

Former Spouse Benefits

Managing the Benefits You
and Your Family Earned
Through Service

Former Spouse Benefits: Managing the Benefits You and Your Family Earned Through Service

Navigating the eligibility and entitlement of the Uniformed Services Former Spouses' Protection Act can be challenging. We hope this guide, which covers topics from retired pay to tax reporting, will be a valuable resource for you when discussing benefits with legal counsel and domestic law specialists. For additional benefits-related information, visit www.moaa.org/benefitsinfo.

Table of Contents

Introduction	2
Chapter 1 Overview of USFSPA	3
Chapter 2 Former Spouse Payments From Retired Pay	4
Chapter 3 Tax Reporting for Division of Military Retired Pay	8
Chapter 4 ID Cards	9
Chapter 5 Medical, Commissary, Exchange, and MWR Benefits	10
Chapter 6 TRICARE and Continued Health Care Benefit Program	14
Chapter 7 The Survivor Benefit Plan	15
Definitions	18

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Introduction

MOAA DEVELOPED THIS REFERENCE GUIDE TO HELP ACQUAINT YOU WITH BASIC INFORMATION ABOUT FORMER SPOUSE BENEFITS AS THEY PERTAIN TO MILITARY RETIRED PAY.

The Uniformed Services Former Spouses' Protection Act (USFSPA) provides to former spouses of military retirees numerous benefits, including direct payments from retired pay for child support or alimony or as a division of property. Former spouses are not automatically eligible to receive benefits; they must meet certain eligibility requirements and apply for benefits. This guide covers benefits such as retired pay; medical; commissary, exchange, and Morale, Welfare and Recreation programs; and the Survivor Benefit Plan. For answers to specific questions concerning your own situation, discuss full details of the legislation with a qualified attorney within the state where the decree of divorce was/will be granted. Laws and policies in this guide have been paraphrased and simplified for readability.



Contact MOAA
about benefits and
financial information.

- Email beninfo@moaa.org
- Visit the MOAA website at www.moaa.org/benefitsinfo
- Call the MOAA Member Service Center at (800) 234-MOAA (6622)
- Mail MOAA
Transition Center
Benefits and Financial Education
201 N. Washington St.
Alexandria, VA 22314

Chapter 1

Overview of USFSPA

The Uniformed Services Former Spouses' Protection Act (USFSPA) was passed as Public Law 97-252 effective Feb. 1, 1983. As a result, unmarried and, in some cases, remarried former spouses of servicemembers have entitlement to certain military-related benefits and privileges. The laws can be found under Title 10 U.S.C., Subtitle A, Part II, Chapter 71, Section 1408 and other sections referenced in Section 1408.

On the retired pay issue, the USFSPA recognizes the right of state courts to award up to 50 percent of a servicemember's disposable (defined below) military retired pay *directly* to a former spouse. The USFSPA *does not automatically* require division of retired pay as property. It authorizes state courts to treat military retired pay as either property of the retiree or as property of the retiree and spouse, in accordance with the state laws. So, the USFSPA permits a court to award a portion of military retired pay to a former spouse as his or her property. This is *in addition* to any other court-awarded spousal and/or child support and/or division of other marital property.

Note: A court may award more than 50 percent of a retired servicemember's pay as property to a former spouse. However, the government is administratively limited by the USFSPA to pay no more than 50 percent of disposable retired pay *directly* to a former spouse.

DISPOSABLE RETIRED PAY

Disposable retired pay (see note on page 7) is the gross monthly pay entitlement — including re-nounced pay — less these authorized deductions:

- amounts owed to the U.S. for previous over-payments of retired pay and the recoupment of retired pay;
- forfeitures of retired pay ordered by court-martial;
- amounts waived in order to receive compen-

sation under VA disability compensation;

- premiums paid to provide the Survivor Benefit Plan to a spouse or former spouse due to a court order; and
- the amount of the servicemember's retired pay computed due to the servicemember's service disability rating upon retirement (or the date the servicemember was placed on the temporary disability retired list).

A court may treat disposable retired pay either as property solely of the servicemember or as property of the servicemember and spouse in accordance with state laws.

A court may not treat retired pay as property in any proceeding to divide retired pay if a final decree of divorce or legal separation:

- was issued before June 26, 1981, and
- did not treat any amount of retired pay of the servicemember as property of the servicemember and the servicemember's spouse or former spouse.

To be eligible for a direct payment of military retired pay from a pay agency, a former spouse must have been married to the servicemember for 10 years, with the time overlapping the servicemember's 10 years of service credited for military retirement. Court-ordered payments for child support and/or alimony do not require a specified length of marriage.

