

APPENDICES

Appendix A

National Defense Authorization Act for Fiscal Year 1998

Public Law 105-85

SEC. 643. REVIEW OF FEDERAL FORMER SPOUSE PROTECTION LAWS.

(a) Review Required.--The Secretary of Defense shall carry out a comprehensive review (including a comparison) of--

(1) the protections, benefits, and treatment afforded under Federal law to members and former members of the uniformed services and former spouses of such persons; and

(2) the protections, benefits, and treatment afforded under Federal law to employees and former employees of the Government and former spouses of such persons.

(b) Military Personnel Matters To Be Reviewed.--In the case of members and former members of the uniformed services and former spouses of such persons, the review under subsection (a) shall include the following:

(1) All provisions of law (principally those originally enacted in the Uniformed Services Former Spouses' Protection Act (title X of Public Law 97-252)) that--

(A) establish, provide for the enforcement of, or otherwise protect interests of members and former members of the uniformed services and former spouses of such persons in retired or retainer pay of members and former members; or

(B) provide other benefits for members and former members of the uniformed services and former spouses of such persons.

(2) The experience of the uniformed services in administering those provisions of law, including the adequacy and effectiveness of the legal assistance provided by the Department of Defense in matters related to the Uniformed Services Former Spouses' Protection Act.

(3) The experience of members and former members of the uniformed services and former spouses of such persons in the administration of those provisions of law.

(4) The experience of members and former members of the uniformed services and former spouses of such persons in the application of those provisions of law by State courts.

(5) The history of State statutes and State court interpretations of the Uniformed Services Former Spouses' Protection Act and other provisions of Federal law described in paragraph (1)(A) and the extent to which those interpretations follow those laws.

(c) Civilian Personnel Matters To Be Reviewed. -- In the case of former spouses of employees and former employees of the Government, the review under subsection (a) shall include the following:

(1) All provisions of law that--

(A) establish, provide for the enforcement of, or otherwise protect interests of employees and former employees of the Government and former spouses of such persons in annuities of employees and former employees under Federal employees' retirement systems; or

(B) provide other benefits for employees and former employees of the Government and former spouses of such persons.

(2) The experience of the Office of Personnel Management and other agencies of the Government in administering those provisions of law.

(3) The experience of employees and former employees of the Government and former spouses of such persons in the administration of those provisions of law.

(4) The experience of employees and former employees of the Government and former spouses of such persons in the application of those provisions of law by State courts.

(d) Sampling Authorized.--The Secretary may use sampling in carrying out the review under this section.

(e) Report.--Not later than September 30, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the results of the review under subsection (a). The report shall include any recommendations for legislation that the Secretary considers appropriate.

Appendix B

Listing of Bar Associations Which Submitted Comments and Information in Response to a Request from the Office of the Secretary of Defense

Bar Association	Date of Letter Accompanying Comments
American Bar Association	January 27, 1999
Arizona	February 10, 1999
Connecticut	February 1, 1999
Florida	February 26, 1999
Hawaii	February 9, 1999
Louisiana*	April 1, 1999
Maryland	February 3, 1999
Michigan	March 24, 1999
Mississippi	January 11, 1999
Nebraska	February 16, 1999
Nevada	March 14, 1999
North Carolina	February 17, 1999
South Carolina	February 2, 1999
Utah	February 1, 1999
Vermont	January 29, 1999
Virginia	March 1, 1999

* The Louisiana response was not included in this report because the views represented those of one individual and was never formally endorsed by the Louisiana State Bar Association.

Appendix C

Information Addressing State Applications and Interpretations of the USFSPA

[Source: Army JAG School]

See <http://dticaw.dtic.mil/prhome/docs/finalc.doc> for Appendix C

Appendix D

Federal Register Notice: December 23, 1998 (Volume 63, Number 246)

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DEPARTMENT OF DEFENSE

Office of the Secretary

Comments on Uniformed Services Former Spouses' Protection Act (USFSPA)

AGENCY: Office of the Assistant Secretary of Defense for Force Management Policy,
DoD.

ACTION: Notice of an Analysis of the USFSPA and report to Congress.

SUMMARY: Pursuant to Section 643 of P.L. 105-85, the National Defense Authorization Act (NDAA) for Fiscal Year 1998, October 23, 1997, notice is hereby given of a comprehensive review of the Uniformed Services Former Spouses' Protection Act (USFSPA) and the preparation of a report to Congress regarding USFSPA. Section 643 of NDAA requires DoD to examine and compare, respectively, the protections, benefits and treatment afforded under Federal law to members and former members of the Uniformed Services and their former spouses; and the protections, benefits and treatment afforded under such laws to employees and former employees of the Federal government and their former spouses. In connection with its analysis, DoD seeks the written comments of tax-exempt organizations, which have as a stated purposes the representation of current or former military members and/or their spouses or former spouses. The comments of these organizations will constitute a portion of the information DoD uses in preparing its report.

The DoD review will include an analysis of all legal authorities that: `` . . . establish, provide for the enforcement of, or otherwise protect the interests of members and former members of the uniformed services and former spouses of such persons in retired or retainer pay of members and former members; or provide other benefits for members and former members of the uniformed services and former spouse of such persons. . ."

(Legal Authorities: 10 U.S.C. 1062, 1072, 1076, 1086a, 1097, 1401, 1401a, 1405-1409, 1447-1460B) The report to Congress will include the following elements: (a) the experiences of the Uniformed Services in administering the legal authorities (including the effectiveness of legal assistance provided by DoD); (b) the experience of members and former members and their spouses and former spouses with respect to the legal

authorities, including the application of the legal authorities by State courts; (c) a discussion of the history of State laws and court decisions which interpret the legal authorities; and (d) an analysis of the extent to which State courts' interpretations of applicable law are consistent with the legal authorities. DoD believes the views of the organizations referred to above will be useful in carrying out its responsibilities under NDAA.

DATES: Comments are required February 22, 1999.

ADDRESSES: Office of the Assistant Secretary of Defense for Force Management Policy, Compensation, 4000 Defense Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT:

LTC Tom Emswiler, OASD(FMP)MPP/COMP, 4000 Defense Pentagon, Room 2B279, Washington, DC 20301-4000; telephone (703) 693-1066; facsimile number (703) 697-8725.

SUPPLEMENTARY INFORMATION: For an organization's comments to be considered, they must be accompanied by copies of the following documents: (a) its certificate or articles of incorporation, by-laws and all amendments thereto; (b) current Internal Revenue Service determination letter; and (c) resolutions, certified by the Secretary of the organization, adopted by the governing body (e.g. board of directors) which approve the comments and authorize their submission to DoD. The Chairman of the Board or the President or an equivalent executive officer must submit the organization's comments.

The comments should address all of the following matters: (a) An assessment of the effectiveness and fairness of the USFSPA and other legal authorities; (b) those aspects, if any of the legal authorities which are well covered and do not require changes; and (c) those aspects of the legal authorities which do not operate properly or are ineffective and suggestions for improvement.

Dated: December 18, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Appendix E

Listing of Private, Tax-Exempt Organizations Which Submitted Comments and Information in Response to the Department of Defense Notice in the December 23, 1998 *Federal Register*

Organization	Date of Letter Accompanying Submission
American Association of Retired Persons	
American Retirees Association	January 25, 1999
Committee for Justice and Equality for the Military Wife	
Ex-Partners of Servicemen (Women) for Equality	February 18, 1999
National Military and Veterans' Alliance (Submission supported the positions of the American Retirees Association)	February 8, 1999
National Action for Former Military Wives	
National Military Family Association	February 12, 1999
Non-Commissioned Officers Association of the United States of America (Submission supported the positions of the American Retirees Association)	February 12, 1999
The Retired Officers Association	February 11, 1999
Women in Search of Equity for Military in Divorce	March 15, 1999
XPOS Seniors (senior ex-partners of servicemen through active duty years)	

APPENDIX F

USFSPA Background Information

Evolution of the Law Applicable to the Division of Retired Pay

The following pages provide an overview of how the Former Spouses' Protection Act evolved.

Related Federal Laws in Effect Prior to the Act. The Federal government first became involved in divorce matters related to its civilian employees and members of the armed forces¹ in 1975. Public Law 93-647 (1975)² authorized the Government to recognize State court garnishment or attachment orders of current or retired pay for an alimony or child support obligation pursuant to a court-ordered divorce decree.³ Public Law 95-30 (1977)⁴ limited the amount of current or retired pay that could be garnished or attached for payment of court-ordered child support or alimony obligations.⁵ These laws applied to both civilian employees and members of the Armed Forces.

In 1978, Congress enacted Public Law 95-366 and directed OPM to comply with the terms of a State court order or property settlement agreement in connection with the divorce or legal separation of a Federal civilian employee. This law did not apply to military personnel.⁶ No limitation was placed on the amount of retired pay subject to allocation to a former spouse pursuant to court order.

In 1980, Congress enacted the Foreign Service Act,⁷ entitling the former spouse of an FS employee to receive a *pro rata* share, up to 50 percent, of the employee's retired pay. This right to receive a share of retired pay could be modified only by written agreement of the parties or by court order. A minimum marriage duration requirement of 10 years was included in the legislation.⁸ The Bill also contained a provision that generally stopped payments to former spouses who remarried before a certain age.⁹

¹ As used in this Report, "armed forces" means the active duty and Reserve Components of the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. § 101(a)(4); 37 U.S.C. § 101(4).

² 93-647, section 101, 88 Stat. 2357 (1977).

³ Codified at 42 U.S.C. section 659.

⁴ 95-30, Title V, section 501, 91 Stat. 161, 162 (1977).

⁵ 15 U.S.C., § 1673(b); 5 CFR Part 581 (1982).

⁶ Codified at 5 U.S.C. § 8354(i).

⁷ 96-465, Title I, § 804, 94 Stat. 2102 (1980).

⁸ 22 U.S.C. § 4044 *et. seq.*

⁹ Foreign Service Act of 1980, section 814.

Pre-Act State Court Decisions. Prior to the USFSPA, those eight states which followed community property laws, as well as some non-community property law states, treated retired pay as “property” subject to division in connection with domestic relations proceedings under State law. In general, these states treated property earned by either spouse during marriage as community property and thus subject to division on divorce. On the other hand, each spouse was entitled to retain his or her “separate” property, which, in general, consists of assets acquired before and gifts received during the marriage.

The *McCarty* Decision. On June 26, 1981, the United States Supreme Court, in the case of *McCarty v. McCarty*,¹⁰ held that Federal law prohibited a State court from using State community property laws to divide military retired pay. In *McCarty*, the Court addressed the issue of whether military retired pay constituted community property in a divorce under California law. The Court determined that military retired pay was not community property on the basis that “the application of community property principles to military retired pay threatens grave harm to ‘clear and substantial’ Federal interests.”¹¹ Specifically, “division of retired pay has the potential to frustrate” the objectives of Congress in establishing the military retirement system.¹² According to the Supreme Court, those objectives are “to provide for the retired service member, and to meet the personnel management needs of the active military forces.”¹³

In reaching its decision, however, the Supreme Court “recognize[d] that the plight of an ex-spouse of a retired service member is often a serious one” which “may be mitigated to some extent by the ex-spouse’s right to claim Social Security benefits . . . and to garnish military retired pay for the purposes of support.” In so commenting, the Court recognized that it is difficult, due to frequent moves, for a military spouse to build his or her own property rights.¹⁴ Few, if any, pension plans vest in the period of a typical military assignment.¹⁵ Additionally, for many, military retired pay was the sole asset of significance. If a State court could not award it upon divorce, the former spouse could be left with nothing.¹⁶ Even if the spouse was able to reenter the workforce, the former spouse would still have relatively little retirement benefits to build upon.¹⁷ Finally, even in those states where military retired pay was awarded as a marital asset, if the member or former member left that State’s jurisdiction, it could become impossible for the former spouse to enforce the judgment.¹⁸ Consequently, the Court concluded by stating: “Congress may well decide, as it has in the Civil Service and Foreign Service contexts, that more protection should be afforded a former spouse of a retired service member.”¹⁹ In so doing, and in accordance with the Court’s long-standing position on military issues, it reserved such a decision

¹⁰ 435 U.S. 210 (1981)

¹¹ 453 U.S. at 232.

