UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT

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FACT SHEET

DIRECT PAYMENTS FROM MILITARY RETIRED PAY PURSUANT TO THE UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT

BACKGROUND:

1. This fact sheet provides information on Section 1002 of Public Law 97-252, signed into law on September 8, 1982, and codified at section 1408, Title 10 United States Code (U.S.C.), also 50 Federal Register 2665 (1985) codified at 32 Code of Federal Regulations (C.F.R.) part 63 (1989). It also incorporates information addressing amendments to the Former Spouses' Protection Act as enacted by Congress under section 555 of Public Law 101-510, signed into law on November 5, 1990.

2. Section 1002 provides for payment from retired pay in compliance with a court order which awards a portion of the retired pay to a spouse or former spouse. This applies only if the state law allows for a division of the retirement pay. This section also provides for direct payment of child support or alimony.

3. The law does not provide for an automatic entitlement to a portion of the retired pay based on the number of years of the marriage while the service member was on active duty.

ELIGIBILITY:

4. The following may be used in determining eligibility to a portion of the retired pay:

a. Payments may be made to a spouse or former spouse, when a court order specifically provides for said payment expressed in dollars or as a percentage of the retired pay. Also, child support and alimony obligations may be enforced.

b. A court may not consider disposable retired pay as property, unless the court has jurisdiction over the member by reason of the member's residence, other than because of military assignments; member's domicile in the state; or member's consent to the court's jurisdiction.

c. Disposable retired pay is defined as gross pay less authorized deductions. The most frequently applied authorized deductions include amount owed to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlements to retired pay, amounts waived in order to receive Veterans Administration compensation or pension, premiums for SBP established only for the former spouse, and amounts waived in order to receive compensation under Title 5 or Title 38.

d. Court orders issued before June 26, 1981, which direct a division of retired pay or payments of alimony or child support will be honored under this law. However, orders which do not contain such provisions and are modified to provide for such a division will not be honored

under this law. Court orders issued after June 25, 1981, may be modified to reflect the State law after June 25, 1981, and may be honored under this law.

e. Payment for a division of retirement pay is limited to cases where the marriage lasted 10 years or more during which time the military member served 10 or more years of creditable service toward retirement. This limitation does not apply to payments for child support or alimony.

f. The amount payable to a spouse or former spouse under this law is limited to 50 % of the disposable retired pay, or 65 % if there are garnishments for alimony or child support.

g. Payments will be made, only if the court order or other documents certify compliance with the terms of the Soldiers' and Sailors' Civil Relief Act. This applies only to members on active duty at the time the court order was issued.

h. Normally, payments will begin to the spouse or former spouse within 90 days after effective service. If the service member is not yet entitled to retired pay, payments normally will begin within 90 days after the service member is entitled to receive retired pay.

i. Payments will terminate upon the death of the former spouse or upon the death of the service member, whichever is earlier, or under the provisions of a court order.

j. A court may not order a service member to apply for retirement in order to initiate payment under this law.

k. Payments made shall be prospective in terms of the amount stated in the court order. Arrearages will not be considered in determining the amount payable from retired pay. However, arrearages for alimony and child support may be sought under 42 U.S.C. part 659 and state garnishment laws.

PAYMENT:

5. The following procedure shall be used to effect payment:

a. A written application is required for the apportionments of the service member's pay, or for child support, or alimony payments. This request must be submitted by the spouse/former spouse or attorney for that spouse.

b. The service member's name and social security number is required. The Air Force serial number is not acceptable.

c. A written statement is required that no modification to this order has been effected, and no appeal will be taken by the applicant.

d. As a condition precedent to payment, the applicant (former spouse) must agree that any future overpayments are recoverable and subject to involuntary collection from the applicant or his or her estate.

e. Also, as a condition precedent to payment, the applicant (former spouse) must agree to notify DFAS-DE/GL if the court order upon which payment is based is vacated, modified or set aside. This includes notice of remarriage, if all or part of the payment is for alimony, or notice of change in eligibility for child support payments by reason of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through direct payments from retired pay.

f. The name and address of the applicant must be furnished.

NOTE: Requirements a. through f. above may be accomplished through the submission of a DD Form 2293 signed by the applicant.

g. A certified copy of the court order which awards an apportionment of the retired pay to a spouse or former spouse is required and a copy of the divorce decree if not the same order. The order must be certified by the issuing court within 90 days preceding its receipt by DFAS-DE/GL.

h. A court order or other documents must be included which show that the rights of the Soldiers' and Sailors' Civil Relief Act were honored. This applies only to those orders issued while the service member was on active duty.

i. Proof of date of marriage is required, if not shown in the court order.

j. Documents must be served by personal service; or by registered or certified mail, return receipt request to the *Garnishment Division*.

