

HEALTH CARE FOR VETERANS OF PROJECT 112/PROJECT
SHAD ACT OF 2003

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JULY 16, 2003.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 2433]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 2433) to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide veterans who participated in certain Department of Defense chemical and biological warfare testing to be provided health care for illness without requirement for proof of service-connection, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Health Care for Veterans of Project 112/Project SHAD Act of 2003".

SEC. 2. PROVISION OF HEALTH CARE TO VETERANS WHO PARTICIPATED IN CERTAIN DEPARTMENT OF DEFENSE CHEMICAL AND BIOLOGICAL WARFARE TESTING.

Section 1710(e) of title 38, United States Code, is amended—

(1) in paragraph (1), by adding at the end the following new subparagraph:
“(E) Subject to paragraphs (2) and (3), a veteran who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as ‘Project Shipboard Hazard and Defense (SHAD)’ and related land-based tests) is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such testing.”.

(2) in paragraph (2)(B), by striking out “paragraph (1)(C) or (1)(D)” and inserting “subparagraph (C), (D), or (E) of paragraph (1)”; and

(3) in paragraph (3)—

(A) by striking “and” at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting “, and”; and

(C) by adding at the end the following new subparagraph:

“(D) in the case of care for a veteran described in paragraph (1)(E), after December 31, 2005.”.

SEC. 3. IMPROVEMENTS TO THE RETENTION AND RECRUITMENT OF HEALTH CARE PROFESSIONALS.

(a) **PROMOTION STANDARDS FOR HEALTH CARE PERSONNEL.**—Subsection (c) of 7403 of title 38, United States Code, is amended by striking “Promotions” and inserting “Consistent with subsection (a) of section 7422 of this title, and notwithstanding subsection (b) of that section, promotions”.

(b) **PROMOTIONS FOR NURSES WHO DO NOT HAVE BACCALAUREATE DEGREES.**—Such section is further amended by adding at the end the following new subsection:

“(h) In a case in which a registered nurse has accomplished the performance elements required for promotion to the next grade, the lack of a baccalaureate degree in nursing shall not be a bar to promotion to that grade, and in such a case the registered nurse shall not be denied a promotion on that basis.”.

SEC. 4. ADDITIONAL PAY FOR SATURDAY TOURS OF DUTY FOR ADDITIONAL HEALTH CARE WORKERS IN THE VETERANS HEALTH ADMINISTRATION.

(a) **IN GENERAL.**—Section 7454(b) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(3) Employees appointed under section 7408 of this title shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.”.

(b) **APPLICABILITY.**—The amendment made by subsection (a) shall apply with respect to pay periods beginning on or after the date of the enactment of this Act.

SEC. 5. COVERAGE OF EMPLOYEES OF VETERANS’ CANTEEN SERVICE UNDER ADDITIONAL EMPLOYMENT LAWS.

(a) **COVERAGE.**—Paragraph (5) of section 7802 of title 38, United States Code, is amended by inserting before the semicolon a period and the following: “An employee appointed under this section may be considered for appointment to a Department position in the competitive service in the same manner that a Department employee in the competitive service is considered for transfer to such position. An employee of the Service who is appointed to a Department position in the competitive service under the authority of the preceding sentence may count toward the time-in-service requirement for a career appointment in such position any previous period of employment in the Service”.

(b) **TECHNICAL AMENDMENTS.**—Such section is further amended—

(1) by striking the semicolon at the end of each of paragraphs (1) through (10) and inserting a period;

(2) by striking “The Secretary ” and all that follows through “(1) establish,” and inserting “(a) LOCATIONS FOR CANTEENS.—The Secretary shall establish,”;

(3) by redesignating paragraphs (2) through (11) as subsections (b) through (k), respectively, and by realigning those subsections (as so redesignated) so as to be flush to the left margin;

(4) in subsection (b) (as so redesignated), by inserting “WAREHOUSES AND STORAGE DEPOTS.—The Secretary shall” before “establish”;

(5) in subsection (c) (as so redesignated), by inserting “SPACE, BUILDINGS, AND STRUCTURES.—The Secretary shall” before “furnish”;

(6) in subsection (d) (as so redesignated), by inserting “EQUIPMENT, SERVICES, AND UTILITIES.—The Secretary shall” before “transfer”;

(7) in subsection (e) (as so redesignated and as amended by subsection (a)), by inserting “PERSONNEL.—The Secretary shall” before “employ”;

(8) in subsection (f) (as so redesignated), by inserting “CONTRACTS AND AGREEMENTS.—The Secretary shall” before “make all”;

(9) in subsection (g) (as so redesignated), by inserting “PRICES.—The Secretary shall” before “fix the”;

(10) in subsection (h) (as so redesignated), by inserting “GIFTS AND DONATIONS.—The Secretary may” before “accept”;

(11) in subsection (i) (as so redesignated), by inserting “RULES AND REGULATIONS.—The Secretary shall” before “make such”;

(12) in subsection (j) (as so redesignated), by inserting “DELEGATION.—The Secretary may” before “delegate such”; and

(13) in subsection (k) (as so redesignated), by inserting “AUTHORITY TO CASH CHECKS, ETC.—The Secretary may” before “authorize”.

Amend the title so as to read:

A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide veterans who participated in certain Department of Defense chemical and biological warfare testing with health care for their illness without requirement for proof of service-connection, and for other purposes.

INTRODUCTION

The reported bill reflects the Committee's consideration of two bills in the 108th Congress, to include H.R. 2433 and certain provisions of H.R. 1951. On June 11, 2003, Honorable Ciro D. Rodriguez and Honorable Rob Simmons introduced H.R. 2433, the Health Care for Veterans of Project 112/Project SHAD Act of 2003. On May 5, 2003, Honorable Stephen F. Lynch and Honorable Jack Quinn introduced H.R. 1951, the VA Medical Workforce Enhancement Act of 2003.

