

[H.A.S.C. No. 114-74]

**CONCURRENT RECEIPT OF SURVIVOR  
BENEFIT PLAN AND DEPENDENCY AND  
INDEMNITY COMPENSATION**

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HEARING

BEFORE THE

SUBCOMMITTEE ON MILITARY PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
SUBCOMMITTEE ON MILITARY PERSONNEL,  
*Washington, DC, Wednesday, December 9, 2015.*

The subcommittee met, pursuant to call, at 1:58 p.m., in room 2118, Rayburn House Office Building, Hon. Joseph J. Heck (chairman of the subcommittee) presiding.

**OPENING STATEMENT OF HON. JOSEPH J. HECK, A REPRESENTATIVE FROM NEVADA, CHAIRMAN, SUBCOMMITTEE ON MILITARY PERSONNEL**

Dr. HECK. I want to welcome everyone to today's Military Personnel Subcommittee hearing. We are here today to hear from military and veterans service organizations on the significant policy and financial issues that are associated with the Survivor Benefit Plan and Dependency and Indemnity Compensation, most notably the issue of concurrent receipt.

As originally created in 1972, the military Survivor Benefit Plan, or SBP, was designed to provide annuity to the survivors of retirement-eligible military personnel. Congress expanded the coverage to the survivors of individuals who died while on Active Duty.

Dependency and Indemnity Compensation, or DIC, was established in 1956 for survivors of certain service members and veterans. This benefit is administered by the Department of Veterans Affairs. DIC is a monthly tax-free cash payment to survivors and dependents of service members killed while on active military duty.

Certain eligible veterans who die from service-related conditions are also eligible for DIC. The significant policy issues that are associated with these benefits include the DIC offset of Survivor Benefit Plan payments, often referred to as the widow's tax; adequacy of the payment for survivors compared with other retirement systems payments to surviving spouses; the remarriage age of 57; and the maximum DIC payments for parents based on income levels that have not been adjusted for inflation.

Our panel was asked to share their views and that of their members and help inform us about the impacts on survivors of these policy issues.

Before I introduce our panel, I would like to offer Congresswoman Davis, our ranking member, an opportunity to make any opening remarks.

[The prepared statement of Dr. Heck can be found in the Appendix on page 17.]

**STATEMENT OF HON. SUSAN A. DAVIS, A REPRESENTATIVE FROM CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON MILITARY PERSONNEL**

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman. And I also want to welcome all of you here today. Thank you for joining us.

As we all know, the SBP–DIC offset is a critically important issue, and we have certainly recognized that here on the committee, but particularly we recognized it with our beneficiaries. And we have attempted to fix some of the issues in the past, but we also know that those darn budget rules get in the way and that makes it really challenging, I think, to try and address it, certainly in total.

In 2009, this committee addressed a portion of the SBP–DIC offset when we created the Special Survivor Indemnity Allowance, by finding a small amount of mandatory dollars to provide an additional stipend to those receiving that benefit. And unfortunately, the mandatory offsets required to address this issue have become extremely difficult to find now, especially in the amounts required, and of course, we look to you to help us do that as well.

I am interested to hear your thoughts today on any solutions that you may have to help us address the offset so we can finally make some positive change. Thank you so much for being here.

Dr. HECK. Thank you, Mrs. Davis.

I now ask unanimous consent that the following testimony be entered into the record: From the American Military Retirees Association; Major General James E. Livingston, United States Marine Corps, retired; National Association for Uniformed Services; National Military Family Association; National Military [and] Veterans Alliance; Kathy M. Prout, Gold Star surviving spouse; The Retired Enlisted Association; Edith Smith; Society of Military Widows, Janet Snyder; Tragedy Assistance Program for Survivors; Dr. Vivianne Wersel, Gold Star surviving spouse; and that Representative Joe Wilson of South Carolina, former chairman of this subcommittee, be allowed to participate and read his statement for the record.

Without objection, so ordered.

[The testimony referred to can be found in the Appendix beginning on page 59.]

Dr. HECK. I will now recognize Mr. Wilson for his statement.

**STATEMENT OF HON. JOE WILSON, A REPRESENTATIVE FROM SOUTH CAROLINA, COMMITTEE ON ARMED SERVICES**

Mr. WILSON. Thank you, Mr. Chairman, and thank you for your leadership for military families by holding this important hearing today on the concurrent receipt of Survivor Benefit Plan, SBP, and Dependency and Indemnity Compensation, DIC.

I am grateful for your recognition of this problem and your efforts in correcting it, which is bipartisan as confirmed by the cosponsorship of this legislation by Ranking Member Susan Davis.

I would also like to thank the organizations testifying before the subcommittee today for their dedication to this critical issue: Gold Star Wives of America, Military Officers Association of America,

Veterans of Foreign Wars of the United States, and the Non Commissioned Officers Association of the United States.

Additionally, I was really grateful to hear about a letter of support from General James Livingston of Mount Pleasant, South Carolina, a distinguished recipient of the Medal of Honor, and a real champion for military families. Without their efforts, this issue would not have made the progress that we have had.

As you know, we have been working on this situation for several years, and currently in the 114th Congress we have over 170 co-sponsors of H.R. 1594, the Military Survivor Spouses Equity Act, which originally was a cause of my predecessor, the late Armed Services Committee Chairman Floyd Spence. This bill would end the clearly identified widow's tax or the dollar-for-dollar offset of payments between the Survivor Benefit Plan and Dependency and Indemnity Compensation program.

Currently, surviving spouses Survivor Benefit Plan payments are offset dollar for dollar either partially or totally as a result of receiving Dependency and Indemnity Compensation. The offset wipes out most or all of the SBP entitlement and affects over 60,000 widows and widowers. The substitution of the Dependency and Indemnity Compensation for Survivor Benefit Plan payments is clearly unjust.

The spouses of military service members are owed a debt of gratitude and appreciation. These spouses provide the support and strength to our men and women in uniform when they secure our freedom at home and abroad. As a military spouse, they too devote their lives to serving our country. Military families make necessary arrangements for their spouses to be taken care of in the event of their death. We owe it to these fallen heroes to carry out their wishes and ensure their expectations are fully met.

Finally, I would like to acknowledge two individuals that have been extremely important to me: Maggie McCloud and Edie Smith.

Maggie previously testified before this subcommittee regarding this exact issue and continues to advocate for a correction. Her husband served as a military fellow in the office that I hold, before he tragically lost his life in Iraq. I will always treasure the service of Lieutenant Colonel Trane McCloud for America. It is through her unwavering advocacy that I became involved in this issue and hope that today we can finally come to a resolution.

Additionally, Edie, who is just effervescent in her support, continues to work hard educating members about the Military Surviving Spouses Equity Act and has been a fantastic resource for a number of members and their offices. Thank you for your designation and tireless efforts.

And I yield back.

[The prepared statement of Mr. Wilson can be found in the Appendix on page 18.]

Dr. HECK. Thank you, Mr. Wilson.

We are joined again today by an outstanding panel. We will give each witness the opportunity to make opening comments, and each member an opportunity to question the witnesses. I respectfully ask the witnesses to summarize to the greatest extent possible the high points of your written testimony in no more than 5 minutes.

Your complete written statements will be entered into the hearing record.

As a reminder, the lights in front of you will turn yellow when you have 1 minute remaining and red when your time is concluded.

And this would not be a Military Personnel Subcommittee meeting if we did not have votes scheduled to interrupt the committee meeting at some point. So please bear with us. When the bell rings, we will run over and vote and then come on back to finish up.

We are joined today by Ms. Chris Kinnard, Co-Chair for Government Relations Committee, Gold Star Wives of America; Mr. Steven Strobridge, Colonel, United States Air Force, retired, Director of Government Relations of the Military Officers Association of America; Mr. Jon Ostrowski, Senior Chief, United States Coast Guard Reserve, retired, Director of Government Affairs of the Non Commissioned Officers Association of the United States; and Mr. Joe Davis, Director of Public Affairs, the Veterans of Foreign Wars of the United States.

With that, I will recognize Ms. Kinnard for 5 minutes.

**STATEMENT OF CHRIS KINNARD, CO-CHAIR FOR GOVERNMENT RELATIONS COMMITTEE, GOLD STAR WIVES OF AMERICA**

Ms. KINNARD. First of all, I would like to thank you, Chairman Heck, and Ranking Member Davis, and everybody else that is here for allowing the Gold Star Wives to testify before this committee. I have been going with Wreaths Across America. It has been late nights and a lot of interesting, emotional things. So I just want to bring the testimony to you.

You have my written testimony. There is a couple of things that—did a typo in going through it. But I just want to give some examples that maybe that would make it a little bit more personal to you that this really does affect, in a heavy-duty way, our surviving spouses and our military families. And we need to do something about it.

The first thing is—talked a little bit about the DIC, but getting down to the actual surviving spouses benefit program, there is a couple of different ways that you can get the offset. And then if you have children you are told, first of all, you have the shock that your husband has been killed or passed away or you found them committing suicide.

And then the next thing that you have is, okay, you have children, you can get SBP and DIC, only full benefits if you relinquish to your children everything. But you don't always get told that at age 18, not 16, it was 16 when my, I am a Vietnam war widow. My son was 16 when we lost his benefits. But now it is 18.

When you lose the benefits at 18 years old, for instance, I have a lady from Texas and she has four children. And she found her husband, he had committed suicide, and she was the one that found him. Then she went through this process and turned everything over to her children. Each year her money goes down as her children become older.

She has two masters' degrees and is not working at the time, raising four children, single parent. And therefore, at the end of the time, she will probably be 20 years out, be 48 years old with

no experience. And even though she has the degrees, who is going to hire her? Her money started out at \$2,200. It will be down to \$900 when she finally has her last child turn 18. So that is one example and that needs to be changed to the 18.

There is another part where, you know, Congress did recognize the fact that there was some problems and the offset is not fair because the men will deploy and they think that they are providing for their family, but it also depends on rank and age and—or not age, but time in service. And when you are military or young—which most of them are young that don't survive. They are the ones out on the field—then their offset is maybe 100 percent.

And a lot of times they don't realize that the widow would get the DIC. So they may think they are going to get more than what they actually get. So what happens then when you figure it out, again, a lot of times you get the SBP first and then all of a sudden you get the DIC and it is like, the SBP is out the window, which is a little devastating because you are thinking you are going to get \$2,500 when you are only going to get \$1,200.

And at this point in time, DIC is only \$1,254. How many people in this country could live on \$1,254 a month? And for our military widows to survive on that is horrible, just horrible.

I live in Colorado Springs, Colorado, and I have a lady there that was from Vietnam and she is living in her car. She has nowhere to go. Nowhere to go.

Then to go on to the SSIA [Special Survivor Indemnity Allowance], that, again, I made a typo, it is supposed to be 2017 not 2016. But the last thing is, the only way that a widow can really get her DIC or her SBP full benefits, and DIC full benefits, is to remarry after 57. However, if she got a premium, premiums paid, then she's got to pay it back. A lady in Florida had remarried and had to pay \$41,000 back after 20 years. A shock.

My time is up. Do you have any questions? Thank you for your support.

[The prepared statement of Ms. Kinnard can be found in the Appendix on page 20.]

Dr. HECK. Thank you, Ms. Kinnard.  
Colonel Strobridge.

**STATEMENT OF COL STEVE STROBRIDGE, USAF (RET.), DIRECTOR, GOVERNMENT RELATIONS, MILITARY OFFICERS ASSOCIATION OF AMERICA**

Colonel STROBRIDGE. Chairman Heck, Ranking Member Davis, and distinguished members of the subcommittee, and Congressman Wilson, we are grateful for your calling this hearing and for championing the cause of SBP–DIC widows.

This committee's leadership efforts are the sole reason there has been even partial progress toward eliminating the unfair deduction of DIC from SBP. In establishing the Special Survivor Indemnity Allowance for SBP–DIC widows in 2008, and then in 2009 by establishing a schedule of annual SSIA increases through 2017, you gave hope to thousands of survivors that Congress was finally taking action on their cause.

The stark reality of their situation and the reason why the deduction is so wrong was stated best in the August 2009 Federal

Court of Appeals ruling, in *Sharp v. United States*, which required payment of both SBP and DIC to certain dual-eligible survivors. After all, the ruling stated, the service member paid for both benefits, SBP with premiums, DIC with his life.

But that narrow case applied only to SBP–DIC survivors who remarry after age 57, as we just heard from Ms. Kinnard. Ironically, it highlighted the inequity even more starkly. The law has always penalized survivors who remarry before age 55 for SBP and 57 for DIC by stopping their payments. Since *Sharp v. United States*, the law now also imposes a financial penalty by continuing the offset for survivors who choose not to remarry after age 57. So it is kind of like they have got you coming and going.

The ideal solution would be to eliminate the offset for all SBP–DIC survivors. Because of budget issues, our hope has been that Congress would do that on a phased basis by steadily increasing the SSIA amounts over time. As of fiscal year 2017, the \$310 monthly SSIA will restore about 25 percent of the offset. But there is a very near problem, as the statutory authority to pay the SSIA will expire on October 1, 2017.

As a minimum, Congress needs to extend the SSIA in the fiscal year 2017 Defense Authorization Act, or SBP widows will be made to forfeit the \$310 monthly allowance this committee worked so hard to win for them. We are sensitive to the mandatory spending challenge. But we have to recognize that on two prior occasions the committee managed to convince House and Senate leaders to use outside offsets to fund the SSIA.

And when leadership recently managed to find far larger offsets to us to provide Medicare premium relief to millions of wealthier beneficiaries, it is hard to explain to SBP–DIC widows who have suffered five-digit annual losses for decades why their situation should have a lower priority. Our hope is that their immediate plight is urgent enough to warrant similar leadership involvement to find a way to extend the SSIA authority and make some further progress on phasing out the offset.

In closing, I want to highlight one further inequity affecting survivors of Guard and Reserve members who die on inactive duty for training. Their survivor benefits are calculated with a reduced formula compared to members who die on Active Duty. Their lower SBP amounts are typically wiped out by the offset. The coalition believes strongly that their SBP formula should be the same as for Active Duty deaths.

Mr. Chairman, that concludes my remarks. Thank you for the opportunity to present them.

[The prepared statement of Colonel Strobridge appears in the Appendix on page 28.]

Dr. HECK. Thanks, Colonel.  
Senior chief.

**STATEMENT OF SENIOR CHIEF JON OSTROWSKI, USCGR (RET.), DIRECTOR, GOVERNMENT AFFAIRS, NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES**

Senior Chief OSTROWSKI. Chairman Heck, Ranking Member Davis, and distinguished members of the subcommittee, on behalf of the Non Commissioned Officers Association [NCOA] and its

nearly 80,000 members, we are grateful to the committee for the opportunity to express our views concerning SBP.

NCOA recognizes all who serve in Congress or in uniformed service who swear an oath of office, enlistment, or commissioning, in which the following affirmation is sacredly promised: To support and defend the Constitution of the United States of America. NCOA remains cognizant, as you must also, that the military enlistment or commissioning, the significance of those words bear the possibility of extreme sacrifice and even death.

NCOA understands that a national debt in excess of \$18 trillion impacts all citizens including military members, veterans, and their family members. There is real concern across the Nation relative to the resolution of this national debt. Many military members, disabled veterans, and veterans feel that they will become disenfranchised from their healthcare programs and promised benefits as a result of being forced to bear the brunt of cost savings plans.

Simply stated, don't make our veterans pay double for this debt. Do not put the burden of balancing the budget on the backs of veterans and their survivors. We say, however, that this debt was not caused by the Nation's approximately .0016 percent of the population whose loved ones served in the Armed Forces and whose personal sacrifice ensured the freedoms enjoyed by all Americans.

The NCOA believes strongly that current law is unjust in reducing military SBP annuities by the amount of any survivor benefits payable for the VA [Department of Veterans Affairs] DIC program. The NCOA believes strongly that SBP and DIC payments are paid for different reasons. Just as military retired pay and VA disability compensation compensates for different reasons.

SBP is insurance purchased by the retiree from his or her employer, the DOD [Department of Defense], and is intended to preserve a portion of service-earned retired pay for the survivor upon the retiree's death for any reason. DIC is a special indemnity compensation paid to the survivor by the VA when a member's service has caused his or her premature death.

In such cases, the VA indemnity compensation should be added to the SBP annuity for the retiree's survivor, not substituted for it. NCOA would like to also state that this offset affects the enlisted members the most.

The reality is that in every SBP-DIC case, Active Duty or retired, the true premium extracted by the service from both a member and the survivor was the ultimate one: The very life of the member. NCOA is grateful to the subcommittee for its significant efforts in past years to improve the survivor benefits plan, and we thank you for that.

Undoubtedly, the best solution is to eliminate the SBP-DIC offset. This is the right thing to do. We know that each of you on the subcommittee and in Congress is compassionate about this goal.

In closing, I would like to share a quote by George Washington: "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive how veterans of earlier wars were treated and appreciated by our Nation."

Mr. Chairman, this concludes my testimony. I am prepared to take any questions. Thank you.

[The prepared statement of Senior Chief Ostrowski can be found in the Appendix on page 38.]

Dr. HECK. Thank you.

Mr. Davis.

**STATEMENT OF JOSEPH E. DAVIS, DIRECTOR OF PUBLIC AFFAIRS, VETERANS OF FOREIGN WARS OF THE UNITED STATES WASHINGTON OFFICE**

Mr. DAVIS. Good afternoon, Mr. Chairman, Ranking Member Davis, members of this subcommittee. Thank you for the opportunity to share the collective voice of 1.7 million members of the Veterans of Foreign Wars [VFW] and our auxiliaries. For the sake of brevity, I will not repeat in depth what has already been said.

But it cannot be overstated that the Survivor Benefit Plan is a DOD insurance program paid by military retirees. The Dependency and Indemnity Compensation is a VA benefit meant to compensate a family for losing a loved one whose premature death was a direct result of their military service. It is a longtime VFW goal to eliminate this dollar-for-dollar offset that exists only to save the government money, which is perhaps the ultimate insult our government can inflict on surviving military families, on their spouses, because the two payments are mutually exclusive and paid for two different reasons from two different Federal agencies.

Earlier this year, the Military Compensation Retirement Modernization Commission [MCRMC] recommended a new SBP program with a substantially higher monthly premium in order to receive a full DIC without offset. The VFW concurs with the commission's ultimate goal to eliminate the offset, but we disagree with its funding method.

We want a full repeal of the offset, not to subsidize it out of the pockets of military retirees who are already required to relinquish up to 6.5 percent of their monthly pay for 30 consecutive years just to ensure that their surviving spouse will receive 55 percent of their retirement pay.

Mr. Chairman, the way things are done must be changed. I am not a Gold Star family member, but I, and hopefully the rest of America, do believe in the fundamental rule of fairness. There is nothing fair about financially penalizing widows and widowers. Let there be no doubt that the VFW stands with the Gold Star Wives everywhere to eliminate this terrible penalty.

We are painfully aware that the Federal Government's resources are very finite, and that sequestration is still the law of the land. But our Nation's first priority is to defend the homeland; and our second priority must be able to defend those who do defend, regardless of whether they served 4 years or 40. The VFW has long maintained that if our Nation cannot afford to take care of veterans, then we should quit creating them.

Our military has answered every call and met every challenge. Now it is Congress' turn. We salute Congressman Joe Wilson of South Carolina for once again reintroducing legislation to end the offset. It is our hope that today's hearing will provide the necessary momentum to propel H.R. 1594 forward. Thank you.

[The prepared statement of Mr. Davis can be found in the Appendix on page 49.]

Dr. HECK. Well, I want to thank you all for taking the time to be here this afternoon and to present your perspective or the perspective of your agencies.

And I also want to thank everyone else who has taken the time, all the Gold Star Wives present, for taking the time to be here, and my favorite Gold Star Wife, Janet Snyder from Nevada, for taking the time to travel out here. I can tell you, the organization has no stronger advocate than Janet Snyder who is on a first-name basis with everybody in my office, she calls so often.

You know, Mr. Davis, you addressed the question that I was going to bring up which was the MCRMC's recommendation. I would like to get the answer from the other three members. So the Military Compensation Retirement Modernization Commission, also known as the MCRMC in these circles, made the recommendation that if total repeal of the offset was not possible, to charge a higher premium on the SBP to allow somebody to get full benefits out of both. Understanding that that is not the desired outcome for probably everybody in this room, just as a potential intermediate step or as a step forward, is that something that your organization would embrace? Ms. Kinnard.

Ms. KINNARD. Not really. Our widows are, we are already there, already suffering. So for the premiums to be higher, that is not really going to do anything for us. We need to have an offset repealed or adjusted so that by the future, as they were trying to do with the SSIA to try to eliminate the offset, that is where we want to go.

Dr. HECK. Okay. Colonel.

Colonel STROBRIDGE. Yes, sir, we would agree. To us, that is no solution at all. Number one, as she said, it doesn't do anything for the current survivors. But even for the future survivors, to me that is worse than the current situation because it, A, gives up on the government owing any obligation and it makes the member fund it completely.

Not only that but it puts the member in the decision of trying to guess whether he or she might die of a service-connected cause and pay the full price upfront whether or not that is going to happen, and most people wouldn't be willing to do that. So to us, it wouldn't solve a thing.

Dr. HECK. Okay. Thanks. Senior chief.

Senior Chief OSTROWSKI. Mr. Chairman, NCOA absolutely does not support the MCRMC solution. We do believe in to eliminate the offset completely. It is unfortunate that we are in the budget situation we are in and looking for outside-the-box solutions, but in this case this needs to be eliminated completely. They are separate pots of money and they were earned for separate reasons, and we don't want to have another bandage.

Dr. HECK. Okay. Thank you.

And, Mr. Davis, you answered in your statement, do you want to expand on the previous statement you made?

Mr. DAVIS. We don't support it, sir. We don't believe in offsetting.

Dr. HECK. Thank you.

Mrs. Davis.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman.

And thank you all for your being so articulate and, I think, making what has always been a very strong case, and you did a very good job of that.

You know, I remember a number of years ago, my veterans reminding me that in many ways we became a military at war and not a Nation at war. I think we all need to take responsibility and to do that in a number of ways, and part of it is in the way that we make sure that all of this is funded properly and that we are able to repeal the SBP-DIC. And I agree with that.

I wonder, Ms. Kinnard, if you had suggested, because, you know, we are looking at \$7 billion essentially for this, and at the same time you all have spoken in some ways of perhaps interim, perhaps phasing, et cetera. And that has been looked at in the past as well. But, Ms. Kinnard, you raised the issue in terms of children and young people who are 18 and younger. What would you do with that? Where do you think that those lines should be drawn, and how would you suggest that?

Ms. KINNARD. Well, first of all, when you first learn of your husband's fate, you are in shock. And for a widow to have to decide, shall I give the money to my children or to myself, you know, to get the full benefit to give it to the children and not being told, or if you are told, you don't remember anything in the first year anyway, that you are going to lose and never be able to regroup that SBP at the end of the—when the last child reaches 18.

You are getting the SBP for the children, the full benefit. By the time the last child turns 18, you don't get any benefit at all. You just get the DIC. So it needs to be given to the widow, and she is the one that is responsible for it. Plus the fact that the children are having to pay taxes which, you know, the widow is going to have to. But every year you get a little note saying, is your one-and-a-half-year-old remarried, you know, things that are just bizarre. So I would say that we want to have it just go to the widow.

Mrs. DAVIS OF CALIFORNIA. Just go to the widow.

Ms. KINNARD. There shouldn't be a choice because you are not in a place to make that choice at that time.

Mrs. DAVIS OF CALIFORNIA. Others? Do you have thoughts about that as well?

Colonel STROBRIDGE. I think what we have felt, you know, one option is an inequity of the current situation, like Ms. Kinnard said, is that it goes away. Well, one of the options we have supported is saying when the children are gone, it should revert to the survivor.

Senior Chief OSTROWSKI. We concur. NCOA concurs with Gold Star Wives. Nothing further.

Mrs. DAVIS OF CALIFORNIA. Okay. Mr. Davis.

All right. Thank you very much.

And in terms of the number of spouses subject to the SBP-DIC, do you think that that is going to increase dramatically, that number? Does anybody have a sense of that?

Ms. KINNARD. I could answer that for you. I mean, just I am a widow from Vietnam, and believe me, after that, what I went through, I was 7 months pregnant with my son, my husband was 20 years old, I didn't want anybody to have to go through what I

went through. And when we started going to war again and again and again, and all these women back here who have suffered the same thing and each one has a different story, I just told you two little ones, it is going to happen unless we learn to not go to war.

And until we learn that war is not just the military part going to war but it is paying for our veterans when they come home, our widows, our widowers, our children, like Abraham Lincoln said, it is time to heal the country and take care of the widows and the orphans, and we are not doing that.

Mrs. DAVIS OF CALIFORNIA. Right. That is all part of it.

Ms. KINNARD. It is all part of it, and we don't consider that in the big budget. You know, DOD says, oh, we are going to spend this money on war. Why are they taking our widows' money away? It is wrong. It is just wrong. It wouldn't happen in the civilian world. It just wouldn't.

Mrs. DAVIS OF CALIFORNIA. Thank you all so much. Appreciate you being here.

Dr. HECK. Mr. O'Rourke.

Mr. O'ROURKE. Thank you, Mr. Chairman.

And first of all, I would like to begin by thanking each of you for your testimony today and your advocacy. And the only thing I can read into the wider-than-desired attendance by my colleagues on the committee is that you have the support because you've been so effective outside of this hearing, in our offices, as our chairman has said.

I would like to thank Mrs. Costello, who has worked with our office to ensure that we make the right decision on this bill. We sponsored it. We were a cosponsor last session of Congress. We will this session again.

But the argument that you have made in my opinion is incontrovertible. And you have made it on its merits, on the facts. You have also appealed to, I think, our more important sensibilities, the moral dimension of this, of what we ask of our service members and then ensuring that we fulfill our end of the obligation.

Mr. Davis, I serve on the Veterans Affairs Committee as well for the last 3 years, and you eloquently and efficiently put it: If we cannot afford to take care of our veterans and their spouses and their dependents, then we cannot afford to go to war.

And I think if we entered these factors into our calculations when we went to war, perhaps put an escrow percentage of what it costs for every \$1 billion we put into Iraq, Afghanistan, Syria, Libya, and we have U.S. Armed Forces stationed in over 150 countries around the world, if some percentage was put away for that veteran, his or her spouse, their dependents, you know, I think we would do a better job and we would make that connection that is so obvious to us, especially when you say it the way you did, Mr. Davis, but make that connection in law. So that we don't have these problems in the VA, in having you have to come to our offices, testify before us to do something that makes only the most common sense to any American listening to you.

So I want to thank Mr. Wilson in his absence for, again, introducing this; for the chairman and ranking member for holding this committee; for your tireless advocacy which brings this issue to home for us in a very personal, very compelling, and I hope very

effective way, so that we make the fix in law that is necessary, that it is fixed in perpetuity so that you are not coming back here to advocate for this.

There are certainly no end of problems that you could come back here to remind us of or help us fix. Let's use your amazing talents on those. This one we should dispense with after this hearing. I really hope that we do.

So I don't have any questions because you have answered them for us. I just want to thank everyone who is here and especially the Costello family for their service to my community, to our country, and to all surviving spouses and dependents going forward. It is that personal advocacy that is making a difference.

So with that, I yield back to the chair.

Dr. HECK. Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman.

I want to thank all of you for being here today.

