

## **Former Spouse and Child Survivor Benefit Plan (SBP) Coverage**

*This fact sheet provides information to help you understand the provisions of the Survivor Benefit Plan (SBP), but is not a contract document. The basic statutory provisions of the SBP law are in Chapter 73, Title 10, United States Code.*

An election for former spouse and child coverage under the SBP was designed to allow you a way to provide a monthly income to your former spouse and any children resulting from your marriage to the elected former spouse. Any other children are not covered under this option. An eligible child(ren) beneficiary can receive more than one SBP annuity (e.g., both parents are military retirees and each elect SBP for the child(ren)). Coverage of a former spouse precludes coverage for a current spouse. This fact sheet presents key aspects of the SBP former spouse and child option.

### **The Annuity**

Benefits paid under this option are identical to those for spouse and child SBP coverage with the following exception:

- This option covers only children resulting from the marriage of the member and former spouse. No other children are covered under this option.

### **Eligible Child(ren)**

In a former spouse and child election, the annuity is paid in equal shares to eligible children only when the former spouse loses eligibility due to death or remarriage before age 55. Children are eligible for SBP payments as long as they are unmarried and under age 18, or under age 22 if a full-time student in an accredited school (see below). A child who is disabled and incapable of self-support remains eligible for life or as long as disabled and unmarried if the disability occurred before age 18 (or before age 22 if a full-time student). (Please read the information sheet titled SBP and SSI attachment for information to be considered when electing coverage for an incapacitated child). Marriage at any age terminates a child's eligibility.

While pursuing a full-time course of study or training, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, is considered to be 22 years of age on the first day of July after that birthday.

### **Accredited Schools**

Accredited schools include high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institute (final decision made by the Defense Finance and Accounting Service (DFAS)).

### **SPB Cost**

Premiums for former spouse coverage are calculated identically to premiums for spouse coverage. It is important to understand that in cases in which a former spouse is awarded a percentage of a military retiree's retired pay, and the SBP coverage is established for the former spouse (either voluntarily or involuntarily), the former spouse, in effect, pays a portion of the SBP premiums in an amount proportionate to the division of retired pay. This happens automatically because divisions of retired pay are based upon disposable retired pay, which has already been reduced because of the SBP premium.

An agreement between a member and a former spouse in which the former spouse must pay the entire cost of the member's participation in SBP is a matter between the member and the former spouse. There are no provisions in Federal law which permit the Defense Finance and Accounting

Service (DFAS) to withhold SBP premiums from a former spouse's portion of a member's retired pay. If a former spouse is to bear the total cost of a member's SBP participation, the former spouse must reimburse the member by some other means.

### **Deemed Election by Former Spouse**

Former spouse coverage can be established without the member's active participation when the following conditions exist:

- The member was required by a court order dated after November 13, 1986 to provide former spouse and child coverage, or the member agreed in writing to provide former spouse and child coverage.
- The member failed or refused to make a former spouse SBP election. The member should know that he/she could be held in contempt of court in this situation.
- The former spouse sent a DD Form 2656-10 (Survivor Benefit Plan (SBP)/Reserve Component (RC) SBP Request for Deemed Election) to DFAS (Defense Finance and Accounting Service, US Military Retirement Pay, PO Box 7130, London, KY 40742-7130), requesting that an election for former spouse coverage be deemed to have been made. The former spouse's deemed election request must be received by DFAS **within one year of the date of the court order** or it cannot be honored. This is true even if the court order was issued more than a year before a member's retirement date, in which case the former spouse's request for a deemed election would be maintained on file at DFAS until the member retires. If an election for former spouse coverage was agreed to or ordered by an earlier court order, a subsequent order or modification that merely restates the previous provision and imposes no new obligation on the member does not begin a new one-year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement cannot be used to begin a new one-year period to deem an election. The deemed election must include:
  - The member's name, Social Security Number (SSN), and whether the member is retired or on active duty.
  - The former spouse's SSN, date of birth, and mailing address.
  - If the original election was for spouse and child, the former spouse can also request that child coverage be included with the former spouse election. In this case, include the name, SSN, and date of birth of any eligible children.
  - A certified copy of the court order which required the member to elect to provide an annuity to the former spouse, or a copy of the member's written agreement to make such an election along with a statement from the clerk of the court or other appropriate official that the written agreement was filed with the court as the applicable state law requires.

