

Texas Veterans Commission

# Journal

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Vol. 21, No. 6

November/December 1998





# TEXAS VETERANS COMMISSION JOURNAL

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The Retired Officers Association**  
JAMES A. ENDICOTT, JR., President

*Comments concerning veterans' programs or delivery of services may be addressed to:*

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E-mail: [texas.veterans.commission@tvc.state.tx.us](mailto:texas.veterans.commission@tvc.state.tx.us)  
VISIT OUR WEB SITE: <http://www.main.org/tvc>



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*The Texas Veterans Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.*

# Instructions for Unrepresented Appellants

*Below is a copy of instructions (Form 8, Rev. 8/98) appellants receive from the U.S. Court of Veterans Appeals when filing an appeal on a decision made by the Board of Veterans Appeals. These instructions explain some court terms that are shown in bold type. Don't try to make things harder by using other "legal" words – especially if you're not sure what they mean!*

The attached notice shows that we have **docketed** (assigned a case number to) your **notice of appeal** from a Board of Veterans' Appeals (BVA) decision. Put that number on every paper you send to the Court so we can match it with your case. Type or print your papers so we can read them! If you don't, we'll have to send them back; that will delay your case.

As your case moves along, we'll tell you what to do next by sending a **notice or order**. Pay attention to those; do what they tell you. You must follow the Court's Rules of Practice and Procedure; a copy is attached.

**About the Court.** In 1988, Congress created this Court to review certain BVA decisions. The Court isn't part of VA. It doesn't hear witnesses, receive new evidence, hold trials, or award money damages. It reviews only what the BVA did in your case, based on the written **record on appeal** and the **briefs**. You or your representative do not need to come to Washington for your appeal.

**Finding the law.** The law about veterans benefits is in Title 38 of the U.S. Code, which should be in a local library. The Court's opinions are printed in West's *Veterans Appeals Reporter*. If you think you need a copy of an opinion and can't get it from a veterans service organization, VA regional office, or law library, you can ask us for it, but we must charge you 50 cents per page. If you have a computer modem, you can get it free from the Court's electronic bulletin board by dialing (202) 501-5836 or 5837.

**Change of address.** If you move while your case is in the Court, send a notice of your new address and phone number to the Court and to VA counsel. If you don't, and you miss a deadline because mail went to your old address, the Court may **dismiss** your appeal (reject it without even considering it)!

**Representation.** As the **appellant**, you may represent yourself before the Court, but the **appellee**, the Secretary of Veterans Affairs, is represented by VA lawyers who will argue VA's side. Your appeal may be better presented if you are represented. The attached list may help you find someone to do that. It shows people who can represent appellants and have said that they'll do that. We can't recommend or appoint anyone to represent you. You can find out more about the attorneys listed by checking a directory, such as Martindale-Hubbell, in your library. Your representative doesn't have to be from the state where you live.

## U.S. Court of Veterans Appeals

*A U.S. Department of Veterans Affairs (VA) claim may be appealed from the Board of Veterans' Appeals to the Court of Veterans Appeals. This Court is independent of the Department of Veterans Affairs. Only claimants may seek reviews by the court; the VA may not appeal Board decisions.*

*To appeal to the court, claimants must have filed a "Notice of Disagreement" on or after November 18, 1988. The notice of appeal must be filed with the court with a postmark that is within 120 days after the Board of Veterans' Appeals mails its final decision.*

*The court does not hold trials or receive new evidence. The court reviews the record that was considered by the Board of Veterans' Appeals. Oral argument is held only at the direction of the court. Either party may appeal a decision of the court to the U.S. Court of Appeals for the Federal Circuit and to the Supreme Court of the United States. Appellants may represent themselves before the court or have lawyers or approved agents as representatives.*

*The court's decisions are published in West's Veterans Appeals Reporter, in the WESTLAW and LEXIS on-line services, and on the court's electronic bulletin board. The bulletin board can be reached at 202/502-5836. For information about case status or the court's rules and procedures, contact the Clerk of the Court, 625 Indiana Avenue, Northwest, Suite 900, Washington, D.C. 20004, or call 1-800-869-8654 from 1 p.m. to 4 p.m., Eastern Time. ★*

**Service of papers.** When you **file** (send to the Court) any paper, you must **serve** (mail a copy to) VA counsel at:

General Counsel (027)  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

and tell us that you have done so. Use a Certificate of Service like the one on Form 1.

**The record on appeal.** a. The Court won't review all of your VA claims file, only those parts that relate to your appeal. In about 60 days, VA counsel will **designate the record** by sending to you (1) a list of papers in your file that relate to your appeal and (2) copies of those papers. Don't send them to the Court; they're yours to keep.

b. If VA's designation is correct, write to the Court and say so. If VA counsel didn't list some important papers from your file, prepare a **counter designation** (a list like the one VA counsel sent to you). Describe the missing papers by title and date. *Don't* list papers VA counsel has already listed. *Don't* list papers dated after the BVA decision. File your list with the Court, and serve a copy on VA counsel.

c. After you and VA counsel agree on what should be in the record—or, if you don't agree, after the Court decides—VA counsel

(See "Instructions . . . on Page 3)

## Instructions . . . (Continued from Page 2)

will send copies of those papers, with page numbers, to you and to the Court. This is the **record on appeal**, and is the *only* evidence the Court can consider. The Court never receives your VA claims file—only copies of some papers in it. VA keeps your VA claims file so it can work on other claims you have in the system.

Your brief. a. After VA counsel files the record, we'll tell you to file your **brief**. That is an important paper. It tells the Court what you think was wrong with the BVA's decision. Most cases depend on the facts. Refer to facts that are in the record, but not new facts that weren't available to the BVA. You may also refer to any laws, regulations, or court decisions that you think apply to your appeal.

b. We'll send an Informal Brief form that you may use. Follow the instructions on the form. If you don't use that form, you must meet all the requirements of the Court's Rules 28 and 32. You may attach extra pages to an Informal Brief, but not more than 23 pages without the Court's permission. Don't attach "evidence." If it's in the record on appeal, the Court will look at it there. If it isn't in the record, the Court can't look at it.

c. File an original and 3 copies of your brief with the Court, and serve another copy on VA counsel.

d. After you file your brief, VA counsel will file a brief arguing its side of the case and will serve a copy on you. Within 14 days after that, you may—but don't have to—file a reply brief of not more than 15 pages. If you used the Informal Brief form, your reply brief may be in a letter.

