



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 We held monthly meetings during which experts testified, legislative and historical documents were reviewed and new research was reported.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

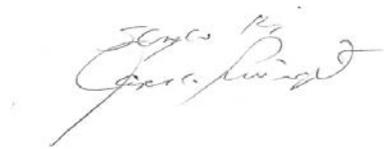
The arguments surrounding survivors’ concurrent receipt are in many ways similar to those surrounding veterans’ concurrent receipt. Those opposed to eliminating SBP offset say it would be too costly to the military. In addition, they claim that there would be no discernable increase in recruitment or 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.

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 1SG Nick Bacon, USA, Ret

The late Charles Butch Joeckel, Jr, USMC, Ret