



Veterans Affairs  
Canada

Anciens Combattants  
Canada

# *Ex Gratia Payments Audit*

Final April 2011



Canada 



*This report was prepared by the  
Audit and Evaluation Division*

## Table of Contents

EXECUTIVE SUMMARY .....	i
1.0 BACKGROUND .....	1
2.0 ABOUT THE AUDIT .....	4
2.1 Audit Objectives .....	4
2.2 Scope.....	4
2.3 Methodology .....	5
2.4 Statement of assurance .....	6
3.0 AUDIT RESULTS.....	7
3.1 Observations, Recommendations and Management Action Plans .....	7
3.2 Audit Opinion .....	17
4.0 DISTRIBUTION .....	18
Annex A – Risk Ranking of Recommendations and Audit Opinion.....	19
Appendix B.....	20
Appendix C.....	22

## EXECUTIVE SUMMARY

The *Ex Gratia* Payments Audit was recommended for inclusion in the Veterans Affairs Canada (VAC) Multi-Year Risk-Based Internal Audit Plan 2010-2013 by VAC's Departmental Audit Committee (DAC) on March 18, 2010. The purpose of the audit was to examine the adequacy of controls put in place for the processing of applications for *ex gratia* payments. The audit fieldwork was substantially completed on December 15, 2010.

*Ex gratia* payments are one-time payments for a fixed duration of time and stringent pre-set eligibility and entitlement criteria are applied. In recent years, VAC has budgeted \$135M for these programs. The majority of the work in this audit focused on the most recent payment, i.e., Agent Orange *ex gratia* payments. In September 2007, the Minister of Veterans Affairs announced a \$20,000 *ex gratia* payment related to the testing of unregistered US military herbicides, including Agent Orange, at Canadian Forces Base Gagetown in 1966 and 1967. As of October 1, 2010, 3,137 individuals received Agent Orange *ex gratia* payments for a total of \$62.74M. The authority to make Agent Orange *ex gratia* payments, and the specific eligibility criteria are set out in Order in Council 2007-1326.

A new Cabinet Decision dated November 30, 2010, resulted in the extension of the Department's authority to make Agent Orange *ex gratia* payments to December 30, 2011, in addition to changes to eligibility criteria.

The Department has implemented a governance process that demonstrates sound oversight on internal and external reporting. Time frames to develop and implement internal policies and procedures regarding the acceptance of documentary evidence to meet the criteria were short which resulted in reduced level of rigour and consistency. There was adequate segregation of responsibilities to ensure that the initiation, approval and authorization functions were completed by different individuals. Financial coding and reporting was maintained adequately to ensure that management was receiving useful information regularly and that the *ex gratia* payments were reported accurately in the public accounts annually, as per regulation. While there were organizational changes within the Agent Orange program section in response to the lower number of applications during 2009-2010, all payment transactions that the Department was committed to by October 1, 2010 were completed.

The audit team identified a need for internal policies and guidance which clearly outline the requirements for appropriate decision making.

## OVERALL AUDIT OPINION

In the opinion of the audit team the internal controls, governance and risk management framework relating to *ex gratia* payments were determined as generally acceptable. The audit results identified weaknesses when taken individually or together are not significant or compensating mechanisms are in place. The control objectives or sound management of the audited activity are not compromised.

## RECOMMENDATIONS:

<b>R1 It is recommended that the Assistant Deputy Minister, Service Delivery implement a program directive requiring the retention of sufficient documentation as an audit trail for any <i>ex gratia</i> payments made in the respective individual files. (Essential)</b>		
<b>Corrective action to be taken</b>	<b>OPI (Office of Primary Interest)</b>	<b>Target date</b>
Develop and implement a program directive to retain sufficient documentation as an audit trail for any <i>ex gratia</i> payments made in the respective individual files.	Service Delivery Management	April 2011

<b>R2 It is recommended that the Assistant Deputy Minister, Service Delivery strengthen departmental policies and procedures to ensure that <i>ex gratia</i> applicants meet all required criteria and ensure that supporting documentation for any exception is retained in the file prior to seeking Section 34 approval of the Deputy Head. (Essential)</b>		
<b>Corrective action to be taken</b>	<b>OPI (Office of Primary Interest)</b>	<b>Target date</b>
Management will review its procedures and implement any required changes to ensure that <i>ex gratia</i> applicants meet all required criteria, that departmental policies are followed, and that supporting documentation for any exception is retained in the file prior to seeking Section 34 approval of the Deputy Head.	Centralized Operations	April 2011

## STATEMENT OF ASSURANCE

In the professional judgment of the Chief Audit Executive, sufficient and appropriate audit procedures have been conducted and evidence gathered to support with a high level of assurance the accuracy of the audit opinion provided in this report. This audit opinion is based on a comparison of the situation at the time of the audit and the pre-established audit criteria that were agreed on with management. The audit opinion is only applicable to the entity, process and system examined. The evidence was gathered in compliance with Treasury Board policy, directives, and standards on internal audit and the procedures used meet the professional standards of the Institute of Internal Auditors. The evidence has been gathered to be sufficient to provide Senior Management with a high level of assurance on the audit opinion.