On October 9, 2002, the Subcommittee on Health held a hearing on Project 112 and Operation Shipboard Hazard and Defense (SHAD). Witnesses who appeared before the subcommittee included Honorable William Winkenwerder, Jr., M.D., M.B.A., Assistant Secretary of Defense for Health Affairs, who was accompanied by Dr. Michael E. Kilpatrick, Director of Deployment Health Support, Dr. Anna Johnson-Winegar, Deputy Assistant to the Secretary of Defense, Chemical and Biological Defense; and Dr. Jonathan B. Perlin, Deputy Under Secretary for Health, Department of Veterans Affairs, who was accompanied by Mr. Robert J. Epley, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration.

On June 24, 2003, the Subcommittee on Health met and unanimously ordered H.R. 2433, as amended, reported favorably to the full Committee.

On June 26, 2003, the full Committee met and ordered H.R. 2433, as amended, reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 2433, as amended, would:

1. Authorize the Secretary of Veterans Affairs to provide veterans who participated in a test conducted by the Department of Defense Desert Test Center from 1962 through 1973 higher priority for hospital care, medical services, and nursing home care without any requirement for proof of service-connection.
2. Extend the authority to provide care to Project 112/Project SHAD veterans through December 31, 2005.
3. Provide that when a Veterans Health Administration registered nurse has accomplished the performance elements for promotion to the next higher grade, the lack of a specific type of educational degree shall not be an impediment to such promotion.
4. Authorize premium pay for Saturday duty to additional Veterans Health Administration health care workers with direct patient-care responsibilities.
5. Allow employees of the Veterans' Canteen Service to be considered for appointment in VA positions in the competitive service in the same manner that VA employees in the competitive

service are considered for transfer to a Canteen Service position.

BACKGROUND AND DISCUSSION

Health Care for Veterans of Project 112/Project SHAD.—On October 9, 2002, the Subcommittee on Health held a hearing on “Project 112”, a series of Cold War chemical, nuclear, and biological tests conducted both at sea and over land. During this hearing the Department of Defense (DOD) announced the results of a declassification review to examine the health effects of 31 tests from Project 112. In addition, the Subcommittee reviewed VA’s role in contacting veterans who may have participated in these tests, and its progress in determining the health status of these veterans.

The Deseret Test Center was established in 1962 by DOD at Fort Douglas, Utah, to manage this testing program. Project 112 was one of 150 Cold War-era military initiatives directed by then-Secretary of Defense, Honorable Robert McNamara, to identify U.S. military personnel and warship vulnerabilities to chemical, nuclear, and biological attacks. The tests were conducted between 1962 and 1973, and according to DOD were intended to hypothesize and evaluate survivability of troops and equipment (including robustness of ships at sea that were sprayed by enemy aircraft) exposed in the battlefield to hazardous agents. Some tests were planned in the Project 112/Operation SHAD series involving the actual use of sarin, VX, tularemia, anthrax, and other possibly dangerous agents.

The results of the testing program were used to develop defense mechanisms against enemies’ potential use of biological, chemical, or nuclear weapons. Operation “Shipboard Hazard and Defense” (SHAD) was the operational name given to the shipboard portion of these tests. Much of the data associated with the conduct of these tests has remained classified since the tests were conducted.

DOD has acknowledged that it lacks documentation to prove that test participants were informed of the risks involved with these tests, or that they received appropriate protective gear during testing. Since these activities were not medical in nature, and did not involve medical research, no patient care records were established to archive health effects.

Dr. Michael Kilpatrick of DOD stated that DOD’s search for materials associated with Project 112/Operation SHAD is onerous and necessitates manual searches of paper archives to locate ship crew manifests in attempts to tie the dates of specific tests to on-board personnel. DOD advised the Committee that in such searches it must ask basic questions of “who, what, where, and when,” in order to associate the nature of these activities with the scope of the original military effort. The stated goal of DOD is to uncover the long-term health consequences of these exposures.

Dr. William Winkenwerder testified at the October 9, 2002, hearing that DOD is committed to an uncompromising and thorough investigation of all chemical and biological warfare tests planned and performed by the Deseret Test Center. Testifying on behalf of VA, Dr. Jonathan Perlin discussed the outreach efforts to contact the 5,000 veterans whom DOD has identified as Project 112 participants, and efforts to establish educational programs for its health

care providers. The Committee has encouraged VA to aggressively follow-up with these veterans to ensure that they are afforded an opportunity to review their medical histories with VA health care providers.

In August 2000, based on a VA request, DOD began to review and declassify information concerning the exact agents used and other details of the Project 112 tests. An office in DOD now known as the Health Affairs Deployment Health Support Directorate was assigned the responsibility of identifying U.S. ships, crew manifests, military units, and service members that may have been involved in these tests, and thus potentially affected by exposure to chemical and biological agents. In addition, DOD began working with VA to identify individual veterans who participated in these tests to determine whether they suffered negative health consequences as a result of their participation.

On June 30, 2003, DOD announced the completion of the nearly three year long examination. Investigators confirmed that 50 of the 134 planned operational tests at the Deseret Test Center were conducted and 84 were canceled. All Deseret Test Center tests were designated by test numbers. Initially, cover names were also assigned to the tests. However, the practice of using cover names was stopped in the later years of the program. Tests were conducted on the open sea in the North Atlantic, open water locations of the Pacific Ocean and near the Marshall Islands, Hawaii, Baker Island, Puerto Rico and the California coast. Land-based tests were conducted in the states of Alaska, Hawaii, Maryland, Florida, Utah, and Georgia.

