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SENATE

{ REPORT
{ No. 91-400

INCREASE IN DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVORS OF SERVICEMEN AND VETERANS

SEPTEMBER 16, 1969.—Ordered to be printed

Mr. TALMADGE, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 1471]

The Committee on Finance, to which was referred the bill (S. 1471) to amend chapter 13 of title 38, United States Code, to increase dependency and indemnity compensation for widows and children, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

SUMMARY OF THE BILL AS REPORTED

The bill as reported would provide an overall increase of 13 percent in the dependency and indemnity compensation program for the widows and orphans of servicemen and veterans whose death was service-related. It would do this by—

(1) increasing a widow's monthly dependency and indemnity compensation payment from \$120 plus 12 percent of the monthly basic pay now being received by a serviceman whose rank and years of service are the same as that of the deceased serviceman or veteran to \$130 plus 12 percent of this monthly pay;

(2) providing a minimum widow's monthly DIC benefit of \$170 (equivalent to the benefit received by the widow of a sergeant with 3 years of military service);

(3) allowing an additional \$20 monthly for each minor child;

(4) increasing by 10 percent monthly payments to children where there is no widow entitled to receive DIC, and to certain children age 18 and over;

(5) allowing an additional \$50 monthly to widows requiring regular aid and attendance; this amount would be increased to

\$75 if the deceased husband's death was related to combat action or other extra-hazardous duty; and

(6) extending dependency and indemnity compensation to certain widows whose husbands were insured under National Service Life Insurance on a premium-free basis.

GENERAL STATEMENT

By law monthly dependency and indemnity compensation payments are paid to the survivors of servicemen and veterans whose death is related to their military service. As the name implies, the purpose of the payments is to provide at least financial compensation for the loss suffered by these survivors. Thus dependency and indemnity compensation payments to widows and orphans are not based on the survivors' needs.

DIC payments to widows are related to the deceased serviceman's or veteran's military rank and length of service; generally, no additional amounts are paid for minor children. If there are minor children but no widow is entitled to receive DIC, the children receive monthly payments specified in the law, regardless of their deceased father's rank.

DEPENDENCY AND INDEMNITY COMPENSATION PAYMENTS TO WIDOWS

Before 1957, two major types of benefits were offered to the widows of deceased servicemen and veterans whose death was service-related: monthly death compensation payments, and a \$10,000 gratuitous indemnity. The monthly death compensation payment was \$87 to a widow whose husband's death was related to wartime military service, and \$69.60 to a widow whose husband's death was related to peacetime military service. Additional amounts were paid for minor children. Peacetime rates were set at 80 percent of wartime rates.

After extensive study, the Congress in 1956 completely revised the survivor benefit program. It was decided that higher monthly payments over a widow's lifetime would provide a more secure financial base for a widow than the gratuitous indemnity and the flat-rate death compensation program. The \$10,000 indemnity was therefore eliminated and the death compensation program was prospectively replaced by the new dependency and indemnity compensation program. Social security coverage was also extended to servicemen, although a widow of a serviceman would not generally be eligible to receive social security benefit until age 60 unless she had minor children.

Enacted after the end of the Korean conflict, the new program from the first was designed primarily to fit the needs of survivors of career servicemen whose death occurred during peacetime service. Unlike death compensation, DIC benefits were the same for deaths related to both wartime and peacetime service. And unlike death compensation or any other veterans' benefits, DIC payments were related to the rank of the serviceman or veteran. As long as the United States was not engaged in hostilities, it would be expected that few deaths would occur among lower ranking draftees, and most persons receiving DIC payments would be the survivors of career servicemen.

The original DIC law set the widow's monthly payment at \$112 plus 12 percent of the monthly basic pay currently received by a serviceman whose rank and years of service were the same as that of the deceased veteran. This formula was intended to provide for automatic increases in DIC payments as military pay was increased. It became clear within a few years, however, that the formula worked unevenly: it preserved the adequacy of DIC benefits for widows of higher ranking officers, but it was not sufficient for the widows of enlisted men. In 1963, the Congress attempted to meet this problem by raising the base amount from \$112 to \$120; the 12-percent factor was not changed.

Despite this modification, much the same situation obtains today as in 1963. Benefits for widows of higher ranking officers have kept up adequately with rises in the cost of living; benefits for widows of officers in the lower grades and higher ranking enlisted men could be brought up to an adequate level with a modification in the base amount of \$120; and benefits for widows of lower ranking enlisted men have fallen far behind increases in the cost of living. This situation is depicted in table 1.

The inadequacies of the present DIC program have been magnified by the fact that we are no longer in a peacetime situation. Most young men serving in Vietnam are draftees who intend to return to civilian life once their military obligation is completed. A Department of Defense study released earlier this year stated that the rank of sergeant (pay grade E-5) with 3 years of service generally represents the dividing line between civilians fulfilling their military obligation and persons who intend to make a career of the military service. As table 2 shows, the first five pay grades—the noncareer ranks—represent five-sixths of American deaths in Vietnam. These are precisely the ranks for which DIC benefits are now the most inadequate.

Thus the dependency and indemnity compensation program has proven more or less adequate in fulfilling the purpose for which it was intended—providing protection to the survivors of career military servicemen during peacetime. It has not met the needs of survivors of noncareer servicemen who are fulfilling their military obligation in a time of war.

The committee bill is designed to meet these needs without sacrificing the aim of providing adequately for the survivors of career servicemen.

