

Vivianne Cisneros Wersel, Au.D., Chair, Government Relations Committee, Gold Star Wives of America, Inc.

Statement  
of  
Gold Star Wives of America, Inc.

Before the  
  
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Senate and House Committees on  
Veterans Affairs  
Hearing

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Presented by  
  
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Chair, Government Relations Committee

“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Not for publication  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 committees

Messrs. Chairmen and Members of both the Senate and House Committees on Veterans Affairs, Messrs. Chairmen and Members of both the Senate and House Committees on Veterans Affairs, I am pleased to be here today to testify on behalf of Gold Star Wives on legislative issues necessary for our nation’s military widows and widowers. My name is Vivianne Wersel, Chair of the Gold Star Wives’ Government Relations Committee. I am the widow of Lt. Col. Richard Wersel, Jr., USMC, who died suddenly on February 4, 2005, one week after returning from his second tour of duty in Iraq.

Gold Star Wives of America, Incorporated (GSW), founded in 1945, is a Congressionally Chartered organization of spouses of military members who died while serving on active duty or as a result of a service-connected disability. GSW is an all-volunteer organization. We could begin with no better advocate than Mrs. Eleanor Roosevelt, at the time newly widowed, who helped make Gold Star Wives a truly “national” organization. Mrs. Roosevelt was an original signer of our Certificate of Incorporation as a member of our Board of Directors. Our current members are widows and widowers of military members who served during World War II, the Korean War, the Vietnam War, the Gulf War, the conflicts in both Iraq and Afghanistan, and every period in between. The following are GSW’s most important legislative issues:

#### Elimination of the Dependency and Indemnity Compensation (DIC) Offset To the Survivor Benefit Plan (SBP)

GSW strongly supports the complete elimination of the SBP/DIC offset. We are grateful for the support of many Members of Congress, including most of you here, as this issue has been brought before Congress for the past eleven years. We respectfully request Congress eliminate the SBP/DIC offset immediately.

#### Survivor Programs

Congress created programs for widows and widowers of our military members. In 1956, Dependency and Indemnity Compensation (DIC) was established by the Servicemen’s and Veteran’s Survivor Benefit Act. According to David Burrelli (2004) CRS Report, “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.” The purpose of DIC is an indemnity payable to widows and widowers when a military member dies as a result of a service connected cause.

In 1972, Congress created the Survivor Benefit Plan (SBP). According to Burrelli (2004) , SBP replaced the Retired Serviceman’s Family Protection Plan (RSFPP) to provide improvements and “increase participation rates, reduce costs to the retiree, and benefits for the survivors.” The purpose of SBP is to ensure that a portion of the military member’s retirement will be provided to the widow or widower after the military member’s death.

Stated simply, DIC, created in 1956, is an indemnity payable to widows and widowers when a military member dies as a result of a service connected cause. SBP, created in 1972, is an annuity paid to a military member’s widow or widower to ensure that a portion of the military member’s retirement pay will be provided to the widow or widower after the military member’s death. These are two very different plans and two very different purposes.

#### GSW Membership and SBP

GSW is made up of approximately 10,000 members all receiving DIC. Some members are eligible for and receive SBP. For those widows and widowers receiving SBP, either their retired

military spouse chose to purchase SBP at retirement or, the military member died while on active duty.

SBP has complex eligibility requirements creating several subgroups. Active duty survivors whose military spouse died before September 11, 2001 and were retirement eligible when they died were eligible for SBP. All other active duty survivors whose military spouse died before September 11, 2001 were not eligible for SBP. Any active duty death occurring after September 11, 2001, resulted in the survivor's automatic enrollment into SBP at the time of their military member's death. P.L. 107-107 authorizes 100% disability retirement be granted posthumously for members of the armed forces who die in the line of duty while on active duty post September 11, 2001.

### The SBP/DIC Offset

A widow or widower eligible for both SBP and DIC becomes subject to the "widow's tax" -- a dollar-for-dollar reduction in the SBP by the amount of DIC received. Remember, a military member chooses to purchase SBP and pays premiums with hard-earned retirement. The military member most often is not made aware that the SBP being purchased will be subject to an offset if he/she dies as a result of a service connected cause, thus, reducing the expected annuity by the DIC received. If the military member is made aware of the offset and resulting reduction in annuity when purchasing SBP, it is unclear if that military member would continue the purchase of SBP.

