

VOLUME 7B, CHAPTER 59: “VICTIMS OF ABUSE – RETIREMENT-ELIGIBLE MEMBERS”

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [***bold, italic, blue, and underlined font***](#).

The previous version dated [January 2021](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision

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CHAPTER 59

VICTIMS OF ABUSE - RETIREMENT-ELIGIBLE MEMBERS

1.1 GENERAL

1.1 Overview

Title 10, United States Code, section 1408(h) ([10 U.S.C. § 1408\(h\)](#)) authorizes various benefits for the spouses, former spouses, and dependent child(ren) of retirement-eligible members who lose eligibility for retired pay because of misconduct involving abuse of dependents. Generally, the spouses and former spouses are provided the same rights and benefits that they would have received had there been no abuse and the member had retired under normal circumstances.

1.2 Purpose

This chapter provides policy on benefits and payments of retired pay in compliance with a court order for spouses, former spouses, and dependent child(ren) of the retirement-eligible member or former member. A member or former member, while in the armed forces and after becoming eligible to retire from the armed forces on the basis of years of service, may have his or her eligibility to receive retired pay terminated as a result of misconduct involving abuse of a spouse and/or dependent child.

1.3 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 10 and 42. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Court Order

A court order is:

2.1.1. A final decree of divorce, dissolution, annulment, or legal separation issued by a court;

2.1.2. A court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation or a court ordered, ratified, or approved property settlement incident to such previously issued decree); or

2.1.3. A support order, as defined in [Section 453\(p\) of the Social Security Act](#) and [42 U.S.C. § 653\(p\)](#), which:

2.1.3.1. Is issued in accordance with the laws of the jurisdiction of that court; and

2.1.3.2. Provides for:

2.1.3.2.1. Payment of child support (as defined in [42 U.S.C. § 659\(i\)\(2\)](#));

2.1.3.2.2. Payment of alimony (as defined in 42 U.S.C. § 659(i)(3)); or

2.1.3.2.3. Division of property (including a division of community property), which specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

2.2 Dependent Child

In this chapter, dependent child means an unmarried legitimate child, including an adopted child or stepchild, of the member or former member who is:

2.2.1. Under 18 years of age;

2.2.2. Incapable of self-support because of a mental or physical incapacity that existed before 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

2.2.3. Enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is less than 23 years of age and is dependent on the member or former member for over one-half of the child's support.

2.3 Disposable Retired Pay

Disposable retired pay is the total monthly retired pay to which a member is entitled, less amounts which:

2.3.1. Are owed by that member to the United States for previous overpayments of retired pay and for recoupments from entitlement to retired pay as required by law;

2.3.2. Are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under Titles 5 or 38 of the U.S.C.;

2.3.3. Are equal to the amount of the member's retired pay under [10 U.S.C., Chapter 61](#), computed using the percentage of the member's disability on:

2.3.3.1. The date when the member was retired; or

2.3.3.2. The date on which the member's name was placed on the temporary disability retired list; or

2.3.4. Are deducted because of an election under [10 U.S.C., Chapter 73](#) to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under section 2.0.

Note: Public Law (PL) 114-328, section 641, (National Defense Authorization Act, Fiscal Year 2017) and 10 U.S.C. § 1408(a)(4)(B), authorized a new definition of disposable retired pay which applies to divorces that occur after December 23, 2016, where the court awards the former spouse a division of property and the member has not yet retired. The disposable retired pay for these cases will be computed in accordance with Chapter 29, paragraphs 8.2 and 8.3. Since members under Chapter 59 would have been considered retirement eligible but for the court martial and revocation of retired pay, Public Law (PL) 114-328, section 641 will not apply.

2.4 Spouse or Former Spouse

The term spouse or former spouse means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

2.5 Retired Pay

The term retired pay includes retainer pay.

3.0 ELIGIBILITY

3.1 Eligibility

The following individuals are eligible for payments by the Defense Finance and Accounting Service (DFAS):

3.1.1. Spouse or Former Spouse. A spouse or former spouse is eligible if the spouse or former spouse was married to the member for a period of 10 years or more, during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay; and

3.1.1.1. Was the victim of the abuse and married to the member or former member at the time of that abuse; or

3.1.1.2. Is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

3.1.2. Dependent Child. A dependent child is considered eligible if the other parent of the child died because of misconduct that resulted in the termination of the member's retired pay.

3.2 Court Order

3.2.1. The court order must specifically provide for the payment of an amount, expressed in dollars or as a percentage, from the disposable retired pay of a member to the spouse or former spouse of that member. The court order must satisfy the requirements of 10 U.S.C. § 1408(a)(2).

3.2.2. If a court order provides for the payment of child support from the disposable retired pay of a member or former member to an eligible dependent child of the member or former member, then the Secretary of the Military Department concerned (or designee) will:

3.2.2.1. Ensure payment of such amount is made to the dependent child; and

3.2.2.2. Ensure payments to the dependent child begin upon effective service of such court order.

3.3 Court-Martial

If a member of the armed forces receives a sentence by a court-martial that will terminate the member's eligibility to receive retired pay, then the member's eligibility to receive retired pay, as determined by the Secretary of the Military Department concerned (or designee), is terminated effective upon entry of judgment under [10 U.S.C. § 860c](#) (Article 60c of the Uniform Code of Military Justice).

3.4 Civilian Court Conviction

If a member of the armed forces is convicted by a civilian court of a crime involving abuse of a spouse or dependent child(ren), after becoming eligible for retirement on the basis of years of service, and the Secretary of the Military Department concerned (or designee) discharges the member from the armed forces as a result of that civilian court conviction, then the member's eligibility to receive retired pay is terminated effective upon the member's discharge from the armed forces.

