

## CHAPTER 59

**★VICTIMS OF ABUSE - NON-RETIREMENT ELIGIBLE MEMBERS**  
(Transitional Compensation)5901 GENERAL

This chapter covers transitional compensation to abused dependents of non-retirement eligible members of the Armed Forces for up to 3 years. Chapter 58 of this volume identifies 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.

590101. Definitions

A. Dependent-Abuse Offense. A criminal offense defined by 10 U.S.C. 801-940 (reference (c)) 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 is:

1. Convicted of a dependent-abuse offense and whose conviction results in separation from active duty under a court-martial sentence or forfeiture of all pay and allowances under a court-martial sentence; or

2. Administratively separated from active duty under applicable Military 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 is:

1. Under age 18;

2. 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. 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.

590102. Eligibility for Transitional Compensation Payment. The dependents of a member who separates on or after November 30, 1993, are eligible for transitional compensation payments. Payments begin on or after December 1, 1993, for qualified dependents. If a recipient is incapable of handling his or her own affairs, payments are made only to 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., the 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.

590103. Commencement and Duration of Payment

## A. Payment of transitional compensation begins on the date that:

1. The court-martial sentence was approved by the person acting under 10 U.S.C. 860(c) (reference (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. Separation action was initiated by the commander under regulations of the Secretary concerned, if administratively separated.

B. Payments are made for a period of 36 months. EXCEPTION: 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.

590104. 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) (reference (ar)).

<u>DIC Rate</u>	<u>Effective Date</u>
\$769	December 1, 1993
790	December 1, 1994
810	December 1, 1995
833	December 1, 1996

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) (reference (ar)).

<u>DIC Rate</u>	<u>Effective Date</u>
\$150	October 1, 1993
200	October 1, 1994
205	December 1, 1995
211	December 1, 1996

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 (reference (ar)).

	DIC Child Rate Eff December 1, 1993	DIC Child Rate Eff December 1, 1994	DIC Child Rate Eff December 1, 1995
1 child	\$327	\$336	\$334
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

DIC Child Rate  
Eff December 1, 1996

1 child	\$354
2 children	510
3 children	662
Over 3	\$662 + \$130 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.

590105. 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 that 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 who is 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 also will not receive payment.

B. Annual Certification. The spouse certifies annually to the DFAS-Denver Center that he or she has not remarried and has not been cohabiting with the offender. The form to be used is a Certificate of Eligibility (COE). The spouse must notify the DFAS-Denver Center 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 annually will certify 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.

590106. Effect of Military Pay Continuation. Transitional compensation is not payable when a member's court-martial sentence, which 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 of the Military Department 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.

590107. Multiple Benefits. A spouse or former spouse may not receive both payments of transitional compensation and payments under 10 U.S.C. 1408(h) (reference (c)) of 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 Chapter 58 of this volume. The spouse or former spouse must elect which benefit he or she chooses to receive.

590108. Effective Date. Transitional compensation provisions apply to members who, on or after November 30, 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 December 1, 1993, for periods on or after December 1, 1993.

B. If payments for the period December 1, 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.

590109. Applications. An individual requests transitional compensation through a Military Service representative. The Military Service representative approves payment, provides the O&M fund cite, and forwards the application to the DFAS at:

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

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