All Project 112 test fact sheets are available to the public on the Deployment Health Support Directorate Web site, (<http://deploymentlink.osd.mil/current—issues/shad/shad—intro.shtml>). The site also includes a chart listing all planned tests and what is known about their status.

The names of 5,842 servicemembers identified as having been present in one or more of the tests were provided to VA, the majority within the past year. Veterans who believe they were involved in Deseret Test Center tests and have medical concerns have been encouraged to contact VA for medical evaluations. Project 112 veterans have complained of an array of ailments from cancer to hypertension. Given the amount of time that has passed and the relatively small number of veterans involved in each test, VA may not be able to obtain the necessary information to fully understand the effects of the testing.

The Committee bill would provide priority access to VA hospital care, medical services, and nursing home care for veterans who participated in the tests conducted by the Deseret Test Center from 1962 through 1973, and not require medical evidence that any illnesses are attributable to such testing.

Retention and Recruitment of Registered Nurses.—VA's Nurse Qualification Standards (the standards) define the performance and education requirements for a Registered Nurse (RN) to be appointed to and promoted to one of the five nurse grade levels in VA. Under these standards, all new hires must have a baccalaureate degree in nursing (BSN) to be appointed at the Nurse II grade level. RNs may be promoted to a Nurse II grade level without a BSN only with a waiver of the education requirements.

RNs must have educational preparation in nursing and meet state licensing requirements. However, fewer nurses nationwide are receiving a BSN as their educational preparation for nursing practice. Sixty-two percent of employed staff nurses received their nursing educational preparation through an associate degree in nursing (ADN) or diploma nursing program. According to the latest survey by the Department of Health and Human Services, Health Resources and Service Administration, 45 percent of RNs in nurse clinician positions and 42 percent of RNs in clinical nurse specialist positions have an ADN or diploma degree as their highest educational preparation for nursing. Further, nearly 40 percent of Certified Nurse Anesthetists do not have a BSN.

As discussed, all RNs, regardless of their educational preparation, must take rigorous licensing examinations administered by state governments. RNs prepared with an ADN have equivalent success rates in their licensing examinations as RNs who obtain a BSN. Whether RNs have a two-year or four-year nursing degree, they are licensed to perform the identical scope of nursing practice.

Notwithstanding their years of experience or expertise in nursing, VA will not hire RNs above the entry Nurse Level I unless they have a BSN; VA will not hire RNs above the Nurse Level II unless they have a master's degree, despite their years of bedside experience or clinical proficiency in nursing.

Currently, VA nurses are also evaluated for promotion based on the BSN and nine areas of competencies. The Nurse Professional Standards Board evaluates nurses and may recommend, subject to the concurrence of the Chief RN and approval of the medical center director, a waiver of the BSN requirement. If the medical center director denies a waiver, the RN has no recourse.

VA's focus on the level at which a RN received his or her educational preparation has created unintended consequences. Currently, the U.S. has an estimated nationwide shortage of RNs of around 6.5 percent. This shortage is projected to grow, and could reach 28.8 percent in 2020 if the current trend continues and no mitigating actions are taken. Given the national shortage and the reduced number of RNs who want to work in hospitals, the Committee believes that VA should focus on a RN's expertise and experience, not where he or she went to nursing school. The Committee bill would clarify that direct patient care performance is the primary criteria in hiring and promoting nurses.

Additional Pay for VA Nursing Personnel Completing Saturday Shifts.—VA's hospitals must maintain safe staffing levels during the weekends in order to meet veterans' medical needs. Most private hospitals offer premium pay for weekend tours-of-duty as an incentive and compensation for individuals to work these shifts. Pursuant to sections 7453 and 7454 of title 38, United States Code, registered nurses, licensed practical nurses, pharmacists, physical therapists, occupational therapists, and respiratory therapists who work regular Saturday or Sunday shifts are paid a premium rate of pay (25 percent) for those shifts. The premium is not for overtime, but rather for working a regular shift on the weekend. Federal law for civil service employees employed under title 5, United States Code, who represent a large group of VA medical support personnel including nursing assistants, pharmacy technicians, and medical technologists, provides premium pay of 25 percent for em-

ployees who work regular shifts on Sundays at VA medical facilities, but not on Saturdays. By authorizing Saturday premium pay for all VA clinical staff members who work a regular shift on Saturdays, the Committee bill would allow VA to compete in the hiring of necessary staff to maintain adequate levels of support on weekends.

Transfer Rights for VA Canteen Workers.—Veterans' Canteen Service (VCS) employees are Federal employees hired under the authority of section 7802 of title 38, United States Code. This authority provides many of the same benefits that title 5, United States Code, federal employees enjoy, such as workers compensation, health benefits, retirement, and veterans' preference. However, there are other benefits to which they are not entitled. In particular, because VCS employees are appointed without regard to title 5, United States Code, competitive civil service rules, these workers are not considered to be in the federal civil competitive service. As a result, a VCS employee cannot transfer to another job in VA without first going through a civil service competition, as if he or she had never been a federal employee.

In 1979, the Office of Personnel Management (OPM) approved a personnel interchange agreement with VA that permitted two-way movement between the two hiring authorities for VCS managers. The agreement allows VCS managers appointed under the same statutory authority (38 U.S.C. 7802) as VCS employees who are non-supervisors to transfer into other federal jobs as if they were originally appointed in the competitive service under title 5, United States Code.