First, the committee bill would increase the base amount of the DIC formula from \$120 to \$130; the 12-percent relation to military basic pay would not be changed.

Second, the committee bill would provide a minimum widow's DIC benefit of \$170, equal to the amount received by the widow of a sergeant (pay grade E-5) with 3 years of service. In effect, this minimum would assure that the widows of virtually all noncareer enlisted men would receive this minimum benefit. The Veterans' Administration estimates that about one-half of the 165,000 widows now receiving dependency and indemnity compensation would receive the minimum benefit.

The Committee on Finance has always recognized the need for at least a minimal level of social security benefits. The committee feels it is time that this social security rationale be applied to the dependency and indemnity compensation program.

Table 1 shows illustrative increases in DIC payments since the program was initiated in January 1957, compared with the increases under S. 1471.

TABLE 1.—COMPARISON OF INCREASES IN DEPENDENCY AND INDEMNITY COMPENSATION UNDER PRESENT LAW AND UNDER S. 1471 AS REPORTED

Grade, rank, and length of service of deceased serviceman.	DIC, 1957	DIC, July 1969	Increase over 1957 rate (percent)	DIC under S. 1471	Increase over 1957 rate (percent)
E-1, recruit, ½ year.....	\$122	\$135	11	\$170	39
E-2, private, 1 year.....	123	136	11	170	38
E-3, private 1st class, 1 year.....	124	139	12	170	37
E-4, corporal, 1½ years.....	127	146	15	170	34
E-5, sergeant, 2½ years.....	132	158	20	170	29
E-6, staff sergeant, 13 years.....	142	175	23	185	30
E-7, sergeant 1st class, 17 years.....	147	185	26	195	33
O-1, 2d lieutenant, 1 year.....	139	167	20	177	27
O-2, 1st lieutenant, 2½ years.....	145	185	28	195	34
O-3, captain, 5 years.....	157	209	33	219	39
O-4, major, 13 years.....	172	233	35	243	41
O-5, lieutenant colonel, 23 years.....	189	272	44	282	49
O-6, colonel, 23 years.....	202	292	45	302	50

TABLE 2.—VIETNAM DEATHS BY RANK, 1961–MARCH 1969

	Number of deaths	Percent of total
E-1, recruit.....	329	1
E-2, private.....	4,478	13
E-3, private 1st class.....	11,771	35
E-4, corporal.....	8,379	25
E-5, sergeant.....	3,394	10
Subtotal, first 5 pay grades.....	28,351	84
E-6, staff sergeant.....	1,494	4
E-7 to E-9.....	714	2
O-1, 2d lieutenant.....	600	2
O-2, 1st lieutenant.....	1,091	3
O-3, captain.....	866	3
Other officers and warrant officers.....	682	2
Total.....	33,798	100

DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS FOR CHILDREN

Dependency and indemnity compensation benefits for children living with a widow are different from DIC benefits where there is no widow entitled. Additional types of DIC benefits for certain children over 18 are specified in the law.

Benefits when a widow is entitled.—The 1956 legislation establishing the dependency and indemnity compensation program also extended social security coverage to servicemen on active duty. Under the social security program, a widow with no minor children is not eligible for benefits until she reaches age 60 (age 50, if she is disabled). If she has minor children the children are eligible for social security benefits until they reach majority, and the widow is eligible for mother's benefits until the last child reaches majority.

Since the dependency and indemnity program was created, DIC benefits for children living with a widow have been related to social security benefits under a complicated formula. Under this formula, a widow with one child receives no additional DIC benefit for the

child. If she has two children and receives less than \$136.20 monthly social security benefits, she may receive additional dependency and indemnity compensation of either \$28 or, if less, the difference between \$136.20 and the social security benefits she actually receives. If she has three or more children and receives less than \$136.20 in monthly social security benefits, she may receive additional DIC equal to the difference between \$136.20 and the social security benefits she actually receives (with a minimum social security benefit to a widow with two children now \$82.50, the maximum additional DIC allowance is \$53.70).

This complicated formula has the effect of denying DIC benefits to many children living with widows. The committee bill meets this problem by eliminating the present connection between DIC children's benefits and social security, and by providing an additional DIC monthly allowance of \$20 for each minor child living with a widow. About 35,000 children will benefit from this provision, including 17,000 now receiving no DIC benefits. A comparison between present law and the committee bill is shown in table 3.

Benefits when no widow is entitled.—The original 1956 legislation establishing the dependency and indemnity compensation program provided specified amounts of DIC payments to children when no widow was entitled. These amounts were set at \$70 for one child, \$100 for two children, \$130 for three children, and \$25 for each additional child. In 1967, the amounts were set at their present levels of \$80 for one child, \$115 for two children, \$149 for three children, and \$29 for each additional child. About 44,000 children receive these benefits today.

The committee bill provides a 10-percent cost-of-living increase in these benefits, as shown in table 4.

Benefits to certain children 18 and over.—The original 1956 legislation also specified DIC amounts payable in certain cases. A child over age 18 who became permanently incapable of self-support before reaching age 18 was entitled to \$25 additional DIC if there was no widow entitled, and \$70 additional DIC if there was a widow receiving DIC. A child between 18 and 21 (now 23) who was a student was entitled to an additional \$35 in monthly DIC if there was a widow entitled.

