



NCOA[®]

**Non Commissioned Officers Association of the United States of America
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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

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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 111th 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.