

This fact sheet provides information to help you understand the provisions of the Survivor Benefit Plan (SBP), but is not a contract document. The basic statutory provisions of the SBP law are in [Chapter 73, Title 10, United States Code](#).

Former-Spouse SBP Coverage

An election for former-spouse coverage under the SBP was designed to give income protection to your former spouse. Coverage of a former spouse precludes coverage for a current spouse. This fact sheet presents key aspects of the SBP former-spouse option.

The Annuity

Benefits paid under this option are identical to those for spouse coverage (see Spouse SBP Coverage) except the annuity for a former spouse, whose divorce from the member was finalized before Nov. 30, 1989, is not reduced when the former spouse attains age 62 provided the member was already retired or retirement eligible on or before Oct. 1, 1985.

SBP Costs

Premiums for former-spouse coverage are calculated identically to premiums for spouse coverage (see SBP Coverage Costs). It is important to understand that in cases in which a former spouse is awarded a percentage of a military retiree's retired pay, and SBP coverage is elected for the former spouse (either voluntarily or involuntarily), the former spouse, in effect, pays a portion of the SBP premiums in an amount proportionate to the division of retired pay. This happens automatically because divisions of retired pay are based upon disposable retired pay, which has already been reduced because of the SBP premium.

An agreement between a member and a former spouse in which the former spouse must pay the entire cost of the member's participation in SBP is a matter between the member and the former spouse. There are no provisions in federal law which permit the Defense Finance and Accounting Service to withhold all SBP premiums from a former spouse's portion of a member's retired pay. If a former spouse is to bear the total cost of a member's SBP participation, the former spouse must reimburse the member by some other means.

Deemed Election by Former Spouse

Former-spouse coverage can be established without the member's active participation when the following conditions exist:

- The member was required by a court order dated after Nov. 13, 1986 to provide former-spouse coverage, or the member agreed in writing to provide former-spouse coverage.

-- The member failed or refused to make a former-spouse SBP election. The member should know that he/she could be held in contempt of court in this situation.

-- The former spouse sent a DD Form 2656-10, SBP Reserve Component (RC) SBP Request for Deemed Election, to DFAS (Defense Finance and Accounting Service, Garnishment Law Directorate, PO Box 998002, Cleveland OH 44199) requesting that an election for former-spouse coverage be deemed to have been made. The former spouse's deemed election request must be received by DFAS within one year of the date of the court order or it cannot be honored. This is true even if the court order was issued more than a year before a member's retirement date, in which case the former spouse's request for a deemed election would be maintained on file at DFAS until the member retires. If an election for former-spouse coverage was agreed to or ordered by an earlier court order, a subsequent order or modification that merely restates the previous provision and imposes no new obligation on the member does not begin a new one-year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement cannot be used to begin a new one-year period to deem an election. The deemed election must include:

-- The member's name, Social Security number, and whether the member is retired or on active duty.

-- The former spouse's SSN, date of birth, and mailing address.

-- A certified copy of the court order which required the member to elect to provide an annuity to the former spouse, or a copy of the member's written agreement to make such an election along with a statement from the clerk of the court or other appropriate official that the written agreement was filed with the court as the applicable state law requires.

Former Spouse Election by Retiring Member

A member, who has a former spouse, may elect to provide SBP coverage for a former spouse or a court order may require the member to elect to provide an annuity to the former spouse. If a member is married and elects SBP coverage for a former spouse, the member's current spouse must be notified of the election, but spouse concurrence is not required. If the member has more than one former spouse, he/she must specify which former spouse will be covered.

A DD Form 2656-1, Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage, signed by the member and the former spouse must be submitted with an election for former spouse coverage. The form sets forth:

-- Whether the election is being made pursuant to the requirements of a court order, or

-- Whether the election is being made pursuant to a written agreement entered into voluntarily by the member as a part of or incident to the proceedings of the divorce. The member and the former spouse must sign and date the statement, or

-- Whether the election is voluntary on the member's part (not part of a court-order or written agreement).