The question of alimony and/or child support is normally open for review by a state court depending on changed circumstances.

The USFSPA does not create for the former spouse any right, title, or interest in the retired pay of the servicemember, meaning a former spouse cannot sell, assign, transfer, dispose, or pass on the retired pay through inheritance.

Chapter 2

Former Spouse Payments From Retired Pay

BACKGROUND

The law authorizes direct payments to a former spouse from the retired pay of a servicemember in response to court-ordered alimony, child support, or division of property — the key terms being “authorizes” and “direct payments.” By “authorizes,” the law *allows* but does not *direct* the payment of retired pay to a former spouse. By “direct payments,” the law administratively allows the service pay agencies to pay a nonservicemember directly.

ELIGIBILITY OF FORMER SPOUSE

The 10/10 rule. A former spouse is eligible to receive a service retiree’s retired pay by court order if the court order specifically states payment is to be made from disposable retired pay.* In addition, a service pay agency can *pay the former spouse directly* when the former spouse was married for 10 years or more during the time the servicemember performed 10 years’ creditable service. Court-ordered payments for child support and/or alimony do not require a specified length of marriage.

Catch the nuance? For the spouse to receive a *direct payment* from a service pay agency, the 10/10 rule applies.

APPLICATION BY FORMER SPOUSE

The former spouse must notify the designated pay agency of the court order. Notification is accomplished when a complete application is received by the appropriate designated pay agency. The designated agent notes the date and time of receipt on the notification document.

A former spouse should make notification of the court order as soon as the divorce decree is final and not later than one year after the finalized divorce. Confirm receipt of the notification by the pay agency. **The one-year time limit also applies to the administration of the Survi-**

vor Benefit Plan, which similarly is administered by the service pay agency.

Notification is a DD Form 2293 (Application for Former Spouse Payments from Retired Pay) signed by the former spouse that includes:

- notice to make direct payment to a former spouse from the servicemember’s retired pay;
- a certified copy of the court order and other certified accompanying documents, if applicable, that provide for payment of child support, alimony, or division of property;
- a statement that the court order has not been amended, superseded, or set aside;
- sufficient information to identify the retired servicemember so the application can be processed. The identification should give the retiree’s full name, Social Security number, and uniformed service;
- the full name, Social Security number, and address of the former spouse;
- personal agreement, prior to payment, which states any future overpayments are recoverable and subject to involuntary collection from the former spouse or his or her estate; and
- personal agreement, prior to payment, to notify the designated pay agent promptly if the court order upon which the payment is based is vacated, modified, or set aside. The former spouse also must notify the designated pay agent upon remarriage if all or part of the payment is for alimony or of any change in eligibility for child-support payments as a result of a child’s death, emancipation, adoption, or attainment of majority if payment is for child support.

If the court-ordered division of retired pay as property does not state that the former spouse satisfied the eligibility criteria above, the former spouse must furnish sufficient evidence for the designated agent to verify eligibility.

The designated pay agencies for each uniformed service are

Defense Finance and Accounting Service

Garnishment Law Directorate
PO Box 998002
Cleveland, OH 44199-8002
Telephone: (216) 522-6960 or
(888) 332-7411 (customer service)
Fax: (877) 622-5930

U.S. Coast Guard, NOAA, U.S. Public Health Service

Commanding Officer (LGL)
Coast Guard Pay & Personnel
Service Center
444 S.E. Quincy St.
Topeka, KS 66683-3591
Telephone: (800) 772-8724
Fax: (785) 339-3788
Email: ppc-dg-igl-1st@uscg.mil

The designated pay agent will respond to the former spouse within 90 days of application.

REVIEW OF COURT ORDERS

Make sure the court order that directs payments to a former spouse is

- a final decree;
- issued by a court of competent jurisdiction in accordance with the laws of that jurisdiction; and
- authenticated by the pay agency within 90 days of receipt.

If the court order was issued while the servicemember was on active duty and the servicemember was not represented in court, the court order or other court document must certify the rights of the servicemember were observed under the Title 50 Appendix U.S.C. A, Section 501-591. The court order must contain sufficient information to identify the retiree. Additionally, a court order that stipulates a division of retired pay as property must meet the following conditions:

- The court must have jurisdiction over the retiree by reason of his or her:
 - residence, other than because of military assignment, in the territorial jurisdiction of the court;
 - domicile in the territorial jurisdiction of the court; or
 - consent by the retiree to the court's jurisdiction.
- The treatment of retired pay as property must be in accordance with the law of the court.
- The court order or other accompanying docu-

ments must show the former spouse was married to the servicemember during 10 years or more of creditable service.