These amounts were set in 1967 at \$29, \$80, and \$41, respectively, the levels under present law. More than 6,000 children 18 and over receive benefits under this section of the law. The committee bill provides a 10-percent cost-of-living increase in these benefits, as shown in table 4.

TABLE 3.—COMPARISON OF MAXIMUM DIC BENEFITS FOR CHILDREN LIVING WITH A WIDOW UNDER PRESENT LAW AND UNDER S. 1471

	Maximum under present law	Allowance under S. 1471
Additional DIC allowance for:		
1 child.....	No allowance.....	\$20
2 children.....	\$28.....	40
3 children.....	\$53.70.....	60
4 children.....	\$53.70.....	80
Each additional child.....	No allowance.....	20

TABLE 4.—DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS TO CHILDREN WHERE NO WIDOW IS ENTITLED AND IN CERTAIN SPECIFIED CASES

	Present law	S. 1471
1 child.....	\$80	\$88
2 children.....	115	127
3 children.....	149	164
Each additional child.....	29	32
Disabled child above age 18:		
where no widow is entitled to DIC.....	29	32
where widow is entitled to DIC.....	80	88
Student, age 18 to 23, where widow is entitled.....	41	45

ADDITIONAL ALLOWANCE FOR WIDOWS REQUIRING REGULAR AID AND ATTENDANCE

For decades, the compensation program for veterans with service-connected disabilities has provided higher payments for those veterans whose disabilities require them to have regular aid and attendance.

In 1951, special provision was made for additional pension payments to veterans with non-service-connected disabilities who require regular aid and attendance.

Most recently, in 1967, Public Law 90-77 extended an aid and attendance allowance of \$50 for the first time to widows entitled to a pension.

The committee bill provides a \$50 additional-monthly allowance for widows receiving dependency and indemnity compensation or death compensation who require regular aid and attendance, thus providing a benefit at least equal to that received by a widow entitled to a pension.

However, the committee feels that additional recognition should be given in cases where the death of the serviceman or veteran is related to armed conflict or extrahazardous service. The principle of providing a higher benefit for servicemen disabled in wartime or in the performance of extrahazardous service during peacetime is already established in our disability compensation law.

The committee bill applies this same principle by providing an additional \$75 allowance (instead of \$50) for a widow requiring regular aid and attendance whose husband's death "resulted from an injury or disease received as a direct result of armed conflict or while engaged in extrahazardous service." This language is similar to the present provision of law permitting higher disability compensation payments for servicemen disabled in peacetime service if the injury or disease resulted from extrahazardous service.

The committee intends that the term "extrahazardous service" shall include only service which is more hazardous than normal peacetime service and where the extra hazard is an inherent part of the military duty including (but not limited to) (a) service under conditions simulating war; (b) service recognized as involving risks beyond ordinary peacetime service, such as dangerous testing of weapons, duty on aircraft, duty on a submarine, or exposure to unusual climatic conditions or unusual disease; and (c) service in campaigns, expeditions, occupations, and similar duty inherently more dangerous than usual peacetime duty.

For example, the additional amount would be payable if the serviceman died while attempting to put out a fire in an ammunition dump—even though he was not eligible for extrahazardous duty pay.

But it would not be payable if a serviceman receiving extrahazardous duty pay died in an airplane crash while on vacation, or if a serviceman stationed in Vietnam died in an automobile accident in no way related to his military duties or hostile action. The Veterans' Administration would be required to evaluate each death individually to determine that it meets the criteria of the bill in order for the widow requiring regular aid and attendance to receive \$75 instead of \$50 monthly.

The Veterans' Administration estimates that in the first year the section is effective, 4,200 widows receiving dependency and indemnity compensation and 70 widows receiving death compensation would be eligible for the additional monthly allowance; of the total, about 10 percent will be eligible for the higher \$75 allowance.

EXTENDING DEPENDENCY AND INDEMNITY COMPENSATION TO CERTAIN SURVIVORS OF VETERANS WHO WERE INSURED UNDER GOVERNMENT LIFE INSURANCE ON A PREMIUM-FREE BASIS

Before the dependency and indemnity compensation was established in 1956, two major types of benefits were offered the survivors of deceased servicemen: monthly death compensation payments, and a \$10,000 gratuitous indemnity. The death compensation payments were small monthly payments, with the same amount payable to all widows whose husbands were killed in wartime service. The \$10,000 gratuitous indemnity had been authorized at the beginning of the Korean war as a free equivalent to the \$10,000 National Service Life Insurance that had been offered to servicemen during World War II. Those servicemen who still had National Service Life Insurance (or pre-World War II U.S. Government life insurance) at the beginning of the Korean war were given the choice of either dropping their National Service Life Insurance in order to receive the \$10,000 gratuitous indemnity, or continuing the National Service Life Insurance with the premiums waived—in effect, receiving \$10,000 in gratuitous life insurance. The same choice applied to holders of U.S. Government life insurance.

When the Congress in 1956 revised the survivor benefit program, the \$10,000 indemnity was eliminated, and in its stead the new program of dependency and indemnity compensation was established, with much more generous monthly payments to widows than had been provided under death compensation.