Approximately 3,000 VCS hourly workers do not have the same transfer rights to other VA positions that VCS managers enjoy. They are prohibited from applying for jobs at VA as an internal competitive service candidate. VA attempted to establish an interchange agreement for these employees in 1984, 1987, and 1998, but OPM did not approve these proposals. This limits the VA's ability to hire VA workers into needed positions to provide ancillary and support services for medical care. The Committee bill would provide transfer rights for hourly rate VCS employees to title 5, United States Code, VA positions through internal competitive procedures.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would name this Act the "Health Care for Veterans of Project 112/Project SHAD Act of 2003".

Section 2 of the bill would amend section 1710(e) of title 38, United States Code, to allow any veteran who participated in chemical and biological warfare tests conducted by the Department of Defense Deseret Test Center from 1962 through 1973 (including the program designated as "Project Shipboard Hazard and Defense" and related land-based tests) to be eligible for hospital care, medical services, and nursing home care, notwithstanding insufficient medical evidence that links any illness to such testing. Authority to provide access to care on this basis expires on December 31, 2005.

Section 3(a) of the bill would amend subsection (c) of 7403 of title 38, United States Code, to allow labor organizations representing

physicians, dentists, podiatrists, optometrists, registered nurses, physician assistants and expanded-duty dental auxiliaries to engage in collective bargaining with respect to the promotion policies for those employees.

Section 3(b) of the bill would amend subsection (c) of 7403 of title 38, United States Code, so that when a VA registered nurse meets the requirements to be promoted to the next higher grade, the lack of a specific type of educational degree will not impede that promotion.

Section 4(a) of the bill would amend section 7454(b) of title 38, United States Code, to allow VA nursing assistants, pharmacy technicians, medical technologists, and other title 5, United States Code, employees who complete a Saturday shift to receive premium pay for that shift at a rate equal to 25 percent of their hourly rate of basic pay.

Section 4(b) of the bill would provide that the amendment made by subsection (a) shall apply with respect to pay periods beginning on or after the date of the enactment of this Act.

Section 5(a) of the bill would amend paragraph (5) of section 7802 of title 38, United States Code, to allow Veterans' Canteen Service employees to be considered for appointment in VA positions in the competitive service, just as VA employees in the competitive service are considered for transfer to a Canteen Service position.

PERFORMANCE GOALS AND OBJECTIVES

The Department of Veterans Affairs' performance goals and objectives are established in annual performance plans and are subject to the Committee's regular oversight and evaluation by the U.S. General Accounting Office. VA also publishes a performance and accountability report for each fiscal year.

STATEMENT OF THE VIEWS OF THE ADMINISTRATION

Testimony of Honorable William Winkenwerder, Jr., Assistant Secretary for Health, Department of Defense, Health Subcommittee Hearing on Project 112 & Operation Shipboard Hazard and Defense

October 9, 2002

As Assistant Secretary of Defense for Health Affairs, I want to stress that the Department of Defense (DoD) is absolutely committed to an aggressive and thorough investigation of all chemical and biological warfare tests planned and performed by the Deseret Test Center between 1962 and 1973. The purpose of the investigation is to provide relevant medical information to the Department of Veterans' Affairs (VA). The Deseret Test Center was established as a result of Project 112. Project 112 was one of one hundred and fifty management initiatives begun by Defense Secretary McNamara, after his review of the Department of Defense in 1961. Under Project 112, the Deseret Test Center planned and conducted a joint chemical and biological testing program that included shipboard and land-based testing. Project Shipboard and Hazard Defense (SHAD) was the shipboard portion. SHAD was designed to test ships' vulnerability to biological or chemical attack.

When I testified before the Senate Veterans' Affairs Committee in July of this year, I expressed that we are dedicated to finding and declassifying all relevant medical information from those tests. Additionally, we are committed to sharing this information with the VA by June 2003. Today, I would like to discuss what we have done, what we have learned and what are currently doing.

Since August 2000, when the Department of Veterans' Affairs requested that the Department of Defense provide information concerning classified Project SHAD tests, we have developed a close working relationship with the VA. From the beginning of this process, VA staff members have met regularly with our investigators

to review their activities and to verify that the information being sought was what VA needed to assist them in addressing health care matters and settle benefit questions. A team from our Deployment Health Support Directorate meets regularly with VA personnel, to ensure we provide the VA with the relevant medical information they need to address veterans' concerns.

To date, our investigation has revealed a great deal about tests planned and conducted by the Deseret Test Center. The Center planned 134 tests between 1962 and 1973. So far we have verified that 46 tests were conducted and 62 were cancelled. We are working to determine the status of the remaining 26 tests. The majority (24) were planned for 1970–1974, a period in which plans were being made to close the Deseret Test Center.

We are working closely with the Department of the Army to facilitate declassification of the necessary data, focusing on relevant medical information. Because many of the same agents remain a threat to our Forces today, the records cannot be casually declassified. Our investigators identify the relevant medical information and request declassification of this specific information in a process that has been significantly expedited.

As information becomes available, it is provided to the VA in the form of fact sheets. To date we have published 45 fact sheets on 41 tests which involved more than 5,000 service members. The fact sheets detail which ships and units were involved in tests, when the tests took place and what substances the crew may have been exposed to. In order to expedite the VA's notification to affected veterans, we now provide names and service numbers of service members involved in each test to the VA as soon as we identify the ship or unit involved; we do not wait for the declassification process to be completed. To date, we have provided the VA with the names of 4,990 veterans from 16 of 18 known shipboard tests and are searching for classified reports which identify the ships used in the remaining two tests.