The court order must require payment of child support or alimony or, in the case of a division of property, specifically provide for the payment of an amount of disposable retired pay* expressed as a dollar amount or percentage. **Court orders specifying a percentage of retired pay are understood as a percentage of disposable retired pay.*** A court order that stipulates a division of retired pay by means of a formula, when the elements of the formula are not specifically apparent in the court order, will not be honored unless clarified by the court.



A court order is a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court-ordered, ratified, or approved property settlement incident to such a decree.

The secretary of the uniformed service department concerned may refuse service of a court order that is an out-of-state modification and does not comply with the court-order provisions, unless the court issuing that order has jurisdiction over both the retiree and the former spouse involved. A court order is considered an out-of-state modification if it:

- modifies a previous court order upon which payments are based and
- is issued by a court of a state other than the state of the court that issued the previous court order.

GARNISHMENT ORDERS

If a court order stipulates a division of property other than retired pay, in addition to specifying an amount of disposable retired pay to the former spouse, the former spouse may garnish the retiree's retired pay to enforce the division of property. The amount payable to the former spouse is limited under 15 U.S.C. 1673. Garnishment orders for divisions of property, other than retired pay, shall be processed in the manner prescribed in Title 5 Code of Federal Regulations, Part 581.

LIMITATIONS

For divorces, dissolutions of marriage, annulments, and legal separations, upon approval, a retiree's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount paid does not exceed:

- 50 percent of disposable retired pay* for all court orders and garnishment actions; and
- 65 percent of the remuneration for employment as defined under Title 42 U.S.C. 659 for all court orders and garnishments as above and garnishments paid under Title 42 U.S.C. 659 (<http://1.usa.gov/1cJGKlu>).

NOTIFICATION OF SERVICEMEMBER

The designated pay agent will send a written notice to the service retiree at his or her last known address not later than 30 days after receipt of a court order or garnishment action.

The notice shall include:

- a copy of the court order and accompanying documentation;
- an explanation of the limitations placed on the direct payment to the former spouse;
- a request that the retiree submit notice to the designated pay agent if the court order has been amended, superseded, or set aside (the servicemember must provide an authenticated or certified copy of the court documents when there are conflicting court orders);
- the dollar amount or percentage of disposable retired pay* that will be deducted if the retiree fails to respond to the notification as prescribed by law;
- the effective date that payments to the former spouse tentatively will begin;
- a reminder that the retiree's failure to respond within 30 days of the date the notification is mailed may result in the payment of retired pay as set out in the notice to the member; and
- a statement that if the retiree submits information in response to this notification, he or she thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

The designated pay agent will consider any response by the retiree and will not honor the court order if it is defective or modified, superseded, or set aside.

LIABILITY OF THE DESIGNATED PAY AGENT

The U.S. and any officer or employee of the U.S. shall not be liable with respect to any payment made from retired pay to any retiree, spouse, or former spouse due to a court order that is made according to law.

Any officer or employee of the U.S. who has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him or her in carrying out any of the duties that directly or indirectly pertain to answering such interrogatories.

If a court order appears to conform to the laws of its jurisdiction, the designated pay agent will not be required to ascertain whether the court had obtained personal jurisdiction over the retiree.

Whenever a designated pay agent receives interrogatories concerning implementation, the pay agent will respond within 30 calendar days of receipt or within a longer period if allowed by state law.

PAYMENTS

Subject to the retiree's eligibility for retired pay and execution of a court order, the uniformed service concerned will start payments to the former spouse no later than 90 days after the date of receipt.

Payments will:

- conform to the normal pay and disbursement cycle for military retired pay;
- be a fixed-dollar amount or based on a percentage or fraction of disposable retired pay*. Payments based on a percentage or fraction will increase in direct proportion with future COLAs unless the court directs otherwise;
- terminate on the date of death of the retiree, death of the former spouse, or as stated in the court order, whichever occurs first. Payments shall also be terminated or reduced upon the occurrence of a condition under the applicable state or local law that requires termination or reduction.

If the service retiree is not currently entitled to payments, the pay agent will advise the former spouse that no payments are due from or payable by the uniformed service. If the servicemember is

on active duty when a court order is served, the pay agent will hold the application until the servicemember's retirement. In such cases, payments to the former spouse will begin not later than 90 days from the date the retiree first becomes entitled to receive retired pay.

If net pay is exhausted temporarily or otherwise unavailable, the former spouse shall be fully advised of the reasons why and for how long funds will be unavailable. The application will be retained by the pay agent, and payments to the former spouse will begin not later than 90 days from the date the retiree becomes entitled to receive retired pay.