While the \$10,000 gratuitous indemnity was eliminated from the law, however, the Veterans' Administration ruled that they had a contractual obligation to continue National Service Life Insurance on a premium-free basis to those servicemen who had secured the waiver prior to the new law. In the light of this ruling, the Congress decided to deny monthly dependency and indemnity compensation payments to survivors receiving payments under National Service Life Insurance that had been continued in force on a premium-free basis. These survivors were and still are permitted to receive only the lower monthly death compensation payments, which have not been increased in 15 years. In view of this provision, a great effort was made to encourage as many servicemen as possible to resume payment of premiums for their National Service Life Insurance rather than having it continued

free, so that their widows would be eligible for the much more adequate monthly dependency and indemnity compensation payments. It is a tribute to that effort that although many servicemen still hold National Service Life Insurance, almost all of them pay premiums to insure that their survivors will be eligible for dependency and indemnity compensation. About 165,000 widows are receiving dependency and indemnity compensation today; however, because of the prohibition in the law just described, some 2,800 widows are barred from receiving dependency and indemnity compensation.

The committee bill would end this situation which forever denies dependency and indemnity compensation to a widow who received a \$10,000 gratuitous insurance benefit upon her husband's death. Under section 5 of the bill as reported, the Veterans' Administration would compute the total amount of dependency and indemnity compensation which would have been payable to the deceased's survivors had they been eligible to receive it. When the total amount of insurance benefits and death compensation actually paid the survivors equals or is less than the DIC they would have received had they been eligible, the survivors would be eligible to apply for dependency and indemnity compensation. The Veterans' Administration estimates that about 700 widows would now be eligible to receive dependency and indemnity compensation under this proposal.

This provision would be fair to these widows who have been limited to receiving death compensation, and it would be fair to the many servicemen who have wisely chosen to pay for their National Service Life Insurance so that their wives are adequately protected. Both groups would be treated equitably.

TABLE 5.—COMPARISON OF DEPENDENCY AND INDEMNITY COMPENSATION PAYMENTS UNDER PRESENT LAW AND UNDER S. 1471 AS REPORTED: ILLUSTRATIVE CASES

	DIC under—		Percentage increase
	Present law	S. 1471	
1. Widow of private with 1 year of service, no children.....	\$136	\$170	25
2. Widow of private 1st class with 1 year of service, 1 child.....	139	190	37
3. Widow of corporal with 1½ years of service, 2 children.....	146	210	44
4. Widow of sergeant with 2½ years of service, 3 children.....	158	230	46
5. Widow of staff sergeant with 13 years of service requiring regular aid and attendance, no minor children.....	175	260	48

¹ Assumes widow receives more than \$136 in social security benefits.

² Assumes widow receives more than \$136 in social security benefits.

³ Assumes husband's death was related to armed conflict or extrahazardous service.

EFFECTIVE DATE

The amendments under the committee bill become effective on the first day of the second calendar month following the month of enactment of the bill.

COST OF THE BILL

The Veterans' Administration has furnished the following estimates of the additional cost of the committee bill during the first full year the provisions are in effect.

1. Increase DIC payment to widow to \$130 plus 12 percent of the monthly basic pay now being received by a serviceman whose rank and years of service are the same as that of the deceased veteran.....	\$20, 184, 000
2. Provide minimum widow's benefit of \$170.....	20, 876, 000
3. Provide additional \$20 monthly for each child.....	4, 800, 000
4. Provide additional \$50 monthly if widow requires regular aid and attendance; \$75 allowance if deceased husband's death was related to combat action or other extrahazardous duty....	2, 683, 000
5. Increase by 10 percent benefits to children where there is no widow entitled and to certain children age 18 and older....	3, 552, 000
6. Extend DIC to certain widows whose husbands were insured under National Service Life Insurance on a premium free basis.....	745, 000
Total.....	52, 840, 000

It is estimated that about two-thirds of the additional expenditures under the bill will go to widows and children whose husbands and fathers were in the lowest five enlisted ranks—the ranks of the non-career servicemen.

REPORT OF U.S. VETERANS' ADVISORY COMMISSION

In President Johnson's message to the Congress on veterans' benefits, January 31, 1967, the Administrator of Veterans' Affairs was directed to appoint an advisory commission to study each facet of the existing programs designed to assist veterans and their dependents. A panel of 11 distinguished members was subsequently named by the Administrator and designated as the U.S. Veterans' Advisory Commission. Hearings were held by the Commission throughout the country during 1967 and on March 18, 1968, the formal report of the Commission was released.

Several recommendations of the Veterans' Advisory Commission have been incorporated in the committee bill. The text of the recommendations follows:

RECOMMENDATION NO. 4

The Commission recommends that an additional monthly payment of \$20 for each child be made to widows receiving dependency and indemnity compensation, independent of any social security or railroad retirement payments.

Background to recommendation

At present, dependency and indemnity compensation (DIC) is payable to the widow of a veteran who died from service-connected causes at the monthly rate of \$120 plus 12 percent of her husband's basic military pay. (Refer to Commission recommendation proposing an increase in this basic monthly rate.) No additional amount is payable for children below age 18, except where the widow has two or more such children, and the monthly total of her social

security benefits (under 42 U.S.C. 402), railroad retirement benefits (under 45 U.S.C. 228e), and special allowance (under 38 U.S.C. 412(a)), is less than the monthly social security payment—usually \$136.20—the widow and children would receive if the deceased veteran had been fully and currently insured with an average monthly wage of \$160. If this total in benefits is less than \$136.20, the widow's rate of DIC is increased by \$28 monthly for each child in excess of one, so long as the total amount of this increase does not exceed the difference between the \$136.20 figure and the social security actually received.