My late father was a career soldier and I am retired military, and I think one of the toughest things I do as a Member of Congress is when a soldier, airman, sailor, or marine has died, whether it be from a training accident or in combat itself, I spend time with those families. And it is always something that is very difficult to do. And every family mourns in their own way the loss of their loved one.

And so I don't think this country appreciates enough those who serve our Nation in uniform and make tremendous sacrifices on behalf of our freedom. So I just want to thank you and the service and the sacrifice of your families. And thank you for being here today.

With that, Mr. Chairman, I yield back.

Dr. HECK. Mrs. Davis, any other questions? Okay.

Well, that was the vote bell. So it seems like timing was somewhat fortuitous.

Look, again, we want to thank all of those who took the time to travel here to present your testimony. As Mr. O'Rourke, and I think Chairman Wilson has been the champion on this issue, at least since I have been in Congress. I will look forward to working with him as well as the rest of the subcommittee and the full committee as we try to move forward with a solution to this issue that doesn't, as Mr. O'Rourke said, require you to come back time and time again.

So, again, thank you all for your service and sacrifice to our Nation and for taking the time to be here. And this hearing will be adjourned.

[Whereupon, at 2:34 p.m., the subcommittee was adjourned.]

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**A P P E N D I X**

DECEMBER 9, 2015

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**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

DECEMBER 9, 2015

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**Opening Remarks – Chairman Heck**  
**Military Personnel Subcommittee Hearing**  
**Concurrent Receipt of Survivor Benefit Plan and Dependency and Indemnity**  
**Compensation**  
**December 9, 2015**

I want to welcome everyone to today's Military Personnel Subcommittee hearing.

We are here today to hear from military and veterans service organizations on the significant policy and financial issues that are associated with the Survivor Benefit Plan and Dependency and Indemnity Compensation, most notably the issue of concurrent receipt.

As originally created in 1972, the military Survivor Benefit Plan (SBP) was designed to provide an annuity to the survivors of retirement-eligible military personnel. Congress expanded the coverage to the survivors of individuals who die while on active duty.

Dependency and Indemnity Compensation (DIC) was established in 1956 for survivors of certain service members and veterans. This benefit is administered by the Department of Veterans Affairs (VA). DIC is a monthly tax-free cash payment to survivors and dependents of service members killed while on active military duty. Certain eligible veterans who die from service-related conditions are also eligible for DIC.

The significant policy issues that are associated with these benefits include: the DIC offset of Survivor Benefit Plan payments, often referred to as the "widow's tax"; adequacy of the payments for survivors compared with other retirement systems' payments to surviving spouses; the remarriage age of 57; and maximum DIC payment for parents based on income levels that have not been adjusted for inflation.

Our panel was asked to share their views and that of their members and help inform us about the impacts on survivors of these policy issues.

Before I introduce our panel, let me offer Congresswoman Davis an opportunity to make any opening remarks.

**Statement of Hon. Joe Wilson**  
**House Armed Services Subcommittee on Military Personnel**  
**Hearing on the “Concurrent Receipt of Survivor Benefit Plan (SBP)**  
**and Dependency and Indemnity Compensation (DIC)”**  
**December 9, 2015**  
**2:00 pm**

Mr. Chairman, thank you for holding this important hearing today on the Concurrent Receipt of Survivor Benefit Plan (SBP) and Dependency and Indemnity Compensation (DIC). I am grateful for your recognition of this problem and your efforts in correcting it. I would also like to thank the organizations testifying before the subcommittee today for their dedication to this critical issue, Gold Star Wives of America, the Military Officers Association of America, Veterans of Foreign Wars of the United States, and the Non Commissioned Officers Association of the United States. Without their efforts, this issue would not have made the progress it has today.

As you know, we have been working on this problem for several years and currently in the 114<sup>th</sup> Congress we have over 170 cosponsors for H.R. 1594, the Military Surviving Spouses Equity Act. This bill would end the so-called “widow’s tax,” or the dollar-for-dollar offset of payments between the Survivor Benefit Plan and the Dependency and Indemnity Compensation program.

Currently, surviving spouses’ Survivor Benefit Plan payments are offset, either partially or totally, as a result of receiving Dependency and Indemnity Compensation. The law requires an unfair dollar-for-dollar deduction of DIC payments from SBP benefits. This offset wipes out most or all of the SBP entitlement, and affects over 60,000 widows and widowers. The substitution of DIC for SBP is clearly unjust.

The spouses of military service members are owed a debt of gratitude. These spouses provide the support and strength to our men and women in uniform, when they secure our freedom at home and abroad. As a military spouse, they too devote their life to serving our country. Military members make necessary arrangements for their spouses to be taken care of in the event of their death. We owe it to these fallen heroes to carry out their wishes and to ensure their expectations are fully met.

Finally, I would like to acknowledge two individuals that have been extremely important to me, Maggie McCloud and Edie Smith. Maggie previously testified before this subcommittee regarding this exact issue and continues to advocate for a correction. Her husband served as a military fellow in my office before he tragically lost his life in Iraq. I will always treasure the service of Lieutenant Colonel Trane McCloud for America. It has been through her unwavering advocacy that I became involved in this issue and hope that today we can finally come to a resolution. Additionally, Edie continues the hard work of educating member offices about the Military Surviving Spouses Equity Act and has been a fantastic resource for a number of members and their offices. Thank you both for your dedication and tireless efforts.

**Chairman Heck, Ranking Member Davis, and members of the Armed Services Military Personnel Subcommittee, we are grateful to testify for the record on behalf of the Gold Star Wives of America, Inc. (GSW).**

I, Chris Kinnard, am one of the Co-Chairs for the Gold Star Wives Government Relations Committee (GRC) along with Donna Eldridge, who is here with me. I will be the one giving testimony today. I am the widow of Specialist James Kinnard, who was drafted into the U.S. Army. He was Killed in Action while serving in Viet Nam in March, 1969. He was 20 years old and I was 7 months pregnant with our son. I currently live in Colorado Springs, Colorado and am a member of the local Cheyenne Mountain Chapter of GSW. Donna and I greatly appreciate the opportunity to provide our testimony in writing as well as to provide oral testimony so much so that we have taken a detour from volunteering with "Wreaths Across America" and taken the train this morning down from Newark, New Jersey to be here. Along with a number of other Gold Star family members, Donna and I have volunteered to be part of the convoy escorting and placing wreaths in military cemeteries. Our journey started in Portland, ME on December 6, and will end on December 12, at Arlington National Cemetery. Our commitment to fighting for the benefits of surviving spouses and families of our fallen heroes is such that we were willing to take time away from our prior obligations and we will rejoin the convoy after this hearing.

The mission of Gold Star Wives is to provide moral support during a surviving spouse's life long journey through grief and recovery from the loss of their loved one, to honor our fallen heroes and to protect the benefits of the families they left behind. We are a non-profit organization and receive no federal grants. GSW assists surviving spouses in obtaining their benefits and works to make Congress, the public, and the military community aware of the inequities which exist in the benefits provided for surviving spouses and children. We wish to address some of these inequities which currently exist and the bills which will aid in adjusting these inequities.

1) Dependency and Indemnity Compensation (DIC), the flat monthly rate (\$1254.19) has not been increased since 1993 except for Cost of Living (COLA). Some of our older widows are trying to survive on this payment alone.

2) Survivor Benefit Plan (SBP)/DIC offset in which a law requires a \$1.00 reduction in a Department of Defense (DoD) SBP for each \$1.00 received from the Department of Veteran Affairs (VA) DIC. SBP is a premium based, voluntarily selected benefit of retirement.

### **H.R. 2539 Military Surviving Spouses Benefits Improvement Act of 2015**

- This is the DIC increase bill.
- Primary Sponsor: Representative Joseph P. Kennedy
- If passed, would raise the current flat rate of compensation to surviving spouses from \$1,254.19 per month to \$1,598.76 per month
- The current rate of compensation surviving spouses receive is 43% of what a single fully disabled veteran receives; the proposed bill would raise that compensation to 55%, which is comparable to other Federal survivor benefit programs.

- DIC is an indemnity payment with the purpose of replacing a portion of the family income lost as a result of the military service member's death.
- Some form of DIC has been paid to survivors since the Revolutionary War
- DIC is paid by the VA and is tax exempt.
- GSW supports the passage of this bill.

#### **H.R. 1594 Military Surviving Spouses Equity Act**

- This bill is to repeal the offset of Survivor Benefits Plan by DIC
- Primary Sponsor: Representative Joe Wilson
- SBP was established in 1972 to provide income for survivors with reasonable cost sharing by retirees to supplement Social Security and to be parallel as closely as possible to the Civil Service Retirement System.
- The DIC offset was established in 1972 as part of the original bill.
- SBP was given by Congress to post 9/11 surviving spouses and children of those who died on active duty.
- Most military personnel purchase SBP at a rate of 6.5% of their retirement pay.
- A surviving spouse with children can avoid the offset by assigning SBP to the children, but **doing so causes the spouse to forfeit any claim to SBP after the children reach age 16.**
- To maintain eligibility for the SBP benefits, a surviving spouse can only remarry if they are over the age of 57. **In order to receive full SBP benefits along with full DIC benefits they MUST REMARRY after the age of 57.**
- If a surviving spouse is unable to receive SBP due to the DIC offset, current law states that they will be reimbursed for any premiums, without interest, that had previously been paid by their spouse. However, if the surviving spouse re-marries after the age of 57, they will receive full SBP and DIC benefits. The catch is that they must repay all premiums previously received.
- SBP is paid by the DoD and is taxable income
- GSW supports passage of this bill.

#### **Extension of Special Survivor Indemnity Allowance (SSIA)**

- SSIA is a result of PL 110-181 and 111-31. Surviving spouses with SBP offset as a result of receiving DIC are eligible for monthly payments of \$275. The amount will increase 10/10/2016 thru 9/30/2017 to \$310 per month. Then payments will be terminated.
- This means that as of 10/01/2017, surviving spouses including the spouses of military members who died while serving on active duty will no longer receive any form of SSIA.
- GSW supports the extension of SSIA at this rate if H.R. 1594 (repealing SBP/DIC offset) does not become law.

### Effects of the Current SBP/DIC Offset

- Military members, while they are in service to our nation, believe that if the worst that can possibly happen to them becomes a reality that their families will be provided for after their death by the SBP. Sadly, the majority of service members who die in the line of duty have not yet achieved the rank or the time in service to actually be able to provide the SBP to their spouse when they die. SBP is calculated using rank and time in service. Technically, on paper these survivors are “eligible” for the benefit but realistically these Soldiers, Sailors, Airmen, and Marines died too young to have achieved enough rank or time in service to be able to overcome the DIC Offset in order to provide the SBP to their surviving spouse. It is a benefit on paper only.
- **Many surviving spouses are either offset or receive nothing from SBP at all.**
- For those that die in retirement from service connected causes – they made a decision to purchase the survivor benefit plan for their spouses not realizing that if they have a service connected disability and die from their service connection that their surviving spouse’s SBP would be reduced dollar for dollar by DIC. For many, the security that they spent their retirement years saving for their spouses simply isn’t there.
- In 2008 Congress authorized the Special Survivor Indemnity Allowance (SSIA). This modest benefit acknowledged the inequity of the SBP/DIC Offset and its purpose was to begin the end of the SBP/DIC Offset
- On April 1, 2009 HASC Chairman Skelton stated “This legislation is the latest step in our continuing effort to eliminate the so-called, ‘widow’s tax’ which has long denied surviving family members the full payment of their Survivor Benefit Plan (SBP) benefits.” He continued, “The House Committee on Armed Services will continue to explore every opportunity to pursue legislation that brings us closer to eliminating the ‘widow’s tax’ ”.
- We are no closer today than we were in 2009 in eliminating the SBP/DIC Offset. The offset remains, and the modest SSIA is due to expire. Not only has this issue not moved forward, but with the looming expiration date of the SSIA at hand, survivors of those who lost their lives because of their service to our nation will be forced to make a financial step backward.
- Currently there is only one option for the surviving spouse to receive the full death benefits of a member of the Armed Forces of the United States of America who served our great nation with honor and died because of that service. That option is to get remarried after the age of 57.

- **LET ME SAY THIS AGAIN: The ONLY way for a military surviving spouse of a service member who made the ultimate sacrifice for this country to receive that members death benefits in full is to remarry after the age of 57.**
- Once a surviving spouse whose SBP is offset by DIC gets remarried after the age of 57, and ONLY if they get remarried will they receive their survivor benefits—without offset. If a surviving spouse does not remarry after age 57, his/her benefits remain offset. **The survivor is financially punished for NOT getting remarried.**

There are no words to describe the astounding dishonor this is for the service member who served our nation and gave their life because of their service. Just as there are no words to describe the disrespect to the survivor by this stipulation of remarriage to access this benefit – other than to say this should be viewed as the national embarrassment that it truly is. It is time to fix this once and for all. Let's honor the service and sacrifice of military members who paid the ultimate price and take proper care of the families they have left behind.

Thank you for your time and the opportunity to present the views of Gold Star Wives of America, Inc. We request your support in repealing the SBP/DIC Offset as indicated in H.R. 1594. I am open to questions from the Committee.

**Bio for Chris Kinnard, Gold Star Wives of America, Inc**

Full Name: Christine Margaret Kinnard

Job Title: Co-Chair for Government Relations Committee, Gold Star Wives of America, Inc.(GSW)

I am the widow of James Edward Kinnard, U. S. Army who was killed in Viet Nam on March 7, 1969. I have been a member of GSW since 1970. I was the Chapter President for San Diego Chapter during the year 1971 when we, as a brand new chapter, played hostesses the 26<sup>th</sup> National Convention in San Diego. I moved to Montana in 1974 where there were no chapters and now means to contact other widows. I was a Member at Large for many years and raised two children. I currently live in Colorado Springs where I am a member of the local Cheyenne Mountain Chapter and am the treasurer.

I have recently retired from my profession as a Registered Dietitian. I have worked as the Director of Dietetic departments in hospitals and nursing homes well as a clinical dietitian. I had the opportunity to be one of the original dietitians in Montana to start the national Women, Infant, and Children nutritional supplement program (WIC). I also worked on two Indian reservation with Indian Health Service.

**DISCLOSURE FORM FOR WITNESSES  
COMMITTEE ON ARMED SERVICES  
U.S. HOUSE OF REPRESENTATIVES**

**INSTRUCTION TO WITNESSES:** Rule 11, clause 2(g)(5), of the Rules of the U.S. House of Representatives for the 114<sup>th</sup> Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants), or contracts or payments originating with a foreign government, received during the current and two previous calendar years either by the witness or by an entity represented by the witness and related to the subject matter of the hearing. This form is intended to assist witnesses appearing before the House Committee on Armed Services in complying with the House rule. Please note that a copy of these statements, with appropriate redactions to protect the witness's personal privacy (including home address and phone number) will be made publicly available in electronic form not later than one day after the witness's appearance before the committee. Witnesses may list additional grants, contracts, or payments on additional sheets, if necessary.

**Witness name:** Chrsitine Kinnard

**Capacity in which appearing:** (check one)

Individual

Representative

**If appearing in a representative capacity, name of the company, association or other entity being represented:** Gold Star Wives of America, Inc.

**Federal Contract or Grant Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) or grants (including subgrants) with the federal government, please provide the following information:

**2015**

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
Gold Star Wives of America, Inc.	Inc. does not have any Federal	contracts or grants.	

2014

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant

2013

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant

**Foreign Government Contract or Payment Information:** If you or the entity you represent before the Committee on Armed Services has contracts or payments originating from a foreign government, please provide the following information:

2015

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment

2014

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment

2013

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment



**T H E M I L I T A R Y C O A L I T I O N**

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**STATEMENT OF  
THE MILITARY COALITION (TMC)**

**Submitted to the**

**HOUSE ARMED SERVICES  
SUBCOMMITTEE ON MILITARY PERSONNEL**

**concerning**

**Military Survivor Benefit Plan Issues**

**December 9, 2015**

**Presented by**

**Colonel Steve Strobridge, USAF (Ret)**

**Co-chair, The Military Coalition  
and  
Director, Government Relations  
Military Officers Association of America**

CHAIRMAN HECK, RANKING MEMBER DAVIS, AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE. On behalf of The Military Coalition (TMC), a consortium of nationally prominent uniformed services and veterans' organizations, we are grateful to the committee for this opportunity to express our views concerning issues affecting certain military survivors. This statement for the record provides the collective views of the following military and veterans' organizations, which represent approximately 5 million current and former members of the seven uniformed services, plus their families and survivors.

Air Force Association  
Air Force Sergeants Association  
Air Force Women Officers Associated  
Army Aviation Association of America  
Association of Military Surgeons of the United States  
Association of the United States Army  
Association of the United States Navy  
Chief Warrant Officer and Warrant Officer Association, U.S. Coast Guard  
Commissioned Officers Association of the U.S. Public Health Service, Inc.  
Enlisted Association of the National Guard  
Fleet Reserve Association  
Gold Star Wives, Inc.  
Iraq and Afghanistan Veterans of America  
Jewish War Veterans of the United States of America  
Marine Corps Reserve Association  
Military Chaplains Association of the United States of America  
Military Officers Association of America  
Military Order of the Purple Heart  
National Association for Uniformed Services  
National Military Family Association  
Naval Enlisted Reserve Association  
Non Commissioned Officers Association  
Reserve Officers Association  
The Retired Enlisted Association  
United States Army Warrant Officers Association  
United States Coast Guard Chief Petty Officers Association  
Veterans of Foreign Wars  
Vietnam Veterans of America

The Military Coalition, Inc. does not receive any grants or contracts from the federal government.

The Military Coalition is grateful to the Subcommittee for its significant efforts in the past decade to improve the Survivor Benefit Plan (SBP), especially its major achievement in 2005 of eliminating the nearly 40-percent annuity reduction that more than a quarter million SBP survivors previously experienced upon attaining age 62.

We also appreciate the Subcommittee's efforts to alleviate another significant inequity experienced by about 63,000 survivors – the deduction of VA Dependency and Indemnity Compensation (DIC) from SBP, known as the SBP-DIC offset.

#### **SBP-DIC Offset**

The Coalition believes strongly that current law is unfair in reducing military SBP annuities by the amount of any survivor benefits payable from the VA DIC program.

*How the offset works.* If any veteran, including a uniformed services retiree, dies of a service-connected cause, the veteran's spouse or other eligible survivor is entitled to receive DIC from the Department of Veterans Affairs. For 2015 and 2016, the DIC annuity amounts to \$1,254 per month, or slightly over \$15,000 annually.

If the veteran happens to be a uniformed services retiree who was also enrolled in SBP, the surviving spouse's SBP annuity is reduced by the amount of DIC. A pro-rata share of the SBP premiums is refunded to the survivor upon the member's death in a lump sum, but with no interest. This offset also affects all survivors of servicemembers who are killed on active duty or active duty for training.

For SBP-eligibles whose SBP annuity is \$1,254 per month or less, the DIC offset wipes out the entire SBP amount. As a practical matter, the service-caused nature of the death effectively eliminates the SBP benefit payable to the survivor of any military retiree below grade E-8. It also eliminates the entire SBP check for thousands of survivors of members who retired in higher grades, but who elected less than maximum SBP coverage.

For DIC-eligible survivors of retired members with higher SBP-covered retired pay amounts, the offset wipes out the first \$15,000 of annual SBP value.

*The inequity.* The Coalition believes strongly that SBP and DIC payments are paid for different reasons, just as military retired pay and VA disability compensation compensate for different issues.

SBP is insurance purchased by the retiree from his/her employer (DoD) and is intended to preserve a portion of service-earned retired pay for the survivor upon the retiree's death for any reason. DIC is a special indemnity compensation paid to the survivor by the VA when a member's service caused his or her premature death.

In such cases, the VA indemnity compensation should be added to the SBP annuity the retiree paid for, not substituted for it.

For the sake of contrast, federal civilian retirees who are disabled veterans and die of military-service-connected causes can receive DIC without losing any of their federal civilian SBP benefits.

The Veterans Disability Benefits Commission (VDBC) was tasked to review the SBP-DIC issue, among other DoD/VA benefit topics. The VDBC's final report to Congress in 2007 agreed with the Coalition in finding that the offset is inappropriate and should be eliminated.

Senator Bill Nelson, who served as Florida insurance commissioner before his election to the Senate, has noted he never heard of any other purchased insurance policy that could refuse to pay the beneficiary part or all of the proceeds (and merely refund a share of premiums) because of the existence of other insurance.

The reality is that, in every SBP-DIC case -- active duty, Guard, Reserve, or retired -- the true premium extracted by the service from both the member and the survivor was the ultimate one -- the very life of the servicemember.

This reality was affirmed and underscored by the August 2009 Federal Court of Appeals ruling in *Sharp v. U.S.* which found, "After all, the service member paid for both benefits: SBP with premiums; DIC with his life." (*US Court of Appeals, 2008-5108, Patricia R. Sharp v. US*)

In 2005, then-Speaker Pelosi and other House leaders made repeal of the SBP-DIC offset a centerpiece of their GI Bill of Rights for the 21st Century.

*Efforts to begin phasing out the inequity.* This Subcommittee took the initiative in the FY 2008 National Defense Authorization Act to establish the Special Survivor Indemnity Allowance (SSIA) as a first, admittedly very modest, step in a longer-term effort to phase out the DIC offset to SBP. (FY 2008 NDAA; PL 110-181 Section 644)

Then House Armed Services Committee Chairman Ike Skelton praised this initiative to reduce the adverse effect of the SBP-DIC "widow's tax".

*"This legislation is the latest step in our continuing effort to eliminate the so-called 'widow's tax', which has long denied surviving family members the full payment of their Survivor Benefit Plan (SBP) benefits," said Skelton.*

*"I am grateful to House Oversight and Government Reform Committee Chairman Ed Towns for working with me on this initiative. Chairman Towns' cooperation made it possible to find the funding needed in order to change the law. I would also like to commend Congressman Solomon Ortiz, who has introduced legislation on the SBP offset and has been a great leader and advocate for the military families affected by this issue," said Skelton.*

*"While I regret that this bill does not completely end the offset, the House Committee on Armed Services will continue to explore every opportunity to pursue legislation that brings us closer to eliminating the 'widow's tax', just as we did today with the help of Chairman Towns," said Skelton.*

That initial legislation authorized the SSIA for all survivors affected by the SBP-DIC offset in the amount of \$50 per month for FY 2009, with the amount increasing by \$10 monthly for each of the next five years, reaching \$100 per month for FY 2014-2016. A separate limitation specified the SSIA amount may not exceed the amount of SBP subject to offset. Due to funding limitations, the authority to pay the SSIA under this initial provision was to expire on March 1, 2016. The primary source of initial funding for the SSIA was the sale of federal assets.

In 2009, Armed Services Committee leadership took a second step to ease the financial penalty for SBP-DIC survivors by convincing House leadership to allocate to SSIA a share of the Medicaid savings realized by P.L. 111-31, *The Family Smoking Prevention and Tobacco Control Act*.

Accordingly, P.L. 111-31 amended title 10 USC 1450(m) to extend SSIA payment authority through September 30, 2017, and to increase the monthly SSIA amounts as follows:

FY 2014: \$150  
 FY 2015: \$200  
 FY 2016: \$275  
 FY 2017: \$310

*Current Outlook.* As of FY2017, the progress achieved through phased SSIA increases will have eliminated roughly 25% of the SBP-DIC penalty.

But as a practical matter, it has been many years since the defense authorization bill was enacted before the end of the fiscal year.

So including an extension of this authority in the FY 2017 National Defense Authorization Act will be essential to preclude at best an interruption, and at worst a termination, of the then-\$310 payment to SBP-DIC widows.

Most of the survivors affected by the SBP-DIC offset have suffered five-digit annual income losses for decades. In many cases, service-caused disabilities meant servicemembers had limited opportunity to purchase other insurance and limited opportunity to pursue post-service careers.

The SBP-DIC offset constitutes a massive financial penalty for these survivors. As the Subcommittee members and staff know only too well, their patience has been sorely tried as you have fought the mandatory spending battles in your efforts to win the modest relief achieved to date.

After at last starting to see more significant increases in their SSIA amounts, the worst message we could send these most aggrieved constituents would be to let even this partial progress expire.

MCRMC SBP-DIC Proposal. The Military Coalition emphatically opposes the recommendation of the Military Compensation and Retirement Modernization Commission (MCRMC) recommendation to create a two-tier SBP system under which retired members could elect an SBP option that had no DIC offset, but would pay an extra premium sufficient to offset the extra cost.

The Coalition believes this is no solution at all. Very, very few retiring members know at the time they leave service whether they will die of a service-connected cause. Accordingly, very, very few would be willing to incur the significantly higher cost of protecting against that possible outcome. The net effect would be the same as the current law -- without the SSIA relief.

The Coalition believes the MCRMC proposal is not a solution, but merely a way to ignore the problem. As a practical matter, the retired member and survivor already are funding their own DIC payments out of the SBP annuity. Asking them to put up their own money from a different pocket does nothing to address the fundamental inequity of making them fund it themselves.

Coalition Recommendation: Clearly, the best solution and the Coalition's ultimate goal is to eliminate the SBP-DIC offset.

We know the Subcommittee is sympathetic to this goal. We also are more than sensitive to the Subcommittee's struggles in dealing with mandatory spending requirements to address this and a range of other issues.

But the cause of the SBP-DIC widows has been urgent and sensitive enough that House leadership has been persuaded on at least two occasions to allocate some level of non-military savings resources for their financial relief.

It is difficult to explain to these widows why far larger spending offsets can be found to provide Medicare Part B premium relief for large numbers of wealthier Medicare beneficiaries, but their far greater need for relief goes unmet.

To the extent broader relief can't be achieved in the near term, our hope is that their plight is urgent enough in FY2017 as to warrant similar leadership involvement to find a way to extend the SSIA authority and hopefully to make further progress in phasing out the highly unfair SBP-DIC offset.

#### **SBP for Inactive Duty for Training Deaths**

The Eleventh Quadrennial Review of Military Compensation (QRMC) report released in June of 2012 recognized that the Survivor Benefit Plan (SBP) annuity for reserve component personnel

who die while performing inactive duty is significantly less than the benefit available to survivors of active duty members and reserve members who die on active duty. This reduced annuity formula means all but a few survivors of inactive duty for training casualties lose their entire SBP because of the DIC offset.

On August 20, 2007, two National Guard families learned of the devastating loss of their husbands who were flying an Apache helicopter near Lake Mountain in Cedar Valley, Utah. On that terrible day, Chief Warrant Officers James Linder and Chief Warrant Officer Clayton Barnes died while flying a training mission. Because of the reduced annuity formula, their families were paid less than others of similar grade and service who die in the line of duty. "I felt like they were taking it away from my kids," Melinda Barnes said. More than the loss of benefit was what it said about her husband's death in service. "It felt like his death wasn't good enough."

Regardless of the way their orders are classified, these reservists are still performing military duties at the time of their death. The QRMC report recommended calculating SBP benefits for a reservist who dies while performing active duty training using the same criteria as for a member who dies while on active duty. We believe widows whose sponsors' deaths were caused by military service should not be last in line for redress.

We ask the Subcommittee to authorize the calculation of the SBP annuity for a reservist who dies while performing inactive duty training using the same criteria as a servicemember who dies while on active duty.

Thank you for the opportunity to present The Military Coalition's views on these important topics.

