

# SILENT PARTNER

## Master Checklist for Military Retirement Benefits

*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 aim of this article is to teach the reader how military retired pay works, to assist in understanding the Survivor Benefit Plan, and explain how to accomplish the allocation and division of military benefits. Also shown below are the places where attorneys can find resources which clarify these issues so that they can guide their clients in decision-making and can submit pension division orders which will be honored by the retired pay centers.

**1. Got “DOCs”?** What are the documents you need to understand military pay and retired pay, Reserve Component retirement points, accrued leave, elections for the Survivor Benefit Plan (SBP), and notification of eligibility for retirement for a Guard/Reserve member? For a full list of documents, see the Silent Partner Infoletter, “Docs for Division,” available at [www.nclamp.gov](http://www.nclamp.gov). Here’s a simple list to use:

- a. Leave and Earnings Statement for active-duty personnel (this is DFAS Form 702)
- b. “How to Read Your LES” on the Defense Finance and Accounting Service (DFAS) website ([www.dfas.mil](http://www.dfas.mil))
- c. Retirement Points Accounting System statement for Guard/Reserve personnel
- d. Retiree Account Statement for retired personnel (DFAS-CL Form 7220)
- e. “20-year letter” (Notice of Eligibility) for Guard/Reserve personnel as when SM attained 20 creditable years of service, was notified as to SBP elections
- f. DD Form 2656-1 for SBP elections, coverage for retirees
- g. DD Form 214 – discharge statement (“Report of Separation”)
- h. Thrift Savings Plan quarterly statements
- i. Letter from DFAS that servicemembers (SMs) receive upon retirement (pay status), showing expected amount of retired pay and calculations
- j. If a document cannot be obtained through SM’s signed release or discovery from SM, then obtain from the retired pay center, which may be DFAS (Army, Navy, Air Force, Marines Corps) or Coast Guard Pay and Personnel Center (serving USCG, and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, or NOAA), the reserve headquarters or state adjutant general’s office, or other military agency, as applicable, by submitting a court order or a subpoena which has been signed by a judge.

**2. “Who’s in charge here?”** This is about the rules for division of military retired pay and the SBP.

- a. Division of military pensions is authorized by USFSPA (Uniformed Services Former Spouses’ Protection Act), 10 U.S.C. 1408. It is an enabling act which allows states to divide pensions but does not require it; it does not specify a method of division and contains some restrictions.

- b. The Survivor Benefit Plan is the survivor annuity program for pension division, to allow a former spouse (FS) to continue to receive payments after the member/retiree dies. 10 U.S.C. 1447 *et seq.*
- c. Volume 7B of the Department of Defense Financial Management Regulation, DoD 7000.14-R (DoDFMR) explains how each of these work. Look up “DODFMR” on any search engine to find the Regulation.
- d. State laws and rules exist for pension division, whether survivor annuity is available for the FS, what the marital fraction is, whether military leave is divisible, etc.

**3. To play the game, know the rules!** You need to know how military retired pay works, how compensation for a retiree is calculated, and what is needed for state court jurisdiction to divide military retired pay.

- a. Active duty retirement is under one of 3 systems: a) Final retired pay b) High-3 c) CSB/Redux. Details are at Army Retirement Services. Go to [www.armyg1.army.mil](http://www.armyg1.army.mil) – this is good for all branches of the uniformed services. The important date is DIEMS (Date of Initial Entry into Military Service), which is found on the Active Duty LES.
- b. Reserve/National Guard retirement rules (pension based on retirement points)
  - i. In general retired pay starts when retiree attains age 60
  - ii. 20 “good years” needed to be retirement-eligible (50 points needed for a “good year”)
  - iii. Four points for a “drill weekend,” one point per day of active duty (e.g., 14 points for two weeks’ annual training or “summer camp”)
- c. Jurisdiction rules are found at 10 U.S.C. 1408 (c)(4). A court has jurisdiction over a SM’s pension through by:
  - i. Domicile – his or her legal residence
  - ii. Consent – entry of general appearance in the lawsuit
  - iii. Residence – but not because of assignment
- d. SCRA – Whether the SM has retired or not, the pension order must state that court has honored his or her rights under the Servicemembers Civil Relief Act, 50 U.S.C. Appx. 501 *et seq.*
- e. There are four methods for division of retired pay (from active duty retirement). The full explanation is in the Attorney Instructions at [www.dfas.mil](http://www.dfas.mil) > Find Garnishment Information > Former Spouses’ Protection Act. Examples:
  - i. Set dollar amount - \$500 a month
  - ii. Percentage – “Mary gets 10% of Tim’s pension monthly” (use when retirement has occurred and all numbers are known)
  - iii. Formula clause – “Mary is to receive 50% of Tim’s final retired pay times 214 months of marriage during service divided by Tim’s total service when he retires” (use when SM not yet retired)
  - iv. Hypothetical - “Mary is to receive 50% of Tim’s retired pay times 214 months of marriage during service divided by Tim’s total service when he retires, with his retired pay calculated as if he had retired as a staff sergeant with 16 years of creditable service. His HIGH-3 pay amount is \$3,400 monthly.”
- f. Reserve/Guard methods of division – same as above except that formula clause must be expressed in points, not months.
- g. Disposable Retired Pay (DRP) = gross retired pay less any VA disability waiver and premium for SBP (for FS in this divorce). DRP is what retired pay center divides, regardless of what the order says. See also “Break a leg!” below.