Uniformed Services Former Spouses' Protection Act[1]	Length of Time that Marriage Overlaps with Service Creditable for Retirement Purposes[3]			
	Number of years			
Benefit for Former Spouses[2]	**0 to <10**	**10 to <15**	**15 to <20**	**20 or more**
Division of Retired Pay[4]	X	X	X	X
Designation as an SBP Beneficiary[5]	X	X	X	X
DFAS Direct Payment[6] of -				
Child Support	X	X	X	X
Alimony	X	X	X	X
Property Division[7]		X	X	X
Health Care[8]				
Transitional[9]			X	
Full[10]				X
Insurance[11]	X	X	X	X
Commissary[12]				X
BX[12]				X
Dependent Abuse				
Retired Pay Property Share Equivalent[13]		X	X	X
Transitional Compensation[14]	X	X	X	X

Chart notes:

1. Pub. L. 97-252, Title X, 96 Stat. 730 (1982), as amended. This chart reflects all changes to the Act through the amendments in the National Defense Authorization Act, Fiscal Year 1994, Pub. L. 103-160 (1993).
2. For guidance on obtaining a military identification card to establish entitlement for health care, commissary, and PX benefits, see appropriate service regulations (3.g. AR 640-3). Former spouses of reserve component members may be entitled to these benefits; see the following notes for applicable benefits.
3. Except for Dependent Abuse Victims Transitional Compensation payments, this chart assumes that the member serves long enough to retire from an active duty component or reserve component of the Armed Force (generally this will mean (s)he has twenty years of service creditable for retirement purposes, but can mean fifteen years in the case of the Voluntary Early Release and Retirement Program.
4. At least one court has awarded a portion of military retired pay to a spouse whom the retiree married after he retired, Konzen v. Konzen, 103 Wash.2d 470, 693 P.2d 97, cert denied, 473 U.S. 906 (1985)
5. Federal law does not create any minimum length of overlap for this benefit; the parties' agreement or