Our investigation has confirmed that Deseret Test Center tests were primarily conducted using simulants believed to be safe in place of chemical or biological warfare agents. In those instances when potentially harmful substances were used, there is no evidence that any of the service members involved were exposed to them without proper protection. Service members were vaccinated before testing that involved live biological agents. If actual chemical agents were used they were confined to airtight sections of their ship. When appropriate, protective clothing was also worn. While some service members may not have known all the details of these tests, it is likely they knew that they were participating in testing due to use of precautionary measures. We have learned that the scientists involved informed senior leaders about tests using simulants. Like other operational activities, service members were not informed of these tests.

Information is presented to the VA as quickly as possible and is posted on our web site, DeploymentLINK.mil. A chart located on that web site shows the status of our investigation for each of the tests and is updated regularly. In addition to responding to letters, e-mails and telephone calls placed to our toll-free number, we have also attended the reunion of the crew of the USS Power and have asked other crews to allow us to attend their reunions to help us better understand the concerns of these veterans. We have also sought out scientists and senior officials involved with the tests to increase our understanding of what happened during the tests.

With the termination of the U.S. offensive chemical and biological weapons programs and with changes to operations and health research standards, the use of live agents on humans is severely restricted. With modern technology we can determine the effectiveness of defensive measures by using mannequins. The military services do still use simulants during operational testing and training. We are reviewing all policies governing the use of simulants during testing and training. Additionally, small amounts of live agent are used in training at the chemical school. Our objective is to ensure that concerns like those surrounding the Deseret Test Center tests do not arise in the future.

Testimony of Jonathan B. Perlin, M.D., Deputy Under Secretary for Health, Department of Veterans Affairs, Health Subcommittee Hearing on Project 112 & Operation Shipboard Hazard and Defense

October 9, 2002

I am here today to talk about the 5,000 veterans who have been identified as Project 112 participants. I also want to tell you about the wide range of outreach activities to veterans, educational programs for VA health care providers, and health care services that VA has implemented for those veterans who participated in tests conducted by the U.S. Army's Deseret Test Center, including Project SHAD.

Deseret Test Center Project 112 and Project SHAD

According to the Department of Defense, Project SHAD, which stands for Shipboard Hazard and Defense, was a portion Project 112, which was a chemical and biological warfare test program of the Deseret Test Center. DoD conducted these tests between 1962 and 1973. Project SHAD itself was a series of tests apparently designed to determine potential vulnerabilities of U.S. warships to attacks with chemical or biological warfare agents. Other Project 112 tests involved similar tests conducted on land rather than aboard ships.

VA first learned of Project SHAD when a veteran filed a claim for service connection for disabilities that he felt were related to his participation in those tests. In two meetings held with DoD in late 1997, VA was advised that all the relevant records about these tests were classified and that general access to that material was not possible. However, DoD offered to provide such information on a case-by-case basis.

In May 2000, VA's Under Secretary for Benefits received a congressional inquiry requesting assistance for veterans involved in Project SHAD tests. A VA/DoD workgroup was subsequently established, which met for the first time in October 2000. Since then, DOD and VA have held a series of meetings to ensure that VA would have full access to the information needed to provide appropriate health care and benefits for veterans involved in these tests. In July 2002, DOD committed to provide VA with all medically relevant data, as well as a complete roster of participants involved in tests under the aegis of Project 112 in the 1960's and 1970's.

As a result of their ongoing investigations, DOD has begun providing to VA the names and service numbers of veterans of Project 112, including Project SHAD participants. As a consequence, VA has initiated a significant outreach program to SHAD veterans and to the VA health-care providers they may see. This program has expanded as we have received more information from DOD about veterans involved in tests conducted by the Deseret Test Center and about possible chemical and biological exposures.

VA Outreach Efforts to SHAD Veterans

As of today, VA has been notified of approximately 5,000 veteran participants in 12 declassified and two classified Project 112 tests. VA has implemented a process for identifying and locating these veterans. Identification is accomplished using a variety of sources, including VA's Beneficiary Identification and Records Locator Subsystem (BIRLS), its Compensation & Pension (C&P) Master Record file, the National Cemetery Administration's database, and the National Personnel Records Center in St. Louis. VA has been able to obtain addresses of some of these veterans by matching records with the Internal Revenue Service.

In May 2002, VA mailed outreach letters to 622 SHAD veterans, and on August 15, mailed outreach letters to an additional 777 veterans. The outreach letters provided them information about their participation in Project 112 and the possible health effects related to the chemical and biological warfare agents used in those tests.

Most recently, in September, DOD provided VA with the names and service numbers of about 2,100 more veterans who were participants in tests just declassified last week. VA is currently matching these data against its BIRLS and C&P Master Record files to identify these individuals.

Efforts to find current addresses for SHAD veterans is ongoing, but for those whom VA has not yet been able to locate, we have established a SHAD Help line (at 1-800-749-8387), an Internet web-site (at www.VA.GOV/SHAD), and an e-mail address (SHADHELPLINE@VBA.VA.GOV). Through the week ending September 27, 2002, VA has received 417 calls on its toll-free SHAD Help line.

Outreach to VA Health Care Providers

A has provided relevant information about Project SHAD to VA health care providers through Information Letters from the Under Secretary for Health. The Information Letters provide VA health care personnel with background information on Project SHAD, as well as information about the potential short- and long-term health effects of the specific chemical and biological agents that DOD tells us were used in these tests. They also include recommendations for reviewing the medical and military exposure history of Project 112 veterans. The first Information Letter was released on December 1, 2000. The most recent Information Letter—the third in this series—is dated August 26, 2002. It is entitled "Possible Occupational Health Exposures of Veterans Involved in Project SHAD Tests," and is based on additional information obtained from DOD. This information has also been made available on VA's SHAD web site at www.va.gov/SHAD.