*Original signed by*

*April 6, 2011*

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Orlanda Drebit  
Chief Audit Executive

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Date

The audit team consisted of the following Audit and Evaluation Division members:

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## 1.0 BACKGROUND

The *Ex Gratia* Payments Audit was recommended for inclusion in the Veterans Affairs Canada (VAC) Multi-Year Risk-Based Internal Audit Plan 2010-2013 by VAC's Departmental Audit Committee (DAC) on March 18, 2010. The purpose of the audit was to examine the adequacy of controls that the Department has put in place for processing applications for *ex gratia* payments.

An *ex gratia* payment is a benevolent payment made by the Crown. The payment is made in the public interest for loss or expenditure incurred where the Crown has no obligation of any kind nor has any legal liability or where the claimant has no right of payment or is not entitled to relief in any form. An *ex gratia* payment is used only when there is no other statutory, regulatory or policy vehicle to make the payment. An *ex gratia* payment is not taxable but applicants must meet certain set criteria in order to receive an *ex gratia*.

VAC has the responsibility to administer *ex gratia* payments under the authority of the Governor in Council. Eligible persons may receive such payments for loss or expenditure for which the Crown has no legal liability. *Ex gratia* payments administered by the Department include those for eligible Merchant Navy Veterans, Aboriginal Veterans, former Prisoners of War, and Agent Orange. A majority of the work in this audit focused on the most recent *ex gratia* payment, Agent Orange.

In 1966 and 1967, the Canadian Department of National Defense cooperated with the US military to test Agent Orange at Canadian Forces Base (CFB) Gagetown in order to determine the efficacy of Agent Orange on northern species of vegetation found on the Base. This is the only known occasion when Agent Orange was used in Canada. The tests involved small amounts of Agent Orange for a short period.

On September 12, 2007, the Minister of Veterans Affairs announced a one-time tax-free *ex gratia* payment of \$20,000 related to the testing of unregistered US military herbicides, including Agent Orange, at CFB Gagetown in 1966 and 1967. The authority to make Agent Orange *ex gratia* payments and the respective eligibility criteria are set out in Order in Council 2007-1326. To qualify for the Agent Orange *ex gratia* payment, the applicant must have:

- worked at, trained at or been posted to CFB Gagetown, or lived in a community within five kilometers of CFB Gagetown when Agent Orange was tested in 1966 and 1967;
- an illness associated with exposure to contaminants in Agent Orange, as determined by the US Institute of Medicine (IOM) 2004 update; and

- been alive as of February 6, 2006.

The geographic parameters considered were defined as either On Base or Off Base. On Base applicants are those who worked or lived at, were posted to or trained at CFB Gagetown during the testing of Agent Orange at any time from June to September 1966 or 1967. Off Base applicants are those who were residents of a community of which any portion lies within a five-kilometer radius of CFB Gagetown.

The US Institute of Medicine (IOM) provides scientific information on the health effects from Agent Orange use. The IOM concluded that there was sufficient evidence of an association for five health outcomes and there is limited or suggestive evidence of an association for seven health outcomes. These observations were from studies of heavily exposed populations in occupational and environmental settings. The Department used these IOM conditions when setting medical eligibility for the *ex gratia* payment.

The Department undertook a comprehensive Government-wide communication strategy to explain the Government's response to the testing of Agent Orange. In addition, it provided a centralized 1-800 number for inquiries.

The last date to apply for the payment was April 1, 2009. This date was extended to September 17, 2010, to accommodate those who were unable to apply due to circumstances beyond the control of the applicant. The authority to make payments ceased on October 1, 2010. However, as per authority from a recent Cabinet Decision dated November 30, 2010, changes to the Agent Orange *ex gratia* payments resulted in the extension of the Department's authority to make payments to December 30, 2011, in addition to changes to the "medical diagnosis in progress" and "date of death" eligibility criteria.

The funds for the Agent Orange *ex gratia* payments are retained in a Special Purpose allotment in the Department's operating expenditures vote 1.



The table below shows the number of applications and Agent Orange *ex gratia* payments made by VAC as of October 1, 2010. There were 3,137 applications approved and payments made; however, the expenditure netted out to 3,136 since one payment was cancelled and not reissued. In total, as of December 31, 2010, \$62M has been expended on *ex gratia* payments.

