



DEFENSE FINANCE AND ACCOUNTING SERVICE

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ARLINGTON, VA 22240-5291

JUL 3 1996

DFAS-HQ/F

MEMORANDUM FOR DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- CLEVELAND CENTER
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- DENVER CENTER

SUBJECT: Update to the Department of Defense Financial
Management Regulation (DoDFMR), Volume 7, Part B,
Victims of Abuse-Separatees (DFAS Item Number D-59)

This is an Interim Change Number R6 - 96 to the DoDFMR,
Volume 7B. This change is effective immediately.

We have evaluated your comments on the draft change to the
DoDFMR, Volume 7B. The attached final version of the change
includes your comments where appropriate. Assignment of an
interim change number is your authority to initiate a procedural
modification to facilitate this change.

We have determined that this policy change does not require
a change to the current pay system. For the Denver Center, use
the attached to initiate the formal printed change to the DoDFMR.

Our point of contact, Mr. Fiti Malufau, may be contacted at
DSN 327-5061 or Commercial (703) 607-5061. Our Fax number is
DSN 332-5271 or Commercial (703) 602-5271.

Roger W. Scearce

Roger W. Scearce
Brigadier General, USA
Deputy Director for Finance

Attachment:
As stated

cc: ASD (FMP)
DGC (F)
DFAS-DE/DG
DFAS-IN
DFAS-KC/FSP
Service Liaisons
USCG/NOAA PHS Liaisons

PART ELEVEN

DFAS ITEM NO. D-59
INTERIM CHANGE NO. *RG* - 96

1. Add Tab A to Volume 7, Part B as Chapter 2.
2. Add the following new bibliography.

	<u>Paragraph</u>	<u>Citation</u>
Part Eleven Miscellaneous Payments Chapter 2 - Victims of Abuse Separated Members	110201 - 110210	Public Law 103-160 Sec 554, 30 Nov 1993 DoDI 1342.24, 23 May 1995 Public Law 103-337, Sec 535, 5 Oct 1994
	110209	OASD/FM Memorandum, 19 Oct 1994

Chapter 2

Victims of Abuse - Separated Members

110201. General

This chapter covers transitional compensation to abused dependents of non-retirement eligible members of the Armed Forces for up to 3 years. Part Eleven, Chapter 1, provides benefits for spouses and former spouses of retirement-eligible members who lose eligibility for retired pay as a result of misconduct involving abuse of dependents.

110202. Definitions

a. **Dependent-Abuse Offense.** A criminal offense defined by 10 U.S.C. 801-940 or other criminal code applicable to the jurisdiction where the act of abuse is committed. Crimes that may qualify as "dependent-abuse offenses" are ones such as sexual assault, rape, sodomy, assault, battery, murder, and manslaughter. This is not an exhaustive or exclusive listing of dependent-abuse offenses.

b. **Punitive or Other Adverse Action.** An action in which a member of the Armed Forces on active duty more than 30 days:

(1) is convicted of a dependent-abuse offense and whose conviction results in the member either being separated from active duty under a court-martial sentence or who forfeits all pay and allowances under a court-martial sentence; or

(2) is administratively separated from active duty under applicable Service regulations if the basis for separation includes a dependent-abuse offense.

c. **Cohabitation.** The spouse or former spouse residing in the same household as the former member after punitive or other adverse action is executed.

d. **Dependent Child.** An unmarried child, including an adopted child or a stepchild, who is residing with the member at the time of the dependent-abuse which results in the separation of the former member and who:

(1) is under age 18;

(2) is age 18 or older and incapable of self-support due to a mental or physical incapacity that existed before age 18 and who is (or, when a punitive or other adverse action was carried out on the member, was) dependent on the member for over one-half of the child's support; or

(3) is age 18 or older, but less than age 23, enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, when a punitive or other adverse action was carried out on the member, was) dependent on the member for over one-half of the child's support.

e. Spouse or Former Spouse. The individual who:

(1) is married to the member or former member at the time of the commission of the dependent-abuse offense resulting in separation;

(2) does not cohabit with the member or former member after the punitive or other adverse action; and

(3) was not an active participant in the conduct constituting the dependent-abuse offense.

110203. Eligibility for Transitional Compensation Payment

The dependents of a member who separates on or after 30 Nov 1993 are eligible for transitional compensation payments. Payments begin on or after 1 Dec 1993 for qualified dependents. If a recipient is incapable of handling his or her own affairs, payments are made only to a court-appointed guardian. In the case of a dependent child under 18 years of age, payments are made only to a court-appointed guardian or a natural parent (who is not a spouse of the member), if the natural parent legally has custody of the dependent child.

a. Spouse or Former Spouse. In the case of a separation from active duty under punitive or other adverse action, payments are made to the person who was the member's spouse at the time of the offense. The spouse or former spouse does not have to be the victim in order to receive transitional compensation. If the spouse or former spouse is ineligible for transitional compensation because of remarriage, cohabitation, or active participation in the abuse, payments are made to each dependent child who does not reside in the same household as the spouse, former spouse, or former member. If there is no eligible spouse for reasons other than those listed in the preceding sentence (e.g., member was not married or the spouse died), compensation is paid to the dependent children of the member who do not reside in the household of the member.

b. Dependent Child. A dependent child's eligibility is determined as of the date on which the member is convicted of the dependent-abuse offense or the date on which the member is administratively separated. The dependent children receiving the transitional compensation payments cannot live in the same household as the former member or the remarried former spouse.