¹² *Ibid.*

¹³ *Ibid.* at 232-233.

¹⁴ *Ibid.* at 210. See testimony of Representatives Schroeder, Hance and Fisher, “Hearing on H.R. 2817, H.R. 3677, and H.R. 6720, Legislation Related to Benefits for Former Spouse of a Military Retiree,” H.A.S.R. 96-65, 96th Cong., 2d Sess.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.* at 235.

to Congress.²⁰

Congress' Response to the *McCarty* Decision. In the wake of *McCarty*, several bills were introduced in Congress which were intended to reverse the effect of the Supreme Court's decision. In fact, several representatives, including Representative Patricia Schroeder (D-CO) who had been one of the most active proponents of such legislation, had introduced legislation to allow State courts to divide military retired pay even prior to the *McCarty* decision.²¹ After several bills were introduced, but not enacted, the USFSPA became law when it was included as part of the Department of Defense Authorization Act for Fiscal Year 1983.²²

Legislative History of the USFSPA

Initial Proposals in the House. In the early 1980s, a number of bills were introduced to address the issue of divisibility of retired pay. The proposals discussed below are arranged in chronological order.

H.R. 2817. This proposal, introduced by Representative Schroeder, would have allowed division of military retired pay subject to the following limitations: (1) the marriage must have overlapped at least 10 years of at least 20 years of creditable service; (2) division of retired pay would be pro-rated based on years of service (but not to exceed 50 percent to the former spouse); (3) the member would be required to provide survivor benefits for the former spouse unless the former spouse declined coverage; and (4) payments to the former spouse would terminate upon remarriage before age 60. After consideration at a May 28, 1980 hearing of the Subcommittee on Military Compensation of the House Armed Services Committee, however, no further action was taken on this measure.

H.R. 3039. This bill, which was also introduced by Representative Schroeder, contained similar provisions to and was modeled after the Foreign Service Act (Public Law 96-465). H.R. 3039 was the companion bill to S. 888 introduced by Senator Mark Hatfield (R-OR). Both H.R. 3039 and S. 888 would have permitted division of retired pay subject to the following provisions: (1) remarriage before age 60 would terminate the right to a portion of the retirement benefits; (2) unless otherwise ordered by the court, a presumption of a *pro rata* distribution of retired pay to a former spouse would apply to marriages over 10 years; (3) a limit of 50 percent would be imposed on the amount of a member's retired pay that could be paid to a former spouse who was married to the member throughout the member's entire period of creditable service; (4) State courts could not force the early retirement of a member or an early payout of retirement benefits; and (5) the new law would not apply retroactively.

H.R. 1711 and S. 1453. In 1981, Representative Hance introduced H.R. 1711 which would have extended the law applicable to the division of Civil Service retirement benefits to retired pay. Additionally, Senator Dennis DeConcini (D-AZ) introduced S. 1453, which would have provided that the division of property and retired pay be governed exclusively by the law of the State in which the proceedings were conducted.

²⁰ Ibid. at 235-236.

²¹ See, e.g., H.R. 2817 (1980).

²² Public Law 97-252, 96 Stat. 718 (1982). The USFSPA was contained in Title X, §1001-1006.

Initial Proposals in the Senate. On September 22, 1981, the Subcommittee on Manpower and Personnel of the Senate Armed Services Committee considered H.R. 1711 and S. 1453. Although neither of the proposals became law, the Chairman of the Subcommittee, Senator Jepsen, introduced S. 1814 as a counter-proposal for review before the full Committee. This was the bill that was later to become the Act. On July 14, 1982, the Senate Armed Services Committee referred the bill to the full Senate for consideration. Senator Jepsen intended this proposal to reverse the Supreme Court's decision in *McCarty*, retroactive to June 26, 1981, the date of the decision. That is, the Committee intended the legislation to restore the law to what it was prior to the *McCarty* decision when State courts were permitted to apply State divorce law to retired pay.²³

Major Provisions of S. 1814. Under the proposal, no automatic right was given to a former spouse to receive an allocation of retired pay. Rather, retired pay could, *in the discretion of the State courts*, be treated as either the sole property of the member or as the property of the member and spouse. The division of retired pay would be determined by a court which has personal and subject matter jurisdiction over the parties based on the divorce law of the State in which the court is situated. However, S. 1814 placed several limitations on the power of a State court to divide retired pay, including the following: (1) the total amount of disposable retired pay allocable to a spouse or former spouse (or to more than one spouse and former spouse) could not exceed 50 percent of such pay; (2) no right was created which would allow a spouse or former spouse to sell, assign, or transfer an interest in retired pay; and (3) the courts could not direct a member to retire at a particular time to effectuate current payment of retired pay to a spouse or former spouse.²⁴

Definition of "Net Disposable Retired Pay." As originally introduced, S. 1814 provided that only "net disposable retired pay" was subject to division by State courts. It defined "net disposable retired pay" as "the total retired pay to which a former member is entitled each month under the provisions of title 10, but not including pay under chapter 61 of title 10 for disability retirement, less several specific deductions."²⁵ The Armed Services Committee noted that the "specific deductions," including disability pay, that are to be made from the monthly retired pay "generally parallel those existing deductions which may be made from the pay of Federal employees and military personnel before such pay is subject to garnishment for alimony or child support payments under section 459 of the Social Security Act (42 U.S.C. 659)."²⁶

Minimum Marriage Requirements. To be eligible for an allocation of retired pay, S. 1814 required a spouse or former spouse to have been married to the member for a period of at least 5 years during which time the member was performing creditable service for retirement purposes.²⁷ Under the House version of the bill, retired pay could be treated as divisible only if the couple

²³ Senate Report 97-502, p. 5.

²⁴ S. 1814 also provided for a maximum limitation of 65 percent of monthly disposable retired pay for all court orders and under all legal processes pursuant to section 459 of the Social Security Act. See Senate Report 97-502, p. 18; 10 U.S.C. section 1408(e)(4)(B).

²⁵ Senate Report 97-502, p. 14.

²⁶ Ibid.

²⁷ Senate Report 97-502, p. 9.

had been married for 10 years or more during which time the service member served 10 years of service.²⁸ The Armed Services Committee considered, but rejected such a provision. In so doing, the Committee stated as follows:

Adoption of any duration of marriage requirement would be directly contrary to the primary purpose of S. 1814—to return to the States the authority to treat military pensions in the same manner as they treat other retirement benefits . . . [A] certain number of years of marriage should not, in and of itself, qualify or disqualify a spouse or former spouse for the benefits of this legislation . . . The duration of the marriage should only be one of a number of factors applied in deciding any entitlement to a property interest in retired pay; it should not necessarily be the determining one.”²⁹

The Armed Services Committee further stated, with respect to this issue, that “if a marriage requirement of any duration was included in the bill, it would restrict the courts’ ability to deal equitably with those who were married less than the required number of years.”³⁰ Instead, the Committee determined to remove the duration of marriage requirement from the legislation. In its place, the Committee proposed to limit allocations of retired pay eligible for direct payment from DFAS to marriages of ten years or more while the member performed military service.³¹

Termination on Remarriage. A House amendment to the proposal included a provision to the effect that “payments for alimony and division of retired pay would terminate if the former spouse remarried before age 60.” However, the conferees agreed to delete this provision.³²

Legislative Intent

Background and Purpose. The USFSPA was enacted as Title X of the Department of Defense Authorization Act for Fiscal Year 1983³³ to reverse the limitations imposed by the Supreme Court’s decision in *McCarty* that barred State courts from judicial enforcement of domestic relations orders applicable to retired pay.

The Senate Armed Services Committee Report sets out the purposes of the USFSPA, as follows:

The primary purpose of the bill was to remove the effect of the United States Supreme Court decision in *McCarty v. McCarty*, 453 U.S. 210 (1981). The bill would accomplish this objective by permitting Federal, State, and certain other courts, consistent with the appropriate laws, to once again consider military retired pay when fixing the property rights between the

²⁸ House Report 97-749, p. 165.

²⁹ Senate Report 97-502, p. 11.

³⁰ Ibid.

³¹ House Report 97-749, pp.166-167.

³² House Report 97-502, p.167.

³³ 97-252, Title X, sections 1001-1006, 96 Stat. 718, 730-738 (1982); codified at 10 U.S.C. section 1408.

parties to a divorce, dissolution, annulment or legal separation. These courts may now apply such laws to the retired pay of Federal civil servants, Foreign Service personnel and private sector employees.³⁴

With respect to its rationale for the creation of the right of former spouses to an allocation of retired pay, the Senate Armed Services Committee stated as follows:

The committee finds that frequent change-of-station moves and the special pressures placed on the military spouse as a homemaker make it extremely difficult to pursue a career affording economic security, job skills and pension protection. Therefore, the committee believes that the unique status of the military spouse and that spouse's great contribution to our defense require that the status of the military spouse be acknowledged, supported and protected . . .³⁵

* * *

Based on these considerations and the record developed in the hearings, the committee believes that returning to the State courts — with certain limitations — the discretion to deal with military retired pay in divorce cases is a sound prescription for the admitted problems created by the *McCarty* decision . . .³⁶

Rationale for Excluding VA Disability Compensation From “Retired Pay”. As discussed above, the primary purpose of the USFSPA was to reverse the effect of the *McCarty* decision.³⁷ However, the USFSPA's plain language grants State courts the authority to treat only disposable retired pay, not total retired pay, as property subject to distribution in a divorce proceeding.³⁸ Since VA disability compensation is excluded from the definition of disposable retired pay, it is not subject to division by State courts.

In the case of *Mansell v. Mansell*,³⁹ the United States Supreme Court stated that “[t]he legislative history [of the USFSPA] does not indicate the reason for Congress’ decision to shelter from community property law that portion of military retired pay waived to receive veterans’ disability payments.”⁴⁰ As the *Mansell* court noted in a footnote to its opinion:

The only reference to the definitional section is contained in the Senate Report which states that the deductions from total retired pay, including retired pay waived in favor of veterans’ disability payments, generally parallel those existing deductions which may be made from the pay of Federal employees and military personnel

³⁴ Senate Report 97-502 (Committee on Armed Services), p.1, accompanying S. 1814, 97th Congress, 2d Session (1982).

³⁵ Ibid. at pg. 6.

³⁶ Ibid. at p. 8.

³⁷ 453 U.S. 210 (1981).

³⁸ 10 U.S.C. § 1408(a)(4).

³⁹ 490 U.S. 581 (1989).