In addition to Information Letters, the Veterans Health Administration (VHA) has engaged in an extensive outreach effort to ensure that every VA medical center knows about SHAD veterans and their potential hazardous exposures during Project 112. VA medical center directors and health care personnel have been regularly apprised of Project SHAD through a series of national telephone hotline conference calls beginning October 20, 2000. VA environmental health physicians also have been kept informed of Project SHAD developments through regular conference calls. Furthermore, a Directive issued last month requires that enrolled SHAD veterans be clinically evaluated by knowledgeable health care providers when those veterans present for care. VA will continue to provide up-to-date information on Project 112 to its health care providers to ensure that these veterans receive optimal health care. Lastly, as suggested by the Vietnam Veterans of America, the VA and DOD web sites, which provide information on Project 112, have been linked to provide ready access to health data among VA and DOD health care personnel and veterans.

Health Care and Benefits Status of Identified SHAD Veterans

VA prepared a preliminary report on the health and disability status of the initial Project SHAD veterans identified for us by DOD in follow-up to the July 10, 2002 hearing. A report dated August 5, 2002, entitled "VA Health Care and Compensation for Project SHAD Veterans" was provided to the House and Senate Committees on Veterans' Affairs on August 9, 2002. It also included information on compensation claims previously filed by Project SHAD participants. The report stated that, as of August 1, 2002, there were compensation claims pending decisions for 28 veterans alleging disabilities due to exposure to agents and substances while participating in Project SHAD. The full report is available on our website at www.va.gov/SHAD. As of September 30, 2002, VA had compensation claims pending decision for 53 veterans alleging disabilities due to exposure to agents and substances while participating in Project 112.

Of the 1,399 veterans who received notification letters in May and August, 31 have newly enrolled for VA health care. Available data indicate that Project SHAD veterans sought health care from VA during FY 2002 at a rate comparable to the overall population of military veterans. About 30 percent of Project SHAD veterans known to us as of August have used VA services since 1970.

It has not been necessary to establish a special clinical program for Project 112 veterans. In this regard, VA's progressive development of its medical record system increasingly permits patient health information to be studied. VHA can now track health care utilization by special groups of veterans, such as the veterans who participated in Project SHAD. The use of these standard health care databases provides several important advantages in evaluating the health of Project SHAD veterans over specialized clinical programs, such as those used to evaluate particular cohorts of veterans, such as Vietnam and Gulf War veterans. The use of VA's health databases allows VA to evaluate the health care utilization of veterans every time they obtain care from VA, not just on the one occasion that they elect to have a registry examination. This practice will provide a much broader and longer-term assessment of the health status of these veterans because many veterans return frequently for VA health care, and because veterans are often seen in different clinics or even different parts of the country for specialized health care.

Evaluating Health Status of All SHAD Veterans

On September 30, 2002, VA entered into a three million dollar contract with the Institute of Medicine, Medical Follow-up Agency of the National Academy of Sciences to fully evaluate the long-term health status of Project SHAD participants. They will conduct, over the next three years, a formal epidemiological study of Project SHAD participants in comparison with veterans who did not participate in Project SHAD. This independent, epidemiological study will give us the clearest possible picture of the health status of SHAD veterans and tell us whether their health was harmed by participation in SHAD tests. The study will compare the current health of veterans who participated in the SHAD tests more than 30 years ago with the health of veterans from the same era who served on ships not involved with the testing. The study will also compare the mortality rates of the two groups. This project may be expanded, if needed, as we learn the identity and military exposures of additional Project 112 participants. Although it will take time to conduct a valid epidemiological study, high quality medical care is being provided right now for each Project 112 veteran who chooses to come to the VA health care system.

VA welcomes DOD's accelerated schedule for providing relevant information about Project 112 and the veterans who were involved in these tests. We understand that it is problematic to locate and declassify records that are 30 to 40 years old, and we appreciate DOD's efforts in this regard. We also look forward to receiving this

information as quickly as possible so that we can address the health concerns of these veterans and properly adjudicate their benefit claims.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 2003

Hon. CHRISTOPHER H. SMITH
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2433, the Health Care for Veterans of Project 112/Project SHAD Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sam Papenfuss, who can be reached at 226-2840.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 2433, Health Care for Veterans of Project 112/Project SHAD
Act of 2003*

*As ordered reported by the House Committee on Veterans' Affairs on
June 26, 2003*

SUMMARY

H.R. 2433 would increase benefits for certain veterans and health care workers employed by the Department of Veterans Affairs (VA). The bill would allow veterans who participated in certain chemical and biological warfare tests while on active duty to have greater eligibility for health care offered by VA. In addition, the bill would change VA's current regulation regarding the promotion of nurses and allow nurses who do not have a baccalaureate degree to be promoted to higher pay grades. Finally, H.R. 2433 would require VA to pay certain health care workers a premium for working on Saturday.

CBO estimates that implementing the bill would cost \$1 million in 2004 and \$8 million over the 2004-2008 period, assuming appropriation of the estimated amounts. The bill would not affect direct spending or receipts. The estimate does not include the costs of the provision that would require VA to pay certain health care workers a premium for working on Saturday because CBO cannot estimate the costs at this time.