<b>Fiscal period</b>	<b>Number of applications approved</b>	<b>Payment amount in millions</b>	<b>Expenditure in millions</b>
2007-2008	886	\$ 17.72	\$ 17.72
2008-2009	1255	\$ 25.10	\$ 25.08
2009-2010	633	\$ 12.66	\$ 12.66
2010-2011	363	\$ 7.26	\$ 7.26
Total	3137	\$ 62.74	\$ 62.72

## **2.0 ABOUT THE AUDIT**

### **2.1 Audit Objectives**

The objectives for this audit were to determine whether:

1. VAC is in compliance with policies, regulations and procedures; and
2. Only eligible and entitled applicants received program benefits and in the right amount.

The criteria used to test against these objectives are outlined in Appendix B.

### **2.2 Scope**

The audit examined *ex gratia* payments made as of October 1, 2010. This included a review of a statistically drawn random sample of Agent Orange *ex gratia* payments to the extent relevant to this audit. Agent Orange is the most recent *ex gratia* type payment and the scope excluded specific previous *ex gratia* payments made to eligible Merchant Navy Veterans, Aboriginal Veterans and former Prisoners of War.

The audit reviewed whether the program is in compliance with Treasury Board Secretariat (TBS) and Departmental policies and procedures such as delegated authorities, program payment methods, program governance/administration, and quality assurance responsibilities.

The team conducted a comprehensive review of the legislation, regulations, policy and directives to assess the adequacy of controls and to determine whether policies, procedures, and guidelines were being followed since the enactment of the June 1, 1998, Treasury Board Policy on Claims and *Ex gratia* Payment and the new Directive effective October 1, 2009.

## 2.3 Methodology

The audit was conducted in accordance with the Institute of Internal Auditors' (IIA) Standards for the Professional Practice of Internal Auditing, as required under the Treasury Board Policy on Internal Audit. The standards require that the audit be planned and performed to obtain a reasonable level of assurance that the *ex gratia* payments were made in accordance with governing authorities.

To achieve the audit's objectives, the following methodologies were used:

- Audit procedures consisted of a preliminary survey and interviews with Departmental officials to gather corporate information regarding their interpretation of *ex gratia* payment processes;
- Interviews with management and staff to assess the overall management controls of the process;
- A review of Acts, Regulations and processes relevant to *ex gratia* payments;
- A flow chart of the *ex gratia* payment process was developed to identify key controls;
- Internal controls over administration of *ex gratia* payments were identified and tested;
- Walkthroughs to assess effectiveness of payment controls were performed;
- Selected large dollar transactions to test compliance with applicable regulations and policies were reviewed;
- Quality assurance monitoring activities were reviewed;
- An audit program was developed which focused on payment-related risks (misappropriations or fraudulent payments, payments made prior to the application date or multiple/duplicate payments, unauthorized payments, payments made for the wrong amount or to unauthorized or non-existing persons and payments that were not accurately and completely recorded on a timely basis); and
- Statistically sampled files were reviewed to test compliance with policies and procedures. Findings from the review are presented throughout the report.

The sample population consisted of 4,489 applications with payments totaling \$62.72M for the period October 2007 to October 1, 2010. The Department's Statistics Unit, Finance Division, provided the data from which a random sample of 367 files (347 files from payments made as of July 2010 and 20 files from payments made between July and October 1, 2010) were extracted for review. The degree of assurance placed in our estimate is at a 95 percent confidence level. The critical error rate is set at 4 percent which is considered acceptable by the auditors. This resulted in the extraction of 367 samples from the Agent Orange *ex gratia* population. A file review checklist with 60

review items was used to summarize the findings. Please refer to Appendix C for findings related to specific criteria/key control areas.

A non-statistical sampling was used to test high dollar value other *ex gratia* payments.

## **2.4 Statement of assurance**

In the professional judgment of the Chief Audit Executive, sufficient and appropriate audit procedures have been conducted and evidence gathered to support with a high level of assurance the accuracy of the audit opinion provided in this report. This audit opinion is based on a comparison of the situation at the time of the audit and the pre-established audit criteria that were agreed upon with management. The audit opinion is only applicable to the entity, process and system examined. The evidence was gathered in compliance with Treasury Board policy, directives, and standards on internal audit and the procedures used meet the professional standards of the Institute of Internal Auditors. The evidence gathered is considered sufficient to provide Senior Management with a high level of assurance on the audit opinion.

## 3.0 AUDIT RESULTS

### 3.1 Observations, Recommendations and Management Action Plans

#### Objective 1: Compliance with policies, regulations and procedures

##### *Program Implementation*

The audit team reviewed existing Departmental policies and procedures to determine if they are in compliance with applicable Treasury Board policies, and that they are current and complete to deliver the program. In addition, through interviews with key program delivery staff who use the policies and procedures in day-to-day activities, the audit team was able to determine how well they were understood by the staff.