⁴⁰ Ibid. at 592.

before such pay is subject to garnishment for alimony or child support payments under section 459 of the Social Security Act (42 U.S.C. 659). [S. Rep. No. 97-502.] This statement, however, describes the defined term...[but] it is not helpful in determining why Congress chose to use the defined term— 'disposable retired or retainer pay'—to limit state court authority . . .⁴¹

DoD has long maintained that “current law prohibits divisions of disability compensation [and that] these limitations should be retained . . . and amounts of retired pay subject to division should be limited by affirmative Federal law.”⁴² In Congressional hearings in 1990, at which the issue of retaining the deductible status of VA disability compensation was discussed, DoD representatives stated as follows:

Current law should not be modified to permit a division of disability compensation. . . .⁴³ More importantly, Federal law has traditionally treated disability compensation as a personal entitlement. As a result, reductions to retired pay reflecting a waiver of retired pay to receive disability compensation from the Department of Veterans Affairs [DVA] should continue to reduce the amount of retired pay that may be divided. Long-standing prohibitions against dual receipt of retired pay and disability compensation substantially reduce a member's entitlement to longevity-based retired pay compensation when there is concurrent entitlement to disability compensation. Since Federal law compels reduction of longevity-based retired pay, amounts divisible as disposable retired pay should be similarly reduced.... In addition, determinations of disability for purposes of entitlement to compensation from the DoD or the DVA is not at the discretion of the member. Each case of military disability is reviewed by boards of professionals who evaluate the specific physical condition of the member. DVA disability determinations are made in a similar manner. For these reasons, disability compensation should not be diverted from the disabled member.⁴⁴

Relationship to Actions for Alimony and Child Support. The deductions from total retired pay used to determine disposable retired pay generally paralleled those existing deductions which could be made from the pay of Federal employees and military personnel before such pay was subject to garnishment for alimony or child support under section 459 of the

⁴¹ Ibid. at 592, n. 14.

⁴² See, e.g., House of Representatives, Hearing Before the Military Personnel and Compensation Subcommittee of the Committee on Armed Services, 101st Congress, 2d Session, April 4, 1990, pp. 246, 248.

⁴³ The following sentence was omitted from the quotation: “The domestic relations law of most states do not treat compensation for personal injury (including disability compensation) as a marital asset.” An examination did not reveal any State laws which treat disability compensation (as distinguished from damages received for personal injuries) paid after termination of employment as a non-marital asset. It is noted that disability benefits paid under private employer-sponsored retirement plans are not exempted from division as marital property pursuant to a Qualified Domestic Relations Order.

⁴⁴ Ibid. at pp. 249-250.

Social Security Act (42 U.S.C. 659). Such deductions included “amounts required by law to be and which are deducted from retired pay, including amounts of retired pay withheld in order for the member to receive compensation from the Veteran's Administration under title 38 or to receive pay under title 5 for employment by the United States.”⁴⁵ Subsequently, this law was changed to allow garnishment of the pay of both civilian employees and members of the Armed Forces for alimony and child support. The law does not, however, allow garnishment of VA disability for property awards.

Prior Law. In 1982, Section 659(a) of title 42 provided, in relevant part, as follows:

Notwithstanding any other provision of law . . . moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States . . . to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States . . . were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments. (emphasis supplied).

Section 662(f)(2) of title 42 defined “based upon remuneration for employment” as:

[P]eriodic benefits . . . or other payments to such individual under . . . any other system or fund established by the United States . . . which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual . . .

This legislation included “*any compensation paid by the Secretary of Veterans Affairs to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive, within the definition of “remuneration for employment,” such compensation*” (emphasis supplied).

Thus, section 659 of title 42 removed a portion of the general bar to garnishment, divisibility, or assignment of veteran benefits as set forth in Section 3101(a).⁴⁶

Current Law. Section 662 of title 42 was subsequently repealed.⁴⁷ In its place, a “new” but substantially similar statute was enacted to permit enforcement of child support and alimony obligations.⁴⁸ This new statute provides that,

⁴⁵ 10 U.S.C. § 1408(a)(4).

⁴⁶ Later amended and redesignated as 38 U.S.C. § 5301.

⁴⁷ See Public Law 104-193, Title III, section 362(b)(1), August 22, 1996, 110 Stat. 2246.

⁴⁸ See 42 U.S.C. § 659; Public Law 104-193, Title III, § 362(a), 110 Stat. 2242 (1996).

[n]otwithstanding any other provision of law (including section 5301 of title 38),” enforcement of child support and alimony obligations is permitted from compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation.⁴⁹

Consequently, VA disability compensation can still be garnished or assigned for child support and alimony enforcement purposes.

⁴⁹ See 42 U.S.C. § 659(h)(1)(A)(i)(V).

Appendix G

H.R. 72

Uniformed Services Former Spouses Equity Act of 1999 (Introduced in the House)

106th CONGRESS

1st Session

H. R. 72

To amend title 10, United States Code, to revise the rules relating to the court-ordered apportionment of the retired pay of members of the Armed Forces to former spouses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

January 6, 1999

Mr. STUMP (for himself and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 10, United States Code, to revise the rules relating to the court-ordered apportionment of the retired pay of members of the Armed Forces to former spouses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Uniformed Services Former Spouses Equity Act of 1999'.

SEC. 2. TERMINATION OF PAYMENTS UPON REMARRIAGE OF FORMER SPOUSE.

(a) IN GENERAL- Section 1408(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

`(5) Payment from the monthly disposable retired pay of a member to a former spouse of the member pursuant to this section shall terminate upon the remarriage of that former spouse, except to the extent that the amount of such payment includes an amount other than an amount resulting from the treatment by the court under paragraph (1) of disposable retired pay of the member as property

of the member or property of the member and his spouse. Any such termination shall be effective as of the last day of the month in which the remarriage occurs.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to marriages terminated by court orders issued before, on, or after the date of the enactment of this Act. In the case of such a court order issued before the date of the enactment of this Act, such amendment shall apply only with respect to amounts of a member's retired pay that are payable for months beginning more than 180 days after the date of the enactment of this Act.

SEC. 3. AWARD OF RETIRED PAY TO BE BASED ON RETIREE'S LENGTH OF SERVICE AND PAY GRADE AT TIME OF DIVORCE.

(a) IN GENERAL- Section 1408(c) of title 10, United States Code, as amended by section 2, is further amended by adding at the end the following new paragraph:

`(6) In the case of a member as to whom a final decree of divorce, dissolution, annulment, or legal separation is issued before the date on which the member begins to receive retired pay, the disposable retired pay of the member that a court may treat in the manner described in paragraph (1) shall be computed based on the pay grade, and the length of service of the member while married, that are creditable toward entitlement to basic pay and to retired pay as of the date of the final decree. Amounts so calculated shall be increased by the cumulative percentage of increases in retired pay between the date of the final decree and the effective date of the member's retirement.'

(b) IMPLEMENTATION- With respect to payments to a former spouse from a member's disposable retired pay pursuant to court orders issued before the date of the enactment of this Act, the Secretary shall--

(1) within 90 days of such date, recompute the amounts of those payments in accordance with paragraph (5) of section 1408(c) of title 10, United States Code, as added by subsection (a); and

(2) within 180 days of such date, adjust the amount of disposable retired pay payable to that former spouse accordingly.

(c) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to court orders issued on or after June 25, 1981.

SEC. 4. LIMITATION ON TIME FOR SEEKING DIVISION OF RETIRED PAY.

(a) IN GENERAL- Subsection (c)(4) of section 1408 of title 10, United States Code, is amended to read as follows:

`(4) A court may not after the date of the enactment of the Uniformed Services Former Spouses Equity Act of 1999 treat the

disposable retired pay of a member in the manner described in paragraph (1) unless--

`(A) the court has jurisdiction over the member by reason of (i) the member's residence, other than because of military assignment, in the territorial jurisdiction of the court, (ii) the member's domicile in the territorial jurisdiction of the court, or (iii) the member's consent to the jurisdiction of the court; and

`(B) the member's spouse or former spouse obtains a court order for apportionment of the retired pay of the member not later than (i) two years after the date of final decree of divorce, dissolution, annulment, or legal separation, including a court ordered, ratified, or approved property settlement incident to such a decree, or (ii) the end of the six-month period beginning on the date of the enactment of the Uniformed Services Former Spouses Equity Act of 1999, whichever is later.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to final decrees of divorce, dissolution, annulment, or legal separation issued on or after June 25, 1981.

SEC. 5. LIMITATION ON APPORTIONMENT OF DISABILITY PAY WHEN RETIRED PAY HAS BEEN WAIVED.

(a) IN GENERAL- Subsection (e)(4) of section 1408 of title 10, United States Code, is amended by adding at the end the following new subparagraph:

`(C) Notwithstanding any other provision of law, a court may not treat as part of the disposable retired pay of a member under this section or as part of amounts to be paid pursuant to legal processes under section 459 of the Social Security Act (42 U.S.C. 659) amounts which are deducted from the retired pay of such member as a result of a waiver of retired pay required by law in order to receive compensation under title 38.'.

(b) AMENDMENTS TO SOCIAL SECURITY ACT- Section 459(h) of the Social Security Act (42 U.S.C. 659(h)) is amended--

(1) in paragraph (1)(A)(ii)--

(A) by inserting `or' at the end of subclause (III);

(B) by striking out `or' at the end of subclause (IV) and inserting in lieu thereof `and'; and

(C) by striking out subclause (V); and

(2) in paragraph (2)--

(A) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(B) by inserting after subparagraph (D) the following new subparagraph:

`(E) are paid by the Secretary of Veterans Affairs as compensation for a service-connected disability under title 38, United States Code, when military retired pay has been waived in order to receive such compensation;`.

(c) EFFECTIVE DATE- The amendments made by subsections (a) and (b) shall apply to court orders and legal processes issued on or after June 25, 1981. In the case of a court order or legal process issued before the date of the enactment of this Act, such amendments shall apply only with respect to retired pay payable for months beginning on or after the date of the enactment of this Act.

APPENDIX H

Protections, Benefits, and Treatment Afforded Under Federal Law to Employees and Former Employees of the Government and Their Former Spouses / Private Employer Retirement and Health Care Plans

Protections, Benefits, and Treatment Afforded Under Federal Law to Employees and Former Employees of the Government and Their Former Spouses

This appendix section discusses Federal (non-military) retirement systems which authorize a former spouse to receive an award of retirement benefits and/or a survivor annuity. The plans included in this analysis are the CSRS, the FERS, the Railroad Retirement Systems (Tier I and Tier II), CIA, Foreign Service Retirement and Disability System (FSRDS), the Foreign Service Pension System (FSPS), and the TSP.

Limitations on State Courts' Jurisdiction to Divide Retired Pay

CSRS/FERS. There is no automatic statutory retirement benefit for a former spouse. However, Federal law¹ permits the division of CSRS and FERS benefits between the retiree and a former spouse in conformity with State court orders. To be eligible for an allocation of retired pay, the former spouse must have been married at least nine months to a participant who has at least 18 months of creditable service. Otherwise, there are no special jurisdiction requirements. Federal law does not impose a statute of limitations on either the original award or subsequent modification of the award. A State court has the authority to allocate up to 100 percent of an employee's gross retired pay to a former spouse. However, OPM regulations provide that the former spouse cannot be paid more than the amount of the former employee's "net annuity." In general, the net annuity amount is calculated by subtracting specified items such as taxes, life insurance, health benefits, and amounts owed to the Federal government from the employee's gross retired pay. Any allocation of retired pay to a former spouse automatically reduces the amount paid to the retiree.