Motions. If you need to ask the Court's permission to do something,

file and serve a **motion**. Say specifically what you want and why you want it. See Rule 27.

Withdrawing your appeal. If you change your mind about appealing, you may withdraw by sending a letter saying, "I withdraw my appeal," to the Court, with a copy to VA counsel. Be sure you want to do that, because the Court probably won't let you change your mind later. We will *not* refund the \$50 filing fee.

Notice of the Court's decision. The Court may decide your appeal in an opinion, memorandum decision, or order. When it does, we'll mail a copy to you.

The Court may find nothing wrong with the BVA decision and **affirm** it.

The Court may **reverse** (overturn) or **vacate** (cancel) the BVA decision and **remand** the case (send it back) for action by the BVA or another part of VA.

The Court may decide that it doesn't have the **jurisdiction**, or legal authority, to consider your appeal at all, or that you haven't obeyed the Court's rules and orders; if so, the Court will **dismiss** the appeal, leaving the BVA decision in effect.

More information. You may write to us at the address at the top of the first page, or call us at (202) 501-5971 or (800) 869-8654 between 1:00 and 4:00 p.m. on weekdays. We *won't* give you legal advice. We *won't* suggest how you should handle your appeal. And we *won't* guess how or when it will be decided. But we will tell you about procedures and about the status of your case.



# House Subcommittee on Veterans Affairs Meets – TVC testifies

State Representative Miguel (Mike) Wise, Chairman, convened the House Subcommittee on Veterans Affairs for a special hearing in Weslaco, Texas on November 23, 1998 at the Catholic War Veterans Home. The focus of the meeting was veterans' issues including medical/health benefits, housing, transportation, retirement pension plans, veterans' cemeteries, tax exemptions and veterans' loans. Every major veteran's organization was represented, as were numerous state and local officials. Among those testifying were John McKinny, Texas Director of the Veterans Employment Service, U.S. Department of Labor; Dan Whealen, Department Commander, American Legion; Martin Villarreal, TVC Counselor, McAllen VAOPC; Mari Pulido, Marketing Specialist, Texas Veterans Land Board. The following Veterans County Service Officers also testified: Salvador Salinas (Cameron); Chris Escamilla (Hidalgo); Eddie Chapa (Willacy); and Bill McLemore (Travis),

representing the Veterans County Service Officers Association of Texas.

TVC Commissioner Patsy Palmquist and Charlie Buerschinger, TVC Deputy Executive Director updated the Committee on the State Veterans Cemetery Feasibility Study and the Commission's priorities for the next session. Charlie told the Committee that the Commission had accepted the study by Komatsu Architecture and was in the process of printing the study for distribution to the 76<sup>th</sup> Texas Legislature.

Among the other issues discussed were the health care needs of the veterans in the Rio Grande Valley and the priorities of the Statewide Coalition of Veterans Organizations. Mari Pulido updated the Committee on the success of the Veterans Land Board in marketing the Housing Assistance and Home Improvement Loan Programs in the Rio Grande Valley.★

**ATTENTION: All TVC Counselors, Veterans' Organizations, CSOs, State Directors, and others listed in the TVC Veterans Service Officers' Directory**

***DIRECTORY REVISION  
SCHEDULED FOR FEBRUARY 1999***

We will be revising our Veterans Service Officers Directory in early 1999. Please check your current listing and report any changes to the TVC Headquarters no later than January 15, 1999. Also, because of the recent area code changes in Texas, you will need to notify us of your area code change. If you would like to add your fax number, e-mail or web page address to your listing, please also advise. Submit changes to Nancy Gamroth at:

Texas Veterans Commission  
P.O. Box 12277  
Austin, Texas 78711-2277  
Fax: 512/475-2395  
e-mail: nancy.gamroth@tvc.state.tx.us

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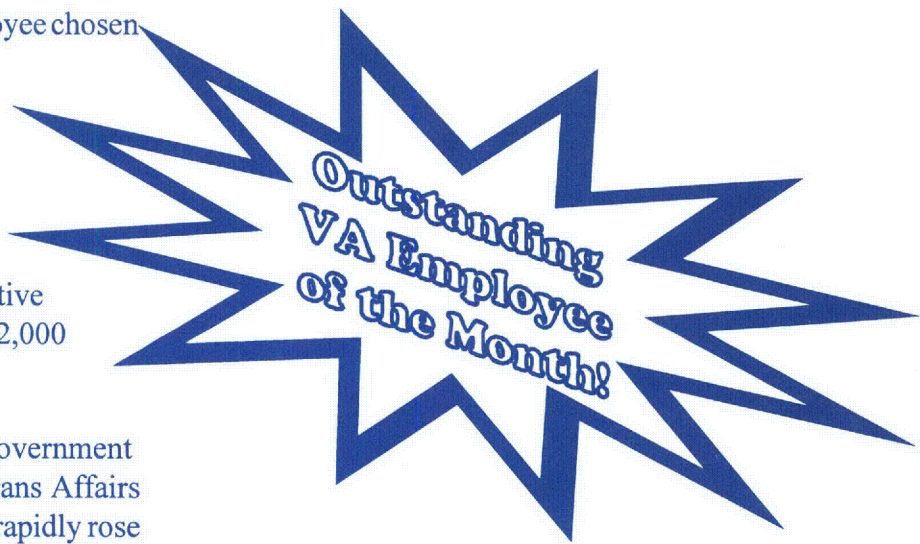
The Department of Veterans Affairs employee chosen for "Outstanding VA Employee of the Month" for November 1998 is **Ronald M. McClure, Patient Representative, Central Texas Health Care System, Temple, Texas.**

Mr. McClure is an advocate and representative for over 220,000 veterans in Central Texas, 32,000 of whom are regular users of this facility.

Ronald has over thirty-seven years of government service. He joined the Department of Veterans Affairs after more than thirty years in the Army. He rapidly rose to the position he now holds. His "can do" attitude has earned him a reputation among veterans and veterans groups for being effective, fair, and capable. Ronald's assistance to the Texas Veterans Commission is invaluable.

Ronald and his wife, Ursula, have seven daughters, all Texans, now making their contributions throughout the state and nation.

