian study from 2002 that was designed to mimic Royal Australian Navy distillation policies and procedures; however, this study is irrelevant to U.S. Navy policy and practice. U.S. Navy ships were required to draw up seawater for conversion to shipboard potable water at least 12 miles offshore from any river, a distance at sea where the presence of Agent Orange was highly unlikely. As points of reference, 12 cubic miles of water is equal to 13.2 trillion gallons, and 1 trillion gallons of water flow over Niagara Falls in a single month. Thus, the dilution factor would have been significant. IOM considered the Australian study in its 2011 review and stated the significance of the study's findings was highly uncertain for U.S. Blue Water Navy ships.

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VA continues to study the science behind this issue. In late 2019, VA will publish the peer-reviewed Vietnam Era Health Retrospective Observational Study. The study will compare the health and morbidity of deployed Vietnam Veterans versus a cohort of non-deployed Veterans and similarly-aged U.S. residents who never served in the military. VA collected data from nearly 43,000 participants including nearly 1,000 Blue Water Navy Veterans. VA recommends waiting on the findings of the study instead of establishing a new presumption without a scientific basis.

- Disabled Veterans Would Be Negatively and Disproportionately Impacted by Modified Funding Fees for VA-Guaranteed Home Loans.

Under this legislation, the funding fee would be a new requirement for Veterans with service-connected disabilities rated as less than total. This would be a departure from the longstanding requirement that Veterans in receipt of VA disability compensation are always exempt from the VA funding fee.

Currently, Veterans with a disability rating of less than “permanent and total” pay \$0 in VA funding fees, regardless of loan amount. However, lenders generally require a down payment for loans exceeding the conforming loan limit; that down payment creates home equity for the Veteran.

Under H.R. 299, such Veterans might not need a down payment, but they would be required to pay a funding fee. The fee is non-refundable, and if rolled into the life of the loan, it is paid with interest. For example, on a \$500,000 non-conforming purchase loan, a disabled Veteran could be required to pay \$12,000 to VA in funding fees (plus interest if rolled into the life of the loan) rather than applying \$11,725 as a down payment which results in home equity.

- Savings from Funding Fees Would Not Be Enough To Cover Blue Water Costs.

VA estimates we will need \$5.5 billion to support the net costs of the bill, \$5.4 billion more than the approximate \$100 million that the Congressional Budget Office (CBO) estimates for the bill. CBO significantly underestimated the number of Veterans and survivors who would be newly eligible for Blue Water benefits. VA's estimate is based on the actual number of Vietnam-era Navy Veterans denied the presumption for Agent Orange on the basis of never setting foot on the landmass of the Republic of Vietnam or its inland waters. VA records show nearly 30,000 of these Veterans were previously denied, but CBO estimates only

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4,730 of these Veterans were previously denied. Similarly, CBO anticipates only 120 survivors receiving benefits over 10 years, while VA estimates 2,817 survivors would receive benefits in the first year alone. In addition, CBO did not account for any expenses to implement this section of the bill. The Veterans Benefits Administration (VBA) estimates 803 employees would need to be hired in the first year, and funding would be required for salaries and related expenses such as training and information technology equipment. VA is unaware of any plans for CBO to revise its estimate.

- Impact on Claims Backlog.

Another impact we need to raise is in regard to the recent ongoing efforts to reduce the appeals and claims processing backlogs. The accomplishments we have made with congressional assistance will be stymied due to the fact that we will have to research and evaluate what could total over 30,000 potential claims. VBA's current resources are not adequate to begin this workload. Therefore, these efforts would not only be impacted through hiring of additional full-time equivalents and costs but also in adding time to the 125 days to process a claim due to the verification and study that would need to go into the processing of that claim.

- Setting a New Precedent by Creating a Presumption without Adequate Scientific Evidence.

The changes proposed in this legislation will have a greater effect beyond what we believe Congress intends. The creation of a new statutory presumption that is not adequately supported by scientific evidence will encourage increased pressure on both Congress and VA to create and expand additional presumptions under a similarly liberal approach. This would present a choice between taking a similarly unprincipled approach to other circumstances where a presumption is sought, but not supported by science, or treating different groups of Veterans disparately without any reasoned basis for doing so. If we do not allow standards in these cases, there is a greater chance that such policies will spread to other agencies in the Federal Government.

- Unintended Consequences on Disabled Veterans.

To offset costs for non-housing related programs, a disabled Veteran would be required to pay VA a new loan fee of up to 2.4 percent of the purchase price of a home instead of applying a similar down payment amount toward the purchase price. In short, certain disabled Veterans would bear the cost of providing other

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benefits by paying a new loan fee, which creates no home equity, instead of contributing funds toward home equity. This would impose a steep price for many and a cost that others may be unable to take on. We do not believe that these unintended consequences have been fully considered by Congress, and they should be completely understood before this legislation is passed.

As for the deliverables requested during the hearing, VA was asked to provide for the record:

- An Estimate of the Additional Funds Generated by the Fee Increases Proposed in H.R. 299.

VA estimates savings associated with modified funding fees proposed in section 6 of H.R. 299 would be \$140 million in 2019, \$732 million over 5 years, and \$1.2 billion over 10 years.

- The Number of VA Home Loans Provided in 1 Year Based on the Most Recent Data Available.

In 2017, 685,735 home loans were guaranteed by VA.

- The Number of Those Loans that Included a Funding Fee.

In 2017, 285,282 home loans, or 42 percent of all VA-guaranteed home loans, included a funding fee.

We appreciate this opportunity to comment on H.R. 299 and look forward to working with you and the other Committee members on this legislation.

Sincerely,



Robert L. Wilkie