Railroad Retirement System. The Railroad Retirement System provides for the payment of two forms or "tiers" of benefits. Tier I benefits are equivalent to a Social Security benefit based on both railroad and non-railroad service. Tier II is a pension benefit analogous to a pension plan sponsored by a private employer, with benefits based on length of service and level of compensation. Tier II benefits may be divided as marital property. However, there is no automatic statutory division of Tier II benefits. They may be awarded only by a court order or a court-approved property settlement agreement. A State court has the authority to award up to 100 percent of the employee's gross Tier II benefit to a former spouse.

¹ 5 U.S.C. § 8345(j).

CIA. In general, Central Intelligence Agency (CIA) employees are covered by one of the following four retirement programs: (1) CSRS, (2) Organization Retirement and Disability System (ORDS), (3) FERS, or (4) Special Category (FERS Special). These four plans are provided under the Central Intelligence Agency Retirement Act (CIARA) which established the CIA retirement system. Under this system, spousal benefits are statutory. However, such benefits can be modified by court order or spousal agreement. Under CIARA, there is no statutory or regulatory definition of “disposable pay” for purposes of allocation of retired pay to a former spouse.

Categories of Former Spouses. There are three categories of eligible “former spouses” under the CIARA, as follows: (1) QFS, which includes a spouse who was married at least 10 years during the participant’s creditable service or married during 5 years of ORDS or FERS qualifying duties; (2) Former Spouse who is a former spouse to whom an employee voluntarily directs an annuity under the CIARA—even if the former spouse does not qualify for statutory benefits; and (3) Previous Spouse (PS), which includes a former spouse who was married to a participant for at least 9 months and who retires with at least 18 months of creditable service. A former spouse who does not meet the requirements to receive Former Spouse benefits may nevertheless be entitled to PS benefits under CIARA or former spouse benefits under FERS or CSRS.

ORDS. ORDS is a retirement system unique to the CIA. The parties must be married for 10 years during which time the participant performed at least 5 years of qualifying service. The years of marriage and service need not be consecutive. Only a QFS is entitled to a retirement annuity under ORDS.

FERS Special. FERS Special is another program unique to the CIA. The provisions of this program are virtually identical to ORDS. However, the amount of a Former Spouse’s entitlement is dependent upon whether he or she qualifies as a QFS or a Former Spouse.

Foreign Service Retirement and Disability System. FSRDS covers FS employees hired before 1984. Under FSRDS, a division of retired pay as marital property must be made pursuant to a written court order issued within 12 months of the date of divorce. For a former spouse to be eligible for an automatic share of retirement benefits, the parties must be married at least 10 years with 5 years of concurrent FS service. A court order dividing retirement pay takes precedence over the “automatic share” provisions of FSRDS. As in the case of CIARA, there is no statutory or regulatory definition of “disposable pay” subject to division or distribution, and the former spouse can receive up to 100 percent of a former employee’s retired pay.

Foreign Service Pension System (FSPS). This system includes participation in Social Security, a basic pension plan and the TSP. A former spouse is statutorily entitled to an allocation of retired pay. However, benefits can be modified by court order or a court-approved settlement agreement. FSPS requires that the parties be married at least 10 years during 5 years of concurrent creditable service for the former spouse to be entitled to a statutory share of the retired pay. A former spouse is entitled to automatic

benefits (capped at 50 percent of the former employee's retired pay) unless otherwise expressly provided by agreement between the spouses or court order. FSPS also prohibits a retiree from making any election or modification of any election which would diminish the entitlement of a former spouse to any benefit granted by statute, agreement or court order.

TSP. The TSP is a retirement savings and investment plan which covers substantially all Federal employees. The TSP was established as a "defined contribution plan" under the Federal Employees' Retirement System Act of 1986. As a defined contribution plan, it provides Federal civilian employees with the same type of savings and tax benefits that many private employers provide to their employees under "401(k)" and "403(b)" plans.² Employees covered by FERS and CSRS can contribute to the TSP. However, the participation rules applicable to such employees are different. Inasmuch as the TSP is a defined contribution plan, the retirement income to be received thereunder depends solely on the amounts contributed to a participants' TSP account and the earnings (and losses) on such contributions.

In general, participants in FERS can contribute up to 11 percent of their basic pay each pay period to their TSP account.³ In addition, the agency which employs FERS participants makes an automatic contribution to TSP equal to 1 percent of participants' basic pay. Such contributions are made, on a dollar-for-dollar basis, with respect to the first 3 percent of basic pay contributed by participants and 50 cents of each one dollar for the next 2 percent of pay contributed to the TSP. Employees who are covered by CSRS may contribute up to 5 percent of their basic pay to the TSP on a pre-income tax basis. No agency contributions are made to TSP with respect to CSRS participants.

The TSP is administered by the Federal Retirement Thrift Investment Board (Board). A decree of divorce, annulment, or separation can require an allocation from a participant's TSP account to a spouse or former spouse. Such orders will be honored by the Board if they meet the requirements of the Board's regulations. The Board will also honor *preliminary* court orders issued in connection with divorce, annulment, and legal separation actions, prior to the issuance of a decree by the State court, for the purpose of freezing a participant's TSP account. The Board will also honor an order which amends a prior order with respect to a participant's TSP account. Lastly, the Board processes orders for the enforcement of alimony and child support obligations.⁴

To be honored by the Board, a court order must satisfy the following three requirements: (1) it must expressly relate to the participant's TSP account, (2) if it requires payment from the account, the amount must be clearly determinable, and (3) the order must require payment to a person other than the participant. To expressly relate to a participant's TSP account, the order must refer to the TSP by name and account

² Section 7701(j) of the Internal Revenue Code provides that the TSP is to be treated as a trust qualified under Section 401(a), which is exempt from tax under Section 501(a). These are the same provisions that apply to tax-qualified plans sponsored by private employers.

³ This applies to the remainder of 2001. This contribution limit will increase by one percentage point each year through 2005, after which participants' contributions will be restricted only by the Internal Revenue Code's annual limits.

⁴ See generally, 5 U.S.C. §§ 8435(d) and 8467; and, 5 C.F.R. Part 1653.

balance. To be clearly determinable, the order must contain the means by which the amount payable to the former spouse can be calculated with certainty. This requirement can be satisfied either by awarding a specific dollar amount or dividing the TSP account by applying a fraction, a percentage or formula that does not contain variables found outside government employment records. Lastly, the order must specify a date or event as of which the amount of the former spouse's benefit is to be calculated. Payment of the allocation of the account balance must be made to a current or former spouse, the attorney for the current or former spouse, the dependent children of the participant, other dependents of the participant, or the attorney for the participant's dependent children or other dependents.

An order that requires payment of the TSP account at a future date cannot be honored unless the following two conditions are satisfied: (1) it is possible to calculate the amount of the entitlement currently, and (2) the award provides for interest or earnings to be paid on the amount of the award until the future date of payment. However, even if these requirements are satisfied, payment of the TSP account will be made as soon as practicable rather than at the future date specified. Amounts distributable pursuant to a court order from the TSP are paid solely in the form of a single lump sum.

For Federal income tax purposes, if payment of the TSP account is made to a spouse or former spouse of the participant, the payment can be included in the recipient's gross income for the year in which the payment is made. Amounts distributed to a spouse or former spouse can be transferred directly to or rolled over to an IRA or another qualified plan which accepts rollover contributions. On the other hand, if the payment is made to another individual, it can be included in the gross income of the TSP participant for the tax year in which the payment is made. These payments cannot be rolled over or transferred to an IRA or qualified plan.

Determination of Former Spouse's Allocation

CSRS/FERS. There is no automatic entitlement to benefits under either of these plans; likewise, there is no required method of computing an allocation to a former spouse. Both plans will accommodate formulas, hypothetical awards and single lump sum payments with respect to the former spouse's entitlement. However, the order must contain all information necessary to calculate the entitlement or such information must be available in OPM files. OPM computes both formula and hypothetical awards.

Railroad Retirement System

Tier I Benefits. As noted above, Tier I constitutes the basic benefit under this system. It includes an automatic entitlement to a former spouse who meets certain eligibility requirements. Specifically, a "divorced wife" benefit (which includes divorced husbands) is payable to a former spouse who was married to an employee for at least 10 years, who is unmarried when applying for benefits, and is at least 62 years of age if applying for a reduced annuity (or at least age 65 if applying for a full annuity). If,

however, a former spouse would be entitled to a greater Social Security benefit than the amount provided by Tier I benefits, because of his or her own work record, then the former spouse will receive his or her own Social Security benefits instead of the Tier I “divorced wife” benefit. The retiree must be in pay status for the former spouse to begin receiving his or her allocation.

Tier II Benefits. There is no automatic award of Tier II benefits to a former spouse. However, the benefits may be characterized as marital or community property subject to distribution in accordance with property settlement agreements or court decrees. To be valid, the court order or property settlement must award a specific portion of the retirement benefit to the former spouse. The court may award a former spouse up to 100 percent of the employee’s retirement benefits. However, a typical award is 50 percent or less of such benefits. The amount awarded is deducted from the amount paid to the retiree. There are no age or length of marriage requirements for a former spouse to collect Tier II benefits.

CIA. Several factors affect the amount of retirement benefits which may be awarded to the former spouses of CIA employees, including the particular CIA retirement system involved, the date of divorce, the date of the employee’s retirement, the age of the former spouse, remarriage factors, application of deadline dates and whether a qualifying court order is in effect. To be valid, a court order must identify the particular CIA retirement program under which the former spouse will receive benefits. Benefits are funded by either a reduction in the employee’s retired pay or through a special appropriation. Benefits can be determined based on a statutory entitlement, a court order, the agreement of the parties, or an employee’s voluntary election. The presumptive benefit (unless modified by agreement or court order) is 50 percent of the *pro rata* share of the employee’s retirement benefit. The *pro rata* share is a fraction represented by the numbers of days the couple were married during the employee’s creditable service divided by the total number of days of creditable service.

FSRDS. This system provides for an automatic former spouse benefit of a *pro rata* share of 55 percent of the former employee’s retired pay if no court order provides to the contrary. However, a former spouse can receive up to 100 percent of the annuity by either court order or a written agreement. Thus, a former spouse can receive an allocation of retired pay in one of the following three ways: (1) court order; (2) court-approved written agreement of the parties; or (3) qualification for the automatic former spouse benefit. The program applies to those participants hired before January 1, 1984 and who chose not to join the FSPS.

FSPS. Under this system, a former spouse is entitled to a “statutory share” of retired pay, unless a court order or spousal agreement provides otherwise. The statutory share is determined by a fraction. The numerator is the number of years of marriage during the retiree’s creditable service, while the denominator is the total number of years of creditable service. For example, if the retiree and former spouse were married during the entire period of creditable service of the employee, the former spouse’s share would be 50 percent of retired pay.

TSP. There is no statutory presumption or entitlement of a former spouse to receive an allocation of a TSP account balance. The maximum amount awardable under TSP is 100 percent of the vested amount allocated to the employee's TSP account at the time of the divorce. Contributions made to the account and earnings after the divorce are not subject to automatic allocation to the former spouse. Remarriage of the former spouse does not affect a former spouse's allocation of a TSP account balance.