110204. Commencement and Duration of Payment

a. Payment of transitional compensation begins:

(1) on the date of the approval of the court-martial sentence by the person acting under 10 U.S.C. 860(c) if the member has been convicted by a court-martial for a dependent-abuse offense and the court-martial sentence as approved includes a dismissal, dishonorable discharge, or bad conduct discharge; or

(2) on the date separation action is initiated by the commander under regulation by the Secretary concerned, if administratively separated.

b. Payments are made for a period of 36 months, except, if, as of the starting date of payment, the unserved portion of the member's obligated active duty service is less than 36 months, the duration of payment is the greater of the unserved portion or 12 months. For enlisted members, the "obligated active duty service" is the time remaining on their term of enlistment. For officers, the "obligated active duty service" is indefinite unless the officer has a date of separation established, in which case it is the time remaining until the date of separation.

110205. Amount of Payment

a. A spouse or former spouse receives transitional compensation at the same rate as monthly Dependency and Indemnity Compensation (DIC) under 38 U.S.C. 1311(a)(1).

DIC Rate	Effective Date
\$769	1 Dec 1993
\$790	1 Dec 1994
\$810	1 Dec 1995

b. If the spouse or former spouse has custody of a dependent child or children of the member, transitional compensation is increased for each child by an amount equal to the monthly DIC amount payable for dependent children under 38 U.S.C. 1311(b).

DIC Rate	Effective Date
\$150	1 Oct 1993
\$200	1 Oct 1994
\$205	1 Dec 1995

c. If transitional compensation is payable only to dependent children, transitional compensation is paid in equal shares in an amount equal to the monthly DIC amount payable for dependent children under 38 U.S.C. 1313.

	DIC Child Rate Eff 1 Dec 1993	DIC Child Rate Eff 1 Dec 1994	DIC Child Rate Eff 1 Dec 1995
1 child	\$327	\$336	344
2 children	471	484	496
3 children	610	627	643
Over 3	610 + \$120 for each child over 3	627 + \$123 for each child over 3	643 + \$126 for each child over 3

d. Payments will be prorated for months when payments start or stop in the middle of a month.

e. When paying multiple children and the payment amount does not divide equally, the youngest child shall receive the odd cent(s).

f. Arrears of compensation, in the event of the death of a spouse or dependent child, will not be paid.

110206. Forfeiture Provisions

a. The transitional compensation payable to the spouse or former spouse is forfeited as a result of:

(1) **Cohabitation.** A punitive or other adverse action has been executed and the former member resides in the same household as the spouse or former spouse or child who is receiving the compensation. Compensation terminates as of the date the former member begins residing in such household. Any compensation paid before the member resides in the household shall not be recouped. Once terminated for cohabitation, the payments do not resume.

(2) **Remarriage.** The former spouse receiving the compensation remarries. Compensation terminates effective as of the date of the former spouse's remarriage. Payments do not resume if the remarriage is terminated. If the payments to the former spouse terminate due to remarriage and there is a dependent child who is not living in the same household as the former spouse or member, payments shall be made to the eligible dependent child.

(3) **Active Participation.** If the victim was a dependent child, and the spouse has been found by competent authority designated by the Secretary concerned to have been an active participant in the conduct constituting the criminal offense or to have actively aided or abetted the member in such conduct against that dependent child, the spouse may not be paid transitional compensation. Dependent children living with the spouse will not be paid either.

b. **Annual Certification.** The spouse certifies annually that he or she has not remarried and has not been cohabiting with the offender on the Certificate of Eligibility (COE) to the Defense Finance and Accounting Service (DFAS). The spouse must notify DFAS within 30 days of the date of remarriage or the date the member begins residing in the same household as the spouse or former spouse or dependent child. Dependent children will certify annually that they are not cohabiting with the offender or ineligible spouse via the COE process. If the COE is not received within 60 days of date of COE, payments will be suspended until verification of eligibility is received.

110207. Effect of Military Pay Continuation

Transitional compensation is not payable when a member's court-martial sentence that includes a dismissal, dishonorable discharge, or bad conduct discharge is remitted, set aside, or mitigated to a lesser punishment that does not include such punishment; or, the administrative separation is disapproved. Any payment of transitional compensation that has started shall stop effective the first day of the month after the Secretary concerned notifies the recipient in writing that payment shall cease for such reason. The recipient is not required to repay transitional compensation received before the effective date of cessation, excluding erroneous payments.

.0208. Multiple Benefits

A spouse or former spouse may not receive payments of transitional compensation and payments under 10 U.S.C. 1408(h), benefits for spouses and former spouses of retirement-eligible members who lost

Eligibility for retired pay as a result of misconduct involving abuse of dependents. (See Part Eleven, Chapter 1). The spouse or former spouse must elect which benefit they choose to receive.

110209. Effective Date

Transitional compensation provisions apply to members who on or after 30 Nov 1993 separate from active duty under a court-martial sentence resulting from a dependent-abuse offense; who separate from active duty for administrative reasons if the basis for separation includes a dependent-abuse offense; or who are sentenced to forfeiture of all pay and allowances by a court-martial which has convicted the member of a dependent-abuse offense.

a. Transitional compensation is payable to dependents who qualify on or after 1 Dec 1993 for periods on or after 1 Dec 1993.

b. If payments for the period 1 Dec 1993 through the expiration of member's active obligated service (ETS) represent less than 12 months, payments continue until the 12 month minimum period is met.

110210. Applications

An individual requests transitional compensation through a Service representative. The Service representative approves payment, provides the O&M fund cite, and forwards the application to DFAS at:

DFAS-DE/FRB
6760 East Irvington Place
Denver, CO 80279-6000

Facsimile numbers: DSN 926-4667
COMM (303)676-4667