Veterans and the Texas Veterans Commission are very fortunate to have such a kind and caring person assisting us. The Texas Veterans Commission is pleased to honor Ronald for his conscientious endeavors by naming him the "Outstanding VA Employee of the Month" for November 1998.★



## **Claims Based on Exposure to Ionizing Radiation (Prostate Cancer and Other Cancer)**

The Department of Veterans Affairs (VA) has amended its adjudication concerning compensation for diseases claimed to be the result of exposure to ionizing radiation. This amendment implements a decision by the Secretary of Veterans Affairs that, based on all evidence currently available to him, prostate cancer and any other cancers may be induced by ionizing radiation. The intended effect of this action is to relieve veterans, or their survivors, seeking benefits under the provisions of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of the burden of having to submit evidence that a veteran's prostate cancer or any other cancer may have been induced by ionizing radiation.

*Effective Date: September 24, 1998.*

**SUPPLEMENTARY INFORMATION:** The Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. 98-542, required VA to develop regulations establishing standards and

criteria for adjudicating veterans' claims for compensation for diseases arising from exposure to ionizing radiation during service. Pub. L. 98-542 also required that the Secretary of Veterans Affairs, after receiving the advice of the Veterans Advisory Committee on Environmental Hazards (VACEH), determine which conditions should be considered service-connected on the basis of exposure to ionizing radiation and include those conditions in VA's regulations.

In September 1985, VA published 38 CFR 3.311b, since redesignated as 3.311, to implement the radiation provisions of Pub. L. 98-542. As threshold requirements for entitlement to compensation under this regulation, a veteran must have been exposed to ionizing radiation during atmospheric testing of nuclear weapons, the occupation of Hiroshima and Nagasaki, Japan, during World War II, or through other activities as claimed, and must have subsequently developed a radiogenic

disease. VA defines the term "radiogenic disease," for purposes of Pub. L. 98-542, to mean "a disease that may be induced by ionizing radiation" (38 CFR 3.311(b)(2)). Since 1985, VA has added a number of diseases to the original list of radiogenic diseases at 38 CFR 3.311(b)(2).

Once the regulation was published, VA denied claims for conditions that were not specifically listed in the regulation as radiogenic diseases. On September 1, 1994, however, the United States Court of the Federal Circuit held in *Combee v. Brown*, 34 F. 3d 1039 (Fed. Cir. 1994), that Pub. L. 98-542 did not authorize VA to establish an exclusive list of radiogenic conditions. VA published a proposal to amend 38 CFR 3.311(b)(2) to add prostate cancer and "any other cancer" to the list of diseases VA recognizes as being radiogenic under the provisions of Pub. L. 98-542 in the *Federal Register* on September 25, 1996 (61 FR 50264-65).★

# VA Paying Increased Education Benefits to Veterans and Dependents

Monthly education payments from the Department of Veterans Affairs (VA) to veterans and dependents enrolled in VA education programs, including the active duty and reserve components of the Montgomery GI Bill (MGIB), increased by 20 percent, effective October 1, 1998.

In announcing the increase, Under Secretary for Benefits Joseph Thompson said, "Beginning with the Serviceman's Readjustment Act of 1944, better known as the GI Bill of Rights, education benefits for veterans have been part of this nation's comprehensive and generous veterans' benefits programs. They have helped better the lives of millions of veterans and their families and helped make higher education more available to all American citizens as a result of the dynamic expansion of American educational institutions following the passage of the original GI Bill."

The full-time monthly rate for MGIB-Active Duty enrollees with three years service increases to \$528 from \$439.85. For a full 36 months, the total amount goes from \$15,834.60 to \$19,008. The

full-time rate for those with two years service increases to \$429 a month from \$357.58, or a total of \$15,444 from \$12,865.68.

Also, Vietnam Era GI Bill enrollees who converted to the MGIB-Active Duty program will see their monthly rates increase to \$716 from \$627.85, or a total of \$25,776 from \$22,602.60. MGIB-Selected Reserve trainees will get a monthly rate increase to \$251 from \$208.93, or a total of \$9,036 from \$7,521.48.

Payments for correspondence training, on-the-job training, flight instruction, farm cooperative training, special restorative training and independent study under respective VA education programs also increased by 20 percent.

Payments for participants in VA's Dependents' Educational Assistance (DEA) program will increase for the first time since 1990. The full-time monthly rate goes to \$485 from \$404. DEA benefits are available to spouses, survivors and dependents of veterans who are permanently and totally disabled from service-connected conditions or who have died from those disabilities.★

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## VA Hearing Aid Program

- You are eligible for the VA Hearing Aid Program if you meet one of the following criteria:
  - ◆ Service-connected for hearing impairment or conditions related to the ear, even if the rating is 0%.
  - ◆ Other service-connected disabilities rated at 10% or more.
  - ◆ Veteran of World War I or the Mexican Border Period.
  - ◆ Former prisoner of war (POW).
  - ◆ Nonservice-connected veteran who is in receipt of Aid and Attendance (A&A) or Housebound (HB) benefits.
  - ◆ Domiciliary or Nursing Home Care Unit resident for a continuous period of time.

*If you meet one of these criteria and wish to schedule an appointment, contact the Audiology clinic nearest you.*

- What services are available through the Hearing Aid Program?
  - ◆ Complete Audiologic Evaluation.
  - ◆ Hearing Aid Selection.
  - ◆ Hearing aid evaluation, including fitting, adjusting and instruction in the use and care of hearing aids.
  - ◆ Hearing aid batteries.
  - ◆ Hearing aid repairs.
  - ◆ Assistive devices which are designed to help the hearing-impaired veteran with difficult communication situations.
- How many appointments are required?
  - ◆ Typically, a minimum of three visits are required:
    - Visit 1: Audiologic evaluation, and hearing aids/ear molds are ordered.
    - Visit 2: Hearing aid evaluation, including fitting/adjusting of hearing aids, and instruction in the use and care of hearing aids.
    - Visit 3: A follow-up is scheduled to confirm the success of the hearing aid fitting and to make minor adjustments as needed

*Additional visits are scheduled as necessary for adjustments of the hearing aids, assessments of assistive devices, or for attending one of the Aural Rehabilitation classes that are offered.*

- Classes for Hearing-Impaired Veterans and Family Members
  - ◆ Living With Hearing Loss - This class meets once a week for four weeks, and is designed to offer ways help improve communication problems which result from hearing impairment
  - ◆ Speechreading - This six week program offers two group classes a week and two computer-assisted training sessions a week, and is designed to help the hearing impaired veteran improve the use of visual clues to understand speech.