Direct Payments of Allocations to Former Spouses and Effect of Remarriage

CSRS/FERS. There is no length of marriage requirement which must be satisfied for a former spouse to receive direct payments. However, a former spouse cannot receive payments until the employee retires and begins receiving retired pay. There is no statutory or regulatory requirement that payments of retired pay to a former spouse terminate on his or her remarriage. However, a court order or property settlement agreement may provide for such payments. Payments to a former spouse terminate on the death of the retiree.

Railroad Retirement System. Under Tier I, payments are made directly to the former spouse. Tier II payments can be paid to a former spouse either directly or by the retiree. All payments commence upon receipt of retirement benefits by the retiree. Tier I benefits terminate upon the remarriage of the former spouse. However, if the subsequent marriage ends by reason of death, divorce or annulment, the former spouse's allocation can be reinstated. The authorization to divide Tier II benefits does not contain a remarriage provision. Nonetheless, this could be supplied by court order or agreement of the parties.

CIA. Direct payments to a former spouse are permitted under all four CIA retirement programs. A former spouse who does not meet the length of service requirements to be designated a QFS may be entitled to a share of the retiree's annuity on the basis of Executive Order No. 12197 (March 5, 1980). This Executive Order authorizes payments to the extent expressly provided for in a court-approved property settlement agreement or court order. Under ORDS, entitlement to a retirement annuity is permanently lost if a QFS remarries before reaching age 55 *and* before payment of his or her allocation of retired pay begins. There is no remarriage penalty for a PS unless otherwise specified in a court order. Under FERS/SP, entitlement to an allocation of retired pay will be permanently lost if the QFS or former spouse remarries before age 55 *and* before payment of his or her allocation of retired pay begins. A court order may lower this age or the parties may agree to lower this age in a property settlement agreement.

If a former spouse remarries [on or] after reaching age 55, his or her allocation of retired pay is not affected. However, if the remarriage occurs before the former spouse reaches age 55, his or her allocation is terminated and cannot be reinstated, even if the remarriage ends in death or divorce. A former spouse who remarries before age 55 will lose his or her allocation of retired pay. A court order can modify this remarriage

penalty. However, when a court order does so, the allocation will be converted to a court-ordered apportionment as opposed to a statutory entitlement.

FS. Direct payments to a former spouse are available. The payments can begin when the employee retires and begins collecting retirement or upon the entry of a court order subsequent to the retiree leaving the FS.

TSP. Unless the former spouse elects to receive his or her allocation in the form of an annuity directly to the former spouse, the allocation will be distributed in a single lump sum to an IRA. A single sum payment of the allocation from a TSP account is made directly to the former spouse, an IRA owned by the former spouse, his or her attorney, or the dependent children of the employee or their attorney.

Survivor Benefit Programs

CSRS/FERS. Under CSRS, a survivor annuity can be paid to the former spouse if provided by a court order. Under FERS, a lump sum death benefit is payable. A survivor annuity may be payable to the former spouse if the employee had at least ten years of creditable service. The provision of a survivor annuity to a former spouse results in a reduction of the employee's retired pay. A retiring employee may also elect to provide a survivor annuity to a former spouse. However, if the employee has remarried, the election must be consented to by the current spouse.

If the employee dies while actively employed after completing at least 18 months of creditable civilian service and dies while enrolled in CSRS or FERS, a court-ordered survivor benefit is payable to the former spouse.

If a former employee dies before becoming eligible for CSRS benefits, no survivor annuity can be paid to a former spouse, regardless of the terms of a court order. Under limited circumstances, a survivor annuity can be paid under FERS to a former spouse where the employee dies before retirement.

The maximum possible combined totals of all current and former spouse survivor annuities are 55 percent of the employee's life annuity under CSRS and 50 percent under FERS. As a result, the award of a survivor annuity to a former spouse reduces the amount of survivor annuity for the employee's spouse. The survivor annuity terminates if the former spouse remarries before age 55 or the annuity is otherwise required to terminate by court order. A survivor annuity that ends on the remarriage of the former spouse cannot be reinstated if the remarriage also ends in divorce.

CIA. A qualifying former spouse may receive a *pro rata* share (up to 55 percent) of the retiree's basic annuity unless a court orders otherwise. A prior spouse who does not satisfy the criteria for being treated as a "qualified former spouse" is nevertheless eligible to receive a portion of the survivor annuity if awarded in a State court order. Any election by the participant to provide a full or partial survivor annuity must be made within 2 years of the date of a post-retirement divorce. An election is ineffective if it

conflicts with a qualifying court order. An election is also ineffective if it causes the combined total of any current or former spouse survivor annuities to exceed 55 percent of the participant's unreduced retirement annuity.

There is a remarriage penalty under the ORDS program. The survivor annuity will be terminated if a QFS remarries before age 55, but after the commencement of the survivor benefit. The annuity can be reinstated if the subsequent marriage ends due to death or divorce. If a prior spouse remarries before age 55 and before the annuitant's death, the survivor annuity is permanently lost. Under FERS Special, the survivor benefit is terminated if the QFS or former spouse remarries before age 55, but after the commencement of the survivor benefit. As in the case of ORDS, the benefit may be reinstated if the remarriage ends due to death or divorce.

FS. In the case of the FS, the retiree pays the cost of a survivor annuity by receiving a reduced annuity. Benefits start at the retiree's death regardless of the age of the former spouse. There is no length of marriage requirement if the pension is expressly addressed in a court order. If the order does not address the issue, the marriage requirement (10 years of marriage during which the member served at least 5 years in the FS) must be met. If the parties were married during the entire creditable service of the employee, the survivor annuity is equal to 55 percent of the retiree's annuity. If the marriage was for a shorter period, the survivor annuity will be a *pro rata* share of 55 percent of the retiree's annuity. A survivor annuity will terminate if the former spouse remarries before age 55. Likewise, benefits can be reinstated if the subsequent marriage ends in divorce or death.

A "former spouse" (a defined term meaning ten years of marriage during creditable service, at least 5 years of which were during FS) is entitled to a survivor annuity as long as the annuity has not been waived or a court has not issued an order to the contrary. Additionally, a State court can order a survivor annuity to be allocated to the former spouse. The annuity terminates if the former spouse remarries before age 55. If the survivor annuity is terminated because of remarriage, and the subsequent remarriage terminates, the survivor annuity can be restored if the former spouse repays any lump sum received on the termination of the annuity. If the parties were married during the entire creditable service of the employee, the former spouse's survivor annuity will be equal to 50 percent of the retiree's annuity. If the marriage was for any period less than that entire creditable service of the employee, the surviving spouse is entitled to a *pro rata* share of 50 percent of the retiree's annuity.

TSP. There are no survivor annuity provisions under the Federal Employees' TSP with respect to a former spouse. Rather, the former spouse is simply awarded a share of the employee's TSP account balance. An order may require a former spouse to be treated as the employee's surviving spouse with regard to all or any part of the survivor benefits payable after the death of the employee. In this case, if the employee remarries, the subsequent spouse could not be treated as a surviving spouse and would thus not receive a surviving spouse benefit on the employee's death—at least as to benefits accrued through the date specified by the Qualified Domestic Relations Order (QDRO).

Other Benefits for Former Spouses of Government Employees

A former spouse may continue coverage under the Federal Employees' Health Benefit Program (FEHBP) and receive an assignment of life insurance coverage under the Federal Employees' Group Life Insurance program (FEGLI).

Continued Health Plan Coverage. A former spouse who receives an allocation of retired pay under CSRS, FERS, ORDS, FERS Special, FSRDS or FSPS qualifies for coverage under the FEHBP, if the former spouse: (1) was previously enrolled in FEHBP as a "family member" at any time during the 18 month period ended on the date of divorce; (2) has not remarried prior to reaching age 55; (3) currently receives, or has a future entitlement to receive, a share of retired pay and/or a survivor annuity; and (4) enrolls in FEHBP within 60 days of divorce.⁵ Unless the spouse qualifies for and elects Temporary Continuation of Coverage (TCC), discussed below, his or her FEHBP coverage will terminate 31 days after the date of divorce. The former spouse must pay the total cost of FEHBP coverage.

Temporary Continuation of Health Coverage. If a former spouse cannot satisfy the requirements for FEHBP coverage, he or she is eligible for 36 months of TCC if the former spouse was covered under the FEHBP as a family member at the time of divorce. To receive TCC, the former spouse must pay the full cost of coverage plus an administration fee equal to two percent of the cost of coverage.

Assignment of FEGLI. An employee or retiree may transfer ownership of FEGLI, through an assignment to another individual, organization or trust (including a former spouse or children). A court order may require, or a property settlement agreement may provide for, the assignment.

FEGLI Beneficiary Designations. The entry of a divorce decree, standing alone, generally will not affect a beneficiary designation made by the employee prior to divorce. For example, if an employee or retiree has designated a spouse, who becomes a former spouse, as a beneficiary under FEGLI the designation will survive the employee's death. Subject to a court order or property settlement agreement to the contrary, these designations may be changed at any time.

⁵ See, generally, 5 C.F.R. 890.801 et.seq.

*Private Employer Retirement and Health Care Plans*⁶

This appendix section summarizes the fundamental characteristics of tax-qualified retirement plans sponsored by private employers. It also summarizes the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, Pub. L. No. 99-272 (April 7, 1986), applicable to continued health care coverage for former spouses incident to divorce. This appendix section does not discuss “nonqualified” plans that cover select groups of highly compensated or management employees.

General Description of Private Employer Retirement Plans

General. If a retirement plan sponsored by a private employer is “tax qualified,” (1) income earned by the plan is exempt from tax while the assets of the plan are held in a tax-exempt trust,⁷ (2) the employer’s contributions to the plan are deductible within certain limits (unless the employer is exempt from tax),⁸ and (3) the contributions are not taxable to employees until benefits are distributed from the plan.⁹ To be tax-qualified, a plan must satisfy, in form and operation, a number of requirements imposed by the Internal Revenue Code. These requirements relate to coverage, eligibility, vesting, nondiscrimination, anti-alienation, benefit accrual, and distributions. Private employer retirement plans are also subject to ERISA, including, its reporting and disclosure, funding, vesting, fiduciary responsibility, and claims procedure provisions.

Categories of Plans. The Internal Revenue Code and ERISA recognize two general categories of retirement plans—“defined benefit plans” and “defined contribution plans” (also called “individual account plans”).¹⁰

Defined Benefit Plans. A defined benefit plan provides an employee with a specified benefit at retirement (e.g., \$1,000 per month for life beginning at age 65). The benefit is based on a formula that is typically based on the employee’s years of service for and compensation from the employer (e.g., two percent of final average compensation times years of credited service at retirement). If benefits begin prior to or later than “normal retirement”, they are actuarially reduced or increased to take into account the longer or shorter period over which benefits will be paid. The employer (or employer and employee) make contributions to the plan in amounts that are actuarially estimated to be required to fund the employee’s projected benefit at retirement. Unlike defined contribution plans, defined benefit plans do not have individual accounts. Rather, all assets are held in a single pool. Moreover, unlike defined contribution plans, employees cannot receive in-service distributions or “hardship withdrawals”. Both the Internal Revenue Code and ERISA impose complex “minimum funding” requirements on defined benefit plans.

⁶ This part of the appendix includes the division and continuation of benefits thereunder on divorce.

⁷ Section 501(a) of the Internal Revenue Code.

⁸ Section 404(a) of the Internal Revenue Code.

⁹ Section 402(a) of the Internal Revenue Code.

