



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

Mr. Reidinger  
PLM II  
14811



OFFICE OF GENERAL COUNSEL

IN REPLY  
REFER TO:

B-199374

September 2, 1980

Mr. E. Marshall, Jr., Director  
Veterans and Retired Affairs  
Air Force Sergeants Association  
Post Office Box 31050  
Washington, D.C. 20031

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Dear Mr. Marshall:

Reference is made to your letter dated June 20, 1980, in which you seek information concerning the effect that certain of the provisions of the Social Security Amendments of 1977 might have on Survivor Benefit Plan (SBP) annuities payable to surviving spouses.

More specifically, you refer to section 334 of those amendments. You state that that section requires that Social Security benefits payable to surviving spouses are to be reduced by any governmental retirement benefits payable to such surviving spouses based on their own earnings in noncovered employment.

You express the view that such provision is unfair. However, you envision a greater problem involving the possible impact such provisions might have on surviving spouse recipients of SBP annuities who are employed governmentally at the time they become entitled to governmental retirement benefits in their own right.

You point out that depending on how these two laws are interpreted, it appears that this category of surviving spouses could have their SBP annuity reduced at age 62, based on the deceased member's military service, only to have the Social Security benefit, which you say is presumed to replace the lost SBP annuity, reduced or completely eliminated because of their own retirement annuity from the governmental source. You consider this to be double dipping in reverse and you request our views on the matter.

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An official decision is not being rendered on the matter presented; however, the following comments may be helpful.

Determinations of eligibility, computation and payment of Social Security benefits to individuals under Subchapter II, chapter 7 of title 42, United States Code, are matters which are the responsibility of the Social Security Administration. Neither this Office nor any of the military services concerned have any jurisdiction to determine or question any decision so made by them. 42 U.S.C. 405(h).

As it relates to widow's benefits, section 334 of the Social Security Amendments of 1977, Public Law 95-216, approved December 20, 1977, 91 Stat. 1509, 1544, amended section 202(b) of the Social Security Act to add in part the following presently contained in 42 U.S.C. 402(e)(8)(A):

"The amount of widow's insurance benefit for each month \* \* \* shall be reduced \* \* \* by an amount equal to the amount of any monthly periodic benefit payable to such widow \* \* \* which is based upon her earnings while in the service of the Federal Government or any state \* \* \*."

As we understand it, as a general rule an individual who is qualified to receive, for example, a widow's benefit from Social Security and also Social Security in her own right, may not receive both. She would be entitled to the greater of either. Apparently, however, it was discovered that there are widows who are entitled to Social Security widow's benefits and also full retirement in their own right from a governmental body. Prior to enactment of the before-quoted provisions, such a widow was entitled to receive both. After enactment such individuals were no longer eligible to receive both, only the greater amount.

The above, of course, does not involve payments to be made under SBP, or affect the setoff requirement of

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10 U.S.C. 1451. As enacted the SBP did not change, alter or diminish an SBP annuitant's right to receive Social Security payments or the amount thereof. Whatever payment the SBP annuitant is entitled to receive in the form of Social Security benefits remained unaffected by any provision of the SBP. However, 10 U.S.C. 1451 does require that when an SBP annuitant becomes age 62, the amount of the SBP annuity shall be reduced, but only to the extent of that portion of Social Security benefits which are predicated on military service credits earned by the individual upon whose death the Social Security benefits flow. In this regard, in many cases the member would have other Social Security covered earnings from nonmilitary sources. The Social Security benefits derived from those sources would not subject the SBP annuity to be further reduced. See B-196569, July 8, 1980 (59 Comp. Gen. \_\_\_), copy enclosed.

Sincerely yours,

*David F. Engstrom*

*for* Edwin J. Monsma  
Assistant General Counsel

Enclosure

*Engstrom, David F.*