Adequate provision is contained in the law for children 18 years of age or over. However, the provisions made for widows during the trying years when they are raising their orphaned children tend to cause hardship.

The hardship increases for widows with more than two children. At present, the widow with no children receives the same amount of DIC payments each month as the widow with seven children under 18. The widow with seven children does have her DIC supplemented by social security payments, but these payments do not increase to cover more than two children. Thus, a widow with seven children could receive the same combined total of DIC and social security as she would receive if she had only two children.

To alleviate this hardship imposed by present law on widows with several children, the Commission recommends that DIC payments to widows with children under age 18 be completely disassociated from social security benefits. Further, the Commission proposes to pay an additional monthly amount of \$20 for each child to widows receiving DIC. Additional payments of \$20 for each child offer the most equitable substitute for the present law, and would prevent any reduction in the combined DIC and social security benefits a widow may receive.

RECOMMENDATION NO. 5

The Commission recommends that the basic rate for DIC be increased from \$120 to \$130 per month and that the 12 percent of base pay provision be retained. In the future, the basic allowance should be adjusted in accordance with any increase in the appropriate service rank pay.

Background to recommendation

The dependency and indemnity compensation program was created to offset deficiencies in the prior death compensation and servicemen's indemnity programs. Under DIC, a widow whose husband died from service-connected causes receives \$112 a month plus 12 percent of the current basic pay of a serviceman with the same rank and service.

Since the January 1, 1957, effective date of the program, the basic rate has been adjudged inadequate. In 1963, the basic rate was increased to \$120 per month. No change in this basic rate has been made, despite a substantial increase

in the cost of living: The payments have been increased with each military pay increase, but the widows of servicemen who were in the lowest pay grades and had short periods of service have not benefited significantly.

The Commission believes these widows of men who gave their lives in service deserve compensation that is adequate in today's world. Therefore, we recommend that the basic rate for DIC be increased from \$120 to \$130 per month, that the 12 percent of base pay provision be retained. In the future, the basic allowance should be adjusted in accordance with any increase in the appropriate service rank pay.

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RECOMMENDATION NO. 48

The Commission recommends that a widow receiving death compensation because of her husband's in-service waiver of insurance premiums may elect to receive dependency and indemnity compensation as soon as she has been denied benefits in an amount equal to the insurance proceeds. * * *

Background to recommendation

In 1951, Congress enacted the Servicemen's Indemnity Act (\$10,000 free insurance) which in some respects was less advantageous to servicemen than their GI insurance.

In order to disrupt as little as possible the insurance programs already in effect, provision was made to permit term policyholders on active duty to waive the entire premium during service and for 120 days thereafter, while permanent plan policyholders could waive that portion of each premium representing the cost of the pure insurance risk. No new applications for in-service waiver of premiums were accepted after December 31, 1956. They could all continue their insurance after leaving the service by paying premiums.

In 1957, the dependency and indemnity compensation program replaced the free insurance under the Servicemen's Indemnity Act and the death compensation benefits paid to survivors. This new legislation was designed to provide higher benefits for most. Servicemen have been counseled on the effect premium waiver might have on survivors' benefits—as the family status changes, it might be advisable for a serviceman to cancel his in-service waiver of premiums so his survivors may receive the higher DIC payments. Another factor favoring DIC payments is that a portion of it varies with the monthly basic pay now being received by a serviceman whose rank and years of service are the same as those of the deceased veteran. * * *

In cases where widows are receiving death compensation because of in-service waivers, some have already been denied benefits in an amount in excess of the \$10,000 face value of their insurance. To assist these widows and others who will move into this situation, the Commission recommends that on the date when a widow has been disadvantaged to the

extent of the insured amount by virtue of the lower death compensation payments, she would have the option of continuing death compensation or receiving DIC payments instead.

DEFENSE DEPARTMENT STUDY

As part of its quadrennial comprehensive study on military pay and benefits, the Defense Department included a detailed analysis of benefits for survivors of servicemen. The study reached the same conclusion as has been incorporated in the committee bill: a minimum benefit should be set at the benefit level of a widow whose husband was a sergeant with 3 years of service. An excerpt from the Defense Department study follows:

There is a substantial difference of opinion concerning the degree to which survivor benefits should be related to active duty pay, if at all. The primary cause of the differing viewpoints is that the military force is composed of two groups—careerists and noncareerists—whose members differ in many respects. There is a considerable body of opinion that survivor benefits should be identical for all military personnel—that they should bear no relationship to the active duty pay of the service member. This opinion is based primarily on a concern for the members of the noncareer force (particularly in wartime when the draft removes many individuals from more comfortable economic circumstances and requires that they serve as enlisted men) and the voluntary nature of their service. An equally significant body of opinion holds that the principles dictating that active duty compensation be at least comparable with other employees of the Federal Government should also apply to the military estate program: that in order to attract and retain a career force of ability and dedication, and to provide equitable treatment compared to that offered by other employers, all aspects of compensation should reward the member's satisfactory progression through his career.

The first opinion—that survivor annuities should not vary with the active duty pay of the service member—asserts that because of the large numbers of men in the Armed Forces who have been drafted or motivated to serve because of the draft, the structure of benefits should not be based on the rank of the individual or his pay grade. This belief holds that military pay is not an accurate reflection of the probable civilian income of those persons who have been taken from civilian life and forced to serve in low ranks, and that the way to prevent inequitable payments is to make them all the same amount. This feeling is strongest during times of war and when a large standing military force is necessary. It correctly emphasizes that the minimum necessities of life cost the same for all survivors.