state law will control a former spouse's entitlement to designation an SBP beneficiary.
6. See 10 U.S.C. 1408 (d) & 1408 (e) and 32 C.F.R. part 63 for further guidance on mandatory language in the divorce decree or court-approved separation agreement. The former spouse initiates the direct payment process by sending a written request to the appropriate finance center.
7. While eligibility for direct payment does not extend to former spouses whose overlap of marriage and service is less that ten years, this is not a prerequisite to award of a share of retired pay as property to the former spouse (see Note 4).
8. To qualify for any health care provided or paid for by the military, the former spouse must be unremarried and must not be covered by an employer-sponsored health care plan; see 10 U.S.C. 1072(2)(F), 1072(2)(G & 1072(2)(H). Department of the Army interpretation of this provision holds that termination of a subsequent marriage by divorce or death does not revive this benefit, but an annulment does. These remarriage and employer-insurance restrictions do no limit eligibility to enroll in the civilian health care insurance plan discussed in Note 11.
9. Transitional health care "was created by Pub. L. 98-625, 645 (C)(not codified), as a stop-gap measure while a civilian health care plan was negotiated for former spouses and other who lose an entitlement to receive military health care (see Note 11). The program subsequently was modified and narrowed by the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100-456, Title VI, 651, 102 Stat. 1990 (1988). Current program benefits are described at 10 U.S.C. 1078a.titled "Continued Health Benefits Coverage." Qualifying former spouses are those who are unremarried, who have no employer-sponsored health insurance, and who meet the "20/20/15" requirement (i.e., married to the member for at least 20 years, and the member has at least 20 years of service that are creditable for retirement purposes, and the marriage overlaps at least 15 years of the creditable service). Transitional health care now includes full military health care for 1 year after the date of the divorce, and during this period the former spouse is eligible to enroll in the civilian group health care plan negotiated by DOD (see Note 11).
Note that for health purposes, 10 U.S.C. 1072 (2)(G) treats a 20/20/15 former spouse as if he or she were a full 20/20/20 former spouse (20 years of marriage, 20 years of service, and 20 years of overlap) if the divorce decree is dated before April 1, 1995. A 20/20/15 former spouse of a reserve component retiree with a divorce decree prior to April 1, 1985, can receive full health care too, but only if the member survives to age 60 or if he or she elected to participate in the Reserve Component Survivor Benefit Program upon becoming retirement eligible.
10. "Full health care" includes health care at military treatment facilities and that provided through the CHAMPUS insurance program. A former spouse of a reserve component retiree is eligible for this benefit upon the retiree's 60th birthday (or on the day the retiree would have been 60 if (s)he dies before reaching age 60) if (s)he meets the normal qualification rules (i.e., an unremarried 20/20/20 former souse who is not covered by an employer-sponsored health care plan); see 10 U.S.C. 1076 (b)(2).
11. Implementation of the Department of Defense Continued Health Care Benefit Program (CHCBP) was directed by Congress in the National Defense Authorization Act for Fiscal year 1993 (see 10 U.S.C. 1078a). It is a premium based program of temporary continued health benefits coverage available to eligible beneficiaries. Medical benefits mirror those available under the basic CHAMPUS program, but CHCBP is <u>not</u> part of CHAMPUS. For further information on this program, contact a military medical treatment facility health benefits advisor, or contact the CHCBP Administrator, P.O. Box 1608, Rockville, MD 20849-1608 (1-800-809-6119). The CHCBP replaces the Uniformed Services Voluntary Insurance Program (USVIP).
12. Pursuant to statute and service regulations, commissary and PX benefits are to be available to a former spouse "*to the same extent and on the basis as the surviving spouse of a retired member*… Pub. L. 97-252, Title X 1005, 96 Stat. 737 (1982); see Army Regulation 640-3. The date of the divorce is no longer relevant for commissary and PX purposes. See Pub. L. 98-525, Title IV, 645, 98 Stat. 2549 (1984) (amending Uniformed Services Former Spouses' Protection Act 006(d). The former spouse must be "unmarried," and, unlike the rules for health care, any termination of a subsequent marriage revives these benefits. Qualified former spouses of reserve component retirees receive commissary and PX benefits when the retiree reaches age 60 (or when (s)he would have reached age 60 if the retiree dies before that time, but in such cases the entitlement arises only if the retiree elected to participate in the Reserve Component Survivor Benefit Plan when (s)he became retirement eligible; see AR 640-3). Notwithstanding the provision of the Act and the regulation, however, the extent of commissary and exchange privileges in overseas locations may be restricted by host-nation customs law.
13. When a <u>retirement-eligible</u> member receive a punitive discharge via court-martial, or is discharged via

administrative separation processing, the members retirement benefits are lost. In certain cases where the court-martial or separation action was based on dependent abuse, eligible spouses may receive their court-ordered share of retired pay (divided as property) as if the member had actually retired. Authority for these payments was created in the National Defense Authorization Act, Fiscal Year 1993, 653, Pub. L. 103-484. An overlap of marriage and service of at least ten years is a prerequisite to receipt of payments. The National Defense Authorization Act, Fiscal Year 1994, 555, Pub. L. 103-160, clarifies that eligibility begins on the date the sentence is approved and does not have to wait until the member is actually discharged.

14. The National Defense Authorization Act, Fiscal year 1994, 554, Pub. L. 103-160, also created authority for monthly transitional compensation to dependents of a non-retirement eligible member separated from the service by reason of dependent abuse.

(This information was prepared by the U.S. Army Judge Advocate General's School. For more information, refer to www.jagcnet.army.mil.)

FACT SHEET

SURVIVOR BENEFIT PLAN (SBP) PURSUANT TO THE UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT

BACKGROUND:

1. This fact sheet, discusses the provisions of the Survivor Benefit Plan (SBP) that pertain to coverage of former spouses of Air Force members. The provisions are based on the enactment of section 1003 of Public Law No. 97-252, section 941 of Public Law No. 98-94, section 644 of Public Law No. 98-525, sections 711-724 of Public Law No. 99-145, sections 641 and 645 of Public Law No. 99-661, and section 1402 of Public Law No. 101-189.

2. The SBP is a statutory plan whereby members of the uniformed services may elect to provide a survivor annuity to their eligible beneficiaries. Upon election, the member's retired pay will be reduced in order to cover the costs of providing the annuity.

3. Former spouses are not automatically covered under the SBP. A former spouse is covered under the SBP only through a "former spouse" election timely submitted by the retired member or through such an election deemed to have been made at the request of the former spouse that is timely submitted. Accordingly, a former spouse is not an eligible beneficiary, unless the member makes a "former spouse" election or such an election is "deemed" to have been made, even if the retired member previously elected "spouse" coverage at a time when the former spouse was married to the retired member. The presence of the former spouse's name on a member's original SBP "spouse" election made at retirement does not establish the former spouse's eligibility for the annuity. A change in the class of beneficiary (from "spouse" or spouse and child" to "former spouse" or "former spouse and child" coverage) must occur before the former spouse is eligible to receive an annuity upon the member's death, and the change may be achieved only by the timely submission of a request for such a change.