Managers with delegated authority to make *ex gratia* payments are to consider the following:

- Compensation from other sources such as federal or provincial statutes, private or public programs, contract provisions and commercial insurance or recovery from third parties;
- An *ex gratia* payment is not used to fill gaps or compensate for the apparent limitations in any act, order, regulation, policy, agreement or other governing instrument;
- All other reasonable means of compensation were reviewed; and
- After the review, there is no other source of funds or the sources provide incomplete compensation, no liability on the part of the Crown, and no limitation, restriction or prohibition imposed in existing schemes.

The spending and certification authorities may be exercised by an official designated by the Deputy Minister except *ex gratia* payments exceeding \$2,000 which must be approved by the Deputy Minister.

Through discussions with Program, Policy and Legal Services, the audit found that there had been consultations among these three areas when Departmental policies and procedures regarding *ex gratia* payments were either being developed or amended as required.

## ***Agent Orange ex gratia***

The Agent Orange *ex gratia* payment program originated from an Order in Council P.C. 2007-1326 which contained eligibility criteria, a start date and an end date. The Department developed departmental policy and guidance, and partnered with the Department of National Defence in an interdepartmental committee to look at research findings relating to the criteria for eligibility. The Department continued to modify the initial criteria throughout the process as applicants provided new types of evidence. For example, the definition of “community as determined by the Minister” was defined to be within a five-kilometer perimeter of CFB Gagetown. The initial list developed was too restrictive to capture the true nature of community where the residents share services such as schools, hospitals, etc. Thus an adjusted and broader definition was established based on a geographic area of shared services. There was also pressure to change eligibility criteria dates; for example, Widows on a Warpath group demanded a change to the Date of Death after February 6, 2006 criterion which was outside the range of eligibility for this *ex gratia* payment.

On December 22, 2010, the Minister of Veterans Affairs announced the extension of this program. With the extension, individuals will now have until June 30, 2011, to obtain a relevant medical diagnosis and to submit an application for an Agent Orange *ex gratia* payment; i.e. the requirement for an in-progress diagnosis before February 6, 2006, is no longer applicable. In addition, the previous requirement for applicants to be alive on February 6, 2006, has been removed.

## ***Other ex gratia payments***

An *ex gratia* payment is made in the public interest in a situation for which there is no legal liability on the part of the Crown. The payment is used only as an exceptional means when there is no statutory, regulatory or policy vehicle to make the payment. The Department should have a good information management process that retains necessary evidentiary documents to support decisions and payment approvals.

A review of four high dollar amount *ex gratia* payments totalling one million dollars was completed. They were payments made as Disability Award for survivors and dependent children of Canadian Forces (CF) members whose death was attributable to military service and who died in the period between the passage of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* commonly referred to as the New Veterans Charter on May 13, 2005, and March 31, 2006. It was found that minimal documentation explaining the rationale for the award of *ex gratia* in addition to their monthly survivor’s pension is retained in the file or in the Department’s electronic information system, Client Services Delivery Network (CSDN) where electronic data is stored. However, on consultation with management, copies of documents relating to

these payments were received for review and it was found that the department received authorization. This resulted in four survivors receiving the lump sum *ex gratia* payment of \$250,000 in addition to the monthly widow's pension.

The only documents retained in the file were a copy of the letter to the recipient informing them of the decision to pay the *ex gratia* and a Requisition for Payment signed by the Deputy Minister who is the appropriate delegated authority to make such a payment. While the authorization process is accurate, the audit is recommending that management retain an audit trail in the files or in the CSDN identifying that *ex gratia* payments were made.

**R1 It is recommended that the Assistant Deputy Minister, Service Delivery implement a program directive requiring the retention of sufficient documentation as an audit trail for any *ex gratia* payments made in the respective individual files (Essential).**

### **Management Response**

Management agrees with this recommendation.

Applicants must meet certain set criteria in order to receive an *ex gratia* payment. The program directive will address the need to adhere to the specific documentation requirements identified in the order in council and retain same as an audit trail.

### **Management Action Plan**

Corrective action to be taken	OPI (Office of Primary Interest)	Target date
Develop and implement a program directive to retain sufficient documentation as an audit trail for any <i>ex gratia</i> payments made in the respective individual files.	Service Delivery Management	April 2011

### ***Communication***

The Department undertook a comprehensive Government-wide communication strategy to explain the Government's response to the testing of Agent Orange via various types of communication channels including national and local newspapers, through organizations, Internet, etc., for applicants to gather information. The Department also provided a centralized 1-800 number for inquiries. The Department's National Client Contact Centre Network and VAC district offices were available for individuals. In addition, a service centre was opened in Oromocto, New Brunswick, where applicants received information and also assistance in completing the application.

