

# SILENT PARTNER

## SBP – By the Numbers

*INTRODUCTION: SILENT PARTNER is a lawyer-to-lawyer resource for military family law issues. Comments, corrections and suggestions should be sent to the address at the end of the last page.*

The survivor annuity option available with military retired pay is called SBP, the Survivor Benefit Plan. It continues a stream of income to the spouse, former spouse or other beneficiary after the death of the servicemember or retiree. When a divorce is pending or imminent, the lawyers on both sides should have a clear idea of what it is and how it works. Here's a summary... "by the numbers."

0	Exactly <b>ZERO</b> subsequent orders for SBP coverage can "restart the clock" on the one-year deadline explained below. In other words, you cannot <i>retrieve the missed year</i> by convincing the court to enter yet another order awarding SBP to a former spouse (FS) if it's already been awarded in the first place.
1	<ul style="list-style-type: none"> <li>&gt; There is only <b>ONE</b> year in which to send to DFAS* the election form for former-spouse SBP coverage. See #2 below for an explanation of the two deadlines.</li> <li>&gt; There is <b>ONE</b> DFAS office which accepts SBP application forms, and it's located in London, KY. Transmit the forms and court papers there by registered or certified mail, return receipt requested (or by fax) to ensure that you have proof of receipt. The address is on any of the SBP forms mentioned in this SILENT PARTNER.</li> <li>&gt; Only <b>ONE</b> adult beneficiary is allowed for SBP. It cannot be subdivided between a current spouse and a former spouse. Tell the client to make a choice: "Your EX or your NEXT."</li> <li>&gt; 2656-<b>1</b> is the number of the form to use when the servicemember (SM) or retiree applies for former-spouse SBP coverage (DD Form 2656-1).</li> </ul>
2	<ul style="list-style-type: none"> <li>&gt; The <b>TWO</b> deadlines for SBP applications are: Election by SM/retiree must be done within one year of the divorce; a "deemed election" by the FS, when the SM/retiree fails or refuses to make the election required by court order, must be submitted within one year of the order granting SBP coverage.</li> <li>&gt; <b>TWO</b> to three years after retired pay begins is the period in which the parties may agree to terminate SBP coverage (between the 25<sup>th</sup> and the 36<sup>th</sup> months after "pay status" for the retiree). This election cannot be reversed, and there is no refund of premiums already paid.</li> </ul>
3	Guard and Reserve retirees have <b>THREE</b> options for SBP coverage when they attain 20 "good years" toward retirement and receive their NOE (notice of eligibility) or "20-year letter." <u>Option A</u> is to wait till pay status (usually age 60) to decide; this means no coverage in the interim period. No interim coverage also applies to <u>Option B</u> , which involves election of coverage but age 60 as the effective date (or when the SM would have turned 60 if death occurs before then). <u>Option C</u> , the only one which doesn't require written spousal consent, is called "RCSBP," or Reserve Component SBP" and it means immediate coverage for the Guard/Reserve member. If the member fails to return the form to DFAS, the default choice will be applied, which is Option C.
4	<b>FOUR</b> percent is the approximate reduction needed to the former spouse's pension share to shift payment of the entire premium to her or him in a retirement from active duty. There are tables and an Excel spreadsheet in <u>The Military Divorce Handbook</u> (Am. Bar Assn., 2 <sup>nd</sup> Ed 2011) which allow more precision in the calculation. Without an adjustment or a decree requiring one party to reimburse the other directly, DFAS will take the premiums "off the top" before retired pay is divided between the parties, since that's required by federal law. Thus the premium is divided in the same ratio as the pension itself (e.g., if John gets 70% of the pension, he pays 70% of the SBP premium).
5	<ul style="list-style-type: none"> <li>&gt; <b>FIVE</b>-five percent (55%) of the selected base amount is the benefit paid out to the beneficiary. The base amount is the full retired pay (as the "default option") or any amount down to \$300 a month.</li> <li>&gt; <b>FIVE</b>-five (55) years old is the age limit for remarriage. If a former spouse remarries before then, SBP coverage is suspended. It will be reinstated if that marriage ends in death, divorce or annulment.</li> <li>&gt;2656-<b>5</b> is the number of the form which is used by a Guard or Reserve member to make one of the three choices set out above (DD Form 2656-5).</li> </ul>

	> There are <b>FIVE</b> options for beneficiaries with SBP: spouse, former spouse, spouse (or former spouse) and child, child (or children), and individual with an “insurable interest.”
<b>6</b>	<b>SIX</b> point five percent (6.5%) is the premium for those electing spouse/former spouse coverage in a retirement from active duty. >2656- <b>6</b> is the number of the form to use for a permitted change of beneficiary, such as when a retiree remarries and there is no requirement for former-spouse coverage (DD Form 2656-6).
<b>7</b>	<b>SEVEN</b> words describe the single unchangeable rule for SBP when the base has been selected initially: “You can not change the base amount.”
<b>8</b>	<b>EIGHT</b> words will do it for an SBP election clause: “John will elect former spouse SBP for Mary.”
<b>9</b>	One four <b>NINE</b> (149) is the number of the Dept. of Defense form (DD Form 149) used to apply to the appropriate Board for the Correction of Military Records (BCMR) when a deadline has been missed and the former spouse wants to get the military to change the records to allow coverage. There are BCMR’s for the Army, Navy, Air Force, Marine Corps and Coast Guard. The time to apply is within three years of the discovery of the error.
<b>10</b>	> <b>TEN</b> percent is the approximate percent of base amount paid by Guard/Reserve retirees for RCSBP coverage. > 2656- <b>10</b> is the number of the form used to make a “deemed election” by the FS (DD Form 2656-10) when the SM/retiree fails or refuses to make the election required by court order. The deemed election must be submitted to DFAS within one year of the order granting former-spouse SBP coverage.

\*DFAS, the Defense Finance and Accounting Service, processes SBP applications for all of the uniformed services except the Coast Guard, and the commissioned corps of the Public Health Service and the National Oceanographic and Atmospheric Administration. Locations for the latter pay centers are found on any SBP form mentioned above.

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