Some proponents of this viewpoint obscure its strength with the argument that survivor annuities should be equal because "all men are equal in death," and because payments that vary according to active duty salary would perpetuate a "social discrimination" that they attribute to the military

rank structure. This argument is proffered strongly and is prevalent in the record of legislative and administrative hearings concerning survivor benefits. It is valid in two respects:

First, it recognizes that active duty military pay of draftees sometimes will bear no relation to certain individuals' civilian employability and economic circumstances prior to being drafted.

Second, it recognizes that many of the essential expenses of survivors are unrelated to active duty pay.

The second opinion—that survivor annuities should bear a relation to the active duty wage of the military member—is more prevalent during times when the bulk of the Armed Forces are career personnel and few men need to be drafted. It holds that one of the motivating factors for a man to strive to attain a responsible position in life is to provide a high standard of living for his family—both while he is in the active force and if his death occurs while serving in the active force; consequently, the structure of survivor benefits should reflect this motivational factor and provide benefits based on the rank and pay of the individual.

This opinion does not dispute that many essential expenses are approximately the same for all survivors. But it does hold that the annuity should do more than pay a minimum maintenance allowance: that it should be established at a level that recognizes the dependence of the survivors on a standard of living achieved during the military career of the service member. Under this concept the level of survivor annuities reflects the member's contribution to the organization, just as active duty compensation does.

Recommendation 34. That the minimum payment for widows, dependent children and orphan children be based on the salary of an E-5 with 3 years of service, and that the maximum payment be based on the salary of an O-5 with 20 years of service

The minimum payment in the recommended military formula is based on the salary of an E-5 with over 3 years of service. This grade and length of service combination is the crossover point between the noncareer force and the career force: when an E-5 has 4 years of service, he becomes a member of the career force. All members of the noncareer force, therefore, will be entitled to a survivor benefit that does not relate to their own active duty pay, but rather to the active duty pay of an E-5 with over 3 years of service who is a member of the career force.

Because military service is compulsory for many non-careerists, because many others are influenced by the draft, because noncareer members are compensated on a "residual income" basis, and because of the transitional characteristics of the various noncareer grades where each grade is held for a relatively short time in preparation for higher grades that bear greater responsibility, survivor annuities for these members should not be related to their active duty pay. Further the Government must view its responsibilities to this part of

the force with full realization that when a member dies on active duty it is frequently a direct result of his involuntary removal from civilian life in order to serve his country.

VETERANS' ADMINISTRATION REPORT

The report of the Veterans' Administration on S. 1471 follows:

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., July 9, 1969.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to respond to your request for a report on S. 1471, 91st Congress.

The proposal would increase the monthly dependency and indemnity compensation rates for widows and children, and would create a special allowance for widows in need of the regular aid and attendance of another person. Also, it would presume service-connection, for dependency and indemnity compensation purposes, in certain non-service-connected death cases.

Chapter 13 of title 38, United States Code (dependency and indemnity compensation), restates a portion of the Servicemen's and Veterans' Survivor Benefits Act (Public Law 881, 84th Cong., August 1, 1956). This act established a new death benefits program of dependency and indemnity compensation for widows and other survivors of veterans dying from service-connected causes on or after January 1, 1957. Any person eligible for benefits under the earlier death compensation program, based on a veteran's death prior to January 1, 1957, may make an irrevocable election to receive benefits under the current dependency and indemnity compensation system.

The rate of dependency and indemnity compensation payable to widows under the provisions of section 411(a) of title 38, United States Code, is geared to basic pay for active military duty at current rates. A widow is paid at a monthly rate equal to a constant factor of \$120 plus 12 percent of the basic pay of her deceased husband. Subsection (a) of the first section of S. 1471 would increase the \$120 factor to \$130 and would guarantee a minimum monthly rate of \$165.

No dependency and indemnity compensation allowance is generally made to a widow on account of the children of the veteran. There are two limited exceptions: (1) where social security or railroad retirement payments to a widow are below a certain amount (38 U.S.C. 411(b)), or (2) where the dependency and indemnity compensation benefit for a widow with children is less than the death pension which would be payable for a like number of children (38 U.S.C. 412(b)). Subsection (b) of the first section of the bill would repeal the present payment formula for widows with children (38 U.S.C. 411(b)) and substitute a fixed payment of \$20 monthly for each child under age 18, unrelated to social security and railroad retirement payments. This would have the effect of providing increased rates of dependency and indemnity compensation for all widows with a child or children.

An additional allowance of \$50 monthly would be authorized by subsection (c) of the first section for any widow entitled to dependency and indemnity compensation who is determined to be in need of the regular aid and attendance of another person. Such an allowance in

an identical amount is authorized under existing law for widows receiving non-service-connected death pension.

Specific rates of dependency and indemnity compensation are authorized by section 413 of title 38, United States Code, for children where no widow is entitled to dependency and indemnity compensation. Section 2 of the bill would provide increases of approximately 10 per centum in these rates.

Section 414 of said title 38 provides dependency and indemnity compensation rates for children over 18, attending school, where there is a widow also receiving benefits, and for helpless children. Similarly, section 3 of S. 1471 would increase these rates by approximately 10 per centum.