4. In general, there are two categories of members who may elect SBP coverage for their former spouses: members who are not yet retired and members who have already retired.

ELECTION BY MEMBER NOT YET RETIRED:

5. A member who has a former spouse when the member becomes eligible to participate in the SBP may elect to provide an SBP annuity to that former spouse. "Former spouse" elections by retiring members are subject to the following rules:

a. The election of SBP coverage for the former spouse precludes payment of SBP to a present spouse or child, unless that child resulted from the marriage between the member and the former spouse.

b. If the member has more than one former spouse, the member must designate which former spouse is to receive the annuity.

c. If the member is currently married and elects SBP coverage for a former spouse, or a former spouse and dependent child, the member's present spouse must be notified of the election.

d. A member who elects SBP coverage for a former spouse may, at the time of the election, elect to provide coverage for both the former spouse and a dependent child, if the child resulted from the member's marriage to that former spouse. Members who made "former spouse" elections before November 8, 1985, had until March 1, 1987, to convert from "former spouse" elections during the period November 8, 1985, to February 1986, had until November 14, 1987, to convert from "former spouse" to "former spouse and child" coverage.

e. At the time of making a "former spouse" or a "former spouse and child" election, any such elections must be written, signed by the retired member and the former spouse, and received by the Service within 1 year after the date of the decree of divorce, dissolution, or annulment, the member must provide a written statement, signed by both the member and the former spouse, that sets forth whether the election is being made: (1) pursuant to the requirements of a court order; or (2) pursuant to a written agreement previously entered into by the member as a part of, or incident to, a proceeding of divorce, dissolution, or annulment. If the "former spouse" election is being made by the member pursuant to such a written agreement, the written statement must also indicate whether the agreement has been incorporated in, or ratified or approved by, a court order.

f. The election of SBP coverage for a former spouse by a member may be revoked.

ELECTION BY MEMBER ALREADY RETIRED:

6. A retired member who is already providing SBP "current spouse" or "current spouse and child" coverage (even if the member does not actually have a current spouse or child) may elect

to provide an SBP annuity to a former spouse or a former spouse and child. "Former spouse" or "former spouse and child" elections by retired members are subject to the following rules:

a. The former spouse must not have been the retired member's former spouse when the member first became eligible to participate in the SBP.

b. A "former spouse" or "former spouse and child" election terminates any previous SBP coverage.

c. Any such elections must be written, signed by the retired member and the former spouse, and received by the Service within 1 year after the date of the decree of divorce, dissolution, or annulment. The member must provide a written statement signed by both the member and the former spouse that sets forth whether the election is being made: (1) pursuant to the requirements of a court order; or (2) pursuant to a written agreement previously entered into by the member as a part of, or incident to, a proceeding of divorce, dissolution, or annulment.

d. The election may not be for a former spouse whom the member married after becoming eligible for retired pay unless: (1) the member was married to the former spouse for at least 1 year; or (2) the former spouse is the parent of a child resulting from the marriage.

e. If the member is married, the member's current spouse will be notified of the member's election to cover a former spouse.

f. The SBP form that must be completed to change from "spouse" or "spouse and child" coverage under the SBP is DD Form 2656, Survivor Benefit Plan Election Statement for Former Spouse Coverage. This form must be submitted to *DFAS Annuity Pay* within 1 year after the date of the decree of divorce, dissolution, or annulment. "Former spouse" or "former spouse and child" coverage is effective the first day of the month following the month in which the election change is received.

g. A member's election of SBP coverage for a former spouse may be revoked.