**Col. Steve Strobridge, USAF (Ret)**  
**Director, Government Relations, Military Officers Association of America, and**  
**Co-Chair, The Military Coalition**

Steve Strobridge, a native of Vermont, is a 1969 ROTC graduate from Syracuse University in Syracuse, N.Y. He was called to active duty in October 1969 and began his career as a Basic Military School training officer and commander and as a military personnel officer.

He subsequently served as a compensation and legislation analyst at HQ U.S. Air Force and in the Office of the Secretary of Defense as director of Officer and Enlisted Personnel Management, with intervening assignments in Thailand and Germany.

His final assignment was as chief of the Compensation Division at HQ U.S. Air Force, with policy responsibility for military compensation, retirement and survivor benefits, and all legislative matters affecting the military community.

He is a graduate of the Armed Forces Staff College and National War College.

Strobridge retired from the Air Force in January 1994 to become MOAA's deputy director for Government Relations. In 2001, he was appointed as director of Government Relations and elected as Co-chair of The Military Coalition.

In December 2012, he was named by Defense News and Military Times to their list of the "100 Most Influential People in US Defense".

He retired from MOAA in April 2013, but was recalled as Government Relations director in September 2015 and was subsequently re-elected as Co-chair of The Military Coalition.

**DISCLOSURE FORM FOR WITNESSES  
COMMITTEE ON ARMED SERVICES  
U.S. HOUSE OF REPRESENTATIVES**

**INSTRUCTION TO WITNESSES:** Rule 11, clause 2(g)(5), of the Rules of the U.S. House of Representatives for the 114<sup>th</sup> Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants), or contracts or payments originating with a foreign government, received during the current and two previous calendar years either by the witness or by an entity represented by the witness and related to the subject matter of the hearing. This form is intended to assist witnesses appearing before the House Committee on Armed Services in complying with the House rule. Please note that a copy of these statements, with appropriate redactions to protect the witness's personal privacy (including home address and phone number) will be made publicly available in electronic form not later than one day after the witness's appearance before the committee. Witnesses may list additional grants, contracts, or payments on additional sheets, if necessary.

Witness name: Col Steven Strabridge USAF-Ret

Capacity in which appearing: (check one)

- Individual
- Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: Military Officers Assn of America and The Military Coalition

**Federal Contract or Grant Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) or grants (including subgrants) with the federal government, please provide the following information:

2015

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
N/A			

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
N/A			

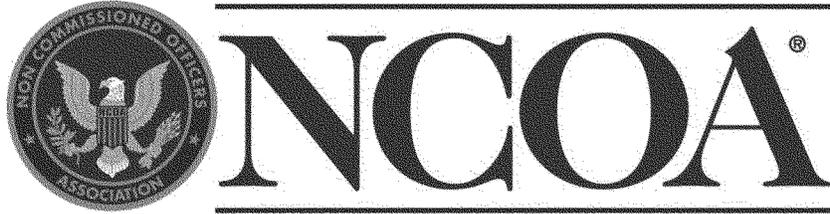
2013

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
N/A			

**Foreign Government Contract or Payment Information:** If you or the entity you represent before the Committee on Armed Services has contracts or payments originating from a foreign government, please provide the following information:

2015

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
N/A			



**Non Commissioned Officers Association of the United States of America  
P.O. Box 3085 – Oakton, VA 22124 – (703) 549-0311**

**STATEMENT OF**

**The Non Commissioned Officers Association (NCOA)**

**Submitted to the**

**HOUSE ARMED SERVICES  
SUBCOMMITTEE ON MILITARY PERSONNEL**

**concerning**

**Military Survivor Benefit Plan Issues**

**December 9, 2015**

**Presented by**

**Senior Chief Jon Ostrowski, USCGR (Ret)**

**Director, Government Affairs**

CHAIRMAN HECK, RANKING MEMBER DAVIS, AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE. On behalf of The Non Commissioned Officers Association (NCOA), we are grateful to the committee for this opportunity to express our views concerning issues affecting certain military survivors.

The NCOA is a congressionally chartered, non-profit, fraternal, benevolent, patriotic association. The NCOA was founded in 1960 and received its federal charter in 1988. NCOA membership includes Active, National Guard, Reserve, Veteran and retired military personnel, who have served honorably in any of the five branches of the Armed Forces.

The Non Commissioned Officers Association and its nearly 80 thousand members is grateful to the Subcommittee for its significant efforts in past years to improve the Survivor Benefit Plan (SBP), especially its major achievement in 2005 of eliminating the approximately 40-percent annuity reduction that SBP survivors previously experienced upon attaining age 62.

**The Oath that has been taken...**

Year after year, NCOA insists in recognizing all who serve in Congress or in our Uniformed Services who swear an Oath of Office, Enlistment, or Commissioning in which the following affirmation is sacredly promised:

*“...to support and defend the Constitution of the United States of America.”*

NCOA remains cognizant, as you must also, that for military enlistment or commissioning the significance of those words bear the possibility of extreme sacrifice and even death. The unquestioned belief of all who serve is that they will have the finest war fighting equipment, support services, healthcare, and ALL necessary institutional support while on Active Duty. They further believe that the Nation’s institutional promises hold true. These promises include:

- Whatever necessary quality and timely health care is provided for the rest of the lives of America’s veterans as a result of their military service,
- To have adequate benefits and entitlements,
- God forbidding should they fall in the line of duty, the institutional commitment of this grateful Nation is to care of their survivors.

The reality of a national debt in excess of \$18 Trillion does impact all citizens including, military members, veterans, and their family members. There is real concern across the Nation relative to the resolution of the national debt. Many military members, disabled veterans, and veterans feel that they will become disenfranchised from the healthcare programs, entitlements and promised benefits as the result of being forced to bear the brunt of cost savings plans.

Simply stated:

**“Don’t balance the budget on the backs of veterans and their survivors!”**

NCOA believes that for far too long significant veteran issues have been neglected as the result of budget implications. We propose examples of veteran issues that budget implications continue to neglect the Nation's "care for those who have borne the battle, their widows and orphaned children." Here are two examples:

- America's disabled veterans remember the objectives stated by President Obama at the start of the 111<sup>th</sup> Congress to allow Chapter 31, that all disabled retired veterans be authorized concurrent receipt of their VA Disability Compensation and limited military retired pay. Congress has still not authorized this.
- Likewise, the President's promised to end the Widow's Tax and allow receipt of their VA Dependency and Indemnity Compensation (DIC) and concurrent receipt of their military Survivor Benefit Program (SBP) annuity. Congress has still not authorized this.

NCOA will continue efforts to seek resolution of these issues and will not agree with any fiscal excuse for limitations that seek to dampen such benefits as these two concurrent receipt programs. The NCOA will not point fingers or assign blame to this or previous Administrations for the Nation's \$18+ Trillion debt. We will say that this debt was not caused by the Nation's 1% of the population that served in the Armed Forces and whose personal sacrifice(s) ensured the freedoms enjoyed by all Americans and our Representatives.

#### **SBP-DIC Offset**

The NCOA believes strongly that current law is unjust in reducing military SBP annuities by the amount of any survivor benefits payable from the VA DIC program.

*How the offset works.* If any veteran, including a uniformed services retiree, dies of a service-connected cause, the veteran's spouse or other eligible survivor is entitled to receive DIC from the Department of Veterans Affairs. For 2015 and 2016, the DIC annuity amounts to \$1,254 per month, or slightly over \$15,000 annually.

If the veteran happens to be a uniformed services retiree who was also enrolled in SBP, the surviving spouse's SBP annuity is reduced by the amount of DIC. A pro-rata portion of the SBP premiums is refunded to the survivor upon the member's death in a lump sum, but with no interest. This offset also affects all survivors of service members who are killed on active duty or active duty for training.

For SBP-eligibles whose SBP annuity is \$1,254 per month or less, the DIC offset wipes out the entire SBP amount. As a practical matter, the service-caused nature of the death effectively eliminates the SBP benefit payable to the survivor of any military retiree below grade E-8. It also eliminates the entire SBP check for thousands of survivors of members who retired in higher grades, but who elected less than maximum SBP coverage. NCOA is strongly opposed to this

deduction. We would also like to point out that this offset impacts our most vulnerable enlisted service members. We cannot let this stand.

*The inequity.* The NCOA believes strongly that SBP and DIC payments are paid for different reasons, just as military retired pay and VA disability compensation compensate for different issues.

SBP is insurance purchased by the retiree from his/her employer (DoD) and is intended to preserve a portion of service-earned retired pay for the survivor upon the retiree's death for any reason. DIC is a special indemnity compensation paid to the survivor by the VA when a member's service caused his or her premature death.

In such cases, the VA indemnity compensation should be added to the SBP annuity the retiree paid for, not substituted for it.

In comparison, federal civilian retirees who are disabled veterans and die of military-service-connected causes can receive DIC without losing any of their federal civilian SBP benefits.

The Veterans Disability Benefits Commission (VDBC) was tasked to review the SBP-DIC issue, among other DoD/VA benefit topics. The VDBC's final report to Congress in 2007 agreed with NCOA's position, finding that the offset is inappropriate and should be eliminated.

Senator Bill Nelson, who served as Florida insurance commissioner before his election to the Senate, has noted he never heard of any other purchased insurance policy that could refuse to pay the beneficiary part or all of the proceeds (and merely refund a share of premiums) because of the existence of other insurance.

The reality is that, in every SBP-DIC case, active duty or retired, the true premium extracted by the service from both the member and the survivor was the ultimate one – the very life of the member.

This reality was affirmed and underscored by the August 2009 Federal Court of Appeals ruling in *Sharp v. U.S.* which found, "After all, the service member paid for both benefits: SBP with premiums; DIC with his life." (*US Court of Appeals, 2008-5108, Patricia R. Sharp v. US*)

In 2005, then-Speaker Pelosi and other House leaders made repeal of the SBP-DIC offset a centerpiece of their GI Bill of Rights for the 21st Century.

*Efforts to begin phasing out the inequity.* This Subcommittee took the initiative in the FY 2008 National Defense Authorization Act to establish the Special Survivor Indemnity Allowance (SSIA) as a first, admittedly very modest, step in a longer-term effort to phase out the DIC offset to SBP. (FY 2008 NDAA; PL 110-181 Section 644)

This legislation authorized the SSIA for all survivors affected by the SBP-DIC offset in the amount of \$50 per month for FY2009, with the amount increasing by \$10 monthly for each of the next five years, reaching \$100 per month for FY2014-2016. Due to funding limitations, the authority to pay the SSIA under this initial provision was to expire on March 1, 2016. The primary source of initial funding for the SSIA was the sale of federal assets.

In 2009, Armed Services Committee leadership took a second step to ease the financial penalty for SBP-DIC survivors by convincing House leadership to allocate to SSIA a share of the Medicaid savings realized by P.L. 111-31, *The Family Smoking Prevention and Tobacco Control Act*.

Accordingly, P.L. 111-31 amended title 10 USC 1450(m) to extend SSIA payment authority through the end of FY2017, and to increase the monthly SSIA amounts as follows:

FY2014: \$150  
 FY2015: \$200  
 FY2016: \$275  
 FY2017: \$310, with payment authority expiring as of Sept. 30, 2017.

*Current Outlook.* As of FY2017, the progress achieved through phased SSIA increases will have eliminated roughly 25% of the SBP-DIC penalty.

So including an extension of this authority in the FY2017 National Defense Authorization Act will be essential to preclude at best an interruption, and at worst a termination, of the then-\$310 payment to SBP-DIC widows.

The Non Commissioned Officer survivors have been affected by SBP-DIC offset the most. These widowers have suffered five-digit income losses for decades. In many cases, their once living NCO spouse's service-caused disabilities meant they had limited opportunity to purchase other insurance and limited opportunity to pursue post-service careers.

The SBP-DIC offset constitutes a massive financial penalty for these survivors. As the Subcommittee members and staff know only too well, their patience has been sorely tried as you have fought the mandatory spending battles in your efforts to win the modest relief achieved to date.

After at last starting to see more significant increases in their SSIA amounts, the worst message we could send these most aggrieved constituents would be to let even this partial progress expire.

*MCRMC SBP-DIC Proposal.* The Non Commissioned Officers Association emphatically opposes the recommendation of the Military Compensation and Modernization Commission recommendation to create a two-tier SBP system under which retired members could elect an SBP option that had no DIC offset, but would pay an extra premium sufficient to offset the extra cost.

The NCOA believes this is no solution at all. Very, very few retiring members know at the time they leave service whether they will die of a service-connected cause. Accordingly, very, very few would be willing to incur the significantly higher cost of protecting against that possible outcome. The net effect would be the same as the current law -- without the SSIA relief.

The NCOA believes the MCRMC proposal is not a solution, but merely a way to ignore the problem. As a practical matter, the retired member and survivor already are funding their own DIC payments out of the SBP annuity. Asking them to put up their own money from a different pocket does nothing to address the fundamental inequity of making them fund it themselves.

*NCOA Recommendation:* Undoubtedly, the best solution and the NCOA's ultimate goal is to eliminate the SBP-DIC offset. This is the right thing to do.

We know the Subcommittee is compassionate to this goal. We also are more than sensitive to the Subcommittee's challenges in dealing with mandatory spending requirements to address this and a range of other issues.

But the cause of the SBP-DIC widows has been urgent and sensitive enough that House leadership has been persuaded on at least two occasions to allocate some level of non-military savings resources for their financial relief.

It is difficult to explain to these widows why far larger spending offsets can be found to provide Medicare Part B premium relief for large numbers of wealthier Medicare beneficiaries, or a special DoD Task Force spent \$43 million on a gas station in Afghanistan that should have cost \$500,000 in an effort to help Afghanistan Reconstruction, but their far greater need for relief goes unmet. I would like to remind you of a quote by George Washington "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive veterans of earlier wars were treated and appreciated by our nation." -- George Washington

To the extent repeal of the SBP / DIC offset can't be achieved in the near term, our hope is that their plight is urgent enough in FY2017 as to warrant similar leadership involvement to find a way to extend the SSIA authority and hopefully to make further progress in phasing out the highly unfair SBP-DIC offset.

#### **SBP for Inactive Duty for Training Deaths**

The Eleventh Quadrennial Review of Military Compensation report released in June of 2012 recognized that the Survivor Benefit Plan (SBP) annuity for reserve component personnel who die while performing inactive duty is significantly less than the benefit available to survivors of active duty members and reserve members who die on active duty.

Despite their inactive status, these reservists are still performing military duties at the time of their death. The MCRMC report recommends calculating SBP benefits for a reservist who dies

while performing active duty training using the same criteria as for a member who dies while on active duty. We believe widows whose sponsors' deaths were caused by military service should not be last in line for redress.

We ask the Subcommittee to authorize the calculation the SBP annuity for a reservist who dies while performing inactive duty training using the same criteria as a service member who dies while on active duty.

Thank you for the opportunity to present The Non Commissioned Officers Association's views on these important topics.

**DISCLOSURE OF FEDERAL GRANTS AND CONTRACTS**

The Non Commissioned Officers Association of the United States of America (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts other than the routine allocation of office space and associated resources at Government facilities for outreach and direct services through its accredited National Veteran Service Officer Program.

**Jon Ostrowski, Director Government Affairs,  
Non Commissioned Officers Association (NCOA)**

Jon Ostrowski serves NCOA members with representation in Washington DC in a variety of ways to include legislative representation, military affairs and veteran affairs. NCOA does this by being a member of the Military Coalition and many other committees in the National Capital Area while also maintaining a relationship with VA and senior enlisted leadership representing all five branches of the military. Jon has retired from the United States Coast Guard Reserve, with 30 years of service. His Coast Guard assignments included Assistant Chief, Waterside Security, Port Security Unit 305, Fort Eustis, Virginia; Enlisted Advisor to Deputy Commandant for Personnel, CG-131, Reserve Affairs, Coast Guard Headquarters, Washington D.C.; National Reserve Recruiting Supervisor, Coast Guard Recruiting Command, Arlington VA; Coxswain, Port Security Unit 311, Long Beach, CA with tours of duty in 2001 to Operation Southern Watch/Enduring Freedom and in 2003 during Operation Iraqi Freedom in Umm Qasr, Iraq; and shipboard Quartermaster, Coast Guard Cutter Diligence, Port Canaveral, FL and Coast Guard Cutter Escape, Charleston, SC.

Additionally, Jon currently serves as Chairman to the Foreign Joint Services Non-Commissioned Officer Association; Board Member - Joint Leadership Council, Commonwealth of Virginia; Board Member - AAFES Exchange Retiree Advisory Council, United States Army. Jon has also served as President, Coast Guard Chief Petty Officers Association; United States Country Representative, Foreign Joint Services Non-Commissioned Officer Association; Chairman Membership Committee, Coast Guard Chief Petty Officers Association; and Board Member, Fleet Reserve Association.

**DISCLOSURE FORM FOR WITNESSES  
COMMITTEE ON ARMED SERVICES  
U.S. HOUSE OF REPRESENTATIVES**

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Witness name: Jon Ostrowski

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: Non Commissioned Officers Association

**Federal Contract or Grant Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) or grants (including subgrants) with the federal government, please provide the following information:

2015

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
n/a			

2014

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
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2013

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n/a			

2014

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
n/a			

2013

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
n/a			




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VETERANS OF FOREIGN WARS OF THE UNITED STATES

www.vfw.org | info@vfw.org

**STATEMENT OF  
Joseph E. Davis  
Director of Public Affairs  
Veterans of Foreign Wars of the United States  
Washington Office**

**BEFORE THE  
House Armed Services Military Personnel Subcommittee**

**WITH RESPECT TO  
Concurrent Receipt of Survivor Benefit Plan (SBP) Payments  
& Dependency and Indemnity Compensation (DIC) Payments**

**WASHINGTON, DC**

**DECEMBER 9, 2015**

It is a longtime goal of the Veterans of Foreign Wars of the United States to eliminate the dollar-for-dollar offset that continues to deny surviving military spouses from concurrently receiving Survivor Benefit Plan (SBP) payments from the Department of Defense, and Dependency and Indemnity Compensation (DIC) payments from the Department of Veterans Affairs.

On behalf of more than 1.7 million VFW and Auxiliary members, I want to thank Chairman Heck, Ranking Member Davis, and the Members of the House Armed Services Military Personnel Subcommittee for holding this hearing. We truly hope it will finally pave the way to eliminating a significant Quality of Life issue that today is impacting some 56,000 surviving spouses of retired and former active-duty military members across the country.

The VFW fully supports the testimony submitted on behalf of The Military Coalition, of which we are its largest member, along with 30 other Veteran and Military Service Organizations and advocacy groups who represent all the uniformed services.

It is an honor to share the witness table with colleagues from the VSO/MSO community, and most especially with Gold Star Wives, who are painfully aware of the frustration and anger the SBP-DIC offset continues to bring to her membership.

Mr. Chairman, the way things are done must be changed.

The SBC-DIC offset exists to save the government money, to prevent the appearance of duplicative monetary benefits, which is perhaps the ultimate insult our government can inflict on

**NO ONE DOES MORE FOR VETERANS.**

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National Headquarters | 406 W. 34th Street | Kansas City, MO 64111 | 1.816.756.3390 | Fax: 816.968.1157  
Washington D.C. Office | VFW Memorial Bldg. | 200 Maryland Ave. N.E. | Washington, D.C. 20002 | 1.202.543.2239 | Fax: 202.543.6719

surviving spouses, because the two payments are mutually exclusive and paid for two different reasons from two different federal departments.

Similar to life insurance, SBP is purchased by the military retiree and is intended to provide up to 55 percent of his/her retirement pay to a surviving spouse. DIC is a modest indemnity compensation benefit of \$1,254 per month that the VA pays to surviving spouses whose loved ones died from a service-connected wound, illness or injury.

Despite the two payments being paid for two different reasons from two different federal departments, all monthly SBP retirement payments are first offset by the \$1,254 DIC payment.

The message this aptly termed "Widow's Tax" sends to our military men and women and their families is that the United States Government salutes your service while in uniform, but should you die on active duty or from service-connected conditions after retirement, you now cost too much.

Our nation cannot afford to continue to communicate that message to a military that is still at war, and prior to 9/11, a military no one would have imagined capable of fighting a two-front war for 14 years with just an All-Volunteer Force.

The VFW is painfully aware that the federal government's resources are finite, and that sequestration is still the law of the land, but we maintain that our nation's first priority is to defend the homeland, and our second priority must be to take care of those who do the defending, regardless of whether they serve 4 years or 40.

A caring and grateful nation simply cannot continue to financially penalize surviving spouses just because their loved ones died—unfortunately and prematurely—on active-duty or from a service-connected wound, illness or injury after they retired.

Mr. Chairman, I am not a Gold Star family member, but I and the rest of America do believe in the fundamental rule of fairness. There is nothing fair about the SBP-DIC offset.

Through this committee, Congress recognized this and created a Special Survivor Indemnity Allowance to partially reduce some of the offset via a graduated monthly payment of up to \$310. As welcome as the monetary plus-up is, it does not eliminate the offset, nor has the funding authority been extended beyond its expiration date at the end of fiscal year 2017.

Earlier this year the Military Compensation and Retirement Modernization Commission recommended a new SBP program with substantially higher (a fluctuating 11.25 percent) monthly premiums in order to receive full DIC without offset.

While the VFW concurs with the Commission's goal to eliminate the offset, we disagree with its funding method. The VFW's position is for the full repeal of the SBP-DIC offset, not to subsidize it out of the pockets of military retirees, who on the top end already sacrifice 6.5 percent of their monthly pay—for 360 consecutive months and reached the age of 70—just to ensure their surviving spouses will receive 55 percent of their retirement pay.

It cannot be overstated that the Survivor Benefit Plan is an insurance benefit paid for by military retirees directly out of their monthly paychecks to the Defense Finance and Accounting Service, whereas Dependency and Indemnity Compensation is a VA benefit meant to compensate a veteran's family for losing a loved one whose premature death was the direct result of their military service.

The VFW has long maintained that if our nation cannot afford to take care of her veterans, then our nation should quit creating them. Our military has answered every call and met every challenge. Now it is Congress' turn.

We salute Congressman Joe Wilson of South Carolina for once again introducing legislation to end the offset. H.R. 1594 now has more than 170 cosponsors, and it is our hope that today's hearing will provide the necessary momentum to propel *The Military Surviving Spouses Equity Act* forward.

Thank you.

**Required Information:** Pursuant to Rule XI, Clause 2(g)(5) of the Rules of the House of Representatives, the Veterans of Foreign Wars of the United States has not received any federal grants in fiscal year 2016, nor for the previous three fiscal years.

**Joseph E. Davis**  
**Director of Public Affairs**  
**Veterans of Foreign Wars of the U.S. Washington Office**

Joe Davis joined the staff of the VFW Washington Office as its Director of Public Affairs in April 2004. His duties include serving as national spokesman for the 1.7 million total-member organization on issues ranging from national security and foreign affairs to the proper care and treatment of veterans, service members and their families.

Davis enlisted in the Air Force in March 1976 and reached the rank of Staff Sergeant when selected to attend Air Force Officer Training School. He would retire in the rank of Major in April 2000 with an overseas deployment history that included assignments with U.S. Central Command in Operations Desert Shield and Desert Storm in Saudi Arabia and Kuwait from 1990-91; the 1st Marine Expeditionary Force in Operation Restore Hope in Somalia from 1992-93; and U.S. European Command in Operation Support Hope in Rwanda, Zaire and Uganda in 1994.

He is a three-time Chief of Public Affairs at Myrtle Beach Air Force Base, S.C., Luke AFB, Ariz., and Hickam AFB, Hawaii; was the Acting Chief of Media for Headquarters, Air Mobility Command, Scott AFB, Ill.; and prior to his military retirement, he was the Deputy Chief of Public Affairs for the operational arm of what is now the Defense POW/MIA Accounting Agency. Prior to accepting his current position with the VFW he was the Director of Communications for the regional headquarters of Goodwill Industries.

Davis earned a bachelor's degree in business administration (marketing) from Christopher Newport University, Va., and a master's degree in business administration and management from Webster University, Mo. His most precious military decorations are the Armed Forces Expeditionary Medal, the Humanitarian Service Medal, and the Southwest Asia Service Medal with three campaign stars.

He joined the VFW following his service in Somalia and is a Life Member of VFW Post 3391 in American Samoa. He is also a member of the Air Force Association and the Military Officers Association of America.

He and his wife, Mary, reside in Old Town Alexandria, Va.

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Witness name: Joseph E. Davis

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: Veterans of Foreign Wars of the United States

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Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
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Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
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2013

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
n/a			



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**DOCUMENTS SUBMITTED FOR THE RECORD**

DECEMBER 9, 2015

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Plattsburgh, NY 12901  
518.563.9479

STATEMENT OF  
THE AMERICAN MILITARY RETIREES ASSOCIATION (AMRA)

before the  
HOUSE ARMED SERVICES  
SUBCOMMITTEE ON PERSONNEL

DECEMBER 9<sup>TH</sup>, 2015

Presented by  
Captain Ted S. Painter, US Army (Retired)  
National Legislative Director

Chairman Heck, Ranking Member Davis and distinguished members of the Subcommittee: On behalf of the American Military Retirees Association (AMRA), a Veteran Service Organization whose members include all categories of military retirees and their surviving spouses, I am grateful to the Committee for this opportunity to express the views of our collective membership regarding the Survivor Benefit Plan and Dependency and Indemnity Compensation offset and the Concurrent Receipt offset.

#### **Survivor Benefit Plan-Dependency and Indemnity Compensation (SBP-DIC)**

The American Military Retirees Association supports a complete repeal of the SBP/DIC offset law. SBP is an insurance policy paid for by military retirees. It is coverage elected and purchased by the retiree to provide a portion of retired pay to the survivor upon the death of the retiree. The SBP benefit is disbursed by the Department of Defense. DIC is an indemnification earned through service to our nation. DIC payments are provided through the Department of Veterans Affairs as a special compensation to a survivor when the service member's death comes as a result of or due to injuries received during military service. It is the belief of our members that no law should prevent the widow of a retired and deceased American service member from receiving payment for both earned benefits.

Current law makes military widows forfeit part of their military SBP annuity when military service causes the member's death and their surviving spouses become eligible for DIC.

SBP is a DoD program that provides income protection to survivors of retired military personnel. Upon retirement, uniformed service members may elect to make monthly contributions of 6.5% of their retirement pay. This serves as a monthly premium and on the occasion of the retired service member's death his or her dependents receive 55% of the deceased service member's retirement pay.

DIC is a Department of Veterans Affairs program that provides a modest monthly annuity to survivors of a service member, active duty or veteran, who dies from a service-connected condition.

Under current law (10 USC 1450 (c) (1)), regarding a surviving spouse who is eligible to receive both DIC and SBP, DoD is required to reduce ("offset") the amount of the surviving spouse's SBP payment on a dollar-for-dollar basis by the amount of the DIC benefit. In essence, DIC payments replace SBP payments. If a spouse is entitled to an SBP payment greater than that of the DIC payment, she will receive the amount remaining in her SBP after the offset reduction. For example, if SBP would be \$1500 and DIC is \$1200 per month, the spouse would receive a taxable SBP payment of \$300.00.

Survivors are entitled to a refund of all or part of the SBP costs paid into the plan by the member if the DIC award is made retroactive to the date of death. The SBP cost refund will be applied to any SBP overpayment or other indebtedness, and a check for the remaining balance, if any, will be forwarded to the survivor. However, the SBP cost refund is considered taxable income.