4.0 APPLICATION FOR PAYMENT

An eligible spouse or former spouse must apply for payment from the supporting DFAS site in the same manner as an application for former spouse payments from retired pay, as described in Chapter 29, section [4.0](#).

5.0 CONDITIONS FOR PAYMENT

5.1 Payment

5.1.1. The court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the armed forces, may request the Secretary of the Military Department concerned (or designee) to provide certification of the amount of the monthly retired pay in connection with a civil action for the issuance of a court order.

The Secretary of the Military Department concerned (or designee) will determine and certify the amount of the monthly retired pay (including any cost-of-living increases to retired pay through the date of certification) to which the member or former member would have been entitled on the date of the certification if:

5.1.1.1. The member or former member's eligibility for retired pay had not been terminated as a result of misconduct involving abuse of a spouse or dependent child; and

5.1.1.2. In the case of a member or former member not receiving retired pay immediately before termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

5.1.2. When certifying retired pay of a member separated for misconduct involving abuse of a dependent, the Secretary of the Military Department concerned (or designee) will ignore reductions in grade and forfeitures of pay or retired pay resulting from the administrative separation or court-martial for the misconduct.

5.1.3. The amount certified by the Secretary of the Military Department concerned (or designee) will be deemed to be the disposable retired pay of the member for the purposes of this provision. The total amount payable under this provision may not exceed 50 percent of such disposable retired pay.

5.1.4. A court order may provide that whenever retired pay is increased under [10 U.S.C. § 1401a](#) (or any other provision of law), the amount payable under the court order to the spouse or former spouse will be increased at that time and by the percent retired pay would have increased if the member or former member were receiving retired pay.

5.1.5. Payments will not be made more frequently than once a month, and the Secretary of the Military Department concerned (or designee) will not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

5.1.6. If a member's eligibility for retired pay is terminated as described in paragraph 3.3, then the effective date for computing retired pay will be the date that the sentence terminating eligibility for retired pay is approved by the appropriate official. If a member's retired pay eligibility is terminated as described in paragraph 3.4, then the effective date for computing retired pay will be the effective date of the member's discharge.

5.1.7. Payments made to an eligible spouse based on being the natural or adopted parent of a dependent child, who was the victim of abuse, will not cease solely because the dependent child is no longer considered a dependent child. Payment requires only that the child was dependent at the time of the abuse, and not necessarily at the time of payment.

5.1.8. Payments will be made from funds in the Department of Defense Military Retirement Fund or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

5.1.9. Payments under this chapter must be coordinated with Transitional Compensation benefits payable to an eligible spouse under Chapter 60, paragraph 4.1.

5.2 Termination of Payment

5.2.1. Payments from the disposable retired pay of a member will terminate pursuant to the terms of the applicable court order, on the date of death of the member or former member, or on the date of death of the spouse or former spouse to whom payments are made, whichever occurs first.

5.2.2. If a former spouse who is receiving payments under these conditions marries again after the payments begin, then his or her eligibility to receive further payments terminates on the date of the marriage. In the event of termination of that marriage by death, annulment, or divorce, payments resume as of the first day of the month in which the marriage is terminated. The monthly amount will be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

5.2.3. If the punishment that results in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in termination of eligibility, then benefits to the eligible dependent based on that punishment will cease. Such benefits cease on the first day of the first month after the month in which the Secretary of the Military Department concerned (or designee) notifies the recipient in writing that benefits will cease. The recipient will not be required to repay the benefits received prior to that effective date, excluding any erroneous payments.

5.3 Other Entitlements

5.3.1. A spouse or former spouse, while receiving payments under this chapter, will be entitled to receive medical and dental care, commissary and exchange privileges, and any other benefits a spouse or former spouse of a retired member may be entitled as if the member or former member was entitled to retired pay. This entitlement includes the right to the Survivor Benefit Plan if the spouse or former spouse is an eligible beneficiary pursuant to [10 U.S.C. § 1448](#).

5.3.2. A dependent child, who was a member of the household of the member or former member at the time of the misconduct, is entitled to receive medical and dental care, commissary and exchange privileges, and any other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member was entitled to retired pay.

5.4 Accrual of Payments

No payments under this chapter will accrue for periods before October 23, 1992.

5.5 Taxability

The spouse or former spouse who receives payment under this chapter will be responsible for the tax liability. DFAS will withhold taxes and will issue the appropriate annual tax form, Form 1099-R, “Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc.”

REFERENCES

CHAPTER 59 – VICTIMS OF ABUSE – RETIREMENT-ELIGIBLE MEMBERS

1.0 – GENERAL	10 U.S.C. § 1408
2.0 – DEFINITIONS	
2.1	10 U.S.C. § 1408(a)(2) 42 U.S.C. § 653(p) 42 U.S.C. § 659(i)
2.2	10 U.S.C. § 1408(h)(11)
2.3	10 U.S.C. § 1408(a)(4) PL 114-328, section 641, December 23, 2016 10 U.S.C. § 1408(a)(4)(B)
2.4	10 U.S.C. § 1408(a)(6)
3.0 – ELIGIBILITY	
3.1.1	10 U.S.C. § 1408(d)(2)
3.3	10 U.S.C. § 860c 10 U.S.C. § 1408(h)(10)(A)
5.0 – CONDITIONS FOR PAYMENT	
5.1.1	10 U.S.C. § 1408(h)(4)
5.1.4	10 U.S.C. § 1401a 10 U.S.C. § 1408(h)(5)
5.2.2	10 U.S.C. § 1408(h)(7)
5.3.1	10 U.S.C. § 1408(h)(9)(A) 10 U.S.C. § 1448
5.3.2	10 U.S.C. § 1408(h)(9)(B)