An application package was prepared by VAC which included an application for *ex gratia* payment and guidelines for completing the application. This package consisted of required details about the program with respect to eligibility and types of evidence to be submitted along with the application to qualify for the *ex gratia* payment. The Department had limited time to develop the departmental policy, guidelines, and the application. This resulted in the design of only one application form for both CF and civilian applicants, which may have made the form complicated since the eligibility criteria are different from one to the other. As the Department is currently working towards more streamlined application processes, consideration should be given to designing application forms that are easy to complete.

### ***Training***

Training for staff was adequate at the later stage but could have been better at the start of the program. The audit noted from interviews that there were inefficiencies when disability adjudicators applied the decision process the same way as they did for the pension program. However, the adjudication process is not the same for these programs. For example, adjudicators sought a second opinion from a local physician although the applicant had provided sufficient evidence from the applicant's doctor. Therefore, initially the learning curve on application of eligibility criteria required special attention. The staff used a business process manual that also contained set criteria to ascertain eligibility as well as their own self-made procedures. Major changes to procedures and guidelines were communicated to staff via e-mails and at staff meetings.

The audit observed that the Department approved some applications in error. Applicants should meet approved eligibility criteria to receive a payment. To assist staff in making decisions, policies and guidance were developed to determine applicant eligibility and approval of payments. In some circumstances such as 'diagnosis in process', the policies were not clear. This resulted in some errors. The audit team was advised that staff consulted with policy experts on complex decisions when the reasonableness of evidence provided was not always clear at all times. However, written documentation, such as records of decision were not available at all times. Clarifications to existing policies or a guide containing the evidence and the rationale for decisions on complex/exceptional cases could have minimized inconsistent or wrong decisions. This situation was elevated with the frequent shift in staff working within the processing unit.

Regular consultations amongst Program, Policy, and Legal Services from the onset of the program and a documented process may have avoided some favourable applications that went to first level and second level review.



## ***Performance Measurement / Governance***

Appropriate methodology to make key assumptions and estimates on expected number of applications; and identification of associated risks and mitigating activities should be in place. As oversight bodies, Senior Management should receive timely and accurate risk and control related financial and operating information to fulfill their oversight function.

The original estimated potential applications and related costs associated with Agent Orange *ex gratia* were revised and updated as and when required for the duration of the program. All estimates were based on a number of assumptions. The Department considered the application activity at a given time and also considered new statistical data available that could have an impact on any previous assumptions when preparing the original estimates. During 2010-2011 prior to the announcement of the extension of the program, the number of applications exceeded the estimated number and the cost. To make up for the insufficient funds, the Department worked with TBS to refill funds that were lapsed from the previous year.

At the start of the program the Department installed a good project management system for the program; therefore, overall the processing of the applications was assessed and processed within a reasonable time frame depending on the complexity of the case. An implementation team was set up consisting of a project manager, a supervisor, and a number of processing staff. The program contained a first application process and two levels for review. With the winding down of the program, there are only two people remaining as of October 1, 2010.

Initially, Senior Management received information weekly on the progress of the program as many applications were processed during the onset of the Agent Orange *ex gratia* program. Later the frequency changed to monthly and quarterly reports. In addition, there was a Question Period note prepared for the VAC Minister's office, which contained the number of favourable and unfavourable decisions.

As per the *ex gratia* policy, all *ex gratia* payments are to be published in the Public Accounts annually. The Agent Orange *ex gratia* payments were reported accurately complying with the policy requirement.

## **Objective 2: Only eligible and entitled applicants received program benefits and in the right amount**

To reduce risk of error or fraud, there should be separation of responsibilities such as initiation, verification, approval, and authorization of payment. Controls should be in place to ensure payments are made only to eligible applicants in compliance with policies related to Agent Orange *ex gratia*.

The sample was reviewed against a checklist consisting of 60 review items to test accuracy (see Appendix C).

### ***Segregation of duties***

To minimize error or fraud, the program area maintained segregation of key roles and responsibilities in the process at a tolerable level. This included responsibility for intake of applications, processing and recording, reviewing, authorizing and approving. Although some individuals were granted privileges in the CSDN to initiate and approve applications, the quality review process by the Quality Review Officers (QRO) and the reconciliation process by Finance on system information were sufficient to mitigate a fraudulent transaction.

### ***Program verification for Section 34***

A quality review for monitoring compliances must be complete and timely.

Only the Deputy Minister has the authority to approve an *ex gratia* payment over \$2,000. The Agent Orange *ex gratia* payments were for \$20,000, therefore a thorough verification process must be implemented to ensure that all payments are accurate prior to authorization by the Deputy Minister.

All favourable files were 100% quality reviewed in the program area prior to Section 34 signature. If problems or errors were found in specific areas, the reviewer determined the reason for the weakness and took appropriate action.