An exception to the law above, codified as 38 USC 103 (d)(2)(B) and as a part of the Veterans Benefits Act of 2003, allows widows who re-marry after age 57 to receive both DIC and SBP without an offset. In these cases, it literally pays to remarry and the DoD essentially rewards these widows by paying them the full amount of their SBP. This law was a successful attempt to prevent the loss of DIC eligibility by widows upon the occasion of a subsequent marriage, as was the case prior to the law's passage. However, a loophole in the law allows this narrow demographic to receive both SBP and DIC payments while their unmarried counterparts are left to deal with the financial hardships outlined above.

AMRA members appreciate that in 2008 Congress acknowledged the inequity in law, authorizing a modest Special Survivor Indemnity Allowance (SSIA) for SBP-DIC widows to begin phasing out the offset. In June

2009, Congress took the next step, increasing SSIA monthly payments to \$150 beginning in FY2014 and rising to \$310 in FY2017. However, barring an additional law change, SSIA authority will expire October 1, 2017.

The SBP-DIC offset is an egregious policy forced upon widows whose spouses made the ultimate sacrifice in the service of their country. As a result, these widows are being forced to sacrifice a second time. SBP is paid for by the retiree through monthly deductions in retirement pay and is then disbursed to the surviving spouse by the DoD. DIC is earned as a result of honorable service to our nation—service that is determined to have caused the death of the retiree and is paid for by the Department of Veterans Affairs. In 2009 the Federal Court of Appeals recognized this point when it ruled in *Sharp v. U.S.*, “After all, the service member paid for both benefits: SBP with premiums; DIC with his life.” Furthermore, surviving spouses of federal civilian retirees who are disabled veterans and die of military-service-connected causes can receive DIC without losing any of their federal civilian SBP benefits.

AMRA members recognize that the Subcommittee faces very hard choices due to current fiscal conditions. However, it is our contention that our nation owes our service members and their surviving spouses the benefits that they have literally paid for and made the ultimate sacrifice to receive.

The American Military Retirees Association urges the members of the Subcommittee to pursue a repeal the current SBP-DIC offset and provide surviving spouses of our military service men and women with the benefits that they, in good faith, earned and sacrificed for.

#### **Concurrent Receipt**

The American Military Retirees Association supports a complete repeal of current law that prevents certain disabled military retirees from receiving both their retirement and disability pay. Disabled military retirees earn their retirement through their years of service to our nation and earn their disability compensation through circumstances arising as a result of their service to our nation. Both retirement and disability pay are earned benefits for their dedication and service.

Military retirement is earned by serving twenty or more years in the military, compensates for longevity of service, and is funded by the Department of Defense. Disability pay is earned in connection with those years of service and compensates for pain and suffering, can be both combat and non-combat related, and is funded through the Department of Veterans Affairs.

Under current law, the Department of Veterans Affairs disability offset requires many military retirees to waive part of their military retirement pay in order to receive VA disability compensation benefits. Retirees are required to waive retirement pay up to the amount of VA Disability compensation they receive.

AMRA recognizes and appreciates that, prior to 2004, all disabled military retirees were forced to comply with the offset and that Members of Congress worked diligently to amend the law to allow military retirees with 20 or more years of service and a disability rating of 50 percent or higher to receive both their military retirement pay and their VA disability compensation without the offset. However, there is still much work to be done.

Current law does not eliminate the offset for those service-connected disabled military retirees with VA ratings of 40 percent and below, and Chapter 61 retirees, who were medically retired with less than 20 years. No other federal employees are penalized for retiring and having a disability.

AMRA is committed to the notion that preventing a disabled military retiree from receiving the full amount of the financial compensation that they have earned is an egregious cost saving measure paid for at the sole

expense of disabled military retirees. By not being allowed to receive both retired pay and VA compensation, a veteran who is disabled as a result of combat action or through peacetime service but has a rating less than fifty percent is actually paying for his or her disability out of his or her military retired pay.

The American Military Retirees Association asks the members of the Subcommittee to pursue a total repeal of the current law in order to allow ALL disabled military retirees to receive the financial compensation for their service that they have earned.

**The American Military Retirees Association Appreciates the Opportunity to Submit Testimony to the  
Military Personnel Subcommittee**

AMRA appreciates the attention that the Subcommittee is giving to these two very important survivor and retiree issues. We thank you for holding this hearing and for considering our testimony.

The Subcommittee's leadership and interest in these issues have allowed for changes that have, in part, eased the burdens for those affected by both of the offsets discussed above. While these changes are valuable steps in the right direction, there is still much more that can be done.

We sincerely appreciate your continued concern and attention regarding both SBP-DIC and Concurrent Receipt and we remain hopeful that your continued leadership will put an end to both of these offsets in the very near future.



**MAJ. GEN. JAMES E. LIVINGSTON, USMC (RET)**

The Honorable Joe Heck  
Chairman  
Military Personnel Subcommittee  
House Armed Services Committee  
132 Cannon House Office Building  
Washington DC 20515

The Honorable Susan Davis  
Ranking Member  
Military Personnel Subcommittee  
House Armed Services Committee  
1214 Longworth House Office Building  
Washington, DC 20515

December 2, 2015

Dear Mr. Chairman and Members of the Committee;

We are submitting this letter in relation to your Military Personnel Subcommittee hearing scheduled for December 9, 2015, regarding the Survivor Benefit Plan/Dependency and Indemnity Compensation (SBP/DIC) offset.

As former members of the Veterans' Disability Benefits Commission (VDBC), which was mandated in the National Defense Authorization Act for 2004 (P.L. 108-136), we duly considered the offset issues that are before you today when we deliberated from 2005 to 2007 and issued a report, "*Honoring the Call to Duty: Veterans' Disability Benefits in the 21st Century.*" At the time, there were 13 commissioners who considered multiple research questions on the appropriateness of the benefits provided to veterans and their families under the laws of the United States, benefit levels and payment rates, and the processes and procedures used to determine eligibility as outlined by then President George W. Bush and senior leaders in the House and Senate. We held monthly meetings during which experts testified, legislative and historical documents were reviewed and new research was reported. Additional analyses and studies were conducted by the Institute of Medicine (IOM) and the Center for Naval Analyses (CNA), which helped shape the VDBC recommendations related to survivors.

We can proudly note that many of the 113 recommendations contained in our report have been enacted over the last decade. However, this one recommendation has been left unaddressed and has spurred us to reissue our initial call to action for these widows and orphans whose quality of life continues to be diminished by this reduced income.

At the time, the Commission carefully reviewed concurrent receipt and whether the survivors of veterans who die either on active duty or as a result of a service-connected disability should be allowed to receive both Department of Defense (DoD) SBP and Department of Veterans Affairs (VA) DIC. We found that based on the same logic that is applied to military retirees with service-connected disabilities who are authorized to receive both benefits, survivors also should be authorized to receive both benefits. The Commission was persuaded that "these programs have unique intents and purposes: military retirement benefits and SBP are intended to compensate for years of service, while VA disability compensation and DIC are intended to

compensate for disability or death attributable to military service. It should be permissible to receive both sets of benefits concurrently.”

The following excerpt is from the original VDBC report and is submitted as evidence for your consideration in crafting legislation that would eliminate this offset:

### **III.1.A Issue**

When the survivors of a retiree are eligible for both SBP and DIC, the survivors’ SBP payments are offset, or reduced, by the amount of their DIC payment. The level of SBP benefit is reduced by one dollar for every dollar of DIC benefit the survivor receives, regardless of the amount the retiree paid into the SBP system. In addition, while the offset decreases the SBP annuity, which is guaranteed to the survivor by the premium paid by the retiree, it does not decrease the overall level of survivor benefits below the guaranteed 55 percent. For survivors of retirees below the rank of E-6, the offset effectively negates most, if not all, of their SBP benefit. If the survivor’s SBP is offset by their DIC, the amount the retiree paid into the SBP program relative to the amount of DIC will be refunded to his survivors without interest. Should a retiree’s beneficiaries die before the retiree does, the premiums that he or she paid into SBP will revert to the U.S. Treasury.

The most common argument against the offset, again mirroring the debate over veteran’s concurrent receipt, asserts that the two programs have distinctly different purposes that do not overlap, and that it is therefore unfair to offset them. It is argued that SBP is “retiree-purchased insurance,” while DIC is “a special indemnity payable when military service causes the service member’s premature death.” Many argue that the differences in purpose between these two programs are even more pronounced than those between military retirement and VA disability compensation. SBP is fundamentally an insurance program, because the military retiree must pay a premium in order to qualify. Because the retiree has already paid into this program, many argue that it is unfair to offset the benefits guaranteed by those premiums for any reason.

Those in favor of the offset argue that SBP and DIC both compensate a veteran’s survivor for a single event, namely the veteran’s death. Other arguments against survivor concurrent receipt focus on the costs to the Federal Government of removing the offset. DoD has estimated that eliminating the SBP/DIC offset would cost DoD \$6.8 billion during the first 10 years. As in the debate over veteran’s concurrent receipt, this argument also points to a study that revealed that eliminating the offset between DoD retirement and VA disability benefit would result in little, if any, measurable increase in recruitment or retention.

### **III.1.B Findings**

The arguments surrounding survivors’ concurrent receipt are in many ways similar to those surrounding veterans’ concurrent receipt. Those opposed to eliminating SBP offset say it would be too costly to the military. In addition, they claim that there would be no discernable increase in recruitment or retention rates as a result of concurrent receipt. Those in favor of concurrent receipt for survivors, however, argue that the two programs have distinctly different purposes, and it is therefore unfair to offset one by the other. Moreover, SBP premiums are paid by the retiree, and are therefore akin to an insurance program. The retiree pays a certain payment in order to guarantee a certain annuity for his survivors, and many argue that it is unfair to subtract from this guaranteed annuity. Eliminating the SBP/DIC offset would acknowledge the difference in the purpose of these two benefits and allow survivors of those whose death was as a result of military service to receive additional compensation.

To date, no laws have been passed to eliminate the SBP/DIC offset. The Commission finds that the purposes of the DIC and SBP programs are distinctly different: DIC compensates for deaths related to service while SBP provides a continuing retirement payment for the survivors of all retirees regardless of the cause of death. The Commission is particularly concerned with the situation of the enlisted survivors. The Commission also finds that refunding premiums without interest is not justified. The Commission concluded that the offset of SBP by DIC payments is not appropriate and should be discontinued.

**Recommendation 8-2: Congress should eliminate the Survivor Benefit Plan/Dependency and Indemnity Compensation offset for survivors of retirees and in-service deaths.**

We hope that this information is helpful to you and sheds light on the extensive research already completed on this issue. We concluded that the cost associated with eliminating the offset would not be prohibitive. We are thankful for this opportunity to share our work and grateful for your continued effort to right this historical wrong. For further questions, I am available at [jelivingston@comcast.net](mailto:jelivingston@comcast.net).

Sincerely,



MG James Livingston, USMC, Ret

On behalf of:

LTG James Terry Scott, USA, Ret, former Chairman

COL Larry Brown, USA, Ret

LCDR Jennifer Carroll, USN, Ret

Col Donald Cassidy, USAF, Ret

MG William Matz, Jr., USA, Ret

VADM Dennis McGinn, USN, Ret

Mr. Rick Surratt, former USA

Mr. Joe Wynn, former USAF

In memory of commissioners:

The late ISG Nick Bacon, USA, Ret

The late Charles Butch Joeckel, Jr, USMC, Ret



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**Statement of**  
**The National Association for Uniformed Services**

**Views on Survivor and Retirement Issues**

presented by

**Rick Jones, Legislative Director**  
**National Association for Uniformed Services**

before the

**Subcommittee on Military Personnel,**  
**Committee on Armed Services**

**Wednesday, December 9, 2015**  
**Rayburn House Office Building**

**Introduction**

Chairman Heck, Ranking Member Davis and Members of the Subcommittee, the National Association for Uniformed Services thanks you for holding this hearing to discuss issues related to survivor and retirement issues.

The National Association for Uniformed Services thanks you for your continued focus on the numerous and important quality of the life issues that affect the generations of service members, their families and their survivors who have through their military and related service changed the world for the better, exactly as today's brave men and women are doing in difficult circumstances elsewhere around the globe.

**Survivor Benefit Plan—Dependency and Indemnity Compensation Offset**

The National Association for Uniformed Services strongly supports action that would end the offset that is applied to the military Survivor Benefit Plan (SBP) due to receipt of veterans Dependency and Indemnity Compensation (DIC).

As members of the Subcommittee know, SBP and DIC payments are paid for different reasons. SBP is provided through the Department of Defense to active-duty and retirement-eligible individuals with a spouse or children. In the case of a retiree, it is coverage elected and purchased by the retiree to provide a portion of retired pay to the survivor. DIC payments are provided through the Department of Veterans Affairs as a special compensation to a survivor when the service member's death comes as a result of or due to injuries received during military service.

Under current law, there is a dollar-for-dollar reduction in the payment of the SBP annuity for each dollar of DIC compensation. Survivors, upon eligibility for DIC, lose a majority -- or all too often -- the entire amount of their monthly SBP annuity. For survivors with a rank below E-6, this effectively negates most, if not all, of the SBP payment.

The adverse impact is a loss of \$1,257 per month, an amount equal to the flat monthly payment of DIC. But in a larger sense, it is a price paid by surviving families for the death of a spouse in service to the nation.

In the case of military retirees, individuals pay into the SBP program with the intention of providing an annuity for their survivors. They sign up believing their premium payments guarantee a certain percent of retired pay for the life of their survivor. It is not hard to imagine the shock of financial disadvantage when the survivors of these men and women who so loyally served the nation learn of the annuity reduction on receipt of the DIC compensation from VA.

Mr. Chairman, taking care of a service member's loved ones is a cost of war, just as providing equipment and ammunition. While we can never fully repay a wife or husband for the loss of their spouse, we can do better than to treat the two categories of assistance, one an annuity program and the other an indemnity, as though they were one and the same. Eliminating the offset between two different programs would support spouses and orphans left behind.

It is critical to the National Association for Uniformed Services that we, as a nation, fix this inequity in law and keep faith with the brave men and women who serve and have served in our military. These are the military who defend our national security, who risk life and limb to serve thousands of miles away from loved ones, and who made significant sacrifice to protect the lives of innocent men, women, and children.

As Michelle Fitz-Henry, the surviving spouse of Senior Chief Petty Officer Theodore Fits-Henry, tells the National Association for Uniformed Services, “The service men and women who die in ... service to our country are no longer alive to fight for what meant most to them—their families.” She adds, “A grateful nation must fight for them.”

This is an important issue, and we urge you to fix the Survivor Benefit Plan and restore it to its full coverage as the service member intended it to provide. To reduce SBP dollar-for-dollar by DIC compensation, given for an entirely different reason, is unfair. Fixing this problem is an issue of basic fairness, and your action to correct this significant inequity would be long remembered as an act of decency and compassion.

**Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation.**

Mr. Chairman, a grateful nation must keep faith with its military retirees. If a retiree has the misfortune of becoming disabled as a result of service, the service member can apply and receive VA disability compensation. To receive this compensation, however, the disabled retiree must waive, dollar-for-dollar, an equal amount of retired pay. No other federal employee is treated similarly, only the military.

Progress has been made in overturning the bar on disabled military retirees from collecting their full retirement for serving a minimum of 20 years in the service. Since the fiscal 2003 National Defense Authorization Act (NDAA) authorized a special compensation for certain military retirees injured in combat, Congress has advanced concurrent receipt to include benefits to most military retirees with combat related disabilities and to personnel with service-connected VA disability ratings of 50 percent or higher.

Changes in the old-way have moved policy in the right direction. Tens of thousands of disabled retirees welcome what Congress has done, yet many more disabled retirees await their inclusion. More can be done and it should be.

The National Association for Uniformed Services has consistently urged members of the House Armed Services Committee (HASC) and other champions in Congress to press legislation for full and complete concurrent receipt for all disabled retirees. We believe this is the right thing to do.

**Uniformed Services Former Spouses Protection Act Reform (USFSPA)**

The National Association for Uniformed Services strongly urges this subcommittee to conduct hearings on needed USFSPA changes, to both gather the information needed to make appropriate changes and to ensure the issue is not further exacerbated.

The National Association for Uniformed Services would like to see a number of reforms, including changes in the issuance of an imputed retirement annuity. Clearly, a service member is required to serve 20 years or more to be eligible for retirement pay. Yet a former spouse can claim a portion of the eventual retirement pay even in the case of a marriage lasting only a short period.

Another area in need of review and reform is the unfair “windfall provision.” This provision bases the portion of retirement that is given to a former spouse on the member’s military pay at the time of retirement, not the amount earned at the time of the divorce.

We encourage your review of this important subject and look forward to your actions on the most important USFSPA-related issues.

#### **Preserving the Marriages and Families of Our Service Personnel**

We also believe that the Subcommittee needs to take a hard look at the rising number of marriages and families that will be forfeit by the current war deployments and continued use of the same set of troops to carry on the fights. Frankly, the same folks cannot do it, year after year, without the loss of their families.

Congressional and military leaders need to make a continued commitment to support military personnel and their families. We support marriage, but we also recognize the reality of divorce, which is especially prevalent in the military due a number of unique challenges in military life—frequent moves and a high tempo of operations. With reductions in end-strengths, dwell time being squeezed and deployments more frequent, now is a good time for the Subcommittee to focus on the importance of ways to help preserve the marriages and families of our service personnel.

#### **The National Association for Uniformed Services Appreciates the Opportunity to Submit Testify Before the Military Personnel Subcommittee**

The National Association for Uniformed Services thanks you for your leadership and commitment on the core issues of the military retirement program and survivor benefits plan. And we thank you, as well, for holding this hearing and allowing us a chance to submit testimony.

Over the years, your panel’s leadership has helped make it clear that the military retirement package continues to be a high priority, and you have our appreciation and support in remembering those brave men and women who serve and have served in uniform.

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The Servicemember's Voice in Government  
Established in 1968

**Richard A. "Rick" Jones**

Legislative Director

National Association for Uniformed Services (NAUS)

Richard A. "Rick" Jones joined NAUS as Legislative Director on Sept. 1, 2005. As legislative director, Rick is the primary individual responsible for promoting the NAUS legislative goals before the Departments of Defense and Veterans Affairs and the Congress of the United States.

Rick presently serves as co-director of the National Military and Veterans Alliance (NMVA), a non-partisan policy and advocacy organization composed of military associations and veterans organizations. Rick also serves as co-chairman of the Alliance for Military and Overseas Voting Rights (AMOVR), an alliance formed to ensure that our military men and women are afforded their right to vote and to ensure their votes are counted.

Rick is an Army veteran who served as a medical specialist during the Vietnam War era. His assignments included duty at Brooke General Hospital in San Antonio, Texas; Fitzsimons General Hospital in Denver, Colorado; and Moncrief Community Hospital in Columbia, South Carolina.

Rick completed undergraduate work at Brown University prior to his Army draft and earned a Master Degree in Public Administration from East Carolina University in Greenville, North Carolina, following military service.

Prior to assuming his current position, Rick served as National Legislative Director for AMVETS, a major veterans service organization. He also worked nearly twenty years as a legislative staff aide in the offices of Senator Paul Coverdell, Senator Lauch Faircloth, and Senator John P. East. He also worked in the House of Representatives as a subcommittee staff director for Representative Larry J. Hopkins and Representative Bob Stump.

In working for Rep. Stump on the House Committee on Veterans' Affairs, Rick served as minority staff director for the subcommittee on housing and memorial affairs and two years as majority professional staff on funding issues related to veterans' affairs budget and appropriations.

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**NATIONAL  
MILITARY FAMILY  
ASSOCIATION**

Together we're stronger

**Statement for the Record**

by the

**NATIONAL MILITARY FAMILY ASSOCIATION**

before the

**Subcommittee on  
Military Personnel**

of the

**UNITED STATES HOUSE OF REPRESENTATIVES  
ARMED SERVICES COMMITTEE**

**December 9, 2015**

**Not for Publication Until Released by  
The Committee**

The National Military Family Association (NMFA) is the leading nonprofit dedicated to serving the families who stand behind the uniform. Since 1969, NMFA has worked to strengthen and protect millions of families through its advocacy and programs. They provide spouse scholarships, camps for military kids, and retreats for families reconnecting after deployment and for the families of the wounded, ill, or injured. NMFA serves the families of the currently serving, retired, wounded or fallen members of the Army, Navy, Marine Corps, Air Force, Coast Guard, and Commissioned Corps of the USPHS and NOAA.

Association Volunteers in military communities worldwide provide a direct link between military families and the Association staff in the Nation's capital. These volunteers are our "eyes and ears," bringing shared local concerns to national attention.

The Association does not have or receive federal grants or contracts.

Our website is: [www.MilitaryFamily.org](http://www.MilitaryFamily.org).

Chairman Heck, Ranking Member Davis, and Distinguished Members of the Subcommittee, the National Military Family Association (NMFA) thanks you for the opportunity to present this statement regarding Military Survivor Benefit Plan issues. We appreciate the Committee listening to the concerns of retirees and surviving spouses about the inequity of the Department of Veterans Affairs (VA) Dependency and Indemnity Compensation (DIC) offset to the Survivor Benefit Plan (SBP) annuity.

We endorse the recommendations presented in the statement of The Military Coalition (TMC).

#### **We Need the DIC Offset Eliminated for Today's Surviving Spouses**

Our Association has long believed the benefit change that would provide the most significant long-term advantage to the financial security of all surviving families would be to end the Dependency and Indemnity Compensation (DIC) offset to the Survivor Benefit Plan (SBP). Although we know there is a significant price tag associated with this change, ending this offset would correct an inequity that has existed for many years. Each payment serves a different purpose. The DIC is a special indemnity (compensation or insurance) payment paid by the VA to the survivor when the service member's service causes his or her death. The SBP annuity, paid by the Department of Defense (DoD), reflects the military member's length of service. It is ordinarily calculated at 55 percent of retired pay. Military retirees who elect SBP pay a portion of their retired pay to ensure their family has a guaranteed income should the retiree die. If that retiree dies due to a service-connected disability, their survivor becomes eligible for DIC.

*We ask the DIC offset to SBP be eliminated to recognize the length of commitment and service of the career service member and spouse.*

#### **Special Survivor Indemnity Allowance**

In the FY2008 National Defense Authorization Act (NDAA), the Military Personnel Subcommittee established the Special Survivor Indemnity Allowance (SSIA) as a first step in a longer-term effort to phase out the DIC offset to SBP.

That initial legislation authorized the SSIA for all survivors affected by the SBP-DIC offset in the amount of \$50 per month for FY2009, with the amount increasing by \$10 monthly for each of the next five years, reaching \$100 per month for FY2014-2016, not to exceed the amount of SBP subject to the offset. The authority to pay the SSIA, under this initial provision, was to expire on March 1, 2016.

In 2009, SSIA payments were extended through the end of FY2017, and the monthly SSIA amounts were increased:

- FY2014: \$150
- FY2015: \$200
- FY2016: \$275
- FY2017: \$310, with payment authority expiring as of Sept. 30, 2017.

**As of FY2017, phased SSIA increases will have eliminated roughly 25 percent of the SBP-DIC penalty.**

Including an extension of SSIA in the FY2017 National Defense Authorization Act is necessary so SBP-DIC widows will not see an interruption or elimination of the then-\$310 payment.

*Extend SSIA so the modest progress in eliminating the DIC offset to SBP will not be lost.*

**Military Compensation and Retirement Modernization Commission (MCRMC)  
Recommendation**

We appreciate the hard work of the Commission. However, we cannot support the recommendation put forth by the Commission that would give retired service members the option of funding the elimination of the offset by paying a higher premium.

We have concerns about the Commission's proposed changes to the SBP premium structure. It would leave the 60,000 surviving widows/widowers who currently absorb the offset in the same situation they are now—continuing to have their SBP annuity offset by their DIC payment. **We need Congress to address the elimination of the offset to those who paid the premium and don't receive their complete benefit now!** Only 8 percent (4580) of SBP/DIC recipients are active duty death surviving spouses. Over 57,500 are the surviving spouses of retirees who have paid SBP premiums subsidized by DoD<sup>1</sup>.

As stated, the SBP annuity and the DIC annuity are paid for two separate purposes. The retiring service member chooses to ensure the financial security of his/her surviving spouse by enrolling in the Survivor Benefit Plan. There is a chance the retiree may die of a service-connected disability. We maintain the payment of the DIC is the responsibility of the VA regardless of what other insurance or annuity the survivor may be eligible for. No other survivors of federal employees (former military members) are subject to the offset when they receive both a survivor annuity and the DIC. Surviving children receiving SBP are not subject to the offset. Since the retiree already pays a premium for SBP, why should he/she also subsidize the payment of the VA DIC annuity?

Increasing the SBP premium to 11.25 percent would discourage retirees from signing up for the higher coverage unless they were severely disabled and had no other options. Those with severe disabilities who have been medically retired may be least financially able to pay higher premiums even though their survivors would have the greatest stake in having the offset eliminated.

We are especially concerned the Commission did not address how the survivors of those who die on active duty would be affected if this recommendation were enacted. Would they continue to experience the DIC offset to SBP? For many of the survivors of junior service members, the DIC

<sup>1</sup> Department of Defense Office of the Actuary...09-30-14

completely offsets the SBP annuity. How would the changes to the retirement system included in the FY16 NDAA figure into this?

We agree with the Commission that retiring service members and spouses should receive a full analysis of the costs and benefits of the various options available to them. Service members and families need information in order to make informed decisions on retirement and survivor plans. **However, we cannot support asking the retiree to fund both the unsubsidized portion of the SBP and the VA provided DIC payment on the chance he/she may die of a service-connected disability.**

**SBP for Inactive Duty for Training Deaths**

The Eleventh Quadrennial Review of Military Compensation released in June, 2012 recognized the Survivor Benefit Plan (SBP) annuity for reserve component personnel who die while performing inactive duty is significantly less than the benefit available to survivors of active duty members and reserve members who die on active duty. Despite their inactive status, these reservists are still performing military duties at the time of their death. The review report recommends calculating SBP benefits for a reservist who dies while performing inactive duty training using the same criteria as for a member who dies while on active duty.

***Calculate Survivor Benefit Program annuities for a reservist who dies while performing inactive duty training using the same criteria as for a member who dies while on active duty.***

Our Association appreciates the responsiveness of Congress, the Department of Defense and the Department of Veterans Affairs to surviving families when needs arise and the continued support these agencies provide. However, more needs to be done. We thank you for your consideration of benefit changes that, if enacted, would have a significant positive effect on the financial well-being of surviving families. These families deserve no less for the sacrifice they have made for our Nation.



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STATEMENT OF  
THE NATIONAL MILITARY and VETERANS ALLIANCE (NMVA)  
before the  
HOUSE ARMED SERVICES  
SUBCOMMITTEE ON PERSONNEL

DECEMBER 9<sup>TH</sup>, 2015

Presented by  
Captain Ted S. Painter, US Army (Retired)  
Co-Director

Chairman Heck, Ranking Member Davis and distinguished members of the Subcommittee: On behalf of the National Military and Veterans Alliance, a non-partisan policy and advocacy organization composed of military and veteran service organizations, I am grateful to the Committee for this opportunity to express the views of our collective membership regarding the Survivor Benefit Plan and Dependency and Indemnity Compensation offset and the Concurrent Receipt offset.

#### **Reform the Survivor Benefit Plan and Dependency and Indemnity Compensation Offset**

The National Military and Veterans Alliance strongly supports action that would end the dollar-for-dollar offset that is applied to the military Survivor Benefit Plan (SBP) due to receipt of veterans Dependency and Indemnity Compensation (DIC).