If the gross amount of retired pay is not sufficient to cover all authorized deductions and collections, refer to the order of precedence for disbursement in DoD Financial Management Regulation 7000.14-R, Volume 7B, Chapter 19, Figure 19-1. The court-ordered payments to a former spouse will be enforced over other voluntary deductions and allotments from retired pay.

Payments to the former spouse are based on current/future pay in terms of the amount stated in the court order, and back payments are not considered in determining the amount payable from retired pay. No right, title, or interest can be sold, assigned, transferred, or otherwise disposed of, including by inheritance, under the law.

The former spouse may be required to submit a signed certification of continued eligibility upon request of the pay agent. The certification of eligibility for the former spouse will include a notice of a change in status or circumstances that affects eligibility. If the former spouse fails or refuses to comply with the certification requirement,



Read about the order of precedence for disbursement at https://comptroller.defense.gov/Portals/45/documents/fmr/archive/07barch/07b_19.pdf

payments may be suspended or terminated after notice to the former spouse.

For divorce, dissolution of marriage, annulment, or legal separation, payments to a former spouse for a division of property are excluded in determining a retiree's gross wages concerning retired pay.

RECONSIDERATION

A retiree or a former spouse may request the pay agent reconsider their determination in response to the application for payment or the servicemember's answer to the pay agent, with respect to notice of the application. For reconsideration, the request must express the issues the retiree or the former spouse believes were resolved incorrectly by the pay agent.

WAIVED SERVICE RETIRED PAY FOR CIVIL SERVICE RETIREMENT

Even if a servicemember uses service time qualified for a service retirement toward credit under the civil service retirement system and waives service retired pay, he or she might still have to pay a former spouse from civilian retired pay for the amount owed from service retired pay (Section 637 of Public Law 104-201, Sept. 23, 1996).

**As a result of the FY 2017 National Defense Authorization Act, future divorce settlements may only relate to portions of a servicemember's retired pay. The new rule says the amount of military retired pay considered as divisible property is directly linked to the member's pay grade and years of service at the time of the divorce and then adjusted by COLA for each year since that date. In other words, because the service continued beyond the cessation of the marriage, those subsequent years' contribution to final retired pay ought not be considered divisible property between the servicemember and former spouse.*

Chapter 3

Tax Reporting for Division of Military Retired Pay

In general, payments to former spouses from retired pay are treated as taxable income and may be subject to withholding.

The pay agencies issue IRS Form 1099-Rs to former spouses for payment of court-ordered divisions of military retired pay (as property) made for divorces, etcetera. The retiree's IRS Form 1099-R reflects net retired pay (gross retired pay minus gross payment to the former spouse). A retiree's tax withholding will be based on gross pay after the deduction of the division of property payment to the former spouse.

If the former spouse does not complete and return a Form W-4P, taxes for division of property will be withheld based on married with three dependents. All withholdings are reported on Form 1099-R. The retiree's tax withholding is based on gross pay before the deduction of the division of property payments to the former spouse.



Former spouses can download Form W-4P, Withholding Certificate for Pension or Annuity Payments, from the IRS website at www.irs.gov/pub/irs-pdf/fw4p.pdf.

Chapter 4

ID Cards

A former spouse may qualify for a military ID — entitling him or her to medical care, post exchange, and commissary privileges — if certain requirements are met (see Chapter 5).

Former spouses who meet the qualifications must apply for the benefit. Processing the application for an ID card will require the following documents:

- certified copy of marriage certificate;
- certified copy of final divorce decree;
- notarized statement that a former spouse has not remarried; and
- notarized statement that a former spouse does not have medical coverage under an employer-sponsored health plan. Provide the name, address, and telephone number of the employer.

Applicants may also include any documents concerning the servicemember's period of service. This is not mandatory because it is the service's responsibility to verify periods of service.

Spouses *previously enrolled* in the Defense Enrollment Eligibility Reporting System can get service from any ID card office.

Initial applications must be processed by the parent service:

- **Army:** The nearest Army issuing activity
- **Marine Corps:** Headquarters U.S. Marine Corps (MMSR-6), 3280 Russell Road, Quantico, VA 22134
- **Navy:** Bureau of Naval Personnel (BUPERS-26), 5720 Integrity Drive, Millington, TN 38055
- **Air Force:** The nearest Air Force issuing activity
- **Coast Guard:** Personnel Service Center (PSC), Commanding Officer (RAS), 444 S.E. Quincy St., Topeka, KS 66683, (785) 339-3441
- **U.S. Public Health Service:** Division of Commissioned Corps Officer Support, OCCO, 1101 Wootton Parkway, Plaza Level, Suite 100, Rockville, MD 20852
- **NOAA:** Commissioned Personnel Center, CPC1, 8403 Colesville Road, Suite 500, Silver Spring, MD 20910



Visit www.dmdc.osd.mil/rsi to locate your nearest ID card office.