After the 9/11 terrorist attacks, P.L. 107-107 opened eligibility of SBP to widows and widowers of all active duty deaths regardless of years in service. These newly eligible SBP recipients also become subject to the SBP/DIC offset and many find their SBP completely eliminated. The offset often negates the original purpose of P.L. 107-107.

In 2003, a new law passed, P.L. 108-136, authorizing widows and widowers of active duty personnel to reassign the SBP annuity to the children, if any and thus, permanently forfeiting their right to SBP. This reassignment allows full receipt of SBP by the children without offset. Complications from this new law often require the widow or widower be granted guardianship of their own children by a court of law. In addition, income tax returns must be filed for each child who receives an SBP annuity.

GSW understands that Congress does not permit private sector and other Federal survivor benefit programs to reduce or terminate retired annuities because the widow or widower is also eligible for DIC. GSW questions why military widows and widowers continue to be subject to reduction of retired annuities by the SBP/DIC offset when others are not.

### Sharp Case

In 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. A widow or widower who remains un-remarried continues to be subject to the SBP/DIC offset while their remarried counterpart is not subject to the offset. GSW questions the intent of the government now requiring widows and widowers of our military members to remarry just to be eligible to receive full SBP and DIC?

### VDBC Recommendation and Concurrent Receipt

Approximately 54,000 widows and widowers are eligible for both SBP and DIC. The Veterans Disability Benefits Commission, created by Congress in 2004 to review the benefits provided to disabled veterans and their survivors, recommended the elimination of the DIC offset to SBP as one of their top priorities for Congress -- and they referred to this issue as "survivor concurrent receipt". Five 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.

Burrelli (2004) states, "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' or paying someone twice for the same period of service."

Full receipt of SBP and DIC cannot 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 widows and widowers based on the military member who is rated at 100% disabled. These military members and their survivors should be treated alike and be allowed to receive concurrent receipt and survivor concurrent receipt. There is no greater disability than death.

### Accuracy of Information

Testimony provided to Congressional committees and subcommittees concerning the SBP and DIC is not always accurate. GSW feels these inaccuracies may negatively affect or distort the original purpose of each plan. As widows and widowers, we live with SBP and DIC daily and can speak with some authority as to the adequacy of these two Congressionally created plans. Unfortunately, we can also speak with authority that some governmental agencies and Congress, with governing authority over these plans, do not always fully understand the complexities of either plan. It is no more evident that confusion persists than reading recent testimony provided to the Senate Armed Services Personnel Subcommittee on March 20, 2010 by the Honorable Clifford L. Stanley, Under Secretary of Defense (Personnel and Readiness). In his testimony on page 14, he clearly states that DoD continues to oppose the elimination of the SBP/DIC offset because the elimination would "create an inequity with one select

group receiving two survivor annuities, while survivors of most military retirees and survivors of veterans who died of service connected cause, but were not retired, would receive only one or the other.”

The inaccuracy of this statement is a good example of problems within governing agencies which do not fully understand the issue of the elimination of the SBP/DIC offset. For example, at present, there are at least five groups of survivors receiving both SBP and DIC already in existence within GSW. The elimination of the offset would reduce the number of these subgroups.

## Conclusion

SBP and DIC are two very different plans and are for two very different purposes. Subgroups of recipients of SBP persist even with the passage of a variety of laws put forth in an effort to streamline the plan and increase the ability to reach out to military families after the death of their military member. There are concerns about the SBP/DIC offset reducing military widows and widowers annuities when other private and Federal survivor benefit plans are not permitted by Congress to impose reductions in retirement annuities. Are military widows and widowers being penalized? The Sharp case, based on U.S. law, makes clear that widows and widowers can remarry and receive SBP without offset while their un-remarried counterparts continue to remain subject to the offset. Clearly, the Congressionally created VDBC recommended the elimination of the SBP/DIC offset and even cited it as a top priority for Congress. Concurrent receipt was determined by Congress in 2004 for 100% retired disabled veterans. Would this same determination not apply to those 100% retired disabled veterans’ own widows and widowers?

For the past eleven years, the SBP/DIC offset has been brought before Congress for elimination. The 54,000 widows and widowers affected need to know they are not being penalized or forgotten just because their military member has died. These same widows and widowers served along side their military member silently, determined and unwavering despite the hazards of their spouse’s job, the deployments, the moving, serving as both parents to their children, and the loss of longevity in their own chosen careers. Many of the widows and widows became full-time caretakers for their military members. Often back-breaking work and enduring financial hardships, these caretakers saved the government untold millions in nursing and hospital care, often to the detriment of their own health. Why should these widows and widowers be penalized when their military member dies. It is a shame that these same selfless widows and widowers do not even receive an accolade or honorable mention in speeches made by our military leaders. It is our job to care for them as was told to their military member who served to protect the freedom we so enjoy.