As members of the Subcommittee know, SBP and DIC payments are paid for different reasons. SBP is provided through the Department of Defense to active-duty and retirement-eligible individuals with a spouse or children. In the case of a retiree, it is coverage elected and purchased by the retiree to provide a portion of retired pay to the survivor. DIC payments are provided through the Department of Veterans Affairs as a special compensation to a survivor when the service member's death comes as a result of or due to injuries received during military service.

Under current law, there is a dollar-for-dollar reduction in the payment of the SBP annuity for each dollar of DIC compensation. Survivors, upon eligibility for DIC, lose a majority -- or all too often -- the entire amount of their monthly SBP annuity.

The National Military and Veterans Alliance urges the members of the Subcommittee to pursue a repeal of the current SBP-DIC offset and provide surviving spouses of our military service men and women with the benefits that they, in good faith, earned and sacrificed for.

#### **Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation**

A grateful nation must keep faith with its military retirees. If a retiree has the misfortune of becoming disabled as a result of service, VA disability compensation is available. To receive this compensation, however, the disabled retiree must waive, dollar-for-dollar, an equal amount of retired pay. No other federal employee is treated similarly, only the military.

Progress has been made in overturning the bar on disabled military retirees from collecting their full retirement for serving a minimum of 20 years in the service. Since the 2003 National Defense Authorization Act (NDAA) authorized a special compensation for certain military retirees injured in combat, Congress has advanced concurrent receipt to include benefits to most military retirees with combat related disabilities and to personnel with service-connected VA disability ratings of 50 percent or higher.

The National Military and Veterans Alliance asks the members of the Subcommittee to pursue a total repeal of the current law in order to allow ALL disabled military retirees to receive the financial compensation for their service that they have earned.

**The National Military and Veterans Alliance Appreciates the Opportunity to Submit Testimony to  
the Military Personnel Subcommittee**

The NMVA appreciates the attention that the Subcommittee is giving to these two very important survivor and retiree issues. We thank you for holding this hearing and for considering our testimony. The Subcommittees leadership and interest in these issues have allowed for changes that have, in part, eased the burdens for those affected by both of the offsets discussed above. While these changes are valuable steps in the right direction, there is still much more that can be done. We sincerely appreciate your continued concern and attention regarding both SBP-DIC and Concurrent Receipt and we remain hopeful that your continued leadership will put an end to both of these offsets in the very near future.

Member Organizations, National Military and Veterans Alliance (NMVA)

American Logistics Association	Military Order Purple Heart
Armed Forces Marketing Council	National Association for Uniformed
American Military Retirees Association	Services
American Military Society	National Defense Committee
American Retirees Association	Society of Military Widows
Army Navy Union	Tragedy Assistance Program for Survivors
Gold Star Wives	The Flag and General Officers' Network
Japanese American Veterans Association	The Retired Enlisted Association
Korean War Veterans Foundation Military	Uniformed Services Disabled Retirees
Order of Foreign Wars	Vietnam Veterans of America

**TESTIMONY RESPECTFULLY SUBMITTED**

**BEFORE THE**

**SUBCOMMITTEE ON PERSONNEL**

**OF THE**

**COMMITTEE ON ARMED SERVICES**

**UNITED STATES HOUSE OF REPRESENTATIVES**

STATEMENT PREPARED FOR THE RECORD

Kathleen M. Prout  
Gold Star Surviving Spouse  
The Military Officer's Association of America's  
Surviving Spouse Advisory Committee, Chairman  
Volunteer Survivor Advocate

December 9, 2015

Not for Publication  
Until Released by the Committee

My name is Kathleen Prout of Coronado, CA. My late husband, Rear Admiral James G. Prout III, USN, was serving in his 30th year in the Navy as the Battle Group Commander of Cruiser-Destroyer Group 3 with the USS Carl Vinson, CVN 70 as his flag ship, when the F-18 in which he was a passenger crashed while on official business. He was killed, and in a moment, my family's life changed forever. While family and friends were supportive, my children and I were left to go through the painful lifelong grief process. I was saddened and shocked to discover that the military and the Department of Defense were far less supportive.

My husband's earned survivor benefit, the Survivor Benefit Plan (SBP) was not paid to me in full. When he died, I was told I would only be getting a fraction of the benefit he earned by serving his country for 30 years plus 4 years at the US Naval Academy. The Casualty Assistance Officer explained that the Department of Defense's SBP is offset dollar for dollar by the amount of Dependency and Indemnity Compensation (DIC) paid by the Veterans Administration. DIC is paid to surviving spouses of service members who die on active duty or as a result of a service caused injury or condition. These are two separate programs for two separate purposes. One is an employer based benefit and the other is a small indemnity compensation due to service to our nation causing a premature death. Even stranger, the surviving spouse is the only beneficiary penalized. Any other insured interest in receipt of SBP is paid in full. Even in the case of a divorce, where SBP is considered "property", SBP may be paid in full to the former spouse and DIC paid to the current spouse. Full SBP is unfairly denied only to the un-remarried surviving spouse under age 57 of he/she who died on active duty or of causes related to military service after retirement. This is known as the SBP-DIC offset, and we must fight to end it.

My husband and I served as a team. I was responsible for not only our own family but the families of all those who served under him in his command. He worked 14-16 hour days consistently during his career and spent half of our marriage deployed. He was a hero, shot during a mission in Vietnam while working with SEAL TEAM Boat Support Unit One, earning the Purple Heart and Bronze Star with V for valor. During our long marriage, he missed the birth of one of his children, and made the birth of our first by only a few hours, having been away on Navy

business, countless birthdays, anniversaries, holidays and summers while I managed the children, our household, the automobiles, the moves, (It seems that the unwritten rule is for the service member to be away during the moving process, returning after the house is unpacked), the official entertaining at our own personal expense, being responsible for the well being of the spouses and children in the command and enabled him to do his job so well. We both served although I was unofficial and not compensated for my countless volunteer work.

When I lost my husband, I lost 75% of our household income due to the SBP-DIC Offset and due to DIC being so low. My husband was retirement eligible and therefore I was eligible for SBP and flat rate DIC from the VA. DIC was implemented to make things right and to provide income to those surviving spouses and children of those whose demise was caused by service to our country. DIC was less than one eighth of his active duty compensation. I lost more than 45 percent of retired pay. I lost 75% of the income he earned. I was appalled to find that the government values the life and sacrifice of those who gave all at only \$1254.19 cents a month. The value is close to the national poverty level versus what he was paid on active duty. Today, 65% of SBP-DIC offset surviving spouses receive compensation lower than \$16,000 a year and are over age 65. These surviving spouses deserve better from their country.

Post 9/11 military surviving spouses are eligible to receive SBP as of a law change shortly after Sept 11, 2001. However, it is a hollow benefit as the majority of these surviving spouses' SBP is less than DIC, resulting in a total offset. The Department of Defense is saving up to \$1254.19 a month on each death by not having to pay all of the SBP earned and purchased by the service members who gave all. DOD is making a windfall profit off these deaths by not paying all of the purchased and earned SBP, by not refunding all the premiums paid by the service member with interest, and by charging interest on the taxable premium refunded to those surviving spouses who do remarry after age 57. Those surviving spouses who marry again and have their offset eliminated are asked to refund the premiums back to DOD within three weeks or they are put on a payment plan with interest. No interest was refunded at the time of the death and this refund is tax deductible. The

paid tax is not refundable by the IRS after three years on this money and then the government charges interest on this same money. This is overkill to say the least and unjust. SBP is taxable income. The premium refund was paid with pretax dollars so the refund should be in the same category, not taxable, particularly when it is not refunded in full.

As a Navy spouse, I was there for countless others who served our nation as well as those who experienced loss. I moved 26 times to follow my husband's career at the sacrifice of my own career as an educator. When I lost my husband, I realized how negligent the government bureaucracy is towards families who have paid the ultimate price. I want to be there for those families again.

I started a petition on [www.change.org](http://www.change.org) to bring attention to this issue. Hopefully, if I can gather enough support, the government will not ignore us any longer. I have 75, 296 signatures as of today and growing. The American public is in favor of eliminating this unjust offset. Here is the link to my petition:

[https://www.change.org/p/stop-denying-earned-survivor-benefits-to-military-surviving-spouses?recruiter=242689561&utm\\_source=share\\_petition&utm\\_medium=copylink](https://www.change.org/p/stop-denying-earned-survivor-benefits-to-military-surviving-spouses?recruiter=242689561&utm_source=share_petition&utm_medium=copylink)

I'm calling on Congress to provide surviving spouses with 100% of the Survivor Benefit Plan promised. Our government is reneging on a voluntarily purchased insurance annuity to assure the surviving spouse receives a portion of the retired pay the service member earned. When a service member makes the ultimate sacrifice, their family shouldn't have to worry about how they will survive.

Please end the SBP-DIC offset for military surviving spouses and pass HR 1594, (Rep Joe Wilson, SC) and S 979, (Senators Nelson, FL and Collins, ME), the two bills to change the law and end this unjust offset.



**STATEMENT OF  
THE RETIRED ENLISTED ASSOCIATION (TREA)**

**Submitted for the RECORD to the**

**HOUSE ARMED SERVICES  
SUBCOMMITTEE ON MILITARY PERSONNEL**

**concerning**

**Military Survivor Benefit Plan Issues**

**December 9, 2015**

**Presented by**

**Deirdre Parke Holleman**

**TREA Washington Executive Director**

**And**

**Co-Chair of The Military Coalition's Survivors Committee**

**Disclosure of Federal Grants or Contracts**

The Retired Enlisted Association does not currently receive, nor has it received during the current fiscal year or either of the two previous years any federal money for grants or contracts. All the Association's activities and services are accomplished completely free of any federal funding.

**CHAIRMAN HECK, RANKING MEMBER DAVIS, AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE,**

TREA, the Enlisted Association is grateful to this Subcommittee for holding this hearing on such an important issue that needs to be corrected. This hearing held before the coming legislative year shows, once again, the concern you have for the survivors of those who have protected and sacrificed to keep our nation safe and strong. TREA is a nation-wide Congressionally Chartered VSO made up of retirees and veterans who have served in all branches of the U.S. military as well as their spouses, families and survivors. Ending the SBP/DIC offset has been one of our memberships' long time legislative goals. We hope this hearing may indicate that the time may have finally arrived.

**SBP/DIC offset**

A small percentage of the American people are fighting her wars, protecting her shores and preserving her freedoms. And their families and loved ones are bearing the terrible loss and loneliness when one of them dies. Of course America wants to protect and help those that are left behind. It is our duty. As President Lincoln said in his Second Inaugural address it is America's duty to "care for his widow and orphan" This same quote can be found on the front of the Department of Veterans Affairs National Headquarters. TREA is grateful for the time and effort Congress has spent trying to make this pledge a reality.

TREA strongly urges Congress to end the unfair SBP/DIC offset and to make DIC equivalent to other federal survivor programs. Long time bi-partisan champions of this issue have once again sponsored bills to end the offset. Representative Joe Wilson R-SC) has introduced **H.R. 1594** in this session of Congress. Senator Bill Nelson (D-FL) has once again introduced a bill in the Senate, **S. 979**. Both bills have large bi-partisan support in both houses of Congress. They would finally end the unfair dollar for dollar offset of military SBP and VA's DIC. Currently the

flat DIC payment for 2015 and 2016 (No COLA) is \$1,254 a month so approximately \$15,000 a year.

- **SO** survivors of all but the most senior enlisted retirees never receive a dime of the SBP that was purchased either with their retired pay or their lives on active duty. As, of course, you well know there are two groups of widows (and widowers) who are harmed by this offset. The first group is made up of those whose spouses died on active duty and the second group is made up of those whose spouses died of service-connected disabilities or injuries. Both groups should be relieved of this burden.

Each payment covers a different purpose and should be treated separately. The DIC is an indemnity (compensation or insurance) payment that is paid by the Department of Veterans Affairs (VA) to the survivor of a member of the military whose service directly causes his or her death. The SPB annuity, paid by the Department of Defense reflects the longevity of the service of the military member. It is ordinarily calculated at 55% of retired pay. Military retirees who elect SPB pay a portion of their retired pay to ensure that their family has a guaranteed income should the retiree die. If that retiree dies due to a service connected disability, only then would their survivor become eligible for DIC.

SBP was created as a purchased annuity- an earned employee benefit. This is a retirement plan. Qualification for SBP for an active duty death was added to stop the grim but extremely well intended practice of medical personnel keeping a lost comrade "technically alive" until he or she could be retired.

As the DC Federal Court of Appeals stated in its ruling in Patricia R. Sharp v. U.S. (2008-5108): "After all, the service member paid for both benefits: SBP with premiums; DIC with his life."

There is no offset if a federal civilian retiree dies of a service connected disability. The survivors will receive the civilian SBP and the VA's DIC without offset.) As stated above it takes into account longevity of service. The vast majority of families affected by this offset served a full career in the military. We all now accept the maxim that you recruit a member but you retain a family. This is part of the retirement package.

Even the name of the Dependency Indemnity Compensation's (DIC) name makes clear that it was created for a very different reason. It is an indemnity program to compensate a family for the loss of a loved one due to his or her military service. Again, they are different programs created to fill different purposes and needs. The survivor does receive a taxable pro-rated share of the paid SBP premiums back without interest in a lump sum. But that cannot make up for the cost and difficulty paying those premiums all those years of retirement caused. If a disabled veteran earns a civilian pension as a federal civil servant the family will never lose either their survivor payment or their DIC to any offset. The service member did what he could to provide for his spouse. This is behavior the Federal Government wishes to encourage. This offset makes his or her attempts a failure. Year after year we (and many other VSOs and MSOs) have asked that this unfair offset be completely abolished. Perhaps 2017 bill be that blessed year.

SSIA Program

While it may seem unwise to mention half a loaf when asking for the full loaf it is also crucial for this Subcommittee in these extremely difficult budgetary times to look at the need of extending a program that partially corrects the SBP/DIC offset. In 2008 a Special Survivor Indemnity Allowance was included in that year's NDAA to partially deal with this obviously unfair practice. It was lengthened in 2009. Starting at \$50 a month in 2009 and increasing in steps until reaching \$310 per month in 2017 this inequity is being partially offset. At the scheduled 2017 level approximately 25% of the offset will have been corrected. But then the allowance **disappears**. While this payment does not permanently and completely correct this unfair SBP/DIC these partial payments are extremely important to many of our military widows and widowers. (When one realizes that many of them are living on little more than \$15,000 a year one can see how important the payment is.)

By creating this special Allowance Congress made clear that it agreed that this offset is unfair and should be abolished. The 2008 program was paid for with the selling of federal assets while the lengthened and enlarged SSIA program was paid for with money from the smoking settlements.

Therefore at the very least we urge you in FY2017 to lengthen and increase the present SSIA Special Survivors Indemnity Allowance.

As the late HASC Chairman Ike Skelton (D-MO) said when commenting on the SSIA legislation: *"This legislation is the latest step in our continuing effort to eliminate the so-called 'widow's tax', which has long denied surviving family members the full payment of their Survivor Benefit Plan (SBP) benefits. I am grateful to House Oversight and Government Reform Committee Chairman Ed Towns for working with me on this initiative. Chairman Towns' cooperation made it possible to find the funding needed in order to change the law. I would also like to commend Congressman Solomon Ortiz, who has introduced legislation on the SBP offset and has been a great leader and advocate for the military families affected by this issue. While I regret that this bill does not completely end the offset, the House Committee on Armed Services will continue to explore every opportunity to pursue legislation that brings us closer to eliminating the 'widow's tax', just as we did today with the help of Chairman Towns."*

While it is clear that funding the allowance was difficult then and will surely be difficult now. But it is a promise made and should be a promise kept.

These survivors have been patient and calm almost beyond endurance. We are always telling them that we will never forget. This is a way to show that we do indeed remember and appreciate all they and their loved ones have done for our country.

Again, TREA thanks this Subcommittee for holding this important hearing and allowing us to submit testimony for the record.

**Biography of Deirdre Parke Holleman, Esq.**

Washington Executive Director, The Retired Enlisted Association (TREA)

Deirdre Parke Holleman, Esq. is the Washington Executive Director of The Retired Enlisted Association. She is the Chairman of the Health Care and Retiree/Survivor Committees for the National Military and Veterans Alliance (NMVA) where she was Co-Director for several years and the Co-Chairman of The Military Coalition's (TMC) Survivors and MWR & MILCON Committees. In all three organizations and as a member of TMC's Health Care Committee Mrs. Holleman focuses on healthcare, financial and benefit matters for the Military's retirees, the active duty, the National Guard and Reserves and all their families and survivors.

Prior to joining TREA Mrs. Holleman was the Washington Liaison for The Gold Star Wives of America, Inc. There she represented the concerns of active duty widows and widows of Military members who die of service connected disabilities Before Congress, the Department of Defense, the Department of Veteran Affairs and other Veteran Service Organizations.

Mrs. Holleman is an attorney licensed to practice in the State of New York and before all Federal Courts. She argued many cases before all the Appellate Courts of New York including the New Your Court of Appeals, the highest appellate court in the state. She successfully argued **In the Matter of Marie B.**, a case that struck down a New York statute as unconstitutional. For years she was a civil trial attorney in New York primarily handling Domestic, Family and Juvenile cases. She was the Associate Director of The Legal Aid Society of Mid-New York, Inc. This charity represents people who cannot afford to hire counsel in civil matters over nine counties in Upstate New York. She has a B.A. in History and Journalism from George Washington University and a J.D. from Vanderbilt University School of Law.

She lives in Rosslyn Virginia with her husband Christopher Holleman, an Administrative Judge for the Small Business Administration.

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TESTIMONY RESPECTFULLY SUBMITTED

BEFORE THE

SUBCOMMITTEE ON PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT PREPARED FOR THE RECORD

EDITH G. SMITH

CITIZEN ADVOCATE FOR  
DECEASED MILITARY RETIREES AND THEIR SURVIVORS

December 9, 2015

Not for Publication  
Until Released  
By the Committee

My name is Edith Smith and I live in Springfield, Virginia. Thank you for allowing me the opportunity to provide testimony for the record on the issue of Concurrent Receipt of Survivor Benefit Plan (SBP) and Dependency and Indemnity Compensation (DIC) before The Military Personnel Subcommittee of The Committee on Armed Services, United States House of Representatives, I have worked for the repeal of the SBP/DIC offset as a volunteer advocate since 1999, shortly after my husband's death. I represent no organization.

I believe Congress should provide SBP to eligible surviving spouses by fair and equal principles of traditional public policy over budget driven partisan politics. If even one disabled military retiree receives concurrent receipt of retired pay and disability compensation, all disabled and dead retirees should receive full retirement. Nothing about DEATH should deny any retiree the benefits of military service they worked to earn prior to their death. SBP was established by Congress to protect surviving spouses by ensuring that they receive a continuation of a portion of retired pay

#### **PERSONAL BACKGROUND:**

My late husband, LtCol. Vincent M. Smith, USMC, retired in 1981 with 21 years of service. I became a volunteer advocate when his service connected disability increased to the permanent degree of "too sick to work" and he qualified for Social Security Disability benefits. The Department of Defense (DoD) wasted no time in terminating his EARNED retired military health benefit of CHAMPUS and "cost shifted" him to Medicare. The DoD also gained financially by reducing the retired pay he EARNED dollar for dollar by the amount of Disability Compensation paid to him by Veterans Affairs (VA). DoD even reduced his EARNED retired pay by the small VA spousal allowance (\$115/mo.) paid to him for me, citing dual compensation for the same service.

Ironically, it was my husband's post retirement employment that qualified him for Social Security Disability Income and Medicare, (20 of 40 quarters for Social Security eligibility must be earned in the 10 years prior to the date of disability.) not contributions made during his service in the Marine Corps. What is the logic for Congress to take CHAMPUS from the disabled military retiree (under age 65) and later require the purchase of Medicare Part B (\$104/mo.) when working military retirees under age 65 have different and better benefits for themselves and their families. Working military retirees are not required to participate in employer provided health insurance; they have the free choice to keep TRICARE as their primary payer. Only the military disabled who have made such huge sacrifices for our freedom lose their own freedom to choose a health benefit they EARNED!

While DoD declares an SBP premium of 6 ½% of retired pay, service connected disabled retirees are charged on retired pay they may not receive. In my husband's case, he responsibly chose to provide for his family by voluntarily electing to purchase SBP (\$169/mo.) at the time of retirement. His SBP premium increased from 6 ½% of his full

retired pay to 32% of the retired pay he actually received in 1998 (\$516/mo.) when he was rated 100% Permanently & Totally disabled.

The egregious injustice applied to the disabled military retiree hit home with me when I learned, as his wife (who had not worked to earn Medicare under age 65), I would not endure the same discriminatory treatment with regard to military health benefits for a similar disabling condition. The DoD had no health benefit to "cost shift" me to, so CHAMPUS/TRICARE would continue to cover me as my primary insurance until age 65, regardless of my health status.

My husband died on September 3, 1998. I reported his death to Defense Finance and Accounting Service for termination of his retired pay. I applied for SBP. The SBP premiums he paid (\$31,665) over 18 years were refunded to me proportionate to the SBP payment I received after the dollar for dollar DIC offset applied by DoD. Interest accrued on the premiums my deceased husband paid was left in the Military Retirement Trust Fund. The \$22,000 refund was taxable to me even though my husband paid the SBP premiums from minimal income not taxable to us. There is an additional "caregiver" allowance paid to survivors whose spouse is 100% disabled for 8 or more years. That allowance of \$266 is added to DIC to further reduced my SBP payment. It is the only VA allowance for survivors that is used to reduce the SBP. Assisting with my husband's care prevented me from following my plan to teach after the children graduated high school.

No other civilian or public sector employer is permitted by law to reduce their compensation to an employee who is disabled veteran.

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### Survivor Benefit Eligibility

The President and the Congress of the United States, a Government "of the people, by the people and for the people," have previously determined eligibility of surviving spouses for the Department of Defense's (DoD) Survivor Benefit Plan (SBP). When SBP was created in 1972 as a premium-based survivor benefit of military retirement, those who died on active duty with 20 or more years of military service were equally recognized as "retirement eligible," and their surviving spouses were also eligible for SBP.

In 2001, within days of the 9/11 tragedy, Congress swiftly enacted legislation to expand eligibility for SBP to all surviving spouses of active duty deaths. Senator Kay Bailey Hutchison, TX, spoke the words quoted below on September 20, 2001, on the floor of the Senate to introduce her amendment to the Senate NDAA02:

*"On September 11, we were reminded of how real that sacrifice is, and how critical those contributions are... This is why I introduced legislation in June [S. 1037] to ensure that all military personnel who die in the line of duty, like those who died serving their country at the Pentagon, are able to receive retirement benefits they have earned. In the military, personnel are not vested in retirement benefits unless they have served 20 years or more, or unless the services medically retire them*

***before death. Clearly, someone who dies in the line of duty cannot fulfill either of these requirements, meaning their families do not receive their pro rata share of retirement pensions. It is horrible enough for a family to lose a loved one—it is an even greater hardship for them to not receive these earned benefits...” Senator Hutchison, TX***

The Congress realized the injustice of failing to provide the SBP to all surviving spouses of active duty deaths, and also recognized that those active duty service members who died the youngest paid the “highest price” and made the “greatest sacrifice.” These surviving spouses soon realized that this expanded SBP eligibility was a hollow benefit to the younger widows because the DIC offset to SBP eliminated all or most of any benefit they should have received.

There are 62,094 surviving spouses (FY14) eligible for both SBP and DIC. About 4,580 surviving spouses are a result of active duty deaths. Surviving spouses receive an average SBP of \$1,099 mo. The flat rate DIC paid in FY15 is \$1,254.mo. 37,685 of these 62,094 surviving spouses receive an SBP benefit less than DIC which appears to profit DoD.

The SBP annuity for retirees is a premium based, voluntary election benefit with the retiree paying 64% of the premium; the government’s contribution is 36% (FY14). In designing the original SBP benefit, Congress concluded “military surviving spouses should receive the same considerations as civil service surviving spouses.” [House Report 99-718, p. 211, accompanying H. R. 4428, 99<sup>th</sup> Congress, 2<sup>nd</sup> Session (1986)] The Survivor Benefit, created like the Federal Civil Service Annuity, was the first military benefit sold to retirees and provided to “retirement eligible” Active Duty deaths without premiums in order to assure their surviving spouse a continued portion of retired pay. SBP eligible children and parents, and insured interest annuitants have no offset with DIC. The Federal Civil Service annuity has no offset with DIC.

Sen. Bill Nelson – SASC Testimony April 13, 2011

***“...So, Mr. Chairman, I had a little bit of experience in insurance, before I came to the Senate, as the elected insurance commissioner of Florida. And this offset is troubling when somebody buys an insurance policy and there’s another government program over here, called Disability Indemnity. And I know of no purchased annuity that would deny payment based on the receipt of a different payment.”***

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### TRICARE RETIREE HEALTHCARE COSTS

37,685 Surviving Spouses have no SBP with which to pay the TRICARE fees because DIC wiped out the DoD's SBP payments: DoD's Survivor Benefit staff and DoD's Health Affairs staff should coordinate the unjust consequence of the offset. The SBP money the surviving spouse should use to pay these costs is not there.

- TRICARE STANDARD 25% co-pay \$3,000 catcap.
- TRICARE PRIME self - \$282.60 yr. family - \$565.20
- TRICARE Young Adult26 \$306. mo. (47% increase - Jan, 2016)
- Delta Dental: self \$37.39 family \$133.59 (varies by zipcode)
- FEHBP absorbed cost of Young Adult coverage
- Federal Civilians receive full survivor annuity to pay FEHBP

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### "The Military Takes Care of its Own" RECRUITMENT AND RETENTION

A time honored tradition: "The Military Takes Care of its own..." is a well-known and respected principle... America honors the "Fallen Heroes" for their courage and sacrifice. That inherent obligation is at the heart of America's total force team. Military leaders send healthy service members to retrieve dead bodies from the battlefield at risk of their own death and disability. No SERVICE MEMBER is ever left behind on the battlefield. Service members who perform these heroic acts of rescue often learn after the fact that they do so at their personal disadvantage, both physically and financially, leaving their families to earn the support they may not now be able to provide.

It is unthinkable that all service-related-death surviving spouses do not receive a full SBP compensation, an earned benefit of military service just the same as all non-service-related-death military widows.

Congress has repealed some former dual compensation benefits reductions. As a result, about 20% of DoD's senior leaders are military retirees. (DoD website, Oct, 2015) How can senior leaders support DoD's official opposition to surviving spouses receiving the SBP their deceased military spouses also earned and paid premiums for? Why is this double standard a status quo? How does a General earn "deferred compensation" of military retired pay for 39 years of military service while his son, a West Point graduate, lost an arm in war, had his career cut short (his life changed forever), and likely does not receive his pro rata share of retired pay earned while serving in a war?

In the 113<sup>th</sup> Session of Congress, policy makers wasted no time in restoring a 1% cola, funded with direct spending, to military retirees under age 62 (themselves.)