Chapter 5

Medical, Commissary, Exchange, and MWR Benefits

FORMER SPOUSE CATEGORIES AND ELIGIBILITY CRITERIA

You may qualify for a military ID — entitling you to medical care, post exchange, commissary, and Morale, Welfare and Recreation (MWR) privileges — if you meet certain criteria.

UNREARRIED FORMER SPOUSE 20/20/20 RULE

(never remarried or remarriage annulled)

Eligibility	Marriage	20 or more years
	Service Creditable for Retirement	20 or more years
	Overlap of Marriage and Service	20 or more years
Benefits	Commissary: Yes	Exchange: Yes
	MWR: Yes	Medical Coverage: Yes*

UNREARRIED FORMER SPOUSE 20/20/15 RULE

Divorced prior to April 1, 1985 (never remarried or remarriage annulled)

Eligibility	Marriage	20 or more years
	Service Creditable for Retirement	20 or more years
	Overlap of Marriage and Service	15 or more years
Benefits	Commissary: No	Exchange: No
	MWR: No	Medical Coverage: Yes*

*Medical coverage is authorized provided the former spouse is not covered by an employer-sponsored health plan.

UNREARRIED FORMER SPOUSE 20/20/15 RULE

Divorced after March 31, 1985, and before Sept. 29, 1988

Benefits	Former spouses in this category no longer have any entitlement to ID card, commissary, exchange, MWR, or medical benefits.
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UNREARRIED FORMER SPOUSE 20/20/15 RULE

Divorced on or after Sept. 29, 1988 (never remarried or remarriage annulled)

Eligibility	Marriage	20 or more years
	Service Creditable for Retirement	20 or more years
	Overlap of Marriage and Service	15 or more years

Benefits	Commissary: No	Exchange: No
	MWR: No	Medical Coverage: Yes*

**Medical coverage is authorized for one year after divorce provided the former spouse does not have an employer-sponsored health plan. Upon expiration of this one-year period, the former spouse is entitled to elect coverage within 60 days, at a cost, under a DoD continued health benefits program. Additional information concerning this "conversion" policy, known as the Continued Health Care Benefit Program (CHCBP), can be obtained by writing or calling:*

CHCBP ADMINISTRATOR
Humana Military
Attn: CHCBP
P.O. Box 740072
Louisville, KY 40201-7472
Fax: (502) 322-8108

UNREARRIED FORMER SPOUSE (NO MINIMUM SERVICE/ MARRIAGE PERIOD)

Effective Oct. 1, 1994 (never remarried or remarriage annulled)

Benefits	Commissary: No	Exchange: No
	MWR: No	Medical Coverage: Yes*

**No military ID card will be issued. However, unremarried former spouses have the right to elect, within 60 days of divorce, health coverage, at a cost, under the CHCBP. See previous note for address and telephone number.*

UNREARRIED FORMER SPOUSE 20/20/20 RULE

(remarried and marriage ended by death or divorce)

Eligibility	Marriage	20 or more years
	Service Creditable for Retirement	20 or more years
	Overlap of Marriage and Service	20 or more years

Benefits	Commissary: Yes	Exchange: Yes
	MWR: Yes	Medical Coverage: No

FORMER SPOUSE IN RECEIPT OF AN ANNUITY AS A RESULT OF A SERVICEMEMBER'S SEPARATION FROM THE SERVICE DUE TO MISCONDUCT INVOLVING DEPENDENT ABUSE 10/20/10 RULE

(unremarried or unmarried)

Eligibility	Marriage	10 or more years
	Service Creditable for Retirement	20 or more years
	Overlap of Marriage and Service	10 or more years

Medical benefits are authorized as follows:

1. The former spouse must certify in writing that he or she has no medical coverage under an employer-sponsored health plan.
2. No coverage is provided if the former spouse is
 - a. entitled to Medicare Part A, or
 - b. under 65 years of age, entitled to Medicare Part A hospital insurance, and not enrolled in Medicare Part B supplemental medical insurance.
3. Coverage is provided if the final decree of divorce, dissolution, or annulment of the marriage was on or after Oct. 23, 1992.

Commissary, MWR, and exchange benefits are authorized.