As per an established business process, the QROs performed a manual pre-payment verification daily on all favourable decision files completed by the processing officers. The QRO verified the contents of the file against CSDN information; and reviewed information against an eligibility checklist that the processor completed to determine a favourable or unfavourable decision. The QRO was required to confirm that all supporting documentation was retained in the file. If in concurrence with the decision, the QRO updated the CSDN identifying quality review completed and returned the file to records for storage.

If the QRO did not agree with the decision, the QRO updated the CSDN accordingly to indicate that a quality review was completed; but a supervisory review was required since they did not agree with the processing officer's decision.

For complex cases, consultations with Program and Legal Services were conducted although this process started only later into the delivery of the program. Efficacy could have been improved if this process had occurred in the earlier stage of the program.

Once the verification was completed and compliance confirmed, a list of all names with payment details was prepared along with a memo signed by the Assistant Deputy Minister, Service Delivery for the Deputy Minister's review and signature.

The results of the findings from the file review of Agent Orange *ex gratia* payments are summarized in Appendix C. Medical documentation to support one or more IOM conditions was missing in 26 of the files reviewed and four of the 34 late applications reviewed did not have any reason for the delay in applying for the *ex gratia* payment.

The authority to make Agent Orange *ex gratia* payments and the specific eligibility for payments is set out in the Order in Council 2007-1326. The medical eligibility criteria requires that the individual must have an IOM recognized medical condition or must have been in the process of diagnosis for an IOM recognized condition prior to February 6, 2006.

Although the results from the file review shows nearly 92% of compliance with departmental policies, our review demonstrated areas for improvement in terms of processing future *ex gratia* payments.

The department should be aware of the lack of rigour in certain areas regarding the processing of Agent Orange *ex gratia* payments. A review of the Order in Council, departmental policies and procedures revealed a need for interpretation on or elaboration on what is acceptable documentation to support the eligibility criteria.

The Physician's Statement contained in the application form states that medical documentation must be provided to support the diagnosis. However, the corresponding departmental policy direction states that the purpose of the supporting medical documentation was to ensure that the Physician's Statement was completed by the physician and not by the applicant or another individual. The medical documentation is not required to explicitly support the diagnosis or date contained in the Physician's Statement. Therefore, the supporting medical documentation was not assessed in terms of providing evidence for the IOM condition. For example, for a Type II Diabetes IOM recognized condition, laboratory reports were submitted which did not contain a test associated with the IOM condition.

A lack of clarity was also noted in the departmental policy document “Diagnosis in Process”. The policy states, “The ‘in the process of being diagnosed’ takes into account two factors: 1. That the various medical conditions covered by the ex gratia payment have different on-set periods, some of which are unknown; and 2. That an individual may have been diagnosed with one of the conditions or consultations which eventually led to a diagnosis prior to that date.” When this situation existed, staff were provided with a number of questions which should have been taken into consideration when determining eligibility. However, a direction on how to apply these questions for ascertaining eligibility was not documented. For example, on a number of occasions a physician’s note that stated “this person was a patient of mine” was accepted as evidence of a medical intervention or a sequence of medical interventions to support the IOM diagnosis in process.

The Order in Council (OIC) associated with this *ex gratia* stated that an application must be made in the form provided by the Minister no later than April 1, 2009 unless circumstances beyond the control of the applicant necessitated a longer period. Examples were not provided in the OIC; however a wide range of reasons and explanations were accepted by the department as meeting the criteria of “circumstances beyond the control of the applicant”. Documentation reviewed stated that late or delayed applications might be accepted with reasons such as hospitalization, illness, awaiting medical reports or the applicant was out of the country. No document was available to provide staff with instructions on how to process late applications.

Based on this, of the 34 samples of late applications reviewed the following reasons were considered as acceptable reasons for delay by the department.

Reason for delay	Number of files
Not aware / Not sure I would qualify / Did not realize / Not clear / Not aware I was eligible	18
Waited for doctor	1
Did not understand medical terminology	8
Moved back and was told was eligible	1
Waiting for documents	1
Due to illness	1
Accepted with no reason	4

Consultation with the Legal Services indicated that the above noted situations are acceptable based on the applicable Order in Council, and available policy and procedures given to the staff. Time frames to develop and implement internal policies and procedures regarding the acceptance of documentary evidence to meet the criteria were short which resulted in reduced level of rigour and consistency. A higher degree of care should have been exercised by the department in its processing of Agent Orange *ex gratia* claims; for example, requiring substantiating documentation to support the medical diagnosis.

**R2 It is recommended that the Assistant Deputy Minister, Service Delivery strengthen departmental policies and procedures to ensure that *ex gratia* applicants meet all required criteria and ensure that supporting documentation for any exception is retained in the file prior to seeking Section 34 approval of the Deputy Head. (Essential)**

### **Management Response**

Management agrees with this recommendation.