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### THE Military Retirement Trust Fund

The Military Retirement Trust Fund (MRF) holds and disburses the Survivor Benefit annuity of \$3.78 Billion annually to 274,259 surviving spouses (FY14) included in the total outlay of \$56,620 Billion annually from the Trust Fund. The Congressional Budget Office estimates a cost of \$500 Million a year to restore SBP to eligible DIC surviving spouses which is less than 1% of the total outlay of the MRF. The Trust Fund has absorbed the cost of the elimination of the SBP/DIC offset for remarried widows over age 57 and other new categories of active duty SBP eligibility since 9/11/01.

The GAO report [GAO-06-837-R], "Actuarial Soundness of the DOD Survivor Benefit Plan," dated July 26, 2006, found that the Military Retirement Trust Fund will maintain actuarial soundness with the provision of SBP without offset by DIC to all military SBP eligible widows."

There has been a great reluctance on the part of Congress and the Administration to find the funding or to ask the taxpayer to make a small sacrifice in recognition of the greater sacrifice made by retirees who have died in service to their country. The taxpayer should bear all funding of a "Cost of War" to include equal payment of DoD's Survivor Benefit Annuity to all military widow(er)s without penalty of a military service related death.

DoD's Compensation Officials brief the annual public meeting for the Board of Actuaries (Military Retirement Trust Fund) each year,

- Board of Actuaries meeting, July 22, 2005: the Assistant Director of Compensation explained a "Philosophy Shift" in Congress in that DoD, VA, and Social Security Systems are becoming "additive" [to retired pay replacing the tradition "double dipping" rules.] He further stated that current duplication does not have a well-defined basis and may have inconsistencies and inequities that need to be addressed.
- Board of Actuaries meeting, August 28, 2009. Assistant Director of Compensation briefs on NDAA10, S. 1390, Section 652, Repeal of requirement of reduction of SBP survivor annuities by DIC Dependency and Indemnity Compensation. He explains that the repeal of SBP/DIC is opposed by OSD. The repeal would leave 540 thousand "second class" survivors who are not eligible for both SBP and DIC. How could a survivor feel "second class" if the retiree did not die of a military related cause?

"The Eleventh Quadrennial Review of Military Compensation" (p. 17) defines benefits of military retirement as deferred compensation earned while on active status. The deferred compensation is officially estimated at 28% of Regular Military Compensation by the Government Accountability Office (GAO).

**Social Security/SBP Offset at age 62.** Repealed in 2004. The cost for the repeal of the SS/SBP age 62 was a provision included in P. L. 108-375 and cost \$14 Billion over 10 years. Why was the social security offset to SBP [eligible widow(er)s] of non-service connected deaths coordinated and passed with the provision of concurrent receipt for disabled retirees only instead of also adding surviving spouses of disabled retirees? SBP/DIC surviving spouses are at least equally deserving of their Survivor Benefit Annuity.

In my case, the DIC replaces the income we both would have earned had he not been disabled. The majority of the DIC eligible surviving spouses don't even receive the SBP annuity to benefit from the repealed offset by Social Security.

XXXX

### Retention of DIC with Remarriage at age 57 SHARP, et al, vs United States

The Veterans Benefits Act of 2003 (H.R. 2297, Section 101) provided for DIC with remarriage after age 57. The Department of Defense failed to implement this provision informally citing that a retiree is not a "veteran." Rep. Henry E. Brown, Jr, SC, Chr., Subcommittee on Benefits, House Committee on Veterans Affairs expressed in a letter dated April 13, 2004, that the intent of Congress was to retain DIC with Remarriage at age 57 without a "reduction in other federal benefits" such as SBP.

DoD's refusal to implement the FY04 law eventually forced the widows to sue in "SHARP vs United States." The intent of "The Veterans Benefits Act of 2003" was affirmed by Chief Judge Haldane Robert Mayer, Federal Court of Appeals, on August 26, 2009.

*"As recognized by the trial court, there are many plausible explanations for Congress' decision to repeal the DIC-SBP offset only for surviving spouses who receive DIC by reason of their having remarried after age 57. Perhaps Congress intended to encourage marriage for older surviving spouses. Perhaps section 1311(e) simply represents a first step in an effort to eventually enact full repeal. After all, the service member paid for both benefits: SBP with premiums; DIC with his life. Perhaps it was recognition that the political process is the art of the possible, and that prudence counseled against making the perfect the enemy of the good. Whatever the reason, the government has failed to make the "extraordinary showing of [Congress'] contrary intentions" that would permit this court to construe section 1311(e) in a way that eviscerates its plain language."*

#### CONCLUSION

"Accordingly, the judgment of the United States Court of Federal Claims is affirmed."

AFFIRMED

2008-5105 10"

1,102 remarried spouses over age 57 (FY14) have applied for and received concurrent receipt of SBP and DIC.

XXXX

#### 4 Attachments

:

- (A) "Congress, DoD differ on restored widow benefits' scope," Tom Philpott, Jan.23, 2004
- (B) - Letter, dated April13, 2004; Rep. Henry E. Brown, SC, Chairman, House Veterans Affairs Committee, Subcommittee on Disability
- (C) "Widows left out of "Concurrent Receipt" Reforms," Tom Philpott, March 4, 2007 ,
- (D) SHARP vs. United States; US Court of Appeals for the Federal Circuit; Appeal is Affirmed: August 26, 2009 10pp.

### DISABILITY DISCRIMINATION IMPACTS SURVIVOR BENEFITS

- The Rehabilitation Act of 1973, Section 504 prohibits discrimination on the basis of handicap in Programs (SBP) and activities assisted or conducted by the Department of Defense.
- DoD Directive 1020.1
  - E1.1.2.21, Title 10, USC, Chapter 55, as implemented by DoD 6010.8.R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," January 10, 1977.
  - E3.2. PROHIBITIONS AGAINST EMPLOYMENT DISCRIMINATION BY RECIPIENTS
    - E3.2.2.3 Rates of pay or any other form of compensation and changes in compensation. [Retired benefits are considered "deferred compensation"]
    - E3.2.2.6. Fringe benefits available by virtue of employment, whether or not administered by the recipient.
- The Department of Defense Trust Funds are not identified as recipients in DoDD 1020.1. However, the trust funds are programs fully funded with Federal money. CHAMPUS is identified as a recipient that must be compliant with this Directive. I believe the laws prohibiting discrimination apply to the DoD Trust Funds as well.

XXXX

### LEGISLATIVE HISTORY – HOUSE AND SENATE

Since 1999, Congress has passed about a dozen pieces of legislation that incrementally restored military retired pay and SBP to those who were affected by dual compensation laws.

In the House of Representatives, since the 107<sup>th</sup> Session of Congress, there have been 10 bills, 2 discharge petitions, and one motion to recommit the NDAA07 regarding the elimination of the SBP/DIC offset. The co-sponsors of these bills have numbered from 44 to 352 in different sessions of Congress. It is mind boggling to see the inconsistency with which elected officials support these bills by putting their name on the bill...so fearful of accusations of spending too much money rather than making laws based on traditional public policy. Loyal sponsors of the legislation have been Rep. Henry Brown, SC, Rep. Solomon Ortiz, TX, Rep. Chet Edwards, TX, Rep. Walter B. Jones, NC; and Rep. Joe Wilson, SC.

The NDAA08 included a provision to establish a Special Survivor Indemnity Allowance (SSIA) with an initial payment of \$50/mo. the first year increasing \$10/yr until the payment reached \$100/mo. HASC Chairman Ike Skelton, MO, personally negotiated funds to increase the SSIA to \$310/mo. and extend the time it ends to October, 2017.

In the Senate, Senator Bill Nelson, FL, has remained a loyal champion since 2001 and the 107<sup>th</sup> Congress. He has introduced 8 bills and several Senate Amendments to the NDAA.

It is disappointing to watch the contradictions with the support of various Senators and Congressmen. Speaking about my own state of Virginia; 10 out of 11 Members of Congress have co-sponsored HR 1594. Representative Dave Brat, (VA-7<sup>th</sup>) is the only Member whose staff has not been responsive. Senators Tim Kaine and Mark Warner, representing the same citizens of Virginia have declined requests to co-sponsor S. 979. 82.4% of Virginians voted "YES" to provide a real estate tax waiver to fully disabled veterans in 2010. Virginians overwhelmingly support disabled veterans and their survivors! Senators Kaine and Warner worked quickly to find funding to reinstate the 1 % COLA for military retirees under age 62. My question is, do Virginia's Senators represent the same Virginia voters as do Virginia's Congressmen? Are Senators Warner and Kaine representing the people of Virginia or turning a deaf ear to surviving spouses and turning their backs on deceased service members who cannot now be their own advocates?

I testified before the Senate Veterans Affairs Committee on February 3, 2005. Newly elected Senator Barack Obama, IL, attended the hearing as a Member of the Committee. Senator Obama attended a Gold Star Wives Memorial Day reception in 2007 and his remarks recognized the significant sacrifices surviving families had made. It is so difficult to understand that President Obama has not adhered to his own beliefs I heard at the Senate Hearing of being inspired to follow through by his sense of our significant sacrifices. He co-sponsored S. 935 (05-24-07) and SA 4979 (06-24-08), bills to eliminate the SBP/DIC offset. He voted for the Senate Amendment to the NDAA09 even though it wasn't funded. The elimination of the SBP/DIC offset has never been included in the President Obama's budget even though the White House staff has convened meetings on the topic.

.XXXX

#### CONCLUSION:

DEAD and DISABLED service members are a consequence of war. The surviving families of these American Heroes are the long term cost of war. The payment of SBP assures all surviving military spouses their pro rata share of earned retired pay (and clearly, someone who dies on active duty does not have the opportunity to pay SBP premiums).

**To sum up, I believe that full SBP should be paid to all recipients without DIC offset.**

I urge the Members of Congress to be mindful of their obligation to protect these surviving spouses just as their deceased service members have protected our Nation. Military Widows are reluctant to participate in the process of legislative change. Their lives have been about caring for others. They have made such great sacrifices all their lives in the tradition of military families. There is also an expectation that legislative officials will do their job.

**Correcting this offset of the DoD's Survivor Benefit is a moral obligation which now stands before Congress and the President.**

XXXX

**BIO OF EDITH G. SMITH**

Edith Smith is the widow of Lt. Col Vincent M. Smith, USMC, Ret., who had the misfortune to suffer a fully disabling heart condition in 1987, at age 49. Vince was soon switched from CHAMPUS, his earned military health benefit of retirement, to Medicare. With the special help of Senator John McCain, AZ, and Congressman Bill Young, FL, Edith set out in 1990 to change the law with another wife (residing in Florida), whose husband suffered a traumatic brain injury at about age 50. Within 10 months, legislation restoring CHAMPUS as second payer to Medicare was signed into law benefitting about 100,000 retired Medicare eligibles under age 65. A July 19, 1992, segment describing the mission of Terry Cox, FL and Edith to change the law ran on Tom Brokaw's NBC "Nightly News." Mr. Brokaw ended the segment with his comment: "Hell hath no fury like a woman scorned with a phone and a fax!"

Edith continued her role as an advocate for Disabled Military Beneficiaries. She has prepared and presented testimony many times since 1993 before various Congressional Committees as a volunteer citizen advocate working to correct problems that resulted with the implementation and integration of the dual Medicare/CHAMPUS/TRICARE benefit for those under age 65.

When the SBP/DIC offset was left out of "concurrent receipt" legislation, Edith pursued separate bills to eliminate the offset based on the same principled policies. Representing Gold Star Wives of America, Edith presented testimony regarding the elimination of the SBP/DIC offset to the Veterans Disability Benefits Commission in 2007. She also testified before the Senate Veterans Affairs Committee on February 5, 2005, the first Senate Hearing dedicated solely to survivor issues.

In 1998, The National Military Family Association honored Edith with its "Margaret Vinson Hallgren" Award for her efforts on behalf of the disabled members of the military community. In 2000, Admiral James Sears, TRICARE Management Activity Executive Director, invited Edith to serve on the TRICARE panel of military service organizations as an independent advocate for the disabled beneficiary. Her commitment to this beneficiary advocacy group continues today.

She joined Gold Star Wives of America shortly after her husband's death in 1998. Putting 10 years of Capitol Hill experience to use, she volunteered to assist as a member of the Government Relations Committee (2004-2014). She has received the Special Recognition and Shining Star Awards from Gold Star Wives.

She served on the Fairfax County Social Services Advisory Board for 7 years and was named Springfield's 1999 "Citizen of the Year." Fairfax County Board of Supervisors presented her with a Certificate of Recognition in March, 1999, for her efforts to persuade INOVA health systems to be participating provider in the newly created TRICARE program.

This year, the Secretary of Veterans Affairs invited Edith to serve as a member of the Advisory Committee on Cemeteries and Memorials.

A native Virginian, Edith graduated from Mary Washington College of the University of Virginia in 1962. She was married to Vince Smith for 35 years, staying at home to assist with his care during the years of his disability. They have two children; and two grandchildren.

**DISCLOSURE STATEMENT**

Edith Smith has not received any Federal Grant or contract, relevant to the subject matter of this testimony during the current or previous two fiscal years.

# Congress, DOD differ on restored widow benefits' scope

Members and staff of the House Veterans Affairs Committee are confident they took a first step late last year toward ending a lesser-known but a much more complex survivor benefit payments to widows and widowers of military retirees.

Defense Department lawyers are just as confident, a Pentagon source said, that the bill's language missed its mark, and does not do a single dollar's worth of military Survivor Benefit Plan payments mandated when widows also receive Dependency and Indemnity Compensation from the Department of Veterans Affairs.

At stake is how the new law is interpreted. It is an average of \$9,204 in annual survivor benefits for about 400 widows of military retirees who died from service-connected disabilities. But Rep. Henry Brown Jr., R-S.C., said it's also a symbolic first step toward ending the so-called "purple heart" benefits for 44,000 dual-eligible surviving spouses of retirees.

Military retirees buy SBP coverage so their surviving spouses can continue to receive a portion of retired pay after retirees die. The widow of any veteran, including military retirees, is eligible for Dependency and Indemnity Compensation, which pays at least \$967 a month, if the veteran died from a service-related injury or illness. But widows of military retirees see their Survivor Benefit Plan reduced dollar for dollar by the amount of their spouse's dependency compensation.

The current controversy is

nose under the tent, sort of like we did with concurrent receipt for disabled retirees. We did the Purple Heart, the VA and then we did the military-related disability with a (combat-related) disability. Then last year we said anybody up to 50 percent (disabled) even out-

sidered in law Dec. 16, 2004 to reapply (Use VA Form 21-686c). More than 12,000 widows are said to qualify. An estimated 350 DIC-eligible widows a year remain after age 56, and therefore stand to gain from the bill.

The House Veterans Affairs Committee's director for the House Committee on Veterans Affairs, Peter Dickson, said the bill would have referred specifically to the spouse of "a military retiree" not of "a veteran."

Defense officials also are said to question the logic of eliminating cuts in the Survivor Benefit Plan only for these widows who remain after age 56, leaving widows to see the Survivor Benefit Plan reduced.

benefit come in, and then lose another benefit," he said.

The National Association of the Uniformed Services explained to the House Veterans Affairs Committee that the provision "in essence, eliminates the requirement for DIC to offset SBP annuities as required by current law."

But a Pentagon source said Defense pay officials and lawyers have reviewed the provision and found no impact on the Survivor Benefit Plan. If the intent was to reduce SBP, the source said, the bill would have referred specifically to the spouse of "a military retiree" not of "a veteran."

Defense officials also are said to question the logic of eliminating cuts in the Survivor Benefit Plan only for these widows who remain after age 56, leaving widows to see the Survivor Benefit Plan reduced.

"It would be a totally incongruous result," said this Pentagon official. The department, therefore, isn't inclined to interpret the law that way.

Rep. Brown said he would like to call for a study of widows drawing dependency compensation, without clarifying guidance from the armed services committees, which have oversight responsibility for SBP.

Edith Smith, a long-time advocate for military widows, also is troubled by the prospect of reduced benefits for widows in combined benefits than other widows. But Smith said she supports the House veterans committee for taking a first step to end the SBP offset, and she argues that defense officials should apply the law as written.

If that happens, said Smith, she and service associations can continue to see the Survivor Benefit Plan reduced.

retiree widows by passing legislation to grant full concurrent receipt of SBP and dependency compensation. In Jan., Brown and Smith introduced H.R. 1726, SBP sponsored bills (H.R. 1726, S.B. 582) to repeal the SBP-DIC offset.

As of mid-January, the House committee had not officially discussed the intent of the provision known as "DIC 57" with Defense officials. That could happen soon.

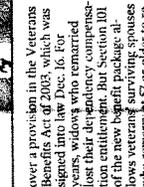
"If there's a question of interpretation," Brown said, "I think we would try to get them to reconsider."

"SBP is not within scope of our jurisdiction," conceded committee spokesman Dickinson. "But we would like to see that they wanted to ensure that it is a paid benefit for all those eligible."

Write to Military Update, P.O. Box 231111, Centerville, VA 20120-1111, e-mail: mupdate@va.gov or visit the Web site: [www.veteransupdate.com](http://www.veteransupdate.com)



Tom Philpott



Brown

the House Committee on Veterans Affairs, Peter Dickson, said the bill would have referred specifically to the spouse of "a military retiree" not of "a veteran."

Defense officials also are said to question the logic of eliminating cuts in the Survivor Benefit Plan only for these widows who remain after age 56, leaving widows to see the Survivor Benefit Plan reduced.

Attachment A

HENRY E. BROWN, JR.  
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1800 NORTH OAK STREET, SUITE C  
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(843) 445-6459  
FAX: (843) 445-6418

Congress of the United States  
House of Representatives  
Washington, DC 20515-4001

COMMITTEES:  
VETERANS' AFFAIRS  
SUBCOMMITTEE ON BENEFITS, CHAIRMAN  
TRANSPORTATION  
BUDGET  
WEB ADDRESS: [WWW.HOUSE.GOV/HENRY.BROWN](http://WWW.HOUSE.GOV/HENRY.BROWN)  
EMAIL: [WRITERHENRYBROWN@MAIL.HOUSE.GOV](mailto:WRITERHENRYBROWN@MAIL.HOUSE.GOV)

April 13, 2004

**It's a Matter of Fairness--Repeal the SBP-DIC Offset For All  
Surviving Spouses: Please cosponsor H.R. 1726!**

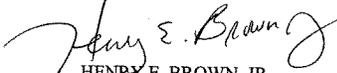
Dear Colleague,

Last year, the House passed H.R. 2297, the Veterans Benefits Act of 2003, by a vote of 399-0, and it was signed into law. Section 101 of that benefit package allows veterans' surviving spouses who remarry after the age of 57 to retain their VA Dependency and Indemnity Compensation (DIC), a benefit to survivors of veterans who died from service-related injury or illness. Included in that same section of the bill is language that states individuals made eligible for DIC by reason of their "status as the surviving spouse of a veteran," **should see no reduction in other federal benefits.** The most important federal benefit involved here is the Survivor Benefit Plan (SBP), an annuity voluntarily purchased by military retirees so their surviving spouses can continue to receive a portion of retired pay after the retiree dies. Although the Congress has clearly spoken on this issue, it is unclear whether the Department of Defense (DoD) will follow our intent to end this injustice and continue to make SBP payments without offset by DIC.

Except for those surviving spouses who remarry after age 57, the DIC benefit is offset against the SBP annuity under current law, and the proportionate SBP premium is refunded to the surviving spouse without interest. Now, it is a matter of simple fairness to eliminate this inequity by repealing the DIC offset from SBP annuities for all surviving spouses of military retirees. H.R. 1726 will do this for the more than 40,000 widows and widowers who face their own version of "concurrent receipt." They are often alone, and on a fixed income, so this purchased and rightful benefit is such a tremendous help.

As we continue our legislative business this year, please do not forget about military surviving spouses and all of the sacrifices that they have made to this great nation. Chairman Nussle has provided us with the headroom in the Budget Resolution to make this happen if the Armed Services Committee includes appropriate language that permits survivors to retain their rightful and voluntarily purchased benefits. For more information or to become a cosponsor, please contact Joe Glebocki at 5-3176.

Sincerely,

  
HENRY E. BROWN, JR.  
Member of Congress

Terry Manning  
 Metro editor  
 Phone 334-261-1520  
 Fax 334-261-1521  
 425 Moltzen St.  
 Montgomery, AL 36104

Montgomery Advertiser

# Alabama

3C  
 Sunday  
 March 4, 2007

## Widows left out of 'concurrent receipt' reforms

**A**rmy Sgt. Maj. Keith Witt had been a soldier for 26 years when illness forced him to retire. Veterans Affairs rated him fully disabled with multiple sclerosis and later with cancer, presumed to have been caused by exposure to the chemical Agent Orange in Vietnam.

Witt had signed up for the military Survivor Benefit Plan for his wife, Kay. His retired pay was reduced by 6.5 percent a month for SEP pay. Because Keith had died before Witt's retirement, Witt had to pay for SEP pay. By 1997, Keith's conditions had worsened to a point that Kay retired early from her federal civilian career to be the primary caregiver. Her SEP pay decision reduced her pension by about half.

When Keith died in 2001,

quires an equal cut in SEP. Premiums paid on the portion of SEP that disappears are returned to the widow. The so-called SEP-DIC offset was set up in 1990 to help military survivors and simply isn't fair, Witt and other widows told the Veterans' Disability Benefits Commission last week. The two pay-ers, they said, are not connected for a service-connected death and the resulting economic loss. SEP is the only benefit that qualified for SEP only because her husband bought it for her with monthly premiums.

"It would be illegal if a civilian company did that — without interest, and said, 'You know, we've changed

our minds. We don't want to pay this," she told me. The Veterans' Disability Benefits Commission is examining all facets of the SEP-DIC offset with a final report due in October.

Witt and several other widows appeared briefly before the commission to describe their situation. It was presented by Smith, a long-time advocate for military widows. The SEP-DIC offset was not the only thing for handling the SEP-DIC offset issue.

Endorse the offset and continued partial refunds of SEP benefits. Eliminating the offset for all recipients, including survivors of

members who die in service.

Recommend eliminating the offset only for survivors of retirees who paid SEP. Under this option, the offset would continue to impact SEP payments for deaths in service.

Smith, widow of a retired soldier, said Congress paid almost \$3 billion to fewer than 4,000 families who lost loved ones in the attacks of 9-11. Ending the offset merely would ensure that they receive their pro rata share of earned retired pay," she said.

To comment, write Military Update, P.O. Box 21111, Centerville, VA 22021. E-mail: [comment@milupdate.com](mailto:comment@milupdate.com) or visit [www.militaryupdate.com](http://www.militaryupdate.com).

fair and equitable solution.

The issue has had its champion in the last Congress. But the Military Retiree Survivor Benefit Equity Act and is expected to do so again this year.

Smith wanted congressional action. She said that Congress paid almost \$3 billion to fewer than 4,000 families who lost loved ones in the attacks of 9-11. Ending the offset merely would ensure that they receive their pro rata share of earned retired pay," she said.

To comment, write Military Update, P.O. Box 21111, Centerville, VA 22021. E-mail: [comment@milupdate.com](mailto:comment@milupdate.com) or visit [www.militaryupdate.com](http://www.militaryupdate.com).

Attachment C

**United States Court of Appeals for the Federal Circuit**

2008-5105

PATRICIA R. SHARP, MARGARET M. HAVERKAMP,  
and IVA DEAN ROGERS,

Plaintiffs-Appellees,

v.

UNITED STATES,

Defendant-Appellant.

Edward R. Reines, Weil, Gotshal & Manges LLP, of Redwood Shores, California, argued for plaintiffs-appellees. With him on the brief were Michael R. Franzinger and Azra M. Hadzimehmedovic, of Washington, DC.

Douglas K. Mickle, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, argued for defendant-appellant. With him on the brief were Michael F. Hertz, Acting Assistant Attorney General, Jeanne E. Davidson, Director, and Bryant G. Snee, Assistant Director. Of counsel on the brief were Kelly L. McGovern, Personnel Branch, Army Litigation Division, United States Army, of Arlington, Virginia, and Scott Lafferty, Senior Associate Counsel, Office of the General Counsel, Military and Civilian Pay Law Directorate, Defense Finance and Accounting Service, of Cleveland, Ohio.

Appealed from: United States Court of Federal Claims

Judge George W. Miller

pp. 1-10  
Attachment (D)

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

2008-5105

PATRICIA R. SHARP, MARGARET M. HAVERKAMP,  
and IVA DEAN ROGERS,

Plaintiffs-Appellees,

v.

UNITED STATES,

Defendant-Appellant.

Appeal from the United States Court of Federal Claims in 07-CV-547,  
Judge George W. Miller.

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DECIDED: August 26, 2009

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Before MAYER, CLEVINGER, and SCHALL, Circuit Judges.

MAYER, Circuit Judge.

The United States appeals the judgment of the United States Court of Federal Claims, which denied its motion to dismiss, and granted the motion for summary judgment of Patricia Sharp, Margaret Haverkamp, and Iva Rogers, permitting them to receive Survivor Benefit Plan ("SBP") payments unreduced by the amount of their reinstated Dependency and Indemnity Compensation ("DIC") payments. Sharp v. United States, 82 Fed. Cl. 222 (2008). Because the Court of Federal Claims correctly determined that 38 U.S.C. § 1311(e) partially repealed 10 U.S.C. § 1450(c)(1), we affirm.

## BACKGROUND

The appellees (collectively referred to in the singular as “Sharp”) are surviving spouses of deceased veterans and military retirees of the United States Armed Forces, each of whom remarried after age 57. This case centers on statutory interpretation and involves two benefit programs: SBP, which is administered by the Department of Defense, and DIC, which is administered by the Department of Veterans Affairs. SBP is an insurance-style program allowing eligible servicemembers and military retirees to elect to have premiums deducted from their pay in order to provide their spouses with additional benefits after their deaths. 10 U.S.C. § 1448 (2006). As the surviving spouse of a deceased military servicemember who chose to participate in SBP, Sharp is the primary beneficiary of annuity payments that became effective the first day after her spouse's death. *Id.* § 1450(a). DIC is a separate benefit, which is automatically paid to surviving spouses of veterans who died while on active duty or while suffering from a service-connected disability. 38 U.S.C. § 1310(a) (2006) (“When any veteran dies . . . from a service-connected or compensable disability, the Secretary shall pay [DIC] to such veteran’s surviving spouse . . .”). Sharp's spouse died while on active duty or while suffering from a service-connected disability. Thus, she is eligible to receive both SBP and DIC benefits.

Prior to 2003, surviving spouses receiving DIC payments became ineligible to continue receiving the benefit when they remarried. Congress responded by passing the Veterans Benefits Act of 2003 (“the Veterans Benefits Act”), which restored DIC benefits to surviving spouses who chose to remarry after age 57. *Id.* § 103(d)(2)(B) (“The remarriage after age 57 of the surviving spouse of a veteran shall not bar the

furnishing of benefits [relating to DIC] to such person as the surviving spouse of the veteran.”). The Veterans Benefits Act also provided that, “notwithstanding any other provision of law,” those remarried spouses who are simultaneously eligible for other benefits inuring to surviving spouses of veterans do not suffer a reduction in their benefits due to the DIC payments. *Id.* § 1311(e).<sup>1</sup>

The SBP and DIC benefit schemes, however, have contradicting provisions regulating offsets for those who receive both benefits. The SBP offset provision, which went into effect September 21, 1972, calls for reducing SBP payments by the amount the recipient receives in DIC benefits. 10 U.S.C. § 1450(c)(1) (2006) (“If . . . the surviving spouse . . . is also entitled to [DIC] under section 1311(a) of title 38, the surviving spouse . . . may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation.”). As stated above, however, the DIC scheme appears to prohibit a reduction in benefits, such as SBP payments, for widows like Sharp, notwithstanding provisions of law like the offset language in the SBP statute. *See* 38 U.S.C. § 1311(e) (2006). Nevertheless, the Department of Defense continued to enforce the SBP offset

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<sup>1</sup> The Veterans Benefits Act of 2003 provides in pertinent part:

In the case of an individual who is eligible for dependency and indemnity compensation under this section by reason of section 103(d)(2)(B) of this title who is also eligible for benefits under another provision of law by reason of such individual's status as the surviving spouse of a veteran, then, notwithstanding any other provision of law (other than section 5304(b)(3) of this title), no reduction in benefits under such other provision of law shall be made by reason of such individual's eligibility for benefits under this section.