Category	Status	Marriage	Service	Overlap	Commissary	MWR	Exchange	Medical Coverage
Unremarried Former Spouse 20/20/20 Rule	Never remarried or remarriage annulled	20+ Years	20+ Years	20+ Years	Yes	Yes	Yes	Yes*
Unremarried Former Spouse 20/20/15 Rule	Divorced prior to April 1, 1985, and never remarried or remarriage annulled	20+ Years	20+ Years	15+ Years	No	No	No	No
Unremarried Former Spouse 20/20/15 Rule	Divorced after March 31, 1985, and before Sept. 29, 1988	20+ Years	20+ Years	15+ Years	No	No	No	Yes*
Unremarried Former Spouse 20/20/15 Rule	Divorced on or after Sept. 29, 1988, and never remarried or remarriage annulled	20+ Years	20+ Years	15+ Years	No	No	No	Yes**
Unremarried Former Spouse No Minimum Service/Marriage Period	Never remarried or remarriage annulled, effective Oct. 1, 1994	n/a	n/a	n/a	No	No	No	Yes***
Unmarried Former Spouse 20/20/20 Rule	Remarried and marriage ended by death or divorce	20+ Years	20+ Years	20+ Years	Yes	Yes	Yes	No
Former Spouse Unmarried or Unremarried 10/20/10 Rule	Receiving annuity as result of member separation from service for misconduct involving dependent abuse under Title 10 U.S.C. 1408(h)	10+ Years	20+ Years	10+ Years	Yes	Yes	Yes	Yes†

* Medical coverage is authorized provided the former spouse is not covered by an employer-sponsored health plan.

** Medical coverage is authorized for one year after divorce provided the former spouse does not have an employer-sponsored health plan. Upon expiration of this one-year period, the former spouse is entitled to elect coverage within 60 days, at a cost, under a DoD continued health benefits program. Additional information concerning this “conversion” policy, known as the Continued Health Care Benefit Program (CHCBP), can be obtained by writing or calling:

CHCBP ADMINISTRATOR

Humana Military

Attn: CHCBP

P.O. Box 740072

Louisville, KY 40201-7472

Fax: (502) 322-8108

www.humanamilitary.com/beneficiary/benefit-guidance/special-programs/chcbp

*** No military ID card will be issued. However, unremarried former spouses have the right to elect, within 60 days of divorce, health coverage, at a cost, under the CHCBP. See previous note for address and telephone number.

† Medical benefits are authorized as follows:

- The former spouse must certify in writing that he or she has no medical coverage under an employer-sponsored health plan.
- No coverage is provided if the former spouse is
 - a. entitled to Medicare Part A, or
 - b. under 65 years of age, entitled to Medicare Part A hospital insurance, and not enrolled in Medicare Part B supplemental medical insurance.
- Coverage is provided if the final decree of divorce, dissolution, or annulment of the marriage was on or after Oct. 23, 1992.

Chapter 6

TRICARE and Continued Health Care Benefit Program

TRICARE

Under certain conditions, former spouses may qualify for TRICARE coverage if they meet the following requirements:

- They must not have remarried;
- They must not be covered by an employer-sponsored health plan; and
- They must not be the former spouse of a citizen of a NATO member (or “Partners for Peace” nation).

Former spouses also must meet the requirements of one of the situations in the tables in Chapter 5.

The Defense Enrollment Eligibility Reporting System and the military ID card reflect TRICARE eligibility under the unremarried former spouse’s own Social Security number. Additionally, all health care information is filed under the unremarried former spouse’s Social Security number and name. Upon completion of the eligibility period for TRICARE, an unremarried former spouse is eligible for the Continued Health Care Benefit Program (CHCBP).

CHCBP

To be eligible for the CHCBP, a former spouse must be a person who:

- is an unremarried former spouse of a member or former member of the uniformed services (for the purposes of this program, there is no requirement regarding the length of time the former spouse was married to the servicemember or former servicemember);
- on the day before the date of the final decree of divorce dissolution or annulment was covered by a health benefits plan under TRICARE or Transitional Assistance Management Program (TAMP) as a dependent of the servicemember or former servicemember; and
- is not eligible for TRICARE Select (formerly Standard/Extra) as a former spouse of a servicemember or former servicemember.