¹⁰ Sections 414(i) and (j) of the Internal Revenue Code; Sections 3(34) and 3(35) of ERISA.

Defined Contribution Plans. Under a defined contribution plan, each employee has an individual account to which contributions are allocated. Income, gains, losses, expenses, and forfeitures from the accounts of employees who terminate employment, without being fully vested in their accounts, are also allocated to the account. As a result, the employee's retirement benefit is based solely on the balance to his or her credit in the account at the time it is distributed. If the plan includes a "qualified cash or deferred arrangement" under Section 401(k) of the Internal Revenue Code, participating employees can elect to reduce their compensation from the employer and have such compensation redirected into the plan on a pre-income tax basis. Under current law, employees may make up to \$10,500 of "salary deferral contributions" per year.¹¹

Anti-Alienation Requirements. Both ERISA and the Internal Revenue Code require a plan to prohibit the assignment or alienation of benefits accrued thereunder.¹² This prohibition includes domestic relations orders. However, the Internal Revenue Code and ERISA recognize an exception to these requirements for "qualified domestic relations orders" (QDROs).¹³ A QDRO may require the plan to pay all or some portion of an employee's plan benefit to an "alternate payee (i.e., the employee's spouse or dependent children) in connection with a domestic relations proceeding such as a divorce or child support action. The amount to be paid to the alternate payee is determined by the parties to a divorce or, in the absence of an agreement by the parties, by the State court which adjudicates the parties' divorce.

Division of Retirement Benefits on Divorce Under Private Employer Retirement plans

General. A violation of the anti-alienation provisions of the Internal Revenue Code constitutes a "disqualifying event" with respect to the plan for tax purposes. Likewise, a violation may also result in the imposition of excise taxes and civil penalties under ERISA.

A QDRO can be drafted in a way which results in a "split" of the employee's plan benefit payments. Under this approach, the alternate payee will not receive any payments unless the plan employee is in "pay status" (i.e., has already begun receiving a stream of payments). A QDRO can also be drafted to divide the employee's plan benefit (rather than the payments) into separate portions. Under this approach, the alternate payee is awarded a separate right to receive a portion of the retirement benefit to be paid at a time and in a form which can be different from the time and form in which the benefit is paid to the employee.

¹¹ See Section 402(g) of the Internal Revenue Code. In 2002, this limit increases to \$11,000; the limit will rise \$1,000 each year until 2006, when it will be \$15,000. It may be increased in later years by cost-of-living adjustments.

¹² Section 401(a)(13) of the Internal Revenue Code; Section 206 of ERISA.

¹³ Section 414(p) of the Internal Revenue Code; Section 206(d)(3) of ERISA.

Preemption of State Law. ERISA generally preempts State law which relates to domestic relations orders to the extent that it would otherwise apply to an employee pension benefit plan. However, in the case of a QDRO, preemption does not apply.

Applicability. The QDRO provisions apply to defined benefit and defined contribution plans that are otherwise subject to ERISA. Therefore, they do not apply to “governmental” plans or to “church” plans which have not elected to be subject to ERISA. The QDRO provisions apply to the interest of an employee or former employee under a plan, whether or not the plan so specifies.

Major Definitions. Benefits under a QDRO can only be paid to an "alternate payee," which includes a spouse, former spouse, child, or other dependent of a plan employee. ERISA generally treats an alternate payee as a "beneficiary" under the plan for all purposes. As a "beneficiary," the alternate payee is essentially entitled to the same information and to the same treatment by plan fiduciaries as the employee.

A "domestic relations order" is any judgment, decree, or other order, including the approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of the employee and is made pursuant to a State domestic relations law, including a community property law. Thus, an agreement between spouses cannot constitute a domestic relations order. To be a "QDRO," a domestic relations order must satisfy certain requirements relating to the character of the order, the specification of certain facts contained in the order, and must satisfy certain non-alteration of benefit requirements contained in ERISA. According to the Department of Labor, a domestic relations order may be issued by any State agency or instrumentality with the authority to issue judgments, decrees, orders, or to approve property settlement agreements, pursuant to state domestic relations laws.

QDRO Requirements. The order must create or recognize the existence of an alternate payee's right (or assign to the alternate payee the right) to receive all or a portion of the benefits payable under a plan with respect to the employee. The order must include several specific facts relating to the identification of the parties, the amount or percentage of the employee's benefit to be paid to each alternate payee (or the method by which such amount or percentage is to be calculated), and the number of payments or the period over which the payments will be made and each plan to which the order applies.¹⁴ The order cannot require a plan to provide any type or form of benefit, or any other option that is not otherwise provided under the plan. Likewise, an order will not qualify if it requires the plan to provide benefits in excess of the benefits to which the employee would be entitled in the absence of the order. An order will also fail to qualify if it requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order that was previously determined to be a QDRO.

¹⁴ Section 414(p)(1) and (2) of the Internal Revenue Code.

Time of Distribution of Benefits. In general, a QDRO may require the plan to distribute the employee's benefit to the alternate payee prior to the time the employee terminates employment—as long as the employee has attained the "earliest retirement age" under the plan. For this purpose, "earliest retirement age" is the earlier of the following two dates:

- The date on which the employee is entitled to a distribution under the plan.
- The later of:
 - (1) the date the employee reaches age 50; or
 - (2) the earliest date on which the employee could begin receiving benefits under the plan if the employee separated from service.

A plan may provide that the alternate payee's benefit may be distributed currently—even if the employee has not reached the earliest retirement age. However, for a current distribution to an alternate payee to be made, the plan (or, in the absence of a plan provision to such effect, the written QDRO procedures maintained by the plan administrator) must provide for an immediate distribution to an alternate payee. However, if the amount of the alternate payee's benefit exceeds \$5,000, the alternate payee must consent to the current distribution.

The order may specify that payments will cease when certain specified events occur, such as the remarriage of the alternate payee.

If the alternate payee is a minor or legally incompetent, the order can require that payments be made to a person with legal responsibility for the alternate payee (e.g., guardian, conservator or trustee).

Determining Amount of QDRO Benefit. In determining the amount of an alternate payee's QDRO benefit under a defined benefit pension plan, it is important to take into account the distinction between the "present value" of the benefit and the actual amount of the benefit. Under a defined benefit plan, the alternate payee's benefit may be described as its present or future value or by the amount of the monthly payments, the time such payments commence and the period for which payments will continue. It is also important to take into account the employee's vesting status under the plan. ERISA and the Internal Revenue Code require that, if an alternate payee receives a QDRO benefit prior to the time the employee retires, the amount of the payment must be determined as if the employee had retired on the date the payment is to begin under the order. In calculating the present value of the alternate payee's benefit, the interest rate specified in the plan will be used. If no interest rate is specified, a 5 percent rate must be used. The present value calculation can take into account only benefits actually accrued and must ignore the value of any employer subsidy for early retirement.

If the alternate payee is to begin receiving a benefit prior to the time the employee actually retires, the amount of the benefit must be calculated by using the employee's normal retirement benefit accrued as of the date payment begins and then by actuarially reducing the benefit based on the interest rate in the plan or 5 percent.

In the case of a plan which provides subsidized early retirement benefits, if the alternate payee begins to receive benefits before the employee actually retires, the QDRO can provide that, when the employee retires, the amount payable to the alternate payee is to be recalculated so that he or she also receives a share of the subsidized benefit.

If the alternate payee begins to receive benefits before the employee retires, the QDRO may specify that benefits will be paid in any form provided under the plan (other than a joint and survivor annuity with regard to the alternate payee and any subsequent spouse of the alternate payee).

Survivor Benefits. A QDRO may require a former spouse to be treated as the employee's surviving spouse with regard to all or any part of the survivor benefits payable after the death of the employee. In this case, if the employee remarries, the subsequent spouse could not be treated as a surviving spouse and would not receive a surviving spouse benefit on the employee's death—at least as to benefits accrued through the date specified by the QDRO. Plans can provide that a spouse will not be treated as married unless he or she has been married to the employee for at least 1 year.

A QDRO can provide that the alternate payee is entitled to receive (either as a "separate" or "shared" interest) part of the employee's retirement benefit as well as a survivor benefit. However, the order cannot provide that the alternate payee's spouse with the survivor benefit rights that ERISA requires be provided to spouses of employees.

QDRO Procedures. ERISA requires that a plan subject to the QDRO rules establish written procedures for determining the qualified status of domestic relations orders and administering distributions thereunder. These procedures may be embodied in the plan document or a separate writing.

- ERISA and the Internal Revenue Code require that the plan administrator promptly notify the employee and alternate payee of the receipt of a domestic relations order and of the plan's procedures for determining its qualified status.
- Applicable law also requires that, while the status of an order is being determined, the plan administrator must separately account for and segregate the amount sought to be paid under the order.
- The determination period is the period of 18 months commencing with the date on which the first payment would otherwise be required to be made under the order.

- If, before the end of the determination period, an order is determined to be a QDRO, the plan administrator then must pay the segregated amounts (including any interest thereon) to the alternate payee.

Income Tax Treatment of Distributions Under QDROs. In general the Internal Revenue Code provides that the tax treatment of annuity payments and special tax rules regarding distributions eligible for rollover treatment apply if the QDRO specifies an alternate payee who is the spouse or former spouse of the employee. In this case, the Internal Revenue Code requires that the alternate payee be treated as the distributee—

- If the alternate payee is the spouse or former spouse of the employee, the payment will not be included in the gross income of the employee.
- If the alternate payee is neither the spouse nor former spouse of the employee, the distribution will not qualify for rollover, forward averaging, capital gain or the special treatment afforded "net unrealized appreciation" on the distribution of employer securities. The distribution will be treated as a distribution to the employee for tax purposes.
- If the alternate payee is the spouse or former spouse of the employee, the portion of the employee's benefit attributable to after-tax contributions (i.e., the "investment in the contract") must be allocated between the employee's benefit and the alternate payee's benefit on the basis of present values. If the alternate payee is not the spouse or former spouse of the employee, no part of the investment in the contract can be allocated to the alternate payee.
- The 10-percent additional tax on early distributions from a qualified plan will not apply to a distribution to an alternate payee pursuant to a QDRO.
- Alternate payees who are spouses or former spouses are entitled to tax-deferred rollover treatment with respect to QDRO benefits unless such benefits are paid:
 - Over the life or life expectancy of the alternate payee and his or her beneficiary;
 - In installments over a specified period of 10 years or more; or
 - To satisfy the minimum distribution requirements of the Internal Revenue Code.

Alternate payees are entitled to provide for a "direct rollover" of the amounts eligible for rollover treatment. Failure to specify direct rollover treatment will subject a distribution to automatic 20-percent withholding.

With respect to a non-spouse alternate payee, the alternate payee will not be able to roll over the distribution to an IRA. However, the employee may roll over an amount equal to the alternate payee's distribution, on which the employee is taxable, to an IRA. If the distribution includes property other than cash, the employee may be unable to satisfy the requirement that the same property distributed be rolled over.

COBRA Healthcare Continuation Coverage

General. COBRA is the Federal health care continuation law. It is applicable, with a minor exception for small employers, to welfare benefit plans that provide medical care sponsored by employers for their employees, including for-profit, tax-exempt, and State and local government employers. The Internal Revenue Code, ERISA and the Public Health Service Act are the statutes that contain the COBRA requirements. Employers with less than 20 employees on a typical business day during the preceding calendar year are not subject to COBRA. Plans sponsored by churches are exempt from COBRA. Plans sponsored by the Federal government are subject to generally similar temporary continuation of coverage provisions under the Federal Employees Health Benefits Amendment Act.