- h. COLAs (cost of living adjustments to retired pay) usually occur in January. They are automatically included in all division methods except the set dollar amount, which does not allow COLAs to be included or added on.
  - i. The military pension is not a “fund,” so you cannot refer to the account balance or the part of the fund acquired during the marriage or at divorce. It is a defined benefit, governmental program (not a “qualified plan”) with monthly payments to retiree. TSP is a fund (Thrift Savings Plan), similar to 401K plan. Remember “What you see is what you get” – you can always check the account balance to see what’s there.
4. **SBP – choose it or lose it.** This is about how the Survivor Benefit Plan (SBP) works, its cost and benefits
- a. SBP – an annuity that continues stream of income to designated beneficiary when SM/retiree dies first; without it, the pensions stops upon death of the SM/retiree.
  - b. It pays 55% of selected base amount to the recipient.
  - c. In a retirement from active duty, FS coverage generally costs 6.5% of base amount, to be paid upon retirement by deduction from pension check.
  - d. If the FS dies first, then the entire pension is restored to the retiree.
  - e. One effectuates FS coverage through a voluntary election by the SM/retiree, or through a court order sent to the retired pay center
  - f. The base amount may be any the full monthly retired pay (which is the default if order or clause is silent) down to \$300/mo.
5. **Snooze... and you lose.** Here we learn the limitations and deadlines which apply across the board.
- a. 10/10 Rule – direct pay from the retired pay center requires 10 years of service concurrent with 10 years of marriage. This is an enforcement rule, not a rule as to pension division eligibility. The FS is still eligible to claim pension division if less than 10/10.
  - b. Never take a default judgment against the SM/retiree. File where there is jurisdiction to divide the pension, obtain proper service, and always state the basis for jurisdiction in the order (see jurisdiction rules above) to get valid direct-pay order honored by retired pay center.
  - c. SBP is suspended for the FS if she/he remarries before age 55.
  - d. SBP deadlines – when the SM/retiree makes the former-spouse election, it must be done within one year of divorce; when the FS makes a “deemed election,” it must be done within one year of order granting SBP coverage (use DD Form 2656-10)
  - e. SBP cannot be divided between present and former spouses.
  - f. SGLI and Ridgway decision – when representing FS, do not rely solely on Servicemembers Group Life Insurance to secure benefits. A 1981 Supreme Court decision says that courts cannot enforce orders or agreements that require SGLI. *Ridgway v. Ridgway*, 454 U.S. 46 (1981).
  - g. 20/20/20 Rule – full medical benefits for a FS requires 20 years marriage, 20 years of creditable service, and an overlap of 20 years. This means TRICARE and space-available care at military medical facilities. If 20/20/20 not met, use CHCBP (Continued Health Care Benefit Program).
6. **“Break a leg!”** One must understand how disability pay can reduce the divisible pension
- a. The primary types of disability payments are: military disability retired pay, VA disability compensation, Combat-Related Special Compensation (CRSC)

- b. Courts cannot divide VA disability compensation, and only a small part of military disability retired pay may be subject to pension division (although disability benefits ARE usually subject to consideration in support cases).
- c. When the retiree has a VA disability rating of less than 50%, the election of VA payments means a dollar-for-dollar reduction of the pension; thus the share for the FS is reduced due to the unilateral action of retiree.
- d. Courts and agreements often employ indemnification language to guard against this. Check state law on reserving jurisdiction to return to court and adjust the pension share, to revise the entire property settlement, to require reimbursement, or to include in the settlement a clause providing for \$1 a year modifiable alimony for the FS.
- e. For details, read *Scouting the Terrain*, *The Servicemember's Strategy*, *The Spouse's Strategy* and *CRDP and CRSC – The Evil Twins* (SILENT PARTNER infoletters).

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