Under section 4 of the proposal, dependency and indemnity compensation would be payable to the widow, children, and parents of certain veterans who died after December 31, 1956, from non-service-connected causes. The basic condition of payment would be that the particular veteran died while in receipt of or entitled to receive compensation for a service-connected disability which was permanently and totally disabling for 20 years or longer. The proposed presumption of service-connection would be specifically inapplicable where death occurred as a result of accidental causes having no relation to the service-connected disability.

Section 5 of the bill provides that the proposed amendments would be effective the first day of the second calendar month following enactment.

As mentioned above, a monthly allowance of \$50 has already been provided by statute for widows receiving non-service-connected death pension who are determined to be in need of regular aid and attendance as defined in 38 U.S.C. 502(b). We believe that the widows of veterans who died from service-connected causes should receive similar treatment. The Veterans' Administration accordingly favors the proposal in subsection (c) of the first section of S. 1471 to extend a similar allowance to widows who are receiving dependency and indemnity compensation and recommends that the subsection be expanded to include all types of cases covered by the pension allowance. We also believe that the existing discriminatory situation should be fully remedied by further extending the aid and attendance allowance to widows in receipt of service-connected death compensation, pursuant to subchapters III and V of chapter 11, title 38, United States Code.

The dependency and indemnity compensation system is under continuing study. Our review thus far has revealed certain potential problem areas in the program, including the aforementioned aid and attendance factor. We have not completed our analysis, however, to the point of reaching a decision on a supportable comprehensive approach for remedial action. Consequently, we recommend that your committee defer action on proposals contained in the first three sections of S. 1471, except the one for a widow's aid and attendance allowance which is clearly warranted.

Section 4 of S. 1471 relates, of course, to certain cases of other than service-connected deaths. By presuming, contrary to the evidence, service-connection as to the cause of such deaths, enactment of the proposal would constitute a major departure from the policy of the Congress in maintaining separate systems of monetary benefits for deaths due to service and those not due to service. Its enactment

would be tantamount to superimposing on the present pension program new non-service-connected death benefits equivalent to the present service-connected benefits, and would result in new and highly discriminatory benefits for surviving dependents of certain disabled veterans.

The Veterans' Administration believes that existing law and regulations provide very liberal and equitable conditions for determining that death is service-connected. Moreover, there is no justification for presuming a death to be service-connected when the evidence does not support such a finding.

It is estimated that enactment of the first three sections of S. 1471 would cost approximately \$46.4 million the first year, increasing gradually to approximately \$50.6 million the fifth year. Due to the lack of necessary data, we are unable to estimate the cost of enactment of section 4 of the bill. Enactment of the aid and attendance allowance provision (amplified to include widows under the death compensation program), as urged above, would cost approximately \$2.6 million the first year with slight annual increases to approximately \$2.9 million the fifth year.

In summary, I recommend as follows with regard to S. 1471: (a) favorable consideration with amendment of the proposal in subsection (c) of the first section for a \$50 aid and attendance allowance for widows; (b) deferral of consideration of all other dependency and indemnity compensation aspects of the measure pending completion of our review of the program; and (c) that the proposal in section 4 for a presumption of service-connected death be not favorably considered.

Advice has been received from the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

DONALD E. JOHNSON,
Administrator.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART II. GENERAL BENEFITS

Chapter	Sec.
11. Compensation for Service-Connected Disability or Death.....	301
13. Dependency and Indemnity Compensation for Service-Connected Deaths.....	401
15. Pension for Non-Service-Connected Disability or Death or for Service.....	501
17. Hospital, Domiciliary, and Medical Care.....	601
19. Insurance.....	701
21. Specially Adapted Housing for disabled Veterans.....	801
23. Burial Benefits.....	901

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

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SUBCHAPTER III—WARTIME DEATH COMPENSATION

Chapter

321. Basic entitlement.
322. Rates of wartime death compensation.

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Subchapter III—Wartime Death Compensation

§ 321. Basic entitlement

The surviving widow, child or children, and dependent parent or parents of any veteran who died before January 1, 1957 (or after April 30, 1957, under the circumstances described in section 417(a) of this title) as the result of injury or disease incurred in or aggravated by active military, naval, or air service, in line of duty, during a period of war, shall be entitled to receive compensation at the monthly rates specified in section 322 of this title.

§ 322. Rates of wartime death compensation

- (a) The monthly rates of death compensation shall be as follows:
- (1) Widow but no child, \$87;
 - (2) Widow with one child, \$121 (with \$29 for each additional child);
 - (3) No widow but one child, \$67;
 - (4) No widow but two children, \$94 (equally divided);
 - (5) No widow but three children, \$122 (equally divided) (with \$23 for each additional child, total amount to be equally divided);
 - (6) Dependent mother or father, \$75;
 - (7) Dependent mother and father, \$40 each.

(b) *The monthly rate of death compensation payable to a widow under subsection (a) of this section shall be increased by \$50 if she is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person and by an additional \$25 if the death of the veteran resulted from an injury or disease received as a direct result of armed conflict or while engaged in extrahazardous service.*

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CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

SUBCHAPTER I—GENERAL

401. Definitions.
402. Computation of basic pay.
403. Coverage of members of Reserve Officers' Training Corps.
404. Special provisions relating to widows.

SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

410. Deaths entitling survivors to dependency and indemnity compensation.
411. Dependency and indemnity compensation to a widow.
412. Benefits in certain cases of in-service or service-connected deaths.
413. Dependency and indemnity compensation to children.
414. Supplemental dependency and indemnity compensation to children.
415. Dependency and indemnity compensation to parents.
416. Dependency and indemnity compensation in cases of prior deaths.
417. Restriction on payments under this chapter.