H.R. 2433 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2433 is shown in the following table. This estimate assumes the legislation will be enacted by the end of fiscal year 2003, that the necessary funds for implementing the bill will be provided for each year, and that outlays will follow historical spending patterns for existing or similar programs. The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By Fiscal Year, in Millions of Dollars					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
Baseline Spending Under Current Law for Veterans' Medical Care						
Estimated Authorization Level ^a	25,279	26,153	26,987	27,890	28,824	29,452
Estimated Outlays	25,677	26,179	26,783	27,655	28,583	29,271
Proposed Changes ^b						
Estimated Authorization Level	0	1	1	2	2	2
Estimated Outlays	0	1	1	2	2	2
Spending Under H.R. 2433 for Vet- erans' Medical Care						
Estimated Authorization Level	25,279	26,154	27,988	27,892	28,826	29,454
Estimated Outlays	25,677	26,180	26,784	27,657	28,585	29,273

^a The 2003 level is the estimated net amount appropriated for that year. No full-year appropriation has yet been provided for fiscal year 2004. The current-law amounts for the 2004–2008 period assume that appropriations remain at the 2003 level with adjustments for anticipated inflation.

^b These amounts do not include the costs of section 4 because CBO cannot estimate the costs at this time.

BASIS OF ESTIMATE

Project 112/Project SHAD

From 1962 to 1973, the Department of Defense (DoD) conducted certain tests to determine the vulnerability of personnel, buildings, and ships to various biological and chemical threats. Some veterans claim that exposure to the agents used in those tests has affected their current health status and would like to receive medical treatment for their health problems at VA facilities. Under H.R. 2433, those veterans who are not currently eligible for medical care from VA and those veterans who currently receive care but pay small copayments based on their priority level would be eligible to receive free health care from VA. This increased eligibility would end on December 31, 2005. After December 31, 2005, CBO expects that VA would allow those veterans who enroll to receive health care from VA under the bill to remain enrolled with VA, though with a lower priority level that would require them to make copayments.

According to data from DoD, about 5,800 members of the military participated in those tests. After adjusting for mortality, CBO estimates that about 5,400 are alive today. Based on information from VA, CBO estimates that 60 percent of those veterans are already eligible to receive health care from VA, though some of those veterans are required to make small copayments for the services they receive. Under section 2, the remaining 40 percent of these vet-

erans, as well as the veterans mentioned above who currently make copayments, would be eligible for free health care. Based on enrollment data provided by VA, CBO estimates that less than 300 veterans would enroll for VA medical care under this bill at an estimated average cost of \$5,100 in 2004. Thus, CBO estimates that implementing this section would cost \$1 million in 2004 and \$8 million over the 2004–2008 period, assuming appropriation of the estimated amounts.

Under the bill, eligible veterans who are currently enrolled in the VA health care system and pay small copayments based on their priority level would no longer make these payments through December 31, 2005. CBO estimates that the lost receipts would be less than \$500,000 each year over the 2004–2006 period. After December 31, 2005, those veterans who would have newly enrolled in the VA health care system under the bill would have a lower priority and would start to make copayments. CBO estimates that these increased receipts also would be less than \$500,000 a year over the 2006–2008 period. (Such payments are recorded as offsetting collections, credited against appropriations.)

Saturday Pay

Currently, many health care workers employed by VA do not receive a pay premium when they work on weekends, although nurses and some other specialized workers do receive that premium. Section 4 would require that all employees providing direct patient-care services or services incident to direct patient-care services receive premium pay equal to 25 percent of their hourly wage, for all hours worked from midnight on Friday through midnight on Sunday. According to VA, these workers are already receiving premium pay for working on Sunday, so the only effect of implementing this section would be to increase the pay they would receive on Saturday. CBO cannot estimate the budgetary impact of implementing this provision, however, since VA has not yet been able to provide information about the amount of premium pay VA currently pays for Saturday and Sunday work.

Nurse Promotion

Under current regulations, VA has five pay grades for its nurses. A nurse cannot advance to a higher grade without both demonstrating the necessary qualifications and having the required college degree. In order to advance from grade 1 to grade 2, nurses need a baccalaureate degree. Similarly, to advance from grade 2 to grade 3 nurses must have a master's degree. VA currently has a waiver program that allows nurses to be promoted without the requisite degrees. Section 3 would bar VA from requiring a baccalaureate degree as a requirement for promotion, essentially affecting nurse promotions from grade 1 to grade 2.

According to VA, in 2002, only one nurse who sought a promotion from grade 1 to grade 2 was denied a waiver; 468 nurses received waivers and were promoted. (VA also denied promotions to 16 nurses who sought a promotion from grade 2 to grade 3, but this bill would not affect nurses in those grades.) Because VA already has a waiver program, CBO does not expect that the implementation of this bill would affect a significant number of nurses, especially since possession of a baccalaureate degree is not the sole re-

quirement for promotion. Thus CBO estimates that implementing this provision would cost less than \$500,000 a year over the 2004–2008 period, assuming the availability of appropriated funds.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 2433 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Sam Papenfuss (226–2840)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Allison Percy (226–2900)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

STATEMENT OF FEDERAL MANDATES

The preceding Congressional Budget Office cost estimate states that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress’ power to “provide for the common Defense and general Welfare of the United States.”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART II—GENERAL BENEFITS

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**CHAPTER 17—HOSPITAL, NURSING HOME,
DOMICILIARY, AND MEDICAL CARE**

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SUBCHAPTER II—HOSPITAL, NURSING HOME OR
DOMICILIARY CARE AND MEDICAL TREATMENT

§ 1710. Eligibility for hospital, nursing home, and domi-
ciliary care

(a) * * *

* * * * *

(e)(1)(A) * * *

* * * * *

(E) Subject to paragraphs (2) and (3), a veteran who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as "Project Shipboard Hazard and Defense (SHAD)" and related land-based tests) is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such testing.

(2)(A) * * *

(B) In the case of a veteran described in [paragraph (1)(C) or (1)(D)] subparagraph (C), (D), or (E) of paragraph (1), hospital care, medical services, and nursing home care may not be provided under subsection (a)(2)(F) with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than the service described in that paragraph.