For an unremarried former spouse of a servicemember or former servicemember, coverage under the CHCBP is limited to 36 months after the later of:

- the date on which the final decree of divorce, dissolution, or annulment occurs;
 - the date one year after the date of the divorce, dissolution, or annulment, if the former spouse is eligible for one-year transitional coverage under TRICARE; or
 - the date the servicemember becomes ineligible for medical and dental care under a military health plan as an active duty servicemember or the date the servicemember first ceases to be eligible for care under TAMP, whichever is later, if the former spouse first meets the requirements for being considered as an unremarried former spouse during a period of continued coverage of that servicemember for self and dependents.
- The limitations for an unremarried former spouse above do not apply, and the length of coverage can be for an unlimited period of time, if the former spouse:
- has not remarried before the age of 55;
 - was enrolled in the CHCBP as the dependent of an involuntarily separated servicemember during the 18-month period before the date of the divorce, dissolution, or annulment; and
 - is receiving any portion of the retired or retainer pay of the servicemember or former servicemember or an annuity based on the retired or retainer pay of the servicemember; or
 - has a court order for payment of any portion of the retired or retainer pay; or
 - has a written agreement (whether voluntary or pursuant to a court order) that provides for an election by the servicemember or former servicemember to provide an annuity to the former spouse.

Chapter 7

The Survivor Benefit Plan

BACKGROUND

The Survivor Benefit Plan (SBP) allows for the election of a “former spouse” (also “former spouse and child”) as an eligible beneficiary under the plan. The SBP annuity pays a lifetime, cost-of-living-adjusted income to the beneficiary of 55 percent of the SBP base amount.

Servicemembers may elect SBP coverage for a former spouse or a former spouse and a child produced by the marriage. Former spouses are not automatically covered beneficiaries under SBP. A former spouse can be covered under SBP as an “insurable interest” beneficiary option or as a former spouse beneficiary option made by the servicemember voluntarily or through a court order requiring such an election.

A former spouse is not automatically a covered beneficiary if the servicemember concerned dies without making a former spouse election, even if the servicemember previously elected spouse coverage during the time when the former spouse was married to the servicemember. Similarly, a former spouse is not a covered beneficiary if the servicemember concerned declines, for whatever reason, to elect former spouse coverage, even if the servicemember has no other eligible SBP beneficiaries, unless the servicemember is under a court order that confirms the servicemember’s election to provide SBP to a former spouse, or the servicemember is under a court order requiring such an election and the former spouse requests or files a valid request for a deemed election.

Premiums as a former spouse beneficiary are the same as a spouse beneficiary unless the servicemember chooses to cover the former spouse as an insurable interest beneficiary. Then the former spouse coverage premium is calculated under the insurable interest premium formula, which is more expensive.

State courts can order servicemembers to participate in SBP and designate a former spouse as a beneficiary as part of a divorce agreement.

SERVICEMEMBERS WHO ELECT OR ARE REQUIRED TO ELECT SBP FOR FORMER SPOUSES

A servicemember who has a former spouse, upon becoming eligible to participate in SBP (i.e., upon retirement, for most servicemembers), may elect to provide an SBP annuity to that former spouse, or a court order may require a servicemember to elect (or to enter into an agreement to elect) to provide an annuity to a former spouse or to both a former spouse and a child produced by that marriage.

Such elections are subject to the following rules:

- If a servicemember has a current spouse or a dependent child by the current spouse, the election of SBP coverage for the former spouse prevents payment of SBP to the current spouse or child of that current spouse.
- If a servicemember elects coverage for a former spouse, the servicemember may elect coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the servicemember’s marriage to that former spouse.
- If the servicemember has more than one former spouse, the servicemember must designate which former spouse is to receive the annuity.
- If the servicemember is married and elects SBP coverage for a former spouse, the servicemember’s current spouse must be notified of such election.
- The servicemember must, at the time of making the election for a former spouse, provide the pay agency with a written statement.
- The statement must be signed by both the servicemember and the former spouse stating whether the election is made due to court order or whether the election is being made due to a voluntary written agreement. State whether the voluntary written agreement has been incorporated in or ratified or approved by a court order.

- If the servicemember fails or refuses to make the SBP election after legally being required to do so, the servicemember is deemed to have made the election if the pay agency receives a written request from the former spouse requesting the election be deemed. (See Deemed SBP Election section this page.)
- Any such election for a former spouse terminates any previous SBP coverage.
- Any such election must be written, signed by the servicemember, and received by the pay agency within one year after the date of the decree of divorce, dissolution, or annulment.
- The election must not be for a former spouse whom the servicemember married after becoming eligible for retired pay, unless the servicemember was married to the former spouse for at least one year.
- If the servicemember is married, the servicemember's spouse will be notified of the election to cover a former spouse.
- The servicemember must, at the time of making the election for a former spouse, provide the pay agency a written statement signed by both the servicemember and the former spouse stating whether the election is being made due to a court order or whether the election is being made due to a written agreement entered into by the servicemember as part of legal requirement.

CHANGING FORMER SPOUSE SBP COVERAGE

For beneficiary agreements not due to official legal requirements (voluntary): The servicemember must furnish to the pay agency a statement signed by the former spouse acknowledging the agreement to the change in the beneficiary and certify to the pay agency the former spouse's statement is current and in effect.