COBRA was enacted to enable terminated employees, their families, or those who experienced a “qualifying event” (e.g., divorce), to have continued access to health care at favorable group rates. Prior to COBRA, unless an employer-sponsored plan included a conversion feature (which was typically quite expensive), the employee lost his or her health care coverage on termination of employment and the employee’s spouse lost the coverage on divorce. In general, COBRA requires that if an employee or “qualified beneficiary” loses his or her coverage under an employer-sponsored health plan due to certain specified events, the plan must offer the continued coverage to the qualified beneficiary for a specified period of time. The plan can (and typically does) require the qualified beneficiary to pay the cost of the continued coverage.

Categories of Plans Covered. The COBRA requirements apply to health insurance plans, health maintenance organizations (HMOs), self-funded health plans, dental plans, and vision plans, drug or alcohol treatment programs and health clinics, prescription drug plans, wellness programs, and union-sponsored health plans. The requirements do not apply to long-term care plans, group-term life insurance plans, accidental death and dismemberment plans, short and long-term disability plans, or hospital indemnity plans.

Events That Trigger COBRA Coverage. COBRA requires that employers provide an election to a “qualified beneficiary” when a “qualifying event” occurs that causes (or will cause) a loss of health care coverage. There are seven categories of events that constitute qualifying events: death, termination of employment for reasons other than gross misconduct, reduction of hours of work, divorce or legal separation, entitlement to Medicare, a child of the employee ceasing to be a dependent child, and bankruptcy of the employer. For the COBRA coverage requirements to apply, the qualifying event must cause a loss of coverage under the health plan.

Duration of COBRA Coverage. COBRA specifies two maximum coverage periods during which a qualified beneficiary may elect to continue to be covered by the employer's health plan. Specifically, continuation coverage for a period of 18 months may be elected in cases where the employee terminates employment for reasons other than gross misconduct or incurs a reduction in hours. This 18-month period can be increased to 29 months in certain cases of disability. All other qualifying events (including divorce) have a maximum coverage period of 36 months.

Categories of Qualified Beneficiaries. In general, there are three categories of "qualified beneficiaries" who must be given the opportunity to elect COBRA coverage. First, employees who are covered by the health plan and incur a termination of employment or a reduction in hours may elect continuation coverage. Second, spouses and dependent children of covered employees who are also covered under the plan on the basis of their status as a covered employee's spouse or dependent child may elect coverage. Lastly, children born or adopted during the employee's COBRA continuation period are also qualified beneficiaries.

Scope of COBRA Coverage. COBRA requires that ". . . the same coverage that the qualified beneficiary had on the day before the qualifying event" be provided. This means that a qualified beneficiary must be given the opportunity to continue the health plan coverage that was being received before the qualifying event occurred. When a qualified beneficiary experiences a qualifying event, the administrator of the health plan must send a written notice to the qualified beneficiary informing him or her of the right to continue coverage under the health plan for the applicable period. The qualified beneficiary must make his or her election for COBRA coverage at any time within 60 days after the date on which coverage under the health plan terminated or, if later, 60 days after the date of the notice of eligibility for continued coverage is issued by the plan administrator. In general, during the election period, the plan can either continue coverage (which would be subject to retroactive cancellation if an election for continued coverage is not made) or, if the plan allows, provide for retroactive reinstatement of coverage when the COBRA continuation coverage is elected.

COBRA Payment Requirements. In general, a plan can require the qualified beneficiary to pay up to 102 percent (150 percent during the 11 month extension for disability) of the "applicable premium" which is the cost to the plan for the period of coverage for similarly situated beneficiaries. In all cases where the qualified beneficiary is responsible for the cost of continuation coverage, the qualified beneficiary must make timely payments for the coverage. A plan can terminate COBRA coverage if the qualified beneficiary fails to pay the required premiums on a timely basis.

Appendix I

Stakeholder Positions on Key USFSPA Issues

Former Spouse Organization Positions

Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
<p>Ex-Partners Of Servicemen/women for Equality (EX-POSE)</p> <p>Source: Prepared statement for 8/5/98 House hearing. <i>Federal Register</i> response.</p>	<p>Open an investigation to determine how the VA defines a service-connected disability.</p> <p>Award disability pay without reducing retired pay.</p>	<p>Other property awards are not forfeited upon re marriage. Therefore, retiree payments should not be terminated.</p>	<p>20/20/15 spouses should be given shopping privileges.</p>	<p>It should be left to the discretion of the state courts to decide how benefits should be calculated.</p>	<p>EX-POSE agrees with the current eligibility for receiving payments from DFAS.</p>	<ul style="list-style-type: none"> a. No position expressed. b. SBP should be the sole property of the former spouse, if she/he was the recipient at time of divorce. Further, SBP benefits should transfer to the new spouse if the former spouse dies. c. No position expressed. d. Former spouses should be automatically enrolled in SBP if they were beneficiaries at the time of divorce.
<p>Committee for Justice and Equality for the Military Wife</p>	<p>"Every dollar denied a wife because something is labeled 'disability' means a</p>	<p>The organization is against the termination of payments upon remarriage.</p>	<p>Although the Committee has not specifically addressed the issue of granting</p>	<p>Benefits should be calculated at the time of retirement.</p>	<p>The issue is not addressed in the prepared statements or articles.</p>	<ul style="list-style-type: none"> a. through c. No positions expressed. d. A "mandatory

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Former Spouse Organization Positions

Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
Sources: Prepared statement for 8/5/98 House hearing and accompanying articles. "Fairness' Amendment Makes Little Sense for Former Spouses" (Article that appeared in the 5/10/99 edition of the <i>Army Times</i>)	...tax of 50 cents placed on...an ex-spouse."		medical, commissary, and exchange benefits to 20/20/15 spouses, it has taken the position that former spouses should receive a "...prorated share of the commonly earned pension after 10 years of service."			assignment of the survivor's annuity" should be made to former spouses.

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Current/Former Member Organization Positions						
Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculating Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "Ten-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
Air Force Sergeant's Assn. (AFSA) Source: Prepared statement for 8/5/98 House hearing.	Disability pay should not be subject to division during a divorce. Rather, it should benefit veterans only.	Payments should end upon remarriage of a former spouse.	The issue is not addressed in the prepared statement.	Benefits should be calculated at time the of divorce.	The issue is not addressed in the prepared statement.	a. Issue not directly addressed in prepared statement, but AFSA implicitly suggests that coverage should end when a former spouse remarries. b through d. No positions expressed.
American Retirees Association (ARA) ¹ Sources: Prepared statement for 8/5/98 House hearing. <i>Federal Register</i> response.	The USFSPA's protection of disability pay is ineffective.	The ARA supports the termination of payments upon remarriage.	The ARA supports the consideration of "...extending base privileges (and, possibly, limited health care benefits) to ex-spouses who were married for at least 15 years concurrently with military service."	Calculations based on time of retirement result in former spouses receiving a "windfall benefit."	The ARA supports a 10-year minimum of marriage concurrently with military service to qualify for payments.	The current legislation "...deprive(s) the military member of the means to protect a subsequent spouse/family." a through d. No positions expressed.
Disabled American Veterans (DAV) Source: Prepared	Disability pay should not be subject to division during a divorce. Rather, it	The issue is not addressed in the prepared statement.	The issue is not addressed in the prepared statement.	The issue is not addressed in the prepared statement.	The issue is not addressed in the prepared statement.	SBP issues are not addressed in the prepared statement.

¹ Member organizations that signed the ARA Federal Register response, but did not provide separate responses, included the Military Order of Purple Heart, National Association for Uniformed Services, Gold Star Wives of America, Navy Enlisted Reserve Association, Naval Reserve Association, Veterans of Foreign Wars, and the Korean War Veterans Association.

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Current/Former Member Organization Positions						
Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculating Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "Ten-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
statement for 8/5/98 House hearing.	should benefit veterans only.					
Fleet Reserve Association (FRA) Source: 9/24/99 response to information request.	A former spouse should not be entitled to disability compensation.	"Most Federal statutes related for former spouses, including VA Dependents Indemnity Compensation (DIC) terminate upon remarriage. Military members should not be treated differently."	Benefits should not be granted to 20/20/15 spouses.	"Once the marriage is terminated, there is no further contribution by the former spouse in the member's subsequent promotions. He or she should not be rewarded for having no part in the member's future career."	FRA is opposed to direct payment of benefits to spouses who were married less than 10 years because "There are enough problems in this area without adding more."	a. Supports termination if remarried before age 55. b. and c. The FRA has no objection to divisibility to more than one spouse "...if voluntarily made by the member or if the former spouse(s) pays premiums, or is awarded SBP coverage in lieu of direct or partial payments awarded by the court." d. The one year deadline should be retained.
National Military and Veterans Alliance (NMVA) Source: <i>Federal Register</i> response.	The USFSPA's protection of disability pay is ineffective.	The NMVA supports the termination of payments upon remarriage.	The NMVA supports the consideration of "...extending base privileges (and, possibly, limited health care benefits) to ex-spouses who were	Calculations based on time of retirement result in former spouses receiving a "windfall benefit."	The NM VA supports a 10-year minimum of marriage concurrently with military service to qualify for payments.	Current legislation "...deprive(s) the military member of the means to protect a subsequent spouse/family." a through d. No positions

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Current/Former Member Organization Positions						
Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculating Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "Ten-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
			married for at least 15 years concurrently with military service."			expressed.
Non Commissioned Officers Association of the USA (NCOA) Sources: Prepared statement for 8/5/98 House hearing. <i>Federal Register</i> response.	The USFSPA's protection of disability pay is ineffective.	The NCOA supports the termination of payments upon remarriage.	The NCOA supports the consideration of "...extending base privileges (and, possibly, limited health care benefits) to ex-spouses who were married for at least 15 years concurrently with military service."	Calculations based on time of retirement result in former spouses receiving a "windfall benefit."	The NCOA supports a 10-year minimum of marriage concurrently with military service to qualify for payments.	Current legislation "...deprive(s) the military member of the means to protect a subsequent spouse/family." a through d. No positions expressed.
The American Legion Source: Prepared statement for 8/5/98 House hearing.	Title 42, USC Section 659 should be amended to make it consistent with USFSPA to forbid garnishment of VA disability pay.	Payments should end upon remarriage of a former spouse.	The issue is not addressed in the prepared statement.	Monthly payments should be based on pay grade and length of service at the time of divorce.	The issue is not addressed in the prepared statement.	SBP issues are not addressed in the prepared statement.
The Retired Enlisted Assn. (TREA) Source: Prepared statement for 8/5/98 House hearing. ARA	Disability pay should not be subject to division during a divorce. Rather, it should benefit veterans only.	Payments should end upon remarriage of a former spouse.	The TREA supports the consideration of "...extending base privileges (and, possibly, limited health care benefits) to ex-spouses who were married for at least 15	Benefits should be calculated based on rank at time of divorce.	The TREA supports a 10-year minimum of marriage concurrently with military service to qualify for payments. (ARA <i>Federal Register</i> response)	Current legislation "...deprive(s) the military member of the means to protect a subsequent spouse/family." (ARA <i>Federal Register</i> response)

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Current/Former Member Organization Positions

Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculating Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "Ten-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
<i>Federal Register</i> response (signed by TREA CEO).			years concurrently with military service." (<i>ARA Federal Register</i> response)			A through d. No positions expressed.
The Retired Officers Association (TROA) Source: <i>Federal Register</i> response.	The USFSPA should be amended to prohibit the division of disability compensation.	The TROA supports the termination of payments upon remarriage.	TROA supports the consideration of "...extending base privileges (and, possibly, limited health care benefits) to ex-spouses who were married for at least 15 years concurrently with military service."	Benefits should be based on a member's status at the time of divorce.	The TROA supports a 10-year minimum of marriage of marriage concurrently with military service to qualify for payments.	<ul style="list-style-type: none"> a. No position expressed. b. The USFSPA should provide for "multiple survivor annuities." c. The USFSPA should be amended to allow former spouses to pay the cost of participating in the SBP. d. No position expressed.
Women In Search of Equity for Military in Divorce (WISE) Source: Prepared statement for 8/5/98 House hearing. <i>Federal Register</i> response.	"...this alternate source of funding should become the sole property of the military member."	Payments should be terminated if a former spouse remarries. The policy should consistent with those in place at the CIA and FS.	Former spouses of long-term marriages (15-20 years), not remarried, should receive commissary and exchange benefits—no medical benefits.	Calculations should be based on pay grade and length of service at time of divorce.	The issue is not addressed in the prepared statement or <i>Federal Register</i> response.	<ul style="list-style-type: none"> a. No position expressed. b. Congress should address and ensure subsequent spouses receive same protections afforded to first spouse. c. Should be available to former and current on a pro-rata basis. d. Payment of coverage

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

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Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculating Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "Ten-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
						<p>of a former spouse should be from the former spouse.</p> <p>e. There should be some time limitation in application for coverage.</p>

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

American Bar Association (ABA) and Responding State Bar Association Positions						
Bar Associations (Responses to DoD Information Request)	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
American Bar Association (ABA)	Disability pay should not be allowed to affect a divorce settlement. A member should not be allowed to unilaterally change a former spouse's share of the settlement.	The current law is correct. Payments should not be terminated upon remarriage.	Benefits should be granted to 20/20/15 spouses. (By implication)	The current law is correct. Benefits should be calculated based on time of retirement.	The limitation should be eliminated.	<ul style="list-style-type: none"> a. No termination upon remarriage. b. Should be divisible to more than one spouse. c. Supports direct premium payment from former spouse. d. One year filing deadline should be eliminated.
Arizona	Disability pay should not be allowed to affect a divorce settlement. A member should not be allowed to unilaterally change a former spouse's share of the settlement.	The current law is correct. Payments should not be terminated upon remarriage.	Benefits should be granted to 20/20/15 spouses. (By implication)	No position expressed.	No position expressed.	<ul style="list-style-type: none"> a. No termination upon remarriage. b. Should be divisible to more than one spouse. c. Supports direct premium payment from former spouse. d. One year filing deadline should be eliminated.
Connecticut	A problem exists in the current law. No solution is proposed.	No position expressed.	Benefits should be granted to 20/20/15 spouses.	No position expressed.	No position expressed.	State courts should be permitted to decide SBP issues.
Florida	A problem exists in	No position expressed.	No position expressed.	No position	No position expressed.	a through c. No

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

American Bar Association (ABA) and Responding State Bar Association Positions						
Bar Associations (Responses to DoD Information Request)	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
	the current law. No solution is proposed.			expressed.		positions expressed. d. Eliminate one year filing deadline.
Hawaii	A problem exists in the current law. No solution is proposed.	No position expressed.	Benefits should be granted to 20/20/15 spouses. (By implication)	No position expressed.	No position expressed.	a through c. No positions expressed. d. Eliminate one year filing deadline.
Louisiana: Although a response was received, it represents the views of one individual and was never formally endorsed by the Louisiana State Bar Association.						
Maryland	The current disability compensation law is correct.	No position expressed.	Benefits should be granted to 20/20/15 spouses.	No position expressed.	No position expressed.	a through c. No positions expressed. d. Eliminate one year filing deadline.
Michigan	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.	a. No position expressed. b. Should be divisible to more than one spouse. c. No position expressed. d. Eliminate one year filing deadline.
Mississippi	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.
Nebraska	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

American Bar Association (ABA) and Responding State Bar Association Positions

Bar Associations (Responses to DoD Information Request)	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
Nevada	Pre-divorce disability compensation should belong to the member. Post-divorce disability compensation should not divest spouse of benefits granted in the divorce decree.	The current law is correct. Payments should not be terminated upon remarriage.	No position expressed.	The current law is correct. Benefits should be calculated based on time of retirement.	The limitation should be eliminated.	<ul style="list-style-type: none"> a. No termination upon remarriage. b. Should be divisible to more than one spouse. c. Supports direct premium payment from former spouse. d. One year filing deadline should be eliminated.
North Carolina	Eliminate special treatment of disability pay. Do not permit Veterans Administration decisions to have a retroactive effect.	The current law is correct. Payments should not be terminated upon remarriage.	No position expressed.	Benefits should be calculated based on time of divorce, if the marriage lasts less than 10 years. The current law is correct for marriages that last more than 10 years.	The limitation should be eliminated.	<ul style="list-style-type: none"> a. No position expressed. b. Should be divisible to more than one spouse. c. Supports direct premium payment from former spouse. d. One year filing deadline should be eliminated.
South Carolina	Post-divorce disability compensation should not divest spouse of benefits granted in the divorce decree.	No position expressed.	Benefits should be granted to 20/20/15 spouses.	No position expressed.	The limitation should be eliminated.	<ul style="list-style-type: none"> a. No position expressed. b. Should be divisible to more than one spouse.

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

American Bar Association (ABA) and Responding State Bar Association Positions						
Bar Associations (Responses to DoD Information Request)	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
						c. Supports direct premium payment from former spouse. d. One year filing deadline should be eliminated.
Utah	A problem exists in the current law. No solution is proposed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.
Vermont	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.	No position expressed.
Virginia	The current disability compensation law is correct.	The current law is correct. Payments should not be terminated upon remarriage.	The current law is correct. Benefits should not be granted to 20/20/15 spouses.	The current law is correct. Benefits should be calculated based on time of retirement.	The current law is correct. Direct payment of benefits should be limited to spouses who were married 10 years or more.	The current law governing SBP issues is correct.

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Governmental Positions

Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
House Bill H.R. 72 (the Uniformed Services Former Spouse Equity Act of 1999)	Disability pay should not be treated as disposable retired pay.	Payments to former spouses should terminate upon the remarriage of the former spouses.	The issue is not addressed in H.R. 72.	The calculation of benefits should be based on a member's status at the time of divorce.	The issue is not addressed in H.R. 72.	SBP issues not addressed in H.R. 72.
Department of Veterans Affairs Sources: Prepared statement for 8/5/98 House hearing. 9/29/99 discussion with Mr. John Thompson, VA, Office of General Counsel.	Since USFSPA is the province of DoD, VA has not provided positions on key issues.	-----	-----	-----	-----	-----
National Oceanic and Atmospheric Administration (NOAA) Source: 10/18/99 meeting with NOAA Commissioned Personnel Center officials.	USFSPA provisions governing disability compensation should not be changed because existing laws allowing garnishment are sufficient.	In most cases, benefits should terminate upon remarriage. The possible exception would be those marriages where the former spouse supported a member/former member throughout his/her career.	Benefits should not be granted to 20/20/15 spouses.	Calculation of benefits should be based on a member's status at the time of divorce.	N/A	a. Issue not addressed. b. SBP benefits should NOT be divisible among more than one beneficiary. The beneficiary should be the current spouse. c. Supports former spouses paying

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Governmental Positions

Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
						SBP premiums, as long as members do not incur costs. d. Maintain current one-year deemed election rule.
Office of Personnel Management (OPM) Source: 9/30/99 meeting with OPM Retirement Policy Division officials.	OPM does not have positions on DoD's administration and implementation of the FSPA.	-----	-----	-----	-----	-----

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Other Organization Position*						
Organizations	Issue 1: Treatment of Veterans Affairs (VA) Disability Compensation	Issue 2: Termination of Payments Upon Remarriage of Former Spouse	Issue 3: Grant of Benefits to 20/20/15 Spouses As Well As 20/20/20 Spouses	Issue 4: Calculation of Benefits Based on Time of Divorce Rather Than Time of Retirement	Issue 5: The "10-Year Rule" for Direct Payment of Retired Pay Allocations	Issue 6: Survivor Benefit Plan (SBP) Issues*
National Military Family Association (NMFA) Sources: Prepared statement for 8/5/98 House hearing. <i>Federal Register</i> response.	The NMFA does not support the division of disability pay. Rather, NMFA supports concurrent receipt.	The NMFA is opposed to the termination of payments upon remarriage.	The NMFA supports granting commissary and exchange privileges to 20/20/15 former spouses.	The NMFA does not oppose the restriction that benefits are based on rank at time of divorce, given that benefits are adjusted to reflect longevity raises and cost of living adjustments.	The issue is not addressed in the prepared statement or <i>Federal Register</i> response.	a through d. Supports a prohibition against changes in SBP coverage for a former spouse, unless the former spouse agrees to changes in writing. Supports allowing former spouses to be named beneficiaries of SBP coverage, if a service member's current spouse dies and the former spouse was once a SBP beneficiary.

*NMFA promotes the interests of military families, not the interests of either military members or former spouses only.

* SBP issues include (a) termination of SBP benefits if remarried before age 55, (b) divisibility of SBP benefits to more than one spouse, (c) direct payments of SBP premiums by former spouses, and (d) the 1-year "deemed election" rule.

Appendix J

10 U.S.C. section 1408

Payment of Retired or Retainer Pay in Compliance with Court Orders

(a) Definitions. - In this section:

(1) The term "court" means -

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term "court order" means 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 section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which -

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for -

(i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)));

(ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3))); or

(iii) division of property (including a division of community property); and

(C) 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.

(3) The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which -

(A) 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;

(B) 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 title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, 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

(D) are deducted because of an election under chapter 73 of this title 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.

(5) The term "member" includes a former member entitled to retired pay under section 12731 of this title.

(6) 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.

(7) The term "retired pay" includes retainer pay.

(b) Effective Service of Process. - For the purposes of this section -

(1) service of a court order is effective if -

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order -

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) Authority for Court To Treat Retired Pay as Property of the Member and Spouse. -

(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of

(A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) Payments by Secretary Concerned to (or for Benefit of) Spouse or Former Spouse.

- (1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not 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, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property

(including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after the date of the enactment of this paragraph and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order -

(i) modifies a previous court order under this section upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(e) Limitations. - (1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or

former spouse of the same member, the Secretary concerned shall -

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of -

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus -

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social

Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) Immunity of Officers and Employees of United States. - (1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) Notice to Member of Service of Court Order on Secretary Concerned. - A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) Benefits for Dependents Who Are Victims of Abuse by Members Losing Right to

Retired Pay. - (1) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse. (2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if -

(A) the 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, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation); and

(B) the spouse or former spouse -

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification -

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, 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.

(5) A court order under this subsection may provide that whenever retired pay is

increased under section 1401a of this title (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 described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term "dependent child", with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who -

(A) is under 18 years of age;

(B) is 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

(C) if 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 under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) Certification Date. - It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.

(j) Regulations. - The Secretaries concerned shall prescribe uniform regulations for

the administration of this section.

(k) Relationship to Other Laws. - In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.

Appendix K

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