

Statement for the Record

Before the

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

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Presented by

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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*Not for publication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

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.

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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.