*If you have questions about the VA Hearing Aid Program or your eligibility for services, contact the VA Audiology clinic nearest you.*



# VA Medical Enrollment

## KEY POINTS

- A veteran may apply to enroll at any VA healthcare facility or veterans benefit office at any time in any year. There is no time limit regarding application for enrollment.
- Veterans must be enrolled to receive care from a VA healthcare facility.
- Enrollment is on an annual basis, and enrollments are reviewed every year.
- Renewal is automatic, unless the veteran chooses not to enroll or if VA resources limit the number of veterans to whom VA can provide care.
- Enrollment levels are based on seven priority groups established by Congress.
- Comprehensive care includes all needed outpatient and inpatient services.
- Domiciliary care, nursing home, limited dental care and community nursing home care are not part of the uniform benefits package, though some enrolled veterans may be eligible for these programs under other VA authorities for care.
- There is a new emphasis on preventive medicine and primary care.
- Medications are covered by the program, as long as they have been prescribed by a physician employed by or under contract to VA. Some veterans will be required to make a co-payment for medication.
- Veterans are encouraged to retain any existing healthcare coverage they may already have.
- Veterans may choose their preferred facility for receiving primary care.
- An enrolled veteran can receive a uniform level of care anywhere in the VA system--over 1,100 facilities in all.

## PRIORITY GROUPS

- **Priority Group 1**
  - ◆ Veterans with service-connected conditions rated 50 percent or more disabling
- **Priority Group 2**
  - ◆ Veterans with service-connected conditions rated 30 to 40 percent or more disabling
- **Priority Group 3**
  - ◆ Veterans who are former POWs
  - ◆ Veterans with service-connected conditions rated 10 or 20 percent disabling
  - ◆ Veterans discharged from active duty for a disability incurred or aggravated in the line of duty
  - ◆ Veterans awarded special eligibility classification under 38 U.S.C., Section 1151
- **Priority Group 4**
  - ◆ Veterans who are receiving aid and attendance or housebound benefits
  - ◆ Veterans who have been determined by VA to be catastrophically disabled
- **Priority Group 5**
  - ◆ Nonservice-connected veterans and service-connected veterans rated zero percent disabled, whose income and net worth are below the established dollar thresholds
- **Priority Group 6**
  - ◆ All other eligible veterans who are not required to make co-payments for their care, including:
    - World War I and Mexican Border War veterans
    - Veterans solely seeking care for disorders associated with exposure to a toxic substance, radiation, or for disorders associated with service in the Persian Gulf
    - Compensable zero percent service-connected veterans
- **Priority Group 7**
  - ◆ Nonservice-connected veterans and zero percent non-compensable service-connected veterans with income and net worth above the statutory threshold and who agree to pay specified co-payments

# *51st Annual Statewide Conference*



*James E. Nier, newly appointed TVC Executive Director, outlines his programs and vision for a concerted effort to benefit the veterans and their dependents in Texas.*



*Hershel Gober Deputy Secretary, Department of Veterans Affairs, addresses the 250 participants at the 51st Annual Statewide Conference for Veterans Service Officers*

From October 6 through October 9, 1998, the 51st Annual Statewide Conference for Veterans Service Officers was held at the Holiday Inn - Select, San Antonio, Texas. Participation included attendance by 130 County Service Officers and Assistants, which resulted in a 91% Certification Rate for 1998. We thank all those attending this Conference and the four Spring Conferences for their participation and interest in these training sessions.

A Special Thanks to the American Legion, AMVETS and the Veterans of Foreign Wars for the wonderful dinner and program at Pedrotti's North Wind Ranch.

Also, "Thanks" to Jim Van Marter for organizing the First Annual Bent Shaft Golf Tournament - quite a success!★

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*Sylvia Garcia*

*Dave Samuels*

## *Commissioners' Appreciation Award Recipients*

Two Commissioners' Appreciation Awards were presented during the 51st Annual Statewide Conference, held in October in San Antonio, to Texas Veterans Commission staff members who have made an exceptional contribution to the maintenance of veterans' advocacy. To date, the Commissioners have presented 12 staff members this prestigious award.

# *Veterans County Service Officers Association of Texas*

## *1998-99 Officers*

*During its annual meeting, conducted in conjunction with the 51st Annual Statewide Conference for Veterans Service Officers held in the fall of 1998 in San Antonio, the Veterans County Service Officers Association of Texas elected new officers for the following year. They are as follows:*

<b>President</b>	<b>Stonell B. Greene</b> Dallas County	<b>Judge Advocate</b>	<b>Abel Chapa</b> Nueces County
<b>Vice President</b>	<b>Roger D. Walker</b> Orange County	<b>Chaplain</b>	<b>Willie Dougherty</b> Travis County Asst.
<b>Secretary/Treasurer</b>	<b>Robert Van Riper</b> Tarrant County	<b>Sergeant-At-Arms</b>	<b>Emilio Jasso</b> Refugio County
	<b>Public Relations Officer</b> <b>Hattie C. Russom</b> Harris County		

*Also elected were the five Regional Directors for the upcoming year:*

*Dallas Region*  
**Penny K. Daniels**  
Wise County

*Waco Region*  
**Billy Murphey, Jr.**  
Brown County

*Lubbock Region*  
**Teresa Putman**  
Lubbock County

*Houston Region*  
**Robert T. Dambach**  
Galveston County

*San Antonio Region*  
**Antonio Muniz**  
Brooks County

*The Outstanding Veterans County Service Officers chosen for 1997-98:*

*Dallas Region*  
**Robert G. Craig**  
Smith County

*Lubbock Region*  
**Gary Rommelfanger**  
Tom Green/Coke/Irion/Sterling Counties

*Houston Region*  
**Kay Lynn Lee, Asst.**  
Montgomery County

*Waco Region*  
**Billy Murphey, Jr.**  
Brown County

*San Antonio Region*  
**Eddie Chapa**  
Willacy County

*The VC SOA also awarded an achievement award, which was renamed the "Dan Garcia Achievement Award" in honor of Dan Garcia, Taylor County Service Officer who passed away, to:*

*Olie Pope, Travis County Assistant*

*"For Significant Contribution to the Association and the Veterans of the Great State of Texas"*

# Final Phase – Gulf Veteran Study

The government's largest study of the health of Gulf War Veterans and their family members has entered its final phase, moving from surveys and record reviews to physical examinations and clinical testing.

Participating veterans will be examined at one of 16 Veterans Affairs (VA) medical centers around the country. The spouses and children of the selected veterans will be invited to see VA physicians or physicians at affiliated medical schools. The exams phase of the study is expected to be completed in about 18 months, to be followed by data analysis and publication of results from all phases of the study.