Changing Spouse Coverage to Former Spouse Coverage upon Divorce after Retirement

If you have spouse coverage and later divorce and wish to continue SBP for your now former spouse, you **MUST** convert your SBP election from spouse coverage to former-spouse coverage **WITHIN** one year of the date of the divorce. To convert your SBP election from spouse to former-spouse coverage you must submit a DD Form 2656-1, Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage, to DFAS (Defense Finance and Accounting Service, US Military Retirement Pay, 8899 E 56th St, Indianapolis IN 36249-1200) within the first year following divorce. Include a copy of your divorce decree and settlement agreement. Many members erroneously assume coverage will continue for the former spouse if they simply continue paying premiums for spouse coverage. Additionally, unless the retiree has spouse coverage, former-spouse coverage cannot be elected as part of a divorce settlement either voluntarily or by court order.

The benefit level for former-spouse coverage has to remain the same as for spouse coverage. The court may not dictate a level of coverage greater or lower than that elected before the divorce. The election must not be for a former spouse whom the member married after becoming eligible for retired pay unless the member was married to the former spouse for at least one year, or the former spouse is the parent of issue by that marriage.

Suspension/Reinstatement of Former Spouse Coverage and Cost

Former-spouse coverage and premiums are suspended if the former spouse remarries prior to age 55. This is because the former spouse is not eligible for the SBP annuity while remarried if the remarriage occurred prior to age 55. This does not terminate the member's obligation to cover the former spouse -- only the obligation to make payments while the former spouse is remarried. The member cannot stop former-spouse coverage nor can the member change the election to spouse and/or child coverage based solely on the former spouse's remarriage prior to age 55. To suspend coverage and premiums because of the former spouse's remarriage prior to age 55, the member must include a copy of the former spouse's marriage certificate with notification to DFAS. Former-spouse costs will be suspended on the first day of the month after the date the former spouse remarries.

If former-spouse coverage and premiums were suspended as a result of the former spouse's remarriage prior to age 55, and the remarriage terminates, former-spouse coverage is reinstated the day after the date of the termination of the remarriage, and costs for former-spouse coverage are reinstated effective the

first day of the month after the date the former spouse's remarriage terminates. The member must provide DFAS a copy of the former spouse's divorce decree or the death certificate of the person to whom the former spouse was married.

If the member dies during the period the former-spouse coverage is suspended because of the former spouse's remarriage before age 55, the former spouse would be eligible for the annuity in the event the remarriage subsequently terminated.

A former spouse's remarriage at age 55 or older does not affect either former-spouse coverage or premiums as the former spouse remains eligible to receive the annuity immediately in the event of the member's death.

Termination of Former Spouse Coverage and Cost

Former-spouse coverage and premiums are terminated if the former spouse dies. The member must include a copy of the former spouse's death certificate with notification to DFAS and costs will be terminated on the first day of the month after the date of the former spouse's death.

A divorce decree which specifies that former-spouse coverage can be terminated if the former spouse remarries at any age is not enforceable. The SBP is a federal law (Title 10, U. S. Code, Chapter 73), not a state law. A state court can incorporate anything it or the parties desire into a divorce decree; however, federal law dictates the conditions of eligibility for SBP and does not allow termination of former-spouse coverage based solely on the former spouse's remarriage at any age.

Changing Former Spouse Coverage to Spouse, Child, or Spouse and Child Coverage

A member may request that former-spouse coverage be changed to cover a spouse, child, or spouse and child by submitting a signed letter of request with documentation (if required, see below). A request to change an election from former spouse to coverage for a new child(ren) must be received by DFAS within one year of acquiring the eligible child(ren) provided documentation requirements (below) are met. See Child-Only SBP Coverage for definition of eligible children. A request to change an election from former-spouse to spouse coverage may be made at any time after the member remarries. The former-spouse coverage will be terminated when the spouse becomes an eligible beneficiary. See Spouse-only SBP Coverage for definition of eligible spouse. If the member remarries the former spouse, the former spouse immediately becomes an eligible spouse beneficiary. This applies whether or not the former-spouse coverage was court ordered, required by a written agreement, or voluntary. If court ordered, no amended/modified court order is required. The member's request must also include: a copy of the marriage certificate/license if requesting spouse coverage;

a copy of the child(ren)'s birth certificate if requesting child coverage; and the new beneficiary(ies) name, Social Security number, and date of birth.

Documentation requirements necessary to change former spouse coverage to spouse, child, or spouse and child coverage:

-- If the original election was made pursuant to the requirements of a court order, a certified copy of a court order that amends/modifies all previous court orders relieving the retiree of a court-ordered former-spouse election must be furnished to DFAS to convert to spouse, child, or spouse and child coverage.

-- If the original election was made pursuant to a written agreement entered into