7. A retired member who elects to provide an annuity to a former spouse may revoke that election and provide an annuity to a current spouse or dependent child.

a. In all cases, the former spouse will be notified of any revocation of a "former spouse" SBP election.

b. If the "former spouse" election made by the member was required by a court order issued on or after November 14, 1986, or if the member's "former spouse" election was made pursuant to a written agreement relating to a divorce, dissolution, or annulment proceeding and the agreement has been incorporated in, or ratified or approved by, a court order, the member must:

(1) Furnish a certified copy of a court order that is regular on its face and that modifies all precious court orders so as to permit the member to revoke the "former spouse" election; and

(2) Certify that the court order furnished under the above subparagraph is valid and in effect.

c. If the member's "former spouse" election was made pursuant to a written agreement with the former spouse, entered into as a part of, or incident to, a proceeding of divorce, dissolution, or annulment, but the agreement has not been incorporated in, or ratified or approved by, a court order, the retired member must:

(1) Furnish a statement signed by the former spouse evidencing the former spouse s agreement to the revocation of the election; and

(2) Certify that the former spouse's statement is current and in effect.

d. The document that must be completed in order to revoke a "former spouse" election is DD Form 2656, Former Spouse Election Change. That form must be returned to the *Garnishment Division*. The revocation will be effective the first month following the month in which it is received.

ELECTION BY FORMER SPOUSE:

8. Without the member's actually making a "former spouse" election, the former spouse can obtain a so-called "deemed former spouse" election by satisfying the following conditions:

a. The former spouse must submit a written request for the election. The written request should identify the member by name and social security number and provide the former spouse's social security number, date of birth, and current mailing address.

b. The former spouse's written request must be accompanied by:

(1) A certified copy of a court order issued on or after November 14, 1986, regular on its face, that requires the member to make a "former spouse" election; or

(2) A certified copy of a court order, regular on its face, that incorporates, ratifies, or approved the member's written face, that incorporates, ratifies, or approves the member's written agreement to make such an election; or

(3) A statement from the clerk of the court or other appropriate official that the member's written agreement to make a "former spouse" election has been filed with the court in accordance with applicable state law.

c. In order to be effective, the former spouse's request for a "deemed former spouse" election must be received within 1 year of the date of the court order or filing involved. Such request should be mailed to the *Garnishment Division*.

d. If the member is not required by a court order issued on or after November 14, 1986, to make a "former spouse" election, the former spouse's request for a "deemed former spouse" election must show:

(1) The member agreed in writing, incident to proceeding of divorce, dissolution, or annulment, to elect to provide an annuity for the former spouse under; and

(2) The member's written agreement was incorporated in, or ratified or approved by, a court order, or the member's written agreement has been filed with the court of appropriate jurisdiction in accordance with applicable state law.

e. The member must have been eligible to make a "former spouse" election under the SBP statute, and the member must have failed or refused to make such an election.

f. A "deemed former spouse" election becomes effective on the first day of the first month that begins after the date of the court order or filing involved.

ELECTION BY MEMBER NOT YET RETIRED AND DECEASED OR BY FORMER SPOUSE:

9. The former spouses of member who, after September 7, 1982, died prior to retirement after having served 20 years on active duty, and the former spouses of certain retirement-eligible Reserve component members who die after September 7, 1982, are eligible for benefits subject to the following rules:

a. In order for a former spouse to be an eligible annuitant, the member must have made a "former spouse" election or be "deemed" to have made such an election. A former spouse may request a "deemed former spouse" election.

b. Reserve component members in unretired status whose former spouses may request that a "former spouse" election be "deemed" are those:

(1) Who die after completing 20 years of service but before being notified that they have completed the years of service required for retired pay eligibility; or

(2) Who die during the 90-day period following receipt of notification of their retired pay eligibility without having made an SBP election.

c. If a member other than an individual covered by subparagraph b above dies on active duty, the member's former spouse may request that a "former spouse" election be "deemed," if the member concerned:

(1) Dies on active duty after becoming eligible to receive retired pay; or

(2) Dies after qualifying for retired pay except that the member has not applied for or been granted that pay; or

(3) Dies after completing 20 years of active duty but before becoming eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service.

d. When an annuity is payable to a former spouse, no annuity can be paid to a current spouse or child beneficiary.

e. "Former spouse" annuities payable are not payable for any month prior to March 1986.

ADDRESSES:

- Garnishment Division - *for divorce decrees & former spouses*
  P.O. Box 998002
  Cleveland, OH 44199-8002
  (216) 522-5977
  (216) 522-6469 - FAX

- DFAS Retired Pay - *for retirees*
  P.O. Box 7130
  London, KY 40742-7130
  1-800-321-1080
  1-800-469-6559 - FAX

- DFAS Annuity Pay - *for widows / widowers*
  P.O. Box 7131
  London, KY 40742-7131
  1-800-321-1080
  1-800-982-8459 - FAX

For more information regarding the Former Spouse Protection Act, contact DFAS Mainline with all inquiries at 1-800-321-1080.

Note: This information is intended only for guidance. Please consult an attorney at your Legal Office before taking any action.