The VA National Health Survey of Gulf Veterans and their Families previously gathered questionnaire data from 15,000 veterans who served in the Gulf during the period of hostilities. Another 15,000 veterans who did not serve in the Gulf were included in the survey effort as controls. This will provide a comparison group to help distinguish how the Gulf conflict veterans' health might differ from those who were not in the conflict.

A subgroup of 1,000 from each of the two groups was randomly selected for the physical examinations coordinated through the VA Office of Research and Development's Cooperative Studies Program.

Through the National Health Survey, veterans and their family members will

be examined under a uniform, comprehensive clinical examination protocol in use at the 16 examination sites. Pediatricians examining the children of veterans will gather data enabling a comparison of child health not only among the Gulf War theater veterans and control cohorts, but also between children in the same family born before the Gulf deployment compared to those born after the conflict.

The VA study builds upon earlier studies of Gulf War veterans' health that have added to medical understanding of Gulf War veterans' illnesses.

For example, the U.S. Centers for Disease Control and Prevention (CDC) recently published an epidemiological study that found multiple symptoms were more prevalent in the Gulf War veterans when 1,155 Air Force Gulf War veterans were compared with 2,520 controls who served elsewhere.

While 39 percent of Air Force Gulf War veterans who were still on duty and studied by CDC suffered from chronic problems with fatigue, mood and thinking, and muscle aches and pains, this was also reported by 15 percent of the non-Gulf group. 111 Gulf War veterans also reported problems in completing their daily routine activities and reported a lower quality of life. No clinically significant physical examination finding or routine laboratory test abnormalities were associated with the mild or severe chronic symptoms in the CDC study. The CDC study found no association between infectious diseases and illness in Gulf War veterans.

The larger sample size in the VA study will have more power to detect subtle physical examination findings or laboratory abnormalities. For any elevated rates of illnesses that are not rare conditions in the U.S. population in general, the study will provide strong evidence on the health consequences associated with military service in Operations Desert Shield and Desert Storm.

So that results of the study can be generalized to the larger group of ill Gulf War veterans, it is important that subject selection be random. Thus, volunteers are not being recruited for the study. The random selection of both the study group and controls is critically important in this kind of population-based epidemiologic study for results to be representative of the larger group sampled.

However, VA does encourage veterans with health concerns about their experience in the Gulf to take advantage of a free health screening examination under the Gulf War Registry Program if they have not already done so, or if their health has changed since an initial registry exam. Interested veterans should contact their local VA medical center for a registry exam appointment. They may call 1-800-749-8387 for assistance in finding their nearest medical center or for general information on Gulf-related topics, including VA's free medical treatment programs for any conditions that could possibly be related to Gulf War service.★

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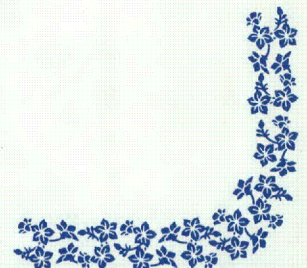
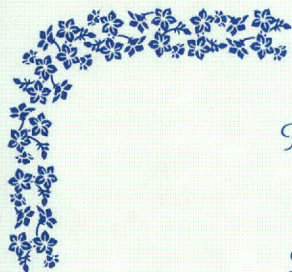
*Dear Friends and Colleagues,*

*I want to express my sincere appreciation to everyone who attended my retirement banquet and thank those who made a contribution to my gift.*

*All of you helped make it a very memorable occasion for Betsy and me. Your friendship and support over the years have meant a great deal to me.*

*Keep up the good work!*

*Sincerely,  
Doug Brown*



# TVC Accreditation

During 1998, we conducted our fourth accreditation training program for County Service Officers and Assistants (CSOs) under the provisions of 40 TAC 451.1 and 451.3. We are pleased to announce that 5 CSOs successfully completed the program and earned the TVC Accreditation. They are as follows:

Robert G. Craig	Smith County	Joe R. Scott	Hopkins County
Billy B. Murphey, Jr.	Brown County	Karla Winn, Asst.	Harrison County
Gloria Picon, Asst.	Victoria County		

Also, the following CSOs, who were among the earlier training programs, successfully recertified for accreditation:

Richard Ambrose	Johnson County	Juan Mireles	Val Verde/Kinney Counties
Gordon Banks	Jefferson County	Al R. Myers	Harris County Asst.
Jesse Carrizales	Travis County Asst.	Olie Pope	Travis County Asst.
Glenn Clark	Polk County	Charles Prewit	Jones County
Patrick Conrad	Fort Bend County	Gary Rommelfanger	Tom Green/Irion/ Coke/Sterling Counties
Gus Culwell	Comal County		Bexar County
Robert Dambach	Galveston County	George Ruiz	Harris County
Willie Dougherty	Travis County Asst.	Hattie Russom	Kleberg County
Stonell Greene	Dallas County	Tomas Sanchez	Denton County
Harold Haynes	Dallas County Asst.	Hank Scheible	Tarrant County
Kathy Matelski	Wichita County	George E. Simpson	Tarrant County
William McLemore	Travis County	Robert Van Riper	

At this time, we are again opening the program to CSOs who would like to participate in the program. All those interested should advise the Commission in writing *no later than December 31, 1998*. Please direct all written responses to the Headquarters, ATTN: Richard M. Prete, Chief Information & Training. You may also contact him on the CSO WATS line for additional information.★

The "Outstanding VA Employee of the Month" for December is **Karen English, Claims Clerk, VA Outpatient Clinic in Beaumont, Texas.**

Karen began her employment with VA ten years ago. Her duties consist of scheduling all Labs and X-Rays for Dr. Stovall, scheduling special procedures required to go through the Houston VA Medical Center, and assisting Dr. Stovall and his nurse. Other duties include assisting veterans in obtaining re-fills on VA medications when they are unable to come to the clinic.



Karen, a native Texan, is married and has five children ranging in age from 6 to 15 years.