Senator Bill Nelson stated for the record of 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 widows and orphans. In keeping with that moral principle, we must repeal the unjust offset that denies widows 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.”

GSW is heartened by all the support and legislation introduced to fix the “widow’s tax” over the past 11 years; however, we are perplexed that none of the support has lead to the necessary change -- the complete elimination of the SBP/DIC offset. It is now time to do the right thing.

#### Increase Dependency and Indemnity Compensation (DIC)

GSW strongly supports legislation which would increase the basic amount of DIC from 43% to 55% of the VA Compensation received by veterans rated with a 100% service-connected disability.

DIC is currently paid to widows and widowers at the rate of only 43% of the VA Compensation received by a veteran with a 100% service-connected disability. Other Federal survivor programs provide 55% of the retirement pay to the surviving spouse. DIC should match that amount.

Calculating DIC at 55% would increase DIC by approximately \$300 per month. Simply stated, an increase in DIC would bring that indemnity in line with all other Federal survivor programs -- from 43% to 55% of the disability compensation.

Why military widows and widowers are forced to accept a lower percentage is incomprehensible. Additionally, no increase occurred in DIC since 1993, 16 years since the flat-rate DIC replaced the ranked-based DIC. With the economic stresses the country is now enduring, many widows and widowers worry about losing their jobs or worry whether or not they will have the ability to retire. Many are one step away from a car that stops running or an unpaid house payment or utility bill.

Equalizing DIC offers some relief from worry and would improve financial independence and confidence. Many of our elderly widows are in financial distress and must choose between paying for food or paying the utility bills.

#### Remarriage at 55

GSW supports legislation to reduce the marriage age from 57 to 55 to be consistent with other Federal survivor programs.

In 2003, Congress approved legislation allowing widows and widowers who remarried after the age of

57 to retain their DIC benefits. A reduction in the age from 57 to 55 will be consistent with other Federal survivor programs.

In addition, widows and widowers who remarry at age 55 retain CHAMPVA – the VA’s health insurance program. Both the DoD Survivor Benefit Plan and the Federal Employee Survivor Benefit Plan allow widows and widowers to remarry at age 55 and retain their benefits.

## CHAMPVA Dental and Vision Insurance Plans

GSW seeks dental and vision insurance plans for CHAMPVA widows and widowers. The Department of Veterans Affairs does not currently provide access to dental and vision insurance plans through the CHAMPVA health insurance program. TRICARE, the military health insurance plan, and the Federal Employees Health Benefit Plan (FEHBP) both provide access to dental insurance, and FEHBP additionally provides access to vision insurance. These plans are funded by the premiums paid by the participants with little or no cost to the Government.

## Chapter 35 Education Benefits

GSW seeks an increase in the monthly stipend for Chapter 35 benefits as it has not kept current with the increases in educational tuition and fees. While tuition increases vary state-by-state, all have increased, some dramatically. A housing allowance also should be included with the Chapter 35 education benefits.

We further request that the new G.I. Bill allow the transfer of benefits to a qualified surviving spouse or child upon the death of the military member.

We are greatly encouraged by the Gunnery Sergeant John David Fry Scholarship Program and request this program be included in the Yellow Ribbon Education Program. The Yellow Ribbon Education Program does not currently apply to children of the Fallen; we believe this was an oversight when the Fry Scholarship was created with the intention of matching education benefits to mirror the New GI Bill.

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This testimony began with one of GSW's most critical issues -- the elimination of the SBP/DIC offset. Included are several other priority issues for GSW. Please find ways to care for our widows and widowers. Surviving spouses look to us as their voice in Congress as we are the vanguards with changing the inequities of survivor benefits, educating the public as well as elected officials. However, this cannot be accomplished without your support. We are that family minus one -- we're spouses and children, all having suffered an unbearable loss.

Secretary of Veterans Affairs Eric K. Shinseki has said, "Taking care of survivors is as essential as taking care of our Veterans and military personnel. By taking care of survivors, we are honoring a commitment..." made to them. I believe you who serve on these two committees feel similarly. Let us work together to make this statement one of action not just rhetoric.

I appreciate the opportunity to be here and am happy to answer any and all questions. Thank you.