For beneficiary agreements due to official legal requirements (not voluntary): The servicemember must furnish to the pay agency a certified copy of a court order that is official and modifies all previous court orders relating to the agreement to elect SBP coverage for the former spouse. Plus, the servicemember must certify to the pay agency the modified court order is current and in effect.

DEEMED SBP ELECTION

A former spouse of a retired servicemember can obtain a so-called "deemed former spouse" SBP election without the servicemember making



Learn more about the Survivor Benefit Plan and find additional resources at www.moaa.org/sbp.

a former spouse election. A servicemember's former spouse may obtain a deemed former spouse election by satisfying the conditions set forth in the following:

- The former spouse must submit a written request for the election. The written request should identify the servicemember by name and Social Security number and provide the former spouse's Social Security number, date of birth, and current mailing address.
- The former spouse's written request must be accompanied by:
 - a certified copy of a court order that requires the servicemember to make a former spouse election; or
 - a certified copy of a court order that incorporates, ratifies, or approves the servicemember's written agreement to make such an election; or
 - a statement from the clerk of the court or other appropriate official certifying that the servicemember's written agreement to make a former spouse election has been filed with the court in accordance with applicable state law.

Note: In order to be effective, the former spouse's request for a deemed former spouse election must be received by the applicable pay agency within one year of the date of the court order or filing involved.

- If the servicemember is not required by a court order to make a former spouse election, the former spouse's request for a deemed former spouse election must show the following:
 - The servicemember agreed, in writing, incident to a proceeding of divorce, dissolution, or annulment, to elect to provide an annuity for the former spouse; and
 - the servicemember's written agreement was incorporated in, or ratified or approved by, a court order, or the servicemember's written agreement has been filed with the court of appropriate jurisdiction in

accordance with applicable state law.

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

DEFINITIONS

Alimony: Periodic payments for support and maintenance of a spouse or former spouse in accordance with state law. Alimony does not include any payment for the division of property.

Annuitant: A person receiving a monthly payment under a survivor benefit plan related to retired pay.

Child support: Periodic payments for the support and maintenance of child(ren) subject to and in accordance with state law. Child support includes, but is not limited to, payments to provide for health care, education, recreation, and clothing or to meet other specific needs of such child(ren).

Court: Any court of competent jurisdiction of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, as well as any court of the United States (as defined in Title 28 U.S.C. 451) having competent jurisdiction; or any court of competent jurisdiction of a foreign country with which the U.S. has an agreement requiring the U.S. to honor any court order of such country.

Court order: A final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court-ordered, ratified, or approved property settlement incident to such a decree. A court order includes a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court-ordered, ratified, or approved property settlement incident to such previously issued decree. A court order must stipulate the payment to a servicemember's former spouse of child support, alimony, or division of property. In the case of a division of property, the court order must specify that the payment is to be made from the servicemember's disposable retired pay.

Creditable service: Service counted toward the establishment of any entitlement for retired pay.

Designated agent: The representative of a uniformed servicemember who will receive and process court orders under this chapter.

Division of property: Any transfer of property or its value by an individual to his or her former spouse in compliance with any community property settlement, equitable distribution of property, or other distribution of property between spouses or former spouses.

Entitlement: The legal right to receive a government benefit.

Final decree: As defined under Title 10 U.S.C. 1408(a)(3), a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

Former spouse: The ex-husband or ex-wife of a servicemember.

Garnishment: The legal procedure through which payment is made from an individual's pay that is due or payable to another party in order to satisfy a legal obligation to provide child support, make alimony payments, or both, or to enforce a division of property.

Renounced pay: Retired pay of a servicemember that has been surrendered or waived by that servicemember. Typically, servicemembers may choose to waive service retired pay to receive VA disability compensation or waive service retired pay to use their service time toward credit in the civil service retirement system.

Retired servicemember (retiree): A person originally appointed to, enlisted in, or conscripted into a uniformed service who has retired and is now carried on one of the lists of retired personnel from the regular or reserve components of the uniformed services.

Retired pay: The gross entitlement due to a servicemember based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, if applicable, and date of retirement (transfer to the Fleet Reserve or Fleet Marine Corps Reserve); also known as retainer pay.

Uniformed services: The Army, Marine Corps, Navy, Air Force, Coast Guard, commissioned corps of the U.S. Public Health Service, and commissioned corps of the National Oceanic and Atmospheric Administration.

Unmarried: Remarried and marriage ended due to death or divorce.

Unremarried: Never remarried or marriage was annulled.

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