(3) Hospital care, medical services, and nursing home care may not be provided under or by virtue of subsection (a)(2)(F)—

(A) * * *

(B) in the case of care for a veteran described in paragraph (1)(C), after December 31, 2002; [and]

(C) in the case of care for a veteran described in paragraph (1)(D), after a period of 2 years beginning on the date of the veteran's discharge or release from active military, naval, or air service[.]; and

(D) in the case of care for a veteran described in paragraph (1)(E), after December 31, 2005.

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**PART V—BOARDS, ADMINISTRATIONS, AND
SERVICES**

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**CHAPTER 74—VETERANS HEALTH ADMINISTRATION—
PERSONNEL**

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SUBCHAPTER I—APPOINTMENTS

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§ 7403. Period of appointments; promotions

(a) * * *

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(c) **[Promotions]** *Consistent with subsection (a) of section 7422 of this title, and notwithstanding subsection (b) of that section, promotions of persons to whom this section applies shall be made only after examination given in accordance with regulations prescribed by the Secretary. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.*

* * * * *

(h) *In a case in which a registered nurse has accomplished the performance elements required for promotion to the next grade, the lack of a baccalaureate degree in nursing shall not be a bar to promotion to that grade, and in such a case the registered nurse shall not be denied a promotion on that basis.*

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SUBCHAPTER IV—PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

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§ 7454. Physician assistants and other health care professionals: additional pay

(a) * * *

(b)(1) * * *

* * * * *

(3) *Employees appointed under section 7408 of this title shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.*

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CHAPTER 78—VETERANS' CANTEEN SERVICE

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§ 7802. Duties of Secretary with respect to Service

[The Secretary shall—

[(1) establish,]

(a) *LOCATIONS FOR CANTEENS.—The Secretary shall establish, maintain, and operate canteens where deemed necessary and practicable at hospitals and homes of the Department and at other Department establishments where similar essential facilities are not reasonably available from outside commercial sources[;].*

[(2)] (b) *WAREHOUSES AND STORAGE DEPOTS.—The Secretary shall establish, maintain, and operate such warehouses and storage depots as may be necessary in operating the canteens[;].*

[(3)] (c) *SPACE, BUILDINGS, AND STRUCTURES.—The Secretary shall furnish the Service for its use in connection with the establishment, maintenance, and operation thereof, such space, buildings, and structures under control of the Department as the Secretary may consider necessary, including normal maintenance and*

repair service thereon. Reasonable charges, to be determined by the Secretary, shall be paid annually by the Service for the space, buildings, and structures so furnished, except that the Secretary may reduce or waive such charges whenever payment of such charges would impair the working capital required by the Service[;].

[(4)] (d) *EQUIPMENT, SERVICES, AND UTILITIES.*—*The Secretary shall transfer to the Service without charge, rental, or reimbursement such necessary equipment as may not be needed for other purposes, and furnish the Service such services and utilities, including light, water, and heat, as may be available and necessary for its use. Reasonable charges, to be determined by the Secretary, shall be paid annually by the Service for the utilities so furnished[;].*

[(5)] (e) *PERSONNEL.*—*The Secretary shall employ such persons as are necessary for the establishment, maintenance, and operation of the Service, and pay the salaries, wages, and expenses of all such employees from the funds of the Service. Personnel necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots shall be appointed, compensated from funds of the Service, and removed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5. Those employees are subject to the provisions of title 5 relating to a preference eligible described in section 2108(3) of title 5, subchapter I of chapter 81 of title 5, and subchapter III of chapter 83 of title 5. An employee appointed under this section may be considered for appointment to a Department position in the competitive service in the same manner that a Department employee in the competitive service is considered for transfer to such position. An employee of the Service who is appointed to a Department position in the competitive service under the authority of the preceding sentence may count toward the time-in-service requirement for a career appointment in such position any previous period of employment in the Service[;].*

[(6)] (f) *CONTRACTS AND AGREEMENTS.*—*The Secretary shall make all necessary contracts or agreements to purchase or sell merchandise, fixtures, equipment, supplies, and services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) and to do all things necessary to carry out such contracts or agreements, including the making of necessary adjustments and compromising of claims in connection therewith[;].*

[(7)] (g) *PRICES.*—*The Secretary shall fix the prices of merchandise and services in canteens so as to carry out the purposes of this chapter[;].*

[(8)] (h) *GIFTS AND DONATIONS.*—*The Secretary may accept gifts and donations of merchandise, fixtures, equipment, and supplies for the use and benefit of the Service[;].*

[(9)] (i) *RULES AND REGULATIONS.*—*The Secretary shall make such rules and regulations, not inconsistent with the provisions of this chapter, as the Secretary considers necessary or appropriate to effectuate its purposes[;].*

[(10)] (j) *DELEGATION.*—*The Secretary may delegate such duties and powers to employees as the Secretary considers necessary or appropriate, whose official acts performed within the scope of the*

delegated authority shall have the same force and effect as though performed by the Secretary[;].

[(11)] (k) *AUTHORITY TO CASH CHECKS, ETC.*—*The Secretary may authorize the use of funds of the Service when available, subject to such regulations as the Secretary may deem appropriate, for the purpose of cashing checks, money orders, and similar instruments in nominal amounts for the payment of money presented by veterans hospitalized or domiciled at hospitals and homes of the Department, and by other persons authorized by section 7803 of this title to make purchases at canteens. Such checks, money orders, and other similar instruments may be cashed outright or may be accepted, subject to strict administrative controls, in payment for merchandise or services, and the difference between the amount of the purchase and the amount of the tendered instrument refunded in cash.*

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