### **Former Spouse Election by Retiring Member**

A member, who has a former spouse and dependent child(ren) by that former spouse at retirement, may elect to provide coverage for that former spouse and child(ren) or a court order may require the member to elect to provide an annuity to both a former spouse and eligible child(ren). If a member is married and elects SBP coverage for a former spouse and child(ren), the member's current spouse must be notified of the election, but spouse concurrence is not required. If the member has more than one former spouse, he/she must specify which former spouse will be covered.

A DD Form 2656-1, Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage signed by the member and the former spouse must be submitted with an election for former spouse and child coverage. The form sets forth:

- Whether the election is being made pursuant to the requirements of a court order, or
- Whether the election is being made pursuant to a written agreement entered into voluntarily by the member as a part of or incident to the proceedings of the divorce. The member and the former spouse must sign and date the statement, or
- Whether the election is voluntary on the member's part (not part of a court-order or written agreement).

### **Changing Spouse and Coverage to Former Spouse and Child Coverage upon Divorce after Retirement**

If you have spouse and child coverage and later divorce and wish to continue SBP for your now former spouse and children of that marriage, you **MUST** convert your SBP election from spouse and child coverage to former spouse and child coverage **WITHIN** one year of the date of the divorce. To convert your SBP election, you must submit a DD Form 2656-1, Survivor Benefit Plan (SBP) Election Statement For Former Spouse Coverage to DFAS within the first year following divorce. Include a copy of your divorce decree and settlement agreement. Many members erroneously assume coverage will continue for the former spouse if they simply continue paying premiums for spouse coverage. Additionally, unless the retiree has spouse coverage, former spouse coverage **CANNOT** be elected as part of a divorce settlement either voluntarily or by court order.

The benefit level for former spouse coverage has to remain the same as your spouse coverage. The court may not dictate a level of coverage greater or lower than that elected before the divorce. The election must not be for a former spouse whom the member married after becoming eligible for retired pay unless the member was married to the former spouse for at least one year, or the former spouse is the parent of issue by that marriage.

### **Suspension/Reinstatement of Former Spouse Coverage and Cost**

Former spouse coverage and premiums are suspended if the former spouse remarries prior to age 55. That's because the former spouse is not eligible for the SBP annuity while remarried if the remarriage occurred prior to age 55. This does not terminate the member's obligation to cover the former spouse - only the obligation to make payments while the former spouse is remarried. The member cannot stop former spouse coverage nor can the member change the election to spouse and/or child coverage based solely on the former spouse's remarriage prior to age 55. To suspend former spouse coverage and premiums because of the former spouse's remarriage prior to age 55, the member must include a copy of the former spouse's marriage certificate with notification to DFAS. Former spouse costs are suspended on the first day of the month after the date the former spouse remarries. If there is an eligible child, the cost is recalculated for child coverage with the new cost effective the first day of the month after the date the former spouse loses eligibility. The ages of the member and youngest eligible child on their birthdays nearest the date after the former spouse loses eligibility are used to calculate the cost. The child portion of the cost is suspended the first day of the month after the date the last remaining child becomes ineligible.

If former spouse coverage and premiums were suspended as a result of the former spouse's remarriage prior to age 55, and the remarriage terminates, former spouse coverage is reinstated the day after the date of the termination of the remarriage and costs for former spouse coverage are reinstated effective the first day of the month after the date the former spouse's remarriage terminates. If there is still an eligible child, cost for the child portion of the coverage is recalculated based on the ages of the member, former spouse, and youngest eligible child on their birthdays

closest to the date the former spouse becomes an eligible beneficiary. The member provides DFAS a copy of the former spouse's divorce decree or the death certificate of the person to whom the former spouse was married.