38 U.S.C. § 1311(e) (2006) (effective Jan. 1, 2004).

provision, and reduced Sharp's SBP payments by the amount she received in DIC benefits.

On July 19, 2007, Sharp filed suit in the Court of Federal Claims, asserting that the government improperly reduced her SBP payments by the amount of her DIC payments. The court granted summary judgment in her favor, holding that "section 1311(e) modifies or partially repeals 10 U.S.C. § 1450(c)(1) to the extent that SBP payments are not to be reduced by the amount of DIC payments to those surviving spouses who receive DIC by virtue of their having remarried after the age of 57." Sharp, 82 Fed. Cl. at 229. The government appeals, and we have jurisdiction under 28 U.S.C. § 1295(a)(3).

#### DISCUSSION

We review the trial court's grant of summary judgment de novo, reapplying the same standard as the trial court. Palahnuk v. United States, 475 F.3d 1380, 1382 (Fed. Cir. 2007). Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Rule 56(c) of the Rules of the United States Court of Federal Claims; see also Palahnuk, 475 F.3d at 1382.

#### I.

The statutory provisions at issue, 10 U.S.C. § 1450(c)(1) and 38 U.S.C. § 1311(e), are at odds: the SBP scheme calls for reducing SBP payments by the amount the recipient receives in DIC benefits, whereas the post-2003 DIC scheme prohibits such reductions for surviving spouses who remarry after age 57. Sharp urges,

and the trial court held, that by its plain language section 1311(e) modifies or partially repeals section 1450(c)(1), so that surviving spouses who receive reinstated DIC by virtue of remarrying after age 57 receive their SBP payments unreduced by the amount of their DIC payments.

The government more restrictively reads the language of section 1311(e) as precluding the reduction of benefits by DIC payments only for those benefits that are paid to surviving spouses of veterans *solely* due to their status as surviving spouses. In order for a surviving spouse of a veteran to receive SBP, the veteran must have been eligible for retirement, 10 U.S.C. § 1448(a)(1), have chosen SBP coverage, *id.* § 1448(a)(2), and have paid premiums for the benefit, *id.* § 1452. Because eligibility for SBP benefits includes requirements additional to one's status as a surviving spouse of a veteran, the government concludes that SBP benefits are not included in the section 1311(e) ambit of protection.

We agree with Sharp and the trial court. To determine Congress' intent, we use the traditional tools of statutory construction, beginning with the text of the statute. Splane v. West, 216 F.3d, 1058, 1068 (Fed. Cir. 2000) (citing United States v. Gonzales, 520 U.S. 1, 4 (1997)). Where the intent is unambiguously expressed by the plain meaning of the statutory text, we give effect to that clear language without rendering any portion of it meaningless. *Id.* Here, Congress' intention to supersede all other laws (except a provision not at issue in this case), and prevent a decrease in some other benefit payment as a result of section 1311(e)'s restoration of DIC payments to surviving spouses who remarry after age 57, is plain on the face of the statute. 38 U.S.C. § 1311(e) ("[N]otwithstanding any other provision of law (other than

section 5304(b)(3) of this title), no reduction in benefits under such other provision of law shall be made by reason of such individual's eligibility for benefits under this section."). Because the "notwithstanding" clause applies to "any other provision of law," without relevant limitation, section 1311(e) cannot be given any effect unless its language is construed to modify or partially repeal the earlier-promulgated section 1450(c)(1) to the extent necessary to resolve the offset conflict.

To the government's unconvincing argument that the only benefits section 1311(e) was meant to protect from offset are those granted solely because of the recipient's status as the surviving spouse of a veteran, Sharp responds that the plain language of section 1311(e) supports the reading that the statute applies to benefits for which a recipient's "status as the surviving spouse of a veteran" is a necessary but not exclusive requirement. Sharp's reading of the statute is more persuasive because, inter alia, neither party has identified a statute that entitles one to benefits solely due to one's status as a veteran or a spouse of a veteran; benefits appear always to be otherwise conditioned, e.g., filing necessary paperwork. The government's position, on the other hand, makes it effectively impossible for any benefit to gain offset protection from section 1311(e). We therefore reject its interpretation, which would violate the canon that we must "give effect, if possible, to every clause and word of a statute" and should avoid rendering any of the statutory text meaningless or as mere surplusage. Duncan v. Walker, 533 U.S. 167, 174 (2001) (internal quotation marks omitted).

The government continues that the statute does not pertain to SBP benefits because SBP is a *retirement* benefit and not a benefit that is conferred based on *veteran* status. Although the government correctly states that not all veterans are

retirees, it also concedes that a military retiree will always be a veteran.<sup>2</sup> Thus, Sharp's status as the surviving spouse of a military retiree unequivocally confers status as the surviving spouse of a veteran. Only military retirees and retirement-eligible servicemembers are permitted to participate in SBP, so an SBP beneficiary always is a surviving spouse (or dependent child) of a veteran. As such, the SBP offset provision, 10 U.S.C. § 1450(c)(1), represents "another provision of law" that makes benefits available to an individual "by reason of such individual's status as the surviving spouse of a veteran" as contemplated by 38 U.S.C. § 1311(e). Because Sharp's eligibility for SBP is predicated upon her status as the surviving spouse of a veteran, her SBP benefits are protected from offset.

## II.

Even though we conclude that the plain language of 38 U.S.C. § 1311(e) unambiguously precludes the DIC-SBP offset of 10 U.S.C. § 1450(c)(1), we take a look at the legislative history "only to determine whether a clear intent contrary to the plain meaning exists." Glaxo Operations UK Ltd. v. Quigg, 894 F.2d 392, 396 (Fed. Cir. 1990). To overcome the plain meaning of the statute, the party challenging it by reference to legislative history must establish that the legislative history embodies "an *extraordinary showing of contrary intentions*." Id. (quoting Garcia v. United States, 469 U.S. 70, 75 (1984)). The government has failed to present anything that comes close to satisfying this burden.

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<sup>2</sup> Title 38 defines a veteran as "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." 38 U.S.C. § 101(2) (2006).

The government first points to the Congressional Budget Office (“CBO”) cost estimate of the Veterans Benefits Act of 2003, which included the DIC-SBP offset in its calculation, as evidence that Congress intended SBP offsets to remain in place. We are unpersuaded. First, the CBO is not Congress, and its reading of the statute is not tantamount to congressional intent. Second, Congress never ratified the CBO’s interpretation, which was completed more than two weeks after Congress took final action on the bill. Finally, section 1311(e)’s “notwithstanding” clause, which repealed the DIC-SBP offset at issue, was not part of the bill’s original text, but was added by amendment. As the trial court noted, the fact that the repeal was not included in the original text of the bill could have resulted in a CBO calculation error or oversight. In sum, the government’s CBO argument is not “an extraordinary showing” that Congress intended the statute to mean something contrary to its unambiguous language.

To counter the government’s position, Sharp contends that the legislative history of a bill considered by the preceding Congress and similar to the one that produced section 1311(e) demonstrates that Congress conveyed its actual intent to partially repeal the DIC-SBP offset. In 2002, Congress considered the Veterans’ and Survivors’ Benefits Expansion Act of 2002, which included language almost identical to the provision in the Veterans Benefits Act of 2003. A House Veterans Affairs Committee report discussing the 2002 legislation expressly stated that the provision at issue is applicable to SBP payments. H.R. Rep. No. 107-472, at 6 (2002), reprinted in 2002 U.S.C.C.A.N. 1020, 1022 (“[T]he Committee has included language so that [retained DIC payments] will be paid to all remarried surviving spouses, and that no reduction of other benefits to which the surviving spouse may be entitled, such as Survivor Benefit

Plan payments, would occur.”). Although this committee report does not speak directly to the language of the Veterans Benefits Act of 2003, it at least confirms that the legislative history does not amount to an “extraordinary showing of contrary intention” required to interpret section 1311(e) as not partially repealing the DIC-SBP offset. “Surely an interpretation placed by the sponsor of a bill on the very language subsequently enacted by Congress cannot be dismissed out of hand . . . simply because the interpretation was given two years earlier.” United States v. Enmons, 410 U.S. 396, 405 n.14 (1973); see also Huffman v. Office of Pers. Mgmt., 263 F.3d 1341, 1347 n.1 (Fed. Cir. 2001) (“Congress did not release committee reports, but it is proper for us to look to the legislative history from the [previous] Congress for guidance in interpreting the [statute], because the language did not change.”).

Finally, the government relies on post-2003 congressional activity in its attempt to prove that Congress did not intend a partial repeal of the DIC-SBP offset in 2003. Specifically, it points to ongoing legislative efforts to effect a total repeal of the DIC-SBP offset as evidence that if Congress had intended the Veterans Benefits Act of 2003 to silently repeal the offset, it would have done so expressly and for all surviving spouses, not just the narrow group of survivors who marry after age 57. This argument also is unavailing.

As recognized by the trial court, there are many plausible explanations for Congress’ decision to repeal the DIC-SBP offset only for surviving spouses who receive DIC by reason of their having remarried after age 57. Perhaps Congress intended to encourage marriage for older surviving spouses. Perhaps section 1311(e) simply represents a first step in an effort to eventually enact full repeal. After all, the

servicemember paid for both benefits: SBP with premiums; DIC with his life. Perhaps it was recognition that the political process is the art of the possible, and that prudence counseled against making the perfect the enemy of the good. Whatever the reason, the government has failed to make the "extraordinary showing of [Congress'] contrary intentions" that would permit this court to construe section 1311(e) in a way that eviscerates its plain language.

CONCLUSION

Accordingly, the judgment of the United States Court of Federal Claims is affirmed.

AFFIRMED

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Statement of

**Society of Military Widows**

for the record

United States House of Representatives

Committee on Armed Services

Subcommittee on Military Personnel

Hearing

December 9, 2015

Presented by

Mrs. Janet Snyder  
Society of Military Widows  
Legislative Chair, President-Elect

Not for publication  
Until Released  
By the Committee

Society of Military Widows (SMW) was founded in Coronado, CA, in February 1968 by Theresa "Tess" Alexander, to serve the interests of women whose husbands died on active duty or during retirement from the armed forces. Incorporated 1971 in California, SMW has a membership of 5,245 members. July 1984 SMW affiliated with National Association for Uniformed Services (NAUS) to build a stronger organization. We are partners with The Coalition to Save Our Military Shopping Benefits. SMW members' service member spouses were career military, having served 20 to over 30 years. Most voluntarily elected to participate in the Survivor Benefit Plan (SBP) at their retirement, in order to responsibly provide financial security for their surviving spouse, whenever they passed.

My husband Tom paid \$70,000 into SBP for 30 years following his retirement from the U.S. Army in 1978. He became service-connected disabled due to his exposure to Agent Orange in Vietnam, suffering from diabetes and prostate cancer. I was his full-time caregiver for the last five years of his life. He received both his retirement pay and his 100% disability pay without offset, and assumed that I would be able to receive 55% of the retirement pay he received, when he passed. When he died, he had no idea that I would not receive what he paid for.

SBP is the earned benefit of those who died, if they elected it. As surviving spouses, we are one of the categories of beneficiaries, and the only ones who are offset. Tom paid for 55% of his retirement for me. He is the one who should be honored here. If he had lived longer, he would still be receiving his earned benefit; but he had the misfortune of dying.

Eliminating the SBP/DIC offset is a recognition of our service members' deaths and sacrifice - not the surviving spouse - as we were their partners in the military life together. They are not alive to fight for us now, so we must be their advocate and speak for them.

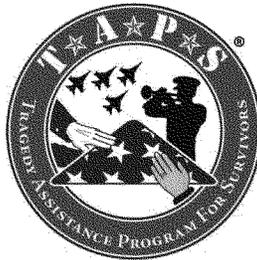
Janet Snyder  
Legislative Chair, President-Elect  
Society of Military Widows

## BIOGRAPHY

Mrs. Janet Snyder is the widow of Lieutenant Colonel Thomas E. Snyder, U.S. Army. Janet is the mother of three children, grandmother of six, and one great granddaughter. She was married to her husband Tom for 52 years. Janet started the Las Vegas Valley Chapter of Gold Star Wives and was president from 2011 - 2014; started the Society of Military Widows of Southern Nevada Chapter #34 and was president from 2012 - 2015, currently serving as Secretary of the chapter; recently elected President-Elect of the national Society of Military Widows for 2014 - 2016, and continuing as Legislative Chair; public relations chair, Southern Nevada Chapter, Military Officers Association of America (MOAA); served for three years (2011 - 2014) on the national Auxiliary Member Advisory Committee, Military Officers Association of America (MOAA); continues to serve on the Veterans Advisory Panel of Congressman Joe Heck (NV-3) and Veterans Roundtables of Congresswoman Dina Titus (NV-1) and Congressman Cresent Hardy (NV-4)

## DISCLOSURE STATEMENT

Neither Mrs. Snyder nor the Society of Military Widows have received any Federal grant or contract, relevant to the subject matter of this testimony, during the current or previous two fiscal years.



**STATEMENT FOR THE RECORD**

**TRAGEDY ASSISTANCE PROGRAM FOR SURVIVORS (TAPS)  
BEFORE THE  
HOUSE COMMITTEE ON ARMED SERVICES  
SUBCOMMITTEE ON MILITARY PERSONNEL**

*Concurrent Receipt of Survivor Benefit Plan (SBP) and Dependency and Indemnity Compensation (DIC)*

**December 9, 2015**

**Tragedy Assistance Program for Survivors (TAPS)** is the national organization providing compassionate care for the families of America's fallen military heroes. TAPS provides peer-based emotional support, grief and trauma resources, grief seminars and retreats for adults, 'Good Grief Camps' for children, casework assistance, connections to community-based care, and a 24/7 resource and information helpline for all who have been affected by a death in the Armed Forces. Services are provided to families at no cost to them. We do all of this without financial support from the Department of Defense. TAPS is funded by the generosity of the American people.

TAPS was founded in 1994 by Bonnie Carroll following the death of her husband in a military plane crash in Alaska in 1992. Since then, TAPS has offered comfort and care to more than 50,000 bereaved surviving family members. For more information, please visit [www.taps.org](http://www.taps.org)

TAPS currently receives no government grants or funding.

Chairman Heck, Ranking Member Davis, and other distinguished members of the Military Personnel Subcommittee, the Tragedy Assistance Program for Survivors (TAPS) thanks you for the opportunity to provide a statement on the concurrent receipt of the Survivor Benefit Program and Dependency and Indemnity Compensation. We are appreciative of the work this subcommittee has done in the past to improve benefits for the survivors of those who have made the greatest sacrifice for our country.

**Eliminate the DIC offset to the SBP Annuity**

The Tragedy Assistance Program for Survivors (TAPS) believes ending the Dependency and Indemnity Compensation (DIC) offset to the Survivor Benefit Plan (SBP) will provide the most significant long-term advantage to the financial security of all eligible surviving families. Although we know there is a significant price tag associated with this change, ending this offset would correct an inequity that has existed for many years.

Each payment serves a different purpose. The DIC is a special indemnity (compensation or insurance) payment paid by the Department of Veterans Affairs (VA) to the survivor when the military member's service causes his or her death. The SBP annuity, paid by the Department of Defense (DoD), reflects the longevity of the military member's service. It is ordinarily calculated at 55 percent of retired pay.

Military retirees who elect SBP pay a portion of their retired pay to ensure that their family has a guaranteed income should the retiree die. If that retiree dies due to a service-connected disability, their survivor also becomes eligible for DIC. At present, the surviving spouse who is eligible for SBP and DIC receives the full DIC payment of \$1,254.19 (2014 rates) per month and the portion of the SBP payment offset by the DIC payment, which varies upon the retiree's rank and length of service.

Surviving spouses whose service member died on active duty after September 11, 2001 are also eligible for both the SBP annuity and DIC payment. Surviving active duty spouses can make several choices, dependent upon their circumstances and the ages of their children. Because SBP is offset by the DIC payment, the spouse may choose to waive this benefit and select the "child only" option. In this scenario, the spouse would receive the DIC payment and the children would receive the full SBP amount until each child turns 18 (23 if in college), as well as the individual child DIC until each child turns 18 (23 if in college). Once the children have left the house, this choice currently leaves the spouse with an annual income from DIC of \$15,050 (2014 rates), a significant drop in income from what the family had been earning while the service member was alive and on active duty. The percentage of loss is even greater for survivors whose service members served longer.

TAPS hears from the eligible surviving spouses that we serve about the inequity of this offset. Many of the surviving spouses of junior service members receive no portion of their SBP annuity. Those who choose to designate their children as the SBP beneficiaries often find that the taxes the children are paying overwhelm the short term benefit of having the SBP go to their children. Add to that the difficulty of making those choices so soon after the death of the service member while still in the fog of grief.

It is unconscionable that this has been an issue for so many years and that survivors need to come back year after year to fight for this change only to be told the cost is too high. The cost was high to surviving families - those who gave their lives for their country deserve more fair compensation for their surviving spouses.

***Eliminate the Dependency and Indemnity Compensation (DIC) offset to the Survivor Benefit Plan (SBP) to recognize the length of commitment and service of the career service member and spouse. We support H.R. 1594, which provides for that elimination.***

**Special Survivor Indemnity Allowance**

Congress has acknowledged the inequity of the offset in the FY2008 National Defense Authorization Act. Since October 1, 2008, surviving spouses whose SBP payments have been offset by DIC are eligible for the Special Survivor Indemnity Allowance (SSIA). What was viewed as an interim fix until the offset could be eliminated is due to terminate after Fiscal Year 2017. The monthly payments were incremented over a 10-year period, but at its highest (\$310 in 2017) only covers about 1/3 of the amount lost by the DIC offset.

We ask that at the very least, the authority for the extension of the SSIA be included in the FY2017 National Defense Authorization Act so there is no interruption or, tragically, a termination of this payment to SBP-DIC widows.

***Extend the Special Survivor Indemnity Allowance beyond FY2017.*****Military Compensation and Retirement Modernization Commission (MCRMC) Recommendation**

The Commission listened to the concerns of retirees and surviving spouses about the inequity of the VA Dependency and Indemnity Compensation (DIC) offset to the Survivor Benefit Plan (SBP) annuity. However, we cannot support the recommendation put forth by the Commission giving retired service members the option of funding the elimination of the offset by paying a higher premium.

We have concerns about the Commission's proposed changes to the SBP premium structure. This would provide no relief to the 60,000 surviving widows/widowers who would be no better off than they are now - continuing to have their SBP annuity offset by their DIC payment. Congress needs to address the elimination of the offset to those who pay the premium and don't receive their complete benefit now. Only 8 percent (4,580) of SBP/DIC recipients are active duty death surviving spouses. Over 57,500 are the surviving spouses of retirees who have paid SBP premiums subsidized by DoD.

The payment of the DIC is the responsibility of the VA, regardless of what other insurance or annuity for which the survivor may be eligible. No other survivors of federal employees (former military members) are subject to the offset when they receive both a survivor annuity and the DIC. Surviving children receiving SBP are not subject to the offset. Since the retiree already pays a premium for SBP, why should he/she also subsidize the payment of the VA DIC annuity?

Increasing the SBP premium to 11.25 percent would discourage retirees from signing up for the higher coverage unless they were severely disabled and had no other options. Those with severe disabilities who have been medically retired may be least financially able to pay higher premiums even though their survivors would have the greatest stake in having the offset eliminated.

How are the needs of survivors of those who die on active duty affected by this recommendation? The Commission did not address this and we have questions on where the funding would come from to fully fund the concurrent receipt of DIC and SBP.

TAPS cannot support asking the retiree to fund both the unsubsidized portion of the SBP and the VA-provided DIC payment on the chance that he/she may die of a service-connected disability.

**It is the responsibility of the Nation to provide for the support of the loved ones of those who have paid the highest price for freedom. Thank you for allowing us to speak on their behalf.**

**Statement for the Record**

Before the

**Committee on Armed Services  
Military Personnel Subcommittee  
United States House of Representatives**

**December 9, 2015**

**Presented by**

**Dr. Vivianne Cisneros Wersel, Au.D.**

**Surviving Spouse Lieutenant Colonel Richard Wersel, Jr., USMC**

*"With malice toward none; with charity for all; with firmness in the right, as God gives us to see right, let us strive to finish the work we are in; to bind up the nation's wounds, to care for him who has borne the battle, his widow and his orphan."*

*...President Abraham Lincoln, Second Inaugural Address, March 4, 1865*

*Not for publication  
until released by  
the committee.*

Dr. Heck, Ranking Member Davis, members of this distinguished committee, thank you for the opportunity to submit testimony for the record as a military surviving spouse. I am Dr. Vivianne Cisneros Wersel, the widow of Lt. Col. Richard Wersel, Jr., USMC, who died suddenly on February 4, 2005, at Camp Lejeune North Carolina, one week after returning from his second tour of duty in Iraq. I will focus this testimony on the impact on surviving spouses, the precedence, funding and legislative recommendations. This issue has come before Congress before with defined recommendations already. My testimony provides evidence that the Department of Defense (DoD) Survivor Benefit Plan (SBP) should not be offset by the Department of Veterans Affairs (VA) Dependency Indemnity Compensation (DIC). Presently, Federal law requires a \$1.00 reduction in SBP for each \$1.00 received in DIC.

My perspective is as a military widow, and as a subject matter expert for military survivor benefits. I am well versed with the SBP DIC offset as it personally impacts me. Having been interviewed by such mainstreamed media outlets such as CNN and USA Today, I always look forward to the next opportunity to share my experiences and discuss the details that continues to make the qualitative difference for me and others like me that have been confronted by the same challenges and issues. Furthermore, I am also associated with and worked with other organizations who are well versed with this issue to include Government Relations Committee for Gold Star Wives (member ten years and past chair), President emeritus Arlington Chapter Gold Star Wives, Military Officer Association of America (MOAA), National Military Family Association (NMFA), Tragedy Assistance Program for Survivors (TAPS), National Association of Uniform Services (NAUS), Got Your Back Network- board member, VA/DoD Survivor Forum Committee, and founder of the Surviving Spouses Support Group Camp Lejeune. I was instrumental in changing the SGLI and Death Gratuity (SA 1376) so that all active duty widows are now eligible for enhanced benefits. I have testified before Congress numerous times and participated in many House VA Committee Roundtables about inequities in survivor benefits. My mission is to help correct those inequities and optimize services provided to survivors.

### **Impact on Quality of Life**

Shortly after the death of my Marine husband, my casualty officer escorted me to the various agencies on base to complete the necessary paperwork to execute benefits. I remember that day clearly as if it was yesterday. My casualty officer told me that it was in my best interest to accept the spouse option of the SBP annuity, and the offset would be applied. This was the best option, however not the option my husband served his

country and went to war for option. Next was the VA and the representative tried to explain the VA indemnity monthly payment. Both he and the VA representative presented the offset scenario to me at that time. My response was "Whatever the VA DIC provides, is taken away from the retirement (SBP), what we earned as a team?" What kind of benefit is this? Even though I was in my fog of grief, I caught on pretty quickly, something was not quite right.

The VA's indemnity subtracted from the DoD's SBP, is a wash of the retirement annuity (SBP) for a majority surviving spouses, leaving little or nothing at all of their SBP- which reflects their deceased spouse's time and grade in the service. My casualty officer was knowledgeable with this inequity, I was lucky, but many other surviving spouses were not as fortunate. There was not enough time allowed to make such a financial life changing decision while absorbing the tragedy of the death. I knew this was a pivotal moment in my life and was the start of my mission to call the baby ugly and address this issue to Congress and the public to fix the wrong.

Congress has created programs for survivors of our military members. In 1956, the Dependency Indemnity Compensation (DIC) was established by the Servicemen's and Veterans Survivor Benefit Act. David F. Burrelli, Specialist in National Defense, stated in the CRS report for Congress (2006) "Under this Act, as amended, DIC is paid to the survivors ... of servicemen or veterans who died on or after January 1, 1957, from: (1) a disease or injury incurred or aggravated in line of duty while on active duty or active duty training; or (2) an injury incurred or aggravated in line of duty while on inactive duty training; or (3) a disability compensable under laws administered by the VA."

In 1972, Congress created the Survivor Benefit Plan (SBP) (Burrelli 2006). The SBP (paid by DoD) is a voluntary insurance program established to provide surviving spouses of retirement-eligible military personnel an income proportional to the members retired pay (SBP is an amount up to 55% of the retiree's base pay). According to DoD, SBP replaced the Retired Serviceman's Family Protection Plan (RSFPP) to provide improvements and "increase participation rates, reduce costs to the retiree, and increase benefits for the survivors."

Stated simply, DIC is an indemnity payable to survivors when a military member dies as a result of a service connected because. SBP, created in 1972, is an annuity paid to a military member's survivor to ensure that a portion of the military member's retirement pay will be provided to the surviving spouse after the military member's death. These are **two different survivor programs** and paid for **two very different purposes**.

### Examples of SBP/DIC offset-Personal Stories

For those survivors who receive SBP, either their retired military spouse chose to purchase SBP at retirement or the military member died while on active duty. After the 9/11 terrorist attacks, P.L. 107-107 was passed and made a change in the eligibility for SBP by providing SBP to military surviving spouses of all active duty deaths regardless of years in service. In addition, the newly eligible SBP recipients became affected by the SBP/DIC offset. The offset often completely eliminates SBP; therefore, the purpose of P.L. 107-107 is significantly lost. P.L. 107-107 granted retirement posthumously for members of the armed forces who died in the line of duty and resulted in the survivor's automatic enrollment in SBP. Prior to this change, a survivor of an active duty death only received SBP if the service member was retirement eligible with 20 or more years of active duty service.

In 2003 P.L. 108-136, permitted the survivors of active duty personnel to reassign the SBP annuity to their children, the "child option." In so doing, the survivor permanently forfeited the right to SBP. This reassignment allows full receipt of SBP by the children without offset. Complications arose from this new law, with some states requiring that the survivor apply for guardianship of their own children! In addition, income tax returns must be filed for each child who receives an SBP annuity. When Congress does remove the offset, these surviving spouses of military personnel who died on active duty and selected the "child only" option should be eligible to reselect the spouse option and reclaim their SBP annuity. Do not leave another group behind.

### Examples of the variables of these two different benefits paid by two different government departments:

- ❖ **Spouse Option- No Children:** Staff Sergeant Douglas Richardson, USMC was killed in Iraq 2006. His widow Catherine, Oceanside California was eligible for the DIC and also the SBP (payment for time in grade in the USMC). After the offset was applied to her SBP, Catherine received \$14.00 per month. This \$14.00 reflects what she receives for her Marine husband's time and grade (his rank) while serving his country.
- ❖ **Spouse Option- No Children Complete Offset:** Gabriella Kubinyi, Washington DC, surviving spouse of Petty Officer Second Class Jeffrey L. Ferren, USN died while on active duty April 2012. She is eligible for both

SBP and DIC, however, after the DIC (\$1254.19) is subtracted from her SBP, this leaves her with zero for annuity SBP.