Applicants must meet certain set criteria in order to receive an *ex gratia* payment. The adjudicators follow the direction provided by Policy and Program Management as to the interpretation of appropriate supporting documentation required to demonstrate that the criteria has been met. Advice is sought when in doubt. In addition, it is recognized that all documentation in support of an adjudication decision must be retained on the file for audit purposes.

### **Management Action Plan**

<b>Corrective action to be taken</b>	<b>OPI (Office of Primary Interest)</b>	<b>Target date</b>
Management will review its procedures and implement any required changes to ensure that <i>ex gratia</i> applicants meet all required criteria, that departmental policies are followed, and that supporting documentation for any exception is retained in the file prior to seeking Section 34 approval of the Deputy Head.	Centralized Operations	April 2011

### ***Finance verification for Section 33***

The account verification by Finance should verify the payee is entitled to or eligible for the payment; the payment information is accurate and complete; and all relevant regulations, orders in council, policies and directives and other legal obligations have been complied with. With respect to accuracy of the transaction, Finance should ensure that the payment is not a duplicate and that the supporting documentation is complete. Finally, auditable evidence of verification should be maintained.

The audit observed that the Benefits Payment Unit in Finance Division reconciles Agent Orange payments daily. They receive a Requisition Report from the CSDN and related Reporting Database (RDB) reports. The Benefits Payments Unit verifies the data to ensure the total number and amount match in the reports received from the two sources. These reports are set aside until they receive the Deputy Minister's authorization to pay. When the authorization arrives, they verify for original authorization signature and match the information contained such as ID and Payee name with the system generated Payment Requisition Report. They also confirm it is not a duplicate payment. If accurate, they approve the requisition in CSDN. The next day, Financial Services Agents ensure the totals in the RDB Payment Requisition Summary report matches with the approved CSDN requisition. If they reconcile and the financial coding is accurate, they generate a control file and send it to Public Works and Government Services Canada (PWGSC) for payment. Financial Services captures the requisition information in Freebalance once it is in the Standard Payment System. The Head, Benefit Payments, approves after verifying that all the necessary populated fields are accurate and complete.

Since the *ex gratia* is a one-time payment, they are paid by cheque made out to the applicant.

Prior to the new extension of the program, the last date for payment was October 1, 2010. Therefore, management set September 17, 2010, as an acceptable last date for receiving applications, which allowed ten business days for processing.

The transactions were clearly documented; they were available for examination. Finance updates the fiscal year summary of Agent Orange payments issued to show the latest payments processed and forwards the same to appropriate management.

We suggest, at a minimum a small random sample of files be verified periodically since *ex gratia* payments are not part of the sampling plan approved by the Chief Financial Officer.

### 3.2 Audit Opinion

In the opinion of the audit team the internal controls, governance and risk management framework relating to *ex gratia* payments were determined as generally acceptable.

The audit results identified weaknesses when taken individually or together are not significant or compensating mechanisms are in place. The control objectives or sound management of the audited activity are not compromised.

## **4.0 DISTRIBUTION**

Deputy Minister

Associate Deputy Minister

Veterans Ombudsman

Chief of Staff to the Minister

Departmental Audit Committee Members

Assistant Deputy Minister, Policy, Communications and Commemoration

Assistant Deputy Minister, Service Delivery

Assistant Deputy Minister, Corporate Services

Director General, Service Delivery Management

Director General, Centralized Operations

Director General, Communications

Director General, Departmental Secretariat and Policy Coordination

Director General, Finance

Regional Director Generals

General Counsel, Legal Services Unit

Executive Director, Transformation

Executive Director and Chief Pensions Advocates

Executive Director, Ste. Anne's Hospital

Director, Briefing, Coordination and Liaison

Area Directors

Executive Advisors to the Deputy Minister

Office of the Comptroller General (Internal Audit Registrar)

Office of the Auditor General



## Annex A – Risk Ranking of Recommendations and Audit Opinion

The following definitions are used to classify the ranking of recommendations and the audit opinion presented in this report.

<b>Audit Recommendations</b>	
Critical	Relates to one or more significant weaknesses for which no adequate compensating controls exist. The weakness results in a high level of risk.
Essential	Relates to one or more significant weaknesses for which no adequate compensating controls exist. The weakness results in a moderate level of risk.

<b>Audit Opinion</b>	
Well Controlled	Only insignificant weaknesses relating to the control objectives or sound management of the audited activity are identified.
Generally Acceptable	Identified weaknesses when taken individually or together are not significant or compensating mechanisms are in place. The control objectives or sound management of the audited activity are not compromised.
Requires Improvement	Identified weaknesses, when taken individually or together, are significant and may compromise the control objectives or sound management of the audited activity.
Unsatisfactory	The resources allocated to the audited activity are managed without due regard to most of the criteria for efficiency, effectiveness and economy.