If the member dies during the period the former spouse coverage is suspended because of the former spouse's remarriage before age 55, the annuity would be payable to any eligible children; however, the former spouse would be eligible for the annuity in the event the remarriage subsequently terminated.

A former spouse's remarriage at age 55 or older does not affect either former spouse coverage or premiums as the former spouse remains eligible to receive the annuity immediately in the event of the member's death.

### **Termination of Former Spouse Coverage and Cost**

Former spouse coverage and premiums are terminated if the former spouse dies. The member must include a copy of the former spouse's death certificate with notification to DFAS and the former spouse portion of the costs will be terminated on the first day of the month after the date of the former spouse's death.

A divorce decree which specifies that former spouse coverage can be terminated if the former spouse remarries at any age is not enforceable. The SBP is a Federal law (Title 10, U. S. Code, Chapter 73), not a state law. A state court can incorporate anything it or the parties desire into a divorce decree. However, federal law dictates the conditions of eligibility for SBP and does not allow termination of former spouse coverage based solely on the former spouse's remarriage at any age.

### **Changing Former Spouse and Child Coverage to Spouse, Child, or Spouse and Child Coverage**

A member may request that former spouse and child coverage be changed to cover a spouse, child, or spouse and child by submitting a signed letter of request with documentation (if required, see below). A request to provide coverage for a spouse may be made at any time after the member remarries provided documentation requirements (below) are met. The member's request must also include a copy of the marriage certificate/license along with the new spouse's name, social security number, and date of birth. The former spouse coverage will be terminated when the spouse becomes an eligible beneficiary. If the member remarries the former spouse, the former spouse immediately becomes an eligible spouse beneficiary. This applies whether or not the former spouse coverage was court ordered, required by a written agreement, or voluntary. If court ordered, no amended/modified court order is required. A request to terminate the former spouse portion of a former spouse and child election (provided documentation requirements (below) are met) changes the election to child only, in which case, all the member's eligible children are covered including children from other marriages. In this case birth certificates for all eligible children must also be provided to DFAS.

Documentation requirements necessary to change former spouse and child coverage to spouse, child, or spouse and child coverage:

- If the original election was made pursuant to the requirements of a court order, a certified copy of a court order that amends/modifies all previous court orders relieving the retiree of a court-ordered former spouse election must be furnished to DFAS to convert to spouse, child, or spouse and child coverage.
- If the original election was made pursuant to a written agreement entered into voluntarily by the member as a part of or incident to the proceedings of the divorce, the former spouse must agree in writing to the change.

- If the original election was voluntary on the member's part (not part of a court order or written agreement), the election can be changed to cover a new spouse, child, or spouse and child without submitting an amended court order or the former spouse's written agreement. The former spouse, however, will be informed of the change by DFAS.
- If the former spouse dies, a copy of the former spouse's death certificate.

### **Member's Responsibilities**

It is a retired member's responsibility to notify the Defense Finance and Accounting Service, US Military Retirement Pay, PO Box 7130, London, KY 40742-7130, when the status of a beneficiary changes. Notification, with supporting documentation, should be made immediately after the change occurs so the appropriate adjustment may be made to your retired pay account. Examples of documentation include: copy of death certificate when reporting death of former spouse; copy of divorce decree and property settlement (if applicable) when reporting a divorce of former spouse; copy of marriage certificate when reporting a remarriage of former spouse prior to age 55; etc.

While pursuing a full-time course of study or training, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, is considered to be 22 years of age on the first day of July after that birthday; therefore the child portion of the premiums will automatically be suspended effective July 1 when such a child is the last remaining eligible child. To suspend child coverage and premiums at an earlier date (because the last remaining child marries or terminates full-time school attendance), the member must notify DFAS. If the member gives the exact date of loss of last dependent child, the change in premium is effective the first of the month following the date provided. If the exact date is not given, DFAS will use the first day of the month after receipt of notification.