Karen is always reliable and willing to assist her co-workers and the veterans at the Beaumont facility. The Texas Veterans Commission is proud to recognize Karen English as the "Outstanding VA Employee of the Month" for December 1998.★

## **KERRVILLE**

March 30 - April 1, 1999

Inn of the Hills Resort

1001 Junction Highway

Kerrville, Texas 78028

(830) 895-5000

Rate: \$62/Single; \$69/Double

Cut Off Date: February 27, 1999

## **BEAUMONT**

April 7 - 9, 1999

Holiday Inn - Midtown

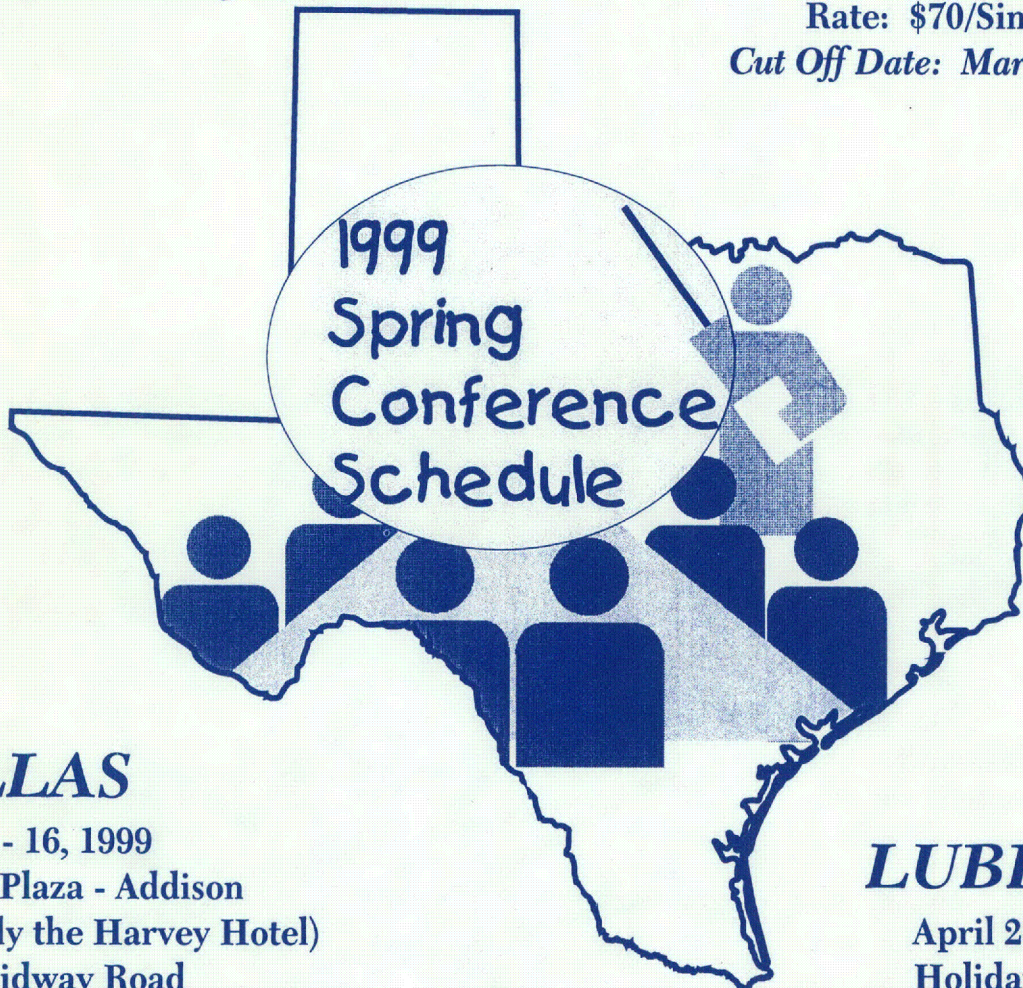
2095 North 11th Street

Beaumont, Texas 77703

(409) 892-2222

Rate: \$70/Single/Double

Cut Off Date: March 22, 1999



## **DALLAS**

April 14 - 16, 1999

Crowne Plaza - Addison

(Formerly the Harvey Hotel)

14315 Midway Road

Dallas, Texas 75244

(972) 980-8877

Rate: \$70/Single; \$90/Double

Cut Off Date: March 23, 1999

## **LUBBOCK**

April 28 - 30, 1999

Holiday Inn Plaza

3201 South Loop 289

Lubbock, Texas 79423

(806) 797-3241

Rate: \$70/Single/Double

Cut Off Date: March 25, 1999

**NOTE:** The above dates are actual meeting dates and **DO NOT** include any travel dates.

# Exclusions of Children's Income in Pension Rate Determinations

The VA pension programs have numerous provisions relative to treatment of income. Veteran representatives should be attentive to the many expense deductions and income exclusions available to their clientele to increase their pension entitlement. This article is limited to exclusions of children's income in determining improved pension entitlement.

Exclusions from children's income fall into three categories:

- a. Child's earned income exclusion—38 CFR 3.272(j)(1).
- b. Child's post secondary education expenses—38 CFR 3.272(j)(2).
- c. Hardship exclusion from children's income.

a. Child's earned income exclusion. Because the first \$6,950 of a child's earned income is excludable, only the amount of a child's wage or earned income that is above this amount is countable for pension purposes. This exclusion applies both for children who are dependents on awards to veterans or surviving spouses and also for children who are paid pension directly under their own awards. No separate claim is necessary as this income is automatically excluded by VA.

b. Child's post secondary education expenses exclusion. This applies only if a child's earned income is above \$6,950, and only to children in post secondary or vocational training programs. The child's educational expenses are

excludable from the amount of earned income in excess of \$6,950. Educational expenses include tuition, fees, books, and necessary materials. These expenses can be claimed on a statement from the claimant. A VA Form 21-4138 can be utilized. One EVR, 21-0515C for children, has an area for claiming educational expenses.

c. Hardship exclusion from children's income.

All other income of children, for example earned income remaining after application of the above exclusions, Social Security, and interest income, is countable in determining pension entitlement, unless the income qualifies for exclusion because it is shown that it would create hardship to count it. This exclusion is only available to veteran and surviving spouse claimants with children, and not to children claiming pension in their own right.

The amount of children's income that may be excluded is the amount by which acceptable annual family expenses necessary for reasonable family maintenance exceed the claimant's Maximum Annual Pension Rate (MAPR) or the claimant's Income for VA Pension Purposes (IVAP), whichever is greater. The resultant amount, subtracted from the original IVAP, results in a revised IVAP. The revised IVAP, subtracted from the claimant's MAPR, provides the claimant's pension entitlement.

Annual expenses necessary for reasonable family maintenance include

expenses for basic necessities such as food, shelter, etc., plus other expenses determined on a case by case basis to be necessary to support a reasonable quality of life. Educational expenses which could not be excluded under 38 CFR 3.272(j)(2) above can be considered as well as the amount of medical expenses which were not otherwise deducted as they were below or equal to 5% of the MAPR.