## Appendix B

Audit Criteria	
Objective 1 – VAC is in compliance with policies, regulations and procedures	
Objective 2 – Entitled applicants receive program benefits in the right amount	
Criteria	Result
<p><b><i>Finance and program management policies and authorities are established and communicated (OCG Core Management Controls-Core Control ST-5)</i></b></p> <ul style="list-style-type: none"> <li>▪ The <i>ex gratia</i> program policies, procedures and guidelines are clearly defined or reliance on Treasury Board policies are referenced</li> <li>▪ Consideration was given to all other reasonable means of compensation prior to the decision to make the <i>ex gratia</i> payment</li> <li>▪ Legal Services Directorate was consulted as appropriate</li> <li>▪ <i>Ex gratia</i> program policies and procedures are communicated and understood by program staff</li> </ul>	<p>Met</p> <p>Met</p> <p>Met</p> <p>Met</p>
<p><b><i>Financial and program management policies and authorities are reviewed regularly and revised, as required (Core Control ST-6)</i></b></p> <ul style="list-style-type: none"> <li>▪ The departmental policies and procedures are updated when required to align with TBS policies and procedures</li> <li>▪ The required authority level approves policy and authority revisions</li> <li>▪ Changes to policies, procedures and guidelines are communicated to staff in a timely manner</li> </ul>	<p>Met</p> <p>Met</p> <p>Partially Met</p>
<p><b><i>Compliance with financial and program management laws, policies and authorities is monitored regularly (Core Control: ST-7)</i></b></p> <ul style="list-style-type: none"> <li>▪ Payments were made for the right amount</li> <li>▪ Evidentiary documentation retained in the file</li> <li>▪ Compliance with financial management laws and policies are monitored</li> <li>▪ Compliance with associated policies and procedures were adhered to</li> </ul>	<p>Met</p> <p>Partially Met</p> <p>Met</p> <p>Partially Met</p>

<p><b><i>Transactions are coded and recorded accurately and in a timely manner to support accurate and timely information processing (Core control: ST-10)</i></b></p> <ul style="list-style-type: none"> <li>▪ Controls are in place to ensure accuracy of transaction coding and processing</li> <li>▪ Monies to make the payment were taken from the appropriate fund</li> <li>▪ <i>Ex gratia</i> payments are reported in the Public Accounts in the fiscal year the payments were made</li> <li>▪ The name of the applicants and the <i>ex gratia</i> payment amount are publically disclosed within the Public Accounts; or in the early stages of the program a request for an exemption was granted</li> </ul>	<p>Met</p> <p>Met</p> <p>Met</p> <p>Met</p>
<p><b><i>There is appropriate segregation of duties (Core Control: ST-13)</i></b></p> <ul style="list-style-type: none"> <li>▪ Access to systems and files are restricted to authorized personnel only</li> <li>▪ Authority, responsibility and accountability on <i>ex gratia</i> payments are clearly defined, communicated, understood and acknowledged by staff</li> <li>▪ Responsibility for initiation of (FAA s.32) and approval of payment for (FAA s.34) transactions must not be the same person responsible for payment (FAA s.33)</li> </ul>	<p>Met</p> <p>Met</p> <p>Met</p>
<p><b><i>Performance measurement system is implemented to report progress</i></b></p> <ul style="list-style-type: none"> <li>• Appropriate methodology to make key operational and financial assumptions and estimates were applied</li> <li>• Risk and control related financial and operational information provided to Senior Management</li> </ul>	<p>Met</p> <p>Met</p>

## Appendix C

The following table shows the file review of 367. A file review checklist with 60 review items was used to summarize the findings into the following criteria/key control areas.

Processing control with supporting documentation in the file	Samples Tested	In Compliance	Exceptions
<b><i>Residency/Employment Criteria:</i></b> Adequate evidence relating to residency/employment retained in the file <ul style="list-style-type: none"> <li>▪ Canadian Forces service or residency eligibility criteria</li> <li>▪ Civilian residency eligibility criteria</li> <li>▪ PCG eligibility criteria</li> </ul>	109 209 49	108 209 49	1 0 0
Total Files Reviewed	367	366	1
Date of death on or after February 6, 2006 provided, if applicable	367	365	2
Copy of death certificate retained in the file, if applicable	367	362	5
<b><i>Medical eligibility criteria:</i></b> Adequate evidence relating to medical condition retained in the file <ul style="list-style-type: none"> <li>▪ Medical documentation to support the physician's statement as proof that the applicant had IOM condition</li> </ul>	367	341	26
<b><i>Late applications</i></b> accepted with no reasons for delay <ul style="list-style-type: none"> <li>▪ Favourable decision</li> <li>▪ Unfavourable decision</li> </ul>	37 34 3	 30 3	 4 0
Payments were made only after FAA S. 34 was completed	367	367	0