- ❖ **Spouse and Child Option:** Kristen Santos-Silva, Odenton, Maryland Army husband Sergeant First Class Carlo Santos-Silva , USA killed in Afghanistan Shortly after the death of her husband, still in her fog of grief, she was told by the military causality officer that because her child was 11 years of age, it was in her best interest to assign the SBP to her child so she could receive the VA's DIC payment, and her son would receive the SBP- with no offset. The caveat is that the SBP has a shelf life and when the child reaches majority, the SBP stops and does not transfer back to Kristen. As her son ages ...the clock is ticking. ?" To confuse the matter more, the child receives a VA child DIC payment, yet receives the SBP-no offset. What will happen to these surviving spouses who made decisions without knowing what the future held, only that they were told by military casualty officers that it was in their best interest to choose child option
- ❖ **Spouse Child Option-** Retiree (paid premiums): Suzanne Gerstner- Tampa Florida. Technical Sergeant Edward C. Gerstner, USAF, chose this option and paid premiums for the SBP annuity to be passed to the children in the event of Suzanne's untimely death. Today she receives zero SBP, as the DoD SBP is removed by the VA DIC.
- ❖ **Spouse Option Retiree- Paid 30 Years of SBP Premiums:** Janet Snyder, Las Vegas Nevada. She and her husband Lt Colonel Tom Snyder, USA acted responsibly to plan their future in the event of a death. After he retired from the Army, he became service-connected disabled due to his exposure to Agent Orange while serving in Vietnam. Janet was his full time caregiver for the remaining five years of his life. He received both VA disability pay (100% disabled) and his DoD retirement pay- no offset. They purchased the DoD SBP insurance so a portion of the retirement would be paid to Janet, and since his illness was service connected, the VA DIC would "kick in" as part of their benefit package. While her husband was still alive, he received a letter from DoD stating that after paying premiums for 30 years the SBP was "paid up," but when her husband died, DoD did not pay out. Because of the offset, DoD did refund a portion of her premiums, but without interest. Their financial long term

planning was sabotaged by DoD, not honoring the servicemembers' commitment to service, country and his spouse.

- ❖ **Spouses Remarries after the Age of 57:** The surviving spouse must repay the portion of premiums that were previously returned in order to receive both benefits. Interest may apply (Sharp 2009)

Like Janet's husband, these 100 % disabled veterans were receiving both their VA disability payment and their military retirement pay, based on their time in the military and their rank, again two different payments for two different reasons. Imagine the shocking news to discover the annuity that was in the financial plan, would be paid at a reduced level or not be paid out at all! Service members who died on active duty after 9-11 were no longer held to the "must have 20 years of active duty service" rule in order for their survivors to be eligible to receive the SBP. SBP is not purchased by those who die on active duty; the premiums are paid with their lives.

#### **The SBP/DIC Offset Believe it or Not!**

- ❖ A surviving spouse can receive both benefits without offset if she assigns it to her children- this ends when the child/children become of age.
- ❖ Military retiree, as part of a divorce decree, purchases SBP for first wife. He later marries and dies of a service connected disability, therefore his 2nd wife collects the VA DIC and the first wife receives SBP, no offset- OK for DoD to pay both benefits if the service member has multiple marriages/spouses.
- ❖ Surviving spouse remarries before the age of 55, loses all VA and DoD benefits.
- ❖ Surviving spouse remarries after the age of 55, but before the age of 57, she/he loses their VA benefits including DIC, but retains SBP.
- ❖ Surviving spouse remarries after the age of 57 she/he receives all benefits, paid as designed, without an offset- except burial rights at Arlington National Cemetery.
- ❖ If the surviving spouse remarries someone in the military and her 2nd husband/wife dies, they can collect DIC from one spouse and SBP from the other without offset.
- ❖ Federal Civilian SBP is not subject to offset by the DIC if the civilian is a veteran and dies from a service connected disability.
- ❖ Congress does not permit the private sector to reduce or terminate retired

- annuities because the survivor is also eligible for DIC.
- ❖ DFAS-SBP website states “age or disability will never be considered a liability nor affect the cost of the program”. It is a \$500 million savings for the Military Retirement Trust Fund to offset SBP by DIC for surviving spouses of those who die in service to their country (estimated cost for the year 2015- from the SBP Cost Estimate-Congressional Budget Office). Is DoD making a windfall profit from the deaths of our Fallen Heroes and disabled Veterans?
  - ❖ The military member (while alive) is rated 100% disabled, his/her benefit lawfully allows for both the VA and DoD payments without offset, better known as concurrent receipt .
  - ❖ No other insurance company would be allowed to default on an insurance payment simply because the beneficiary had income from another source. The premiums are refunded, but the government does not pay interest on the refund; interest the government may have earned on those premiums for 30 years.
  - ❖ This year, a grassroots effort resulted in over 75,000 concerned citizens sending letters asking Congress to remove the offset (Change.org)
  - ❖ CBO score estimates a cost of \$6 billion over the course of ten years to remove the offset- what’s the price of war? DO the math of the paid premiums; money should be there in the Military Retirement Trust Funds.
  - ❖ If a servicemember pays thirty years of SBP insurance premiums and his aged wife precedes him in death, benefit is not paid, but he can transfer it to his second wife if he remarries. What happens to all the premiums the servicemember paid whose wife preceded him in death and never received the benefit?

### **Precedence Set by Congress to Remove the Offset**

#### **VDBC and Concurrent Receipt**

Today should not be about whether or not it’s the right thing to do because this has already been established. General Jim Livingston’s statement to the Committee presents it with accuracy and distinction. Please refer to the recommendations of the Veterans’ Disability Benefits Commission (VDBC). The VDBC was mandated in the National Defense Authorization Act for 2004 (P.L. 108-136) and created by the President of the United States and Congress. The results of extensive research by the VDBC produced “Honoring the Call to Duty: Veterans Disability Benefits in the 21st Century.”

This is a well vetted study, examined and agreed to by a group of subject matter experts appointed by the President and their final report recommendations were signed by the President. It clearly stated that the offset should be completely removed.

Ten years ago, concurrent receipt was applied to military members who are rated by the VA as 100% disabled, enabling them to receive both VA Compensation and military retirement pay in full. Logically, this should have applied to the surviving spouse at the same time. The VDBC referred to this as "survivor concurrent receipt."

Some have claimed that if concurrent receipt or "special pays" for military retirees are allowed, such should also be afforded their survivors. Under this reasoning, if a military retiree is allowed to receive both military retired pay and VA disability payments, or other "special pay," it is only fair that the surviving spouse also receive both the SBP annuity and DIC benefits. Critics contend that concurrent receipt was originally barred because Congress viewed it as "double dipping" for paying someone twice for the same period of service. These critics reason that allowing concurrent receipt to the retiree or the retiree's survivor is a form of "double dipping" that is inherently unfair to the taxpayer."

How can the full receipt of SBP and DIC be considered double dipping when in 2004 it was determined by Congress that the 100% disabled veterans who were also retired military members would receive both full retirement and disability compensation payments? Survivor compensation is provided to surviving spouses based on the military member who is rated at 100% disabled. There is no greater disability than death, concurrent receipt should apply.

#### **Sharp Case**

August, 2009 the U.S. Court of Appeals in the matter of Sharp, et al. v. The United States, 82 Fed. Cl. 222 (2008), ruled that DIC payments may not be deducted from SBP annuities if a person entitled to both benefits has remarried after age 57. Why does a surviving spouse who remains un-remarried continue to be subject to the SBP/DIC offset when her/his remarried counterpart is not subject to the offset? Is the government now requiring surviving spouses of our military members to remarry just to be eligible to receive full SBP and DIC? Why should I have to sacrifice my commitment to my husband and marry another man to receive what my husband and I earned as a team? Is this discrimination if we don't remarry after age 57?

#### **FY08 NDAA**

Congress acknowledged the SBP/DIC offset in the FY08 NDAA by establishing a Special

Survivor Indemnity Allowance (SSIA). This congressional position strongly recognized there was a wrong and it was a step towards correcting the offset, but it was just the camel's nose under the tent. This SSIA payment started with a taxable payment of \$50.00 per month. Congress in 2009 again acknowledged the offset inequity when it increased the SSIA to \$310 per month by fiscal year 2017; however, the SSIA will cease at the end of 2017.

#### **The Forgotten Surviving Spouses- [dfas.mil](http://dfas.mil)**

In 1980 PL 96-402 was amended to include a group of surviving spouses whose service member spouse died while on active duty and was eligible for retirement at the time of death, but the death occurred before the SBP plan was established 21 September 1972. After the 1972 creation of the SBP, due to a Congressional oversight, these surviving spouses were not considered eligible for the SBP program.

### **Congressional Support**

There have been 12 bills since 2001 to repeal the SBP/DIC offset. The signatures of 353 cosponsors in the 111th Congress revealed overwhelming support to remove the offset. Was this an overwhelming landslide of support or was this merely support of a bill to please constituents? As a clinician and researcher, I find this to be a significant finding. I don't understand the logic of not bringing this forward in the NDAA, and find that the explanations given to the military surviving spouses of "...there are no funds" at the House Veterans Affairs Committee round tables unacceptable. Over the many years attending these round tables, I have asked congressional leaders to look deep and find the funds and fix the problem. I am willing to help find the funds; however, this is truly beyond my expertise.

#### **Favorable Recommendations to Eliminate the SBP/DIC Offset:**

- ❖ VDBC (2007)
- ❖ Commission on Care of America's Returning Wounded Warriors 2007)
- ❖ 11th Quadrennial Review of Military Compensation (2012)
- ❖ Military Compensation and Retirement Modernization Commission(2015)
- ❖ Dear Colleague Letter Honorable Joe Wilson 12/2/2015
- ❖ Letter in support to remove the offset by the VDBC 12/2/2015
- ❖ Congressional House and Senate Bills (12 bills)

"Military members make necessary arrangements for their spouses to be taken care of in the event of their death. We owe it to these fallen heroes to carry out their wishes

and to ensure their expectations are fully met” Honorable Joe Wilson 2015.

Senator Bill Nelson stated simply for the record before the Senate Armed Services Committee Personnel Subcommittee Hearing on March 10, 2010, “To truly honor our service members, we all agree that the U.S. Government must take care of our veterans, their surviving spouses and orphans. In keeping with that moral principle, we must repeal the unjust offset that denies surviving spouses and orphans the annuity their deceased loved ones have earned on active duty or purchased for them. Our efforts have been important steps in the right direction, but they are not enough. We must meet our obligation to the widow and orphan with this same sense of honor as was the service their loved one had rendered. We must completely eliminate the SBP-DIC offset.”

In every Veterans Day and Memorial Day speeches, it goes without saying, the families of the Fallen are mentioned in all the leaders speeches, the first was President Abraham Lincoln “...to care for him who has borne the battle, his widow and his orphan.” (1865).

### **Funding**

It is puzzling why there is no “funding” for the small number of survivors who are negatively impacted by this offset. What happens to the money paid into the Military Retirement Trust Funds (MRTF) each year for every active duty service member in anticipation of paying them a retirement at some point? What happens to the SBP premiums paid in and then never collected because a spouse may pre-decease a service member? Or the money that remains when someone dies on active duty or doesn’t remain in the service long enough to collect a retirement? I respectfully request, as a tax paying citizen, an inquiry into how SBP and retirement funds are managed. Are formal audits performed to determine if there is a surplus in the MRTF to pay the small number of survivors affected by the SBP/DIC offset? We owe it to the survivors of our Fallen Heroes to correct this!

As an invited guest to sit at both the Majority and the Minority House Veterans Affairs Committee Round Tables, I was often told, there is not any funding this year to remove the offset. Surviving spouses are tired of hearing the same response that there are no funds for us.

This issue has become rhetoric dysfunctional behavior, we find a member of congress to introduce the bill, then the surviving spouses call tirelessly getting cosponsors. We obtain significant amount of cosponsors, one year over 350 sponsors, yet we never make

it in the NDAA. Sometimes we are fortunate enough to have an amendment to the NDAA, but to no avail. Repetitively, I have heard from members in Congress such statements as...it's a tough year, no money, pay go or worse yet, look worse for next year. Then January comes around in the new congressional year and we start all over again. Telling us there are no funds or instructing us for us to look for the funds is not acceptable. Year after year we accepted Congress' response to why the offset could not be removed because there were no funds. How do you run a country if there are no funds? There are no funds for the less than 1% of this population who died on active duty or as the result of a service connected cause. We smile and thank our elected officials, vote them back in office and we go forward to start the process again, repeating this cycle. Are we providing positive reinforcement for negative behavior?

### **Proposed Legislative Recommendations**

I urge this committee to accept the Congressional and Presidential recommendations that are already established in the House Armed Services full Committee, and the Senate. I encourage Congress to enact the language of the HR 1594 Military Surviving Spouse Equity Act and encourage the passage of HR 1594 to mark up and send it to the floor of the House.

### **Conclusion**

This is the last bastion of inequality for honoring the memory of those who died in service to their country. There is overwhelming evidence that the offset should be eliminated. Again, please refer to General Livingston's letter to the Military Personnel Subcommittee (12-2015) and Honorable Joe Wilson's Dear Colleague letter provided for today's hearing. Support is evident; find the funds and fix this inequity!

I appreciate the opportunity to submit for the record and am happy to answer any and all questions.

*Dr. Vivianne Cisneros Wersel, Au.D.*  
(252) 646-2678  
[viwersel@yahoo.com](mailto:viwersel@yahoo.com)

**Vivianne Cisneros Wersel, Au.D.**

Dr. Vivianne Cisneros Wersel, Au.D. was born in Los Angeles, California and is the widow of a Marine Lieutenant Colonel. Lt. Col Richard Wersel, Jr. United States Marine Corps, who served in Operation Iraq Freedom I and II died on active duty at Camp Lejeune 2005 one week after his return from his second tour of duty in Iraq. At the time of Rich's death their children, Katie and Richard, were 12 and 14 years old respectively. As a Marine Corps family, they lived in San Diego, CA; Quantico, VA; Okinawa, Japan; Camp Pendleton, CA; Las Vegas, NV; Monterey, CA; Vina Del Mar, Chile; Vista, CA (while serving at the Marine Corps Recruit Depot, San Diego) and Emerald Isle, NC (while serving with II MEF at Camp Lejeune).

Shortly after her husband's 2005 passing, Vivianne discovered she was not eligible for the newly enhanced survivor benefits. She subsequently became instrumental in changing the SGLI and Death Gratuity (SA 1376) so that all active duty widows are now eligible for enhanced benefits. She has testified before Congress numerous times about inequities in survivor benefits. Her mission is to help correct those inequities and optimize services provided to survivors.

She holds a Doctorate of Audiology from the School of Audiology- Salus University. She is also a graduate of the Defense Language Institute (DLI), Monterey, CA and holds a language certificate in Spanish. She earned a Masters and a Bachelors Degree in Communicative Disorders (Audiology) from San Diego State University, CA.

Dr. Wersel currently works full time as a clinical audiologist. She is a member of the Gold Star Wives of America (GSW) Government Relations Committee; President Emeritus of Arlington Gold Star Wives; military survivor advisor for the "Got Your Back Network"; is an active participant in the VA/DoD Survivor Forum, and founder of, and advisor to the Surviving Spouses Support Group II MEF, Camp Lejeune, NC. She was a local representative for the National Military Family Association (NMFA) and was a volunteer coordinator/liaison representative for the Tragedy Assistance Program for Survivors (TAPS) Marine Corps TAPS weekend seminars and Good Grief Camps at Camp Lejeune, NC, and Camp Pendleton, CA, and the TAPS Surviving Spouses Retreat in Las Vegas, NV.

Dr. Wersel is a staff Audiologist at Walter Reed National Military Medical Center, Bethesda. Currently her children are attending college in Asheville, NC and in Philadelphia PA, using the GySgt John David Fry Scholarship.



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**QUESTIONS SUBMITTED BY MEMBERS POST HEARING**

DECEMBER 9, 2015

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#### QUESTIONS SUBMITTED BY MR. COFFMAN

Mr. COFFMAN. What is the impact of the suspension of SBP/DIC payments for spouses who remarry before the age of 57?

Ms. KINNARD. Probably the biggest problem with the suspension of SBP/DIC payments for spouses who remarry before the age of 57 is loss of independence which was paid for by the military spouse's ultimate sacrifice. Why is it that the age of 57 makes it okay to receive both benefits in full? Here again is another widow's story. Her name is Misty Jeannette Brammer:

"As a surviving military spouse, my life has been a constant state of uncertainty since losing my husband over ten years ago. At the young age of 31, I found myself to be a widow. The sudden and tragic loss left me devastated, unsure of my future, and as a single mom raising two children affected by the loss of their father. I came to rely on the connections and support the military offered. It has become a way of life. My husband's service is important to the United States and, as a family we have continued to support military life. As a widow, my life shifted and changed and so did the support from the military. It steadily decreased over time and has been reduced to SSIA, DIC, SBP, Tricare (in which I now have to pay my own premiums), some educational benefits and VA home loan. These benefits have, and continue to be, an important resource to establishing and continuing my life as a surviving military spouse, mother, and productive member of my community. This is not easy to do after a traumatic loss. I have come to rely on these resources to be independent and not vulnerable.

It has taken time to rebuild by life. It has been difficult and unbearable at times. The benefits afforded to me by the loss of my husband are both a resource and burden. Under current military law, if I remarry before the age of 57 (completely arbitrary age), I lose all of these benefits and thus my independence. It is as if the United States disregards my loss in the presence of another spouse. This is so contradictory to current United States values. More importantly, it forces me to revisit the trauma I have already experienced and places me in a vulnerable economic position. It also violates my civil right to marry (without penalty). This has caused even more undue stress in my life including jeopardizing relationships, the ability to have additional children (out of wedlock) and causing social distance. This burden has been an emotional strain. The current law is penalizing to younger spouses. It doesn't make sense that those over the age of 57 keep benefits upon remarriage. Still further, those who remarry and that marriage ends get some of their benefits reinstated. The current law forces surviving spouses to be dependent on another (new) spouse despite their loss. A remarriage doesn't negate the loss of our soldiers. It doesn't take away the pain or the hardship we have and continue to experience. It doesn't remove the ongoing trauma. Worse yet, it forces us to be economically vulnerable.

We are respectfully requesting assistance in changing current law. It is important to keep all benefits intact for survivors regardless of marital status. To lose these benefits creates further undue burden and places surviving spouses at risk."

Many of the younger surviving spouses feel this way. Those that have made the choice to turn over SBP and DIC to their children in order to receive full SBP and full DIC benefits have come to regret it. This is especially true when they realize that the SBP will end forever when the children reach maturity. This decision for many was made shortly after learning of the spouse's death when they are in shock and really not in a frame of mind to make such a life changing decision.

It is the same with remarriage before age 57, many are not aware that they will lose most of their benefits. However at the age of 57 with remarriage, the widow will receive the full SBP and the full DIC with no offset. The catch is that the premiums paid to the widow originally must now be paid back to the government in full. Depending on the amount, this again could be a burden for the re-married widow.

Mr. COFFMAN. This question highlights two separate inequities: (a) the difference in remarriage age for various programs after which the survivor benefit payment continues, and (b) a highly unique inequity facing SBP–DIC widows in particular.

Almost all Federal survivor payments terminate if the survivor remarries before age 55, and can be resumed if the second or subsequent marriage ends in death or divorce.

For DIC, however, the age of remarriage after which DIC payments may be continued is age 57. The age difference was solely because of a funding shortfall in the legislative effort to fix the DIC age disparity. Congress only found enough money to reduce the age to 57.

However, that same law change that reduced the DIC remarriage eligibility age to 57 also included language specifying that dual-eligible SBP and DIC survivors who remarry after age 57 are entitled to receive both SBP and DIC annuities in full, without offsetting one for the other. This interpretation was upheld by a 2009 Federal Court of Appeals ruling (U.S. Court of Appeals, 2008–5108, *Patricia R. Sharp v. United States*).

So the net effect of current law is to: (a) punish survivors for remarrying before age 57 (for DIC) or 55 (for SBP) by suspending their annuity payments, and (b) punish dual-eligible SBP/DIC annuitants for NOT remarrying after age 57 by continuing to deduct the DIC amount from SBP for unremarried survivors. The only fair way to rectify this absurd situation is to eliminate the SBP–DIC offset requirement.

Colonel STROBRIDGE. Our members definitely believe the two have separate purposes. SBP is a retiree-purchased insurance plan that is intended to replace 55% of SBP-covered retired pay in the event of the servicemember/retiree's death for any reason. DIC, on the other hand, is indemnity compensation paid by the VA to the survivor of a servicemember or retired servicemember whose death is acknowledged to have been caused by service in uniform. If a veteran serves a career as a federal civilian, purchases federal civilian SBP upon retirement, and subsequently dies of a service-caused condition, the federal civilian's survivor is not required to forfeit any of his or her federal civilian survivor benefit. There is no reason to impose that kind of penalty on the survivor of a military retiree who dies in the same circumstance. Likewise, no civilian-purchased insurance plan has a clause that denies payment if the survivor is eligible for a different survivor benefit.

Mr. COFFMAN. What is the impact of the suspension of SBP/DIC payments for spouses who remarry before the age of 57?

Senior Chief OSTROWSKI. Probably the biggest problem with the suspension of SBP/DIC payments for spouses who remarry before the age of 57 is loss of independence which was paid for by the military spouse's ultimate sacrifice. Why is it that the age of 57 makes it okay to receive both benefits in full? Here again is another widow's story. Her name is Misty Jeannette Brammer:

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those over the age of 57 keep benefits upon remarriage. Still further, those who remarry and that marriage ends get some of their benefits reinstated. The current law forces surviving spouses to be dependent on another (new) spouse despite their loss. A remarriage doesn't negate the loss of our soldiers. It doesn't take away the pain or the hardship we have and continue to experience. It doesn't remove the ongoing trauma. Worse yet, it forces us to be economically vulnerable.

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Mr. COFFMAN. What is the impact of the suspension of SBP/DIC payments for spouses who remarry before the age of 57?

Mr. DAVIS. The threat of suspension provides two choices: it forces survivors to exist years on an offset pittance, while bearing the full cost of rearing, educating and housing their children; or it forces survivors to live a lie with a new love they are unable to marry until a certain age gate is met. There should be no suspension of SBP/DIC payments because a surviving spouse wants to remarry—at any age.

SBP is similar to life insurance that's purchased by a military retiree to provide up to 55 percent of their retirement pay to a surviving spouse; however, unlike life insurance, all payouts stop if the surviving spouse remarries before age 55. No life insurance company stops paying eligible beneficiaries just because they remarry, yet the Department of Defense does.

DIC is a modest indemnity compensation benefit of \$1,254 per month that the VA pays to surviving spouses whose loved ones died prematurely from a service-connected wound, illness or injury.

As stated in testimony, the two payments are mutually exclusive and paid for two different reasons from two different federal departments, yet all monthly SBP payments are first offset by the full DIC amount, which is why the offset is aptly called the "Widow's Tax."

To receive concurrent SBP and DIC payments, the annuitant must not only be eligible to receive both, but the DIC entitlement must be a result of a remarriage after the age of 57.

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#### QUESTIONS SUBMITTED BY MR. WALZ

Mr. WALZ. How does the current law impact the value of these benefits and the perception of the impacts to the quality of life for surviving spouses?

Ms. KINNARD. When one loses a spouse, usually they lose at least half of their combined income. The service member thought when they signed up for the Survivor Benefit Plan (SBP), that they were helping to offset that loss if they died before the spouse. Because of the current law with SBP/Dependents Indemnity Compensation (DIC) offset, the income is even less than half, often times as low as a third of what the combined income had been. To put it mildly, this does make a dramatic difference in the surviving spouse quality of life. An example from a military widow, Deborah Tainsh, is provided here as presented:

"My husband, USMC Sgt Major David Tainsh who retired in 1994, served 28 years in the Marine Corps that included serving in Vietnam and the first Persian Gulf War.

When he retired he paid into the SBP program to protect me in the event of his death.

After our son was KIA in 2004 in Iraq, my husband was placed at 100% disabled/unemployable from service connected issues. With the passing of concurrent receipt for Veterans, his Marine Corps retirement, VA, and Social Security provided a household income that allowed me a home and lifestyle that my hus-

band had earned through 28 years of service in the Marine Corps and health issues that followed.

After his death on December 23, 2014 from stage 4 lung and brain cancer that doctors attributed to Agent Orange, my monthly income dropped to 1/3 of what our household income had been. Hence, I lost my home due to the inability to make the payment.

If I had been able to receive both my husband's VA and the full SBP he paid for, I could have afforded to keep my home.

It is issues such as this that bring to the surface the reason for Congress to pass concurrent receipt for military and veteran's widows."

This widow's story is one of many. Every story maybe a little different, however the bottom line is the same that there is a huge adjustment that must be made for military surviving spouses to even survive.

Mr. WALZ. How do your members view SBP and DIC in terms of different programs for different circumstances?

Colonel STROBRIDGE. Our members definitely believe the two have separate purposes. SBP is a retiree-purchased insurance plan that is intended to replace 55% of SBP-covered retired pay in the event of the servicemember/retiree's death for any reason. DIC, on the other hand, is indemnity compensation paid by the VA to the survivor of a servicemember or retired servicemember whose death is acknowledged to have been caused by service in uniform. If a veteran serves a career as a federal civilian, purchases federal civilian SBP upon retirement, and subsequently dies of a service-caused condition, the federal civilian's survivor is not required to forfeit any of his or her federal civilian survivor benefit. There is no reason to impose that kind of penalty on the survivor of a military retiree who dies in the same circumstance. Likewise, no civilian-purchased insurance plan has a clause that denies payment if the survivor is eligible for a different survivor benefit.

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Mr. WALZ. How do your members view SBP and DIC in terms of different programs for different circumstances?

Mr. DAVIS. The 1.3 million members of the Veterans of Foreign Wars of the U.S. reflect the overall demographics provided by the Departments of Defense and Veterans Affairs, in that there are roughly 2 million military retirees out of the nation's 21 million total veterans. As such, less than 10 percent of all veterans (and VFW membership) would know what the DOD Survivor Benefit Plan is, and even fewer would know about the VA's Dependency and Indemnity Compensation program.

However, once educated about the two programs being mutually exclusive and paid for two different reasons from two different federal departments, all are united in eliminating the offset, and not to just to subsidize it with increased SBP pay-

ments, as recommended by the Military Compensation and Retirement Modernization Commission.

Ending the SBP–DIC offset is reflected in the passage of VFW National Resolutions, the most recent of which, Resolution 415, was passed unanimously by delegates attending the 116th VFW National Convention in Pittsburgh on July 20, 2015.

Similarly, the VFW also supports eliminating the dollar-for-dollar offset that continues to impact service-connected disabled military retirees with VA ratings of 40 percent or below, and Chapter 61 retirees who were medically retired with less than 20 years.

The 10-year concurrent receipt phase-in period for retirees with 50 percent or higher disability ratings was accomplished in 2014. Now it's time to provide the same equity to all military retirees, regardless of their disability rating percentage. This VFW position is supported by Resolution 413, which was also passed unanimously by delegates attending the 116th VFW National Convention in Pittsburgh on July 20, 2015.