EXAMPLE: Veteran is unmarried with two minor children and therefore has a MAPR of \$12,825. The only income of the family is Social Security of \$500 monthly for the veteran and \$250 for each child resulting in an IVAP of 12,000, normally qualifying the veteran for an annual pension of \$825. Veteran reports reasonable annual expenses of \$16,500. Family expenses are greater by \$3,675 than the MAPR, which is used instead of the IVAP to calculate entitlement in this example because it is the greater amount. The new IVAP is \$8,325, after deduction of the \$3,675 exclusion from the children's combined \$6,000 Social Security. New entitlement to pension is \$4,500 yearly (\$12,825 MAPR minus revised IVAP of \$8,325) or \$375 monthly.

VA Form 21-0571, Application for Exclusion of Children's Income, should be utilized to claim the exclusion. The VA claims examiner will exercise judgement in determining acceptability of expenses. These determinations are of course subject to appeal.★

*Contributed by Craig Hardwick, TVC Staff*

## Restored DIC vs. Other Benefits

The VA General Counsel addressed the issue of whether a surviving spouse who regains eligibility for DIC under 38 USC 1311(e) as added by PL 105-178 on June 9, 1998, also regains eligibility for CHAMPVA, Ch. 35 educational assistance, or VA home loan guaranty benefits.

PL 105-178 amended 38 USC by adding new subsection (e) to section 1311 relating to the payment of DIC to a remarried surviving spouse. Under this provision, remarriage shall not bar a surviving spouse's eligibility for DIC if the remarriage is terminated by death, divorce, or annulment. It also provided that DIC is not barred if a surviving spouse ceases living with another person and holding himself or herself out openly to the public as that person's spouse.

According to the General Counsel's analysis of the statutes, the amendment applies only to the restoration of eligibility for DIC. It did not amend any statute governing benefits other than DIC, nor did it change the generally applicable definition of "surviving spouse" set forth in 38 USC 101(3) which includes the stipulation "who has not remarried since the veteran's death, or after September 19, 1962 living with another person and held himself or herself out openly to the public as that person's spouse." Therefore, even though a remarried surviving spouse may regain eligibility for DIC, they do not regain eligibility for medical care under CHAMPVA, Ch. 35 educational assistance, or VA home loan guaranty. Eligibility for those benefits is not based upon eligibility for DIC, but rather on the claimant's status as a "surviving spouse" as defined in 38 USC 101(3).★

# State Tax Exemption for People with Disabilities

The State of Texas exempts the Motor Vehicle Sales Tax, which is currently 6.25%, when the vehicle being purchased has to be modified so it can be driven by or to transport people with orthopedic disabilities. Some examples of exempt modifications are:

Hand Controls  
Wheelchair Lifts

Wheelchair Ramps

Left Side Accelerator Pedals  
Raised Ceilings

If individuals or organizations who have purchased a vehicle, which has to be modified to either be driven or to transport orthopedic disabled people, and have paid the State of Texas vehicle sales tax, may receive a refund of this tax. This refund has to be requested from the State Comptroller of Public Accounts in Austin, Texas. For more information concerning the exemption of the Motor Vehicle Sales Tax Exemption or requesting a refund of the paid tax, contact the Comptroller's office toll-free at 1-800-252-5555 and they will send the information along with the form to apply for the refund.

People who are vision or hearing impaired may also be eligible for items and services exempt from the State Sales Tax. If the individual has a guide or hearing dog, the food and grooming costs of this dog is exempt from the sales tax. Contact the Comptroller's office at the above toll-free number for further information.★

*Contributed by Gary Bartelt, Medina County Service Officer*

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## VA General Counsel Precedent Opinions

The Office of the General Counsel has issued a Precedent Opinion concerning entitlement to benefits. The question at issue along with the Held portion of that decision is provided here for your review.

### **REPS Effective Dates (VAOPGCPREC 7-97)**

#### **QUESTION:**

a. Where eligibility under the Restored Entitlement Program for Survivors (REPS) is based on service-connection established under a Department of Veterans Affairs (VA) regulation establishing a presumption of service-connection for a disease, is the effective date of the award of REPS benefits limited by the effective date of the regulation establishing the presumption?

b. If, pursuant to the Nehmer stipulation, an award of dependency and indemnity compensation (DIC) is made effective prior to the effective date of the VA regulation establishing presumptive service-connection for the cause of death, is the effective date of an award of REPS benefits also governed by the Nehmer stipulation?

#### **HELD:**

In the case of a member or former member of the Armed Forces who died on active duty prior to August 13, 1981, or who died from a service-connected disability which was incurred or aggravated in service before such date, the Department of Veterans Affairs (VA) is authorized, under Pub. L. No. 97-377, § 156, 96 Stat. 1830, 1920 (1982), and 38 CFR § 3.812, to award benefits under the Restored Entitlement Program for Survivors (REPS) to the member or former member's surviving spouse or child for all periods in which such spouse or child meets the eligibility requirements for such benefits. If the claimant meets the statutory requirements governing eligibility for REPS benefits, the fact that service-connection for a former member's death has been established pursuant to regulatory presumptions of service-connection which became effective subsequent to the initial period of eligibility does not limit VA's authority to award REPS benefits retroactive for all of eligibility.★

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## Dallas VAMC Dedicates Clinical Addition

Hundreds of veterans, community leaders and medical center employees gathered to watch officials cut the ceremonial ribbon, appropriately fashioned with medical gauze, at the November 2 dedication ceremony for the Dallas VA Medical Center's \$108.8 million Clinical Addition.

The Clinical Addition is the final and major component of a capital improvement project that has been 26 years in the making and includes the Spinal Cord Injury Center, which opened two years ago, and an Energy Center, which opened in 1995, that provides utilities to the entire complex.

The 615,000-square-foot addition features surgery and recovery rooms, intensive care units, cardiac catheterization laboratory, emergency room, a pharmacy, and dialysis, telemetry, radiology and nuclear units. The new high tech addition, which is bright and colorful, will open in phases over the next several weeks, beginning November 9.

The Dallas VA Medical Center is the major referral center to the VA North Texas Health Care System, which also includes the Fort Worth Outpatient Clinic and the Sam Rayburn Memorial Veterans Center in Bonham.★



# Direct Deposit Scam

Some disreputable non-bank financial institutions are preying on the fears of veterans by misrepresenting the government's new system of electronic fund transfer to veterans. This is done hoping to scare them into signing on.

The Treasury Department's EFT '99 program encourages recipients of regular government payments to use direct deposit. This system eliminates the hassle of checks getting stolen, lost, or delayed in the mail and quickly gets funds to recipients and gets the government out of the check-writing business. However, the EFT law liberally allows waivers for recipients who want to continue receiving paper checks. Disabled veterans can write the Department of Veterans Affairs to receive a waiver. Veterans' checks will not be delayed or withheld in lieu of direct deposit.

Treasury officials have received several complaints that some non-bank companies have used the scare tactic of delayed or withheld payments to urge federal payment recipients to immediately sign up for direct deposit. The truth is that no payments will be delayed or withheld if the recipient hasn't opened a direct deposit account.

The Treasury Department should be contacted immediately if you receive what may be false or misleading information regarding direct deposit of your checks. Information on suspicious advertising materials or sales pitches should be sent to the FT '99 Information Materials Committee, in care of the Product Promotion Division, Financial Management Service, U.S. Department of the Treasury, 401 14th Street, NW, Washington, DC 20227.★

*Disabled American Veterans*

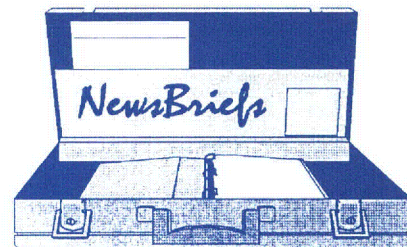
## TRICARE Prime "Split Enrollment"

TRICARE Prime now offers a solution to families living apart. It's called "split enrollment", and it means that retired family members living apart, such as college students or children living with a service member's former spouse, can enroll together and pay only one annual fee.

Enrollment portability is available to all Prime families. Because today's families often live apart, TRICARE places no limitations on the number of family members using the portability benefit. This means, as a retiree, you'll never pay more than the family enrollment fee of \$460, no matter how many family members enroll. Active duty families pay no enrollment fee.

For example, a retired Prime member lives in San Diego, but has two college-age children living in other areas where the TRICARE Prime is available. One attends college in Phoenix and the other in Florida. Under split enrollment, the parent will only pay \$460 a year to enroll, and the college children are covered.

Split enrollment is just one of several benefits offered under what is called Enrollment Portability. Certain restrictions apply. Ask your TRICARE service center for details, 1-800-242-6788.★



## INFORMATION RESOURCE CENTER OPENS

The Department of Veterans Affairs (VA) recently approved the development of a new VA Information Resource Center (VIREC) to be based at the Hines VA Medical Center, Hines, Illinois. Designed to act as a wellspring of information on VA databases, the national center will provide a new information infrastructure to health services researchers as they seek to use these databases in addressing health research issues important to VA health care. Ribbon cutting for the Center was September 17.

In addition, center staff will act as liaison between health services researchers and the office of the VA Chief Information Officer. In the future, the VIREC also may provide information on other databases often used by researchers such as those developed by the U.S. Bureau of the Census and the Health Care Financing Administration.

The VIREC is unique to VA as it provides one centralized location for researchers to ask questions regarding the numerous databases VA owns and stores throughout the country. Although the VIREC actually will not conduct computer analyses for researchers, the VIREC can point researchers in the right direction to answer their questions. VIREC staff will be able to lead investigators to specific databases that may assist them in the search for the information they require and to consultants who are knowledgeable with those databases.

## SECRETARY OF DEFENSE APPROVES AFEM FOR PERSIAN GULF PARTICIPANTS

Recently, Secretary of Defense William S. Cohen approved the award of the Armed Forces Expeditionary Medal (AFEM) to members of the U.S. Armed Forces who have participated in Southwest Asia Operations Maritime Intercept Operations (MIO), Vigilant Sentinel (VS) and Northern Watch (ONW).

Effective dates for the MIO is December 1, 1995 through a date to be determined; VS is December 1, 1995 to February 15, 1997; and ONW is January 1, 1997 through a date to be determined.

To be eligible, a member of the Armed Forces would have served on land or airspace of Saudi Arabia, Kuwait, or Iraq and the waters and airspace above the Persian Gulf. Also, individuals serving aboard ships in the Red Sea in direct support of MIO are eligible.★

## TRAINING FOR NEWLY APPOINTED SERVICE OFFICERS

As a matter of interest, the next training session for newly appointed Veterans County Service Officers is scheduled for January 19-22, 1999, at the Marriott Residence Inn, 7710 South Main Street, Houston, Texas. Monday, January 18, 1999, will be the travel day, with training beginning at 9:00 a.m. on Tuesday, January 19, 1999, and ending by noon Friday, January 22, 1999. By law, the Texas Veterans Commission is authorized to reimburse travel expenses; i.e., lodging, per diem and travel, for CSO's and Assistants. For others involved in veterans benefits programs wishing to attend, or for further information, contact Richard M. Prete, TVC Headquarters, Austin; or call (512) 463-5538 or on the CSO Headquarters WATS line.★

**FOR  
IMMEDIATE  
RELEASE**



## ***VA Reduces Government Life Insurance Loan Interest Rate***

According to \_\_\_\_\_, Veterans County Service Officer for \_\_\_\_\_ County, Department of Veterans Affairs (VA) has reduced from six to five percent the interest rate on loans veterans have taken against their government life insurance policies.

The rate drop means savings of \$5.5 million in annual interest charges for some 125,000 veterans who currently have loans against their policies at the higher rate.

All policyholders with six-percent loans automatically had their loans reduced to the five-percent rate on October 1, 1998. The rate reduction is in effect at least until Oct. 1, 1999.

Nearly 1.6 million veterans who have policies prefixed with V, W, RS, RE, J, JR or JS in the National Service Life Insurance program, have the right to borrow against their policies at a variable interest rate that can range between five and 12 percent depending on investment conditions. If warranted, rate changes occur on October 1 of each year and remain effective for at least one year.

The last change in the loan interest rate occurred on October 1, 1995, when VA increased the rate from five to six percent. VA had lowered the rate to five from seven percent on October 1, 1993.

The interest charged on policy loans is returned to the life insurance reserve funds. Any excess reserves are automatically returned each year in the form of dividends to policy-holders with participating policies.

VA will not release notification letters, but the change will be noted on the Annual Insurance Statement received by policyholders.





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P.O. Box 12277  
Austin, Texas 78711  
(512) 463-5538; (FAX) 512-475-2395  
texas.veterans.commission@tvc.state.tx.us  
<http://www.main.org/tvc>

BULK RATE  
US POSTAGE PAID  
AUSTIN, TEXAS  
PERMIT NUMBER 520