

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

SUMMARY OF MAJOR CHANGES

All changes are denoted by **blue font**.

Substantive revisions are denoted by an * 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 December 2009 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is being updated with hyperlinks and formatted to comply with current administrative instructions.	Update
All	Expanded and rearranged chapter for clarity.	Update
590101	Moved first sentence from original subparagraph 590301.B to new paragraph 590101.	Update
590102.A, C, D, and E	Added four new definitions to the definition paragraph which was once section 5901.	Add
590201.A	Updated this paragraph by removing description of “court order” since it was added to the definition paragraph and renumbered from original subparagraph 590301.A.	Update
590201.B	Added subparagraph for eligible dependent child.	Add
590202.B	Added subparagraph on court ordered child support for eligible dependent child.	
5904	Changed title for section from Method of Payment to Conditions for Payment.	Update
590401	Expanded the original paragraph (590501) for clarity.	Update
590401.H	Updated subparagraph according to 10 U.S.C. 1408(h)(8).	Update
590403	Added sentence on the Survivor Benefit Plan entitlement to address recent inquiries of this nature.	Add

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CHAPTER 59

VICTIMS OF ABUSE - RETIREMENT-ELIGIBLE MEMBERS5901 BACKGROUND

*590101. Authority

A member or former member, while a member of the Armed Forces and after becoming eligible to be retired 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 the spouse or dependent child. [Public Law 102-484, dated October 23, 1992](#), authorized various benefits for the spouses, former spouses, [and dependent child\(ren\)](#) of retirement-eligible members who lose eligibility for retired pay as a result of misconduct involving abuse of dependents. Generally, the spouses and former spouses are provided the same rights and benefits that they would have had if there had been no abuse and the member had retired under normal circumstances.

590102 Definitions

The [following](#) definitions apply to this chapter unless otherwise noted.

* A. [Court Order](#). A court order is a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or 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 a support order, as defined in the Social Security Act, Title 42, United States Code, section 653(p) ([42 U.S.C. 653\(p\)](#)), which:

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

2. Provides for payment of child support (as defined in [42 U.S.C. 659\(i\)\(2\)](#)); payment of alimony (as defined in 42 U.S.C. 659(i)(3)); or division of property, including division of community property; and

3. In the case of a division of property, 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.

B. [Dependent child](#). Dependent child means an unmarried legitimate child, including an adopted child or stepchild of the member or former member who is:

1. Under 18 years of age;

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

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

* C. Disposable Retired Pay. The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which:

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

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.;

3. In the case of a member entitled to retired pay under Chapter 61, Title 10, of the U.S.C. are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

4. Are deducted because of an election under Chapter 73, Title 10, of the U.S.C. 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 this section.

* D. 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.

* E. Retired Pay. The term retired pay includes retainer pay.

5902 ELIGIBILITY

590201. Eligibility

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

A. Spouse or Former Spouse. The spouse or former spouse to whom payments are to be made 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**

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

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

* B. Dependent Child. A dependent child is considered eligible, if the other parent of the child died as a result of the misconduct that resulted in the termination of the member's retired pay.

*590202. Court Order

A. 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).

* B. If a court order provides for the payment of child support from the disposable retired pay of that 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), beginning upon effective service of such court order, shall ensure payment of such amount is made to the dependent child.

590203. Court-Martial

If a member of the Armed Forces has been sentenced by a court-martial to receive a punishment 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 considered terminated effective upon the approval of the court-martial sentence.

5903 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, set out in Chapter 29, section 2904.

*5904 CONDITIONS FOR PAYMENT

*590401. Payment

A. Upon the request of a court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the Armed Forces in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary of the Military Department concerned (or designee) shall determine and certify the amount of the monthly retired pay (including any cost-of-living increases to retired pay through

the date of certification) that the member or former member would have been entitled to receive as of the date of [the certification if](#):

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

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

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

C. The amount certified by the Secretary [of the Military Department](#) concerned [\(or designee\)](#) shall 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.

D. 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 of a member or former member shall be increased at the same time and by the percent by which retired pay would have increased if the member or former member were receiving retired pay.

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

F. The effective date for computing retired pay shall be the date that the sentence terminating eligibility for retired pay is approved by the appropriate official.

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

* H. Payments shall 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.](#)

590402. Termination of Payment

A. Payments [from the disposable retired pay of a member shall terminate pursuant to](#) the terms of the applicable court order, but not later than the date of the death of the

member or former member or the date of death of the spouse or former spouse to whom payments are being made, whichever occurs first.

B. 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 shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

C. 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 under this chapter that are based on the punishment so vacated, set aside, or mitigated shall cease. Such benefits cease effective on the first day of the first month after the month the Secretary of the Military Department concerned (or designee) notifies the recipient in writing that benefits cease. The recipient may not be required to repay the benefits received before that effective date, excluding any erroneous payments.

590403. Other Entitlements

* A. A spouse or former spouse, while receiving payments under this chapter, shall 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 in the manner as if the member or former member were entitled to retired pay. This entitlement includes the right to the Survivor Benefit Plan, so long as the spouse or former spouse is an eligible beneficiary pursuant to 10 U.S.C. 1448.

B. 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 as though the member or former member were entitled to retired pay.

590404. Accrual of Payments

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

590405. Taxability

Tax liability for payments under this chapter is the responsibility of the spouse or former spouse who receives the payments.

BIBLIOGRAPHY

CHAPTER 59 – VICTIMS OF ABUSE – RETIREMENT-ELIGIBLE MEMBERS

5901 – BACKGROUND

10 U.S.C. 1408

5902 – ELIGIBILITY

10 U.S.C. 1408(h)

5904 – CONDITIONS FOR PAYMENT

10 U.S.C. 1408

10 U.S.C. 1408(h)(9)(A)

10 U.S.C. 1408 (h)(9)(C)