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Subchapter II—Dependency and Indemnity Compensation

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§ 411. Dependency and indemnity compensation to a widow

(a) Dependency and indemnity compensation shall be paid to a widow at a monthly rate equal to **[\$120]** *\$130* plus 12 per centum of the basic pay of her deceased husband *or at a monthly rate of \$170, whichever is greater.*

(b) **[**If there is a widow and two or more children below the age of eighteen of a deceased veteran, and—

[(1) the total of the monthly benefits to which such widow and children are (or would be, upon the filing of an application) entitled on the basis of such deceased veteran's status under the laws referred to in subsection (d);

is less than

[(2) the amount described in subsection (e);
then the dependency and indemnity compensation paid monthly to the widow shall be increased by \$28 for each such child in excess of one; however, the total of increases under this subsection shall not exceed the difference between the amounts referred to in subparagraphs (1) and (2) of this subsection.**]** *If there is a widow and one or more children below the age of eighteen of a deceased veteran, the dependency and indemnity compensation paid monthly to the widow shall be increased by \$20 for each such child.*

(c) *The monthly rate of dependency and indemnity compensation payable to a widow shall be increased by \$50 if she is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person and by an additional \$25 if the death of her deceased husband resulted from an injury or disease received as a direct result of armed conflict or while engaged in extrahazardous service.*

[(c)] (d) If the amount determined under subsection (a) **[**, after increase (if any) under subsection (b),**]** involves a fraction of a dollar, the amount payable thereunder shall be increased by the Administrator to the next higher dollar.

[(d)] The laws referred to in subsection (b)(1) are—

- (1) section 412(a) of this title;
- (2) section 402 of title 42 (including the reduction provisions of subsection (a) of section 403 of title 42, but without regard to the deduction provisions of section 403); and
- (3) section 228e of title 45 (including the reduction provisions of section 228c-1(i) and 228e(h) of title 45).

[(e)] The amount referred to in subsection (b)(2) is an amount equal to the total of the monthly benefits to which a widow and two children of a deceased fully and currently insured individual would be entitled under section 402 of title 42 (after reduction under subsection (a) of section 403 of title 42 but without regard to deduction provisions of section 403) if such deceased individual's average monthly wage had been \$160.

[(f)] The amount referred to in subsection (b)(1) shall be determined by the Secretary of Health, Education, and Welfare, or the Railroad Retirement Board, as the case may be, and shall be certified to the Administrator upon his request.**]**

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§ 413. Dependency and indemnity compensation to children

Whenever there is no widow of a deceased veteran entitled to dependency and indemnity compensation, dependency and indemnity compensation shall be paid in equal shares to the children of the deceased veteran at the following monthly rates:

- (1) One child, ~~[\$80]~~ \$88.
- (2) Two children, ~~[\$115]~~ \$127.
- (3) Three children, ~~[\$149]~~ \$164.
- (4) More than three children, ~~[\$149]~~ \$164, plus ~~[\$29]~~ \$32 for each child in excess of three.

§ 414. Supplemental dependency and indemnity compensation to children

(a) In the case of a child entitled to dependency and indemnity compensation who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, the dependency and indemnity compensation paid monthly to him shall be increased by ~~[\$29]~~ \$32.

(b) If dependency and indemnity compensation is payable monthly to a woman as a "widow" and there is a child (of her deceased husband) who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the widow, in the amount of ~~[\$30]~~ \$38.

(c) If dependency and indemnity compensation is payable monthly to a woman as a "widow" and there is a child (of her deceased husband) who has attained the age of eighteen and who, while under the age of twenty-three, is pursuing a course of instruction at an educational institution approved under section 104 of this title, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the widow, in the amount of ~~[\$41]~~ \$45.

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§ 417. Restriction on payments under this chapter

(a) No dependency and indemnity compensation shall be paid to the widow, children, or parents of any veteran dying after April 30, 1957, having in effect at the time of death a policy of United States Government life insurance or National Service Life Insurance under waiver of premiums under section 724 of this title, unless (1) waiver of premiums on such policy was granted pursuant to the first proviso of section 622(a) of the National Service Life Insurance Act of 1940, and the death occurs before the veteran's return to military jurisdiction or within one hundred and twenty days ~~thereafter.~~ *thereafter*, or (2) *the total amount payable to the widow, children, or parents of such veteran under any such policy has been paid and such amount when added to any amounts paid as death compensation is equal to or less than the total amount which would have been payable in dependency and indemnity compensation following the death of such veteran if such widow, children, or parents had been eligible for such compensation upon the death of such veteran. Any person receiving death compensation at the time he becomes eligible for dependency and indemnity compensation pursuant to clause (2) of the preceding sentence shall continue to receive*

such death compensation unless he makes application to the Administrator to be paid dependency and indemnity compensation. An election by such person to receive dependency and indemnity compensation shall be final. Where dependency and indemnity compensation is not payable by reason of the **【preceding】** first sentence, death compensation may be paid under section 321 or 341 of this title, as applicable.

(b) No person eligible for dependency and indemnity compensation by reason of any death occurring after December 31, 1956, shall be eligible by reason of such death for any payments under (1) provisions of law administered by the Veterans' Administration providing for the payment of death compensation or death pension, or (2) the Federal Employees' Compensation Act.

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