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**VA SECRETARY'S DUTY TO COMPLY WITH FVEC LAW,  
CONGRESSIONAL DIRECTIVES AND COURT DECISIONS**

**by**

**Eric Lachica, ACFV executive director**

**WRITTEN STATEMENT SUBMITTED FOR THE RECORD**

**November 20, 2014 hearing on Filipino Veterans Equity Compensation Fund:  
Inquiry into the Adequacy of Process in Verifying Eligibility;**

Chairman Jon Runyan & Ranking Member Dina Titus

House Veterans Affairs Subcommittee on Disability Assistance & Memorial Affairs

Room 337 Cannon Bldg., Washington DC 20515

Chairman Runyon and Ranking Member Titus,

On behalf of our officers and members of the American Coalition for Filipino Veterans, a national nonprofit advocacy organization, may I extend our deepest appreciation to your subcommittee for holding this timely hearing on the adequacy of the process in verifying eligibility of claimants for the Filipino Veterans Equity Compensation (FVEC) benefit.

It is our coalition's view that the VA Secretary and his department FAILED to adequately comply with the FVEC law and congressional directives in addressing the 4,554 appeals of elderly Filipino veteran claimants before the VA and the US Court of Appeals on the denials of recognition of their US service in World War II.

The 2009 FVEC law is very clear: "The Secretary may make a payment from the compensation fund to an eligible person who... submits to the Secretary a claim for benefits... [for those who] served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States." <http://www.gpo.gov/fdsys/pkg/PLAW-111publ5/html/PLAW-111publ5.htm>

There are FIVE major shortcomings of the FVEC eligibility determination process as administered by the VA Secretary.

FIRST: Former VA Secretary Shinseki erred and should have followed the congressional directive of the FVEC law and the FY 2014 Appropriations Act (H.R. 2216) that "directed the VA to consider **ALL** forms of evidence of service and not just those originally considered." (My emphasis)

Moreover, the House Appropriations Committee stated, it "looks forward to VA execution of this directive." (House Appropriations Committee Report; H.R. 4416 passed April 30, 2014)

SECOND: The former VA Secretary relied solely on the National Personnel Record Center (NPRC) of the National Archives to verify and determine US Army military service.

The recent August 26, 2014 decision and findings by a three-judge panel of the U.S. Court of Appeals on Veteran Claims further clarified this issue. The court ruled against VA Secretary's denial of the appeal of Mrs. Juliet T. TAGUPA, a Filipino veteran's widow, for solely relying on the NPRC to determine US Army service of her husband. The court remanded to the VA to directly "seek verification service from the Department of the Army." They found the NPRC was a "reference service" and not a "service department" of the US Army to issue determinations. (pages 8 & 12 <http://law.justia.com/cases/federal/appellate-courts/cavc/11-3575/11-3575-2014-08-26.html>)

THIRD: The former VA Secretary failed in his "duty to assist a claimant in obtaining evidence necessary to substantiate a claim" of Mrs. Tagupa in particular (and to the thousands of FVEC claimants). "This duty includes making reasonable efforts to obtain all records held by a governmental entity that are relevant... if the claimant provides the Secretary information sufficient to locate such records," the above Appeals Court panel cited the relevant Code of Federal Regulations. Moreover, the VA Secretary and the VA Manila Regional Office did not "attempt to seek alternative means of verifying service." (page 8-9).

The Court also listed several possible sources for the VA. Certain Philippine Commonwealth Army records and their World War II guerrilla service rosters, honorable discharge documents or certifications should have been accepted as sufficient proof.

FOURTH: Former VA Secretary Shinseki failed to exercise administrative discretion under his FVEC authority to accept genuine WW II honorable service documentation of the Philippine Commonwealth Army and the USAFFE guerrilla service, as presented by the veteran claimants. The above Appeals Court cited the "plain language" of the VA regulation that "uses the term '**may**' and thus give the VA discretion to determine whether the evidence submitted to establish service is itself sufficient **without** additional service verification." (page 6)

FIFTH: The former VA Secretary and the VA Board of Appeals failed to comply with the VA Adjudication Procedures in their manual. They did not consider the possibility of "**UNRECOGNIZED guerrilla service** and 'that this is service ' under a recognized commissioned officer, who was a former member of the U.S. Armed Forces or the Commonwealth Army'," as pointed out by the Appeals Court panel in their decision. (p. 12, my emphasis)

**SOLUTION: In light of above failed actions, we respectfully urge the House VA Committee to remind the new VA Secretary Robert McDonald to comply with the FVEC law, congressional directives and Court of Appeals decisions. FVEC compensation benefits should be granted to deserving claimants based on alternative documents provided by other U.S. official government sources including the Philippine Government's Adjutant General's Office who have PH Commonwealth Army records, authenticated WWII guerrilla rosters and individual letters of recognition.**

In an earlier precedent in 2011, the VA Board of Appeals approved the award of FVEC benefits to Gaudencio Pablo, a Filipino WWII guerrilla, who was previously denied official recognition by the NPRC in St. Louis MO. He provided copies of US Army documents he found in the National Archives College Park Maryland. (No. 10-17 727 BVA decision January 31, 2011).

If needed to expedite the eligibility review, the VA Secretary should directly request the US Army and the NPRC to provide copies of documents, if any, in the veteran claimant's folder or from rosters of WWII service from the NPRC in St. Louis MO or from the National Archives.

Unfortunately, US Army considers these documents as "classified." The Army has instructed the NPRC not to release the relevant documents without their permission, despite expiration of the 50-year secrecy limitation.

In response to our earlier complaint, the U.S. Army on 2 May 2012 released to congressional staff the two-page "Information Paper AHRC-PDR Subject: Records for World War II Filipino Veterans" prepared by LTC Curriera who was the Chief, Army Personnel Records Division, Human Resources Command in Fort Knox KY. (see attachment)

She wrote: "The Philippine Army records in question are classified by NPRC as Philippine military 'organizational records' used to establish identity of Missing Persons Act (MPAP) status regarding Philippine Army personnel and recognized Guerrillas. These records are NOT Official Military Personnel Files (OMPF), and at **NO** time has the U.S. Army produced individual personnel records of OMPF's for Philippine Army Veterans and/or eligible Guerillas." (my emphasis)

In her Army memorandum, Curreira confirmed that "the NPRC does not have the authority to release organizational or claim records without the appropriate permission."

As background on why the US Army has been uncooperative in this regard, the secret 1949 "U.S. Army Recognition Program of Philippine Guerrillas" report declassified in 1988, but only released in July 2013 by the White House Interagency Working Group, would be helpful. The nameless US Army authors of the report frankly describe the convoluted and unjust treatment faced by Filipino WWII veterans in pursuing their claims.

Sadly, four American military officers were accused by the US Army of engaging in erroneous recognition of guerrillas. As a result of their dispute, the US Army quietly revoked en masse 37,190 guerrillas who were earlier recognized in 1946 **and who were paid by the US Army for their service** and given honorable discharge documents. (pages 159, 160, 197 and 213 in <http://research.archives.gov/description/6921767> )

Thus six decades later, many deserving patriotic Filipino veterans were blacklisted by the US Army after their names were secretly "deleted by roster reconstruction" from the USAFFE guerrilla rolls in 1948. (page 160) Their mistake: they belonged to guerrilla units led by these four US Army officers. This may be a major factor why there are still 4,554 remaining **appeals** from FVEC claimants today.

The Philippine Commonwealth Government and the Filipino People of 16 million (Census estimate, all were US nationals) were faced with the overwhelming task of rebuilding after a devastating war that killed 60,000 Commonwealth soldiers and guerrillas as well as one million Filipino civilians who died due to war-related causes, according to the US State Department.

In conclusion, the new VA Secretary Robert McDonald should respectfully be **compelled** to promptly award FVEC compensation to these elderly Filipino veterans with honorable service when they meet the conditions established by the FVEC law, Congressional directives and Court of Appeals decisions:

- 1) Philippine Commonwealth Army service documentation; or,
- 2) Guerrilla service documents when they were recognized by U.S. Army officers as certified by the Philippine Government's Army Adjutant General Office; AND,
- 3) No derogatory information such as disloyalty or fraud to the United States.

On behalf of thousands of our members and supporters throughout the United States and in the Philippines, we again thank your committee for holding this crucial hearing to find solutions for our heroes.

*Eric Lachica*

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Over the past two decades, our coalition has lobbied Congress with our champions, Senators Daniel Inouye and Daniel Akaka and their colleagues in the House: Representatives Benjamin Gilman, Bob Filner, Darrell Issa and Joe Heck. We were assisted by sympathetic White House staff under the Clinton, Bush and Obama Administrations.

Our goal is to win full official recognition and equitable benefits for our WWII veterans. With our allies: the VFW, American Legion, D.A.V. and community partners like the National Federation for Filipino American Association, we won veterans' burial benefits in 2000, full war-related disability compensation in 2001, V.A. health care in 2003, and Filipino Veterans Equity Compensation law in 2009. Our organization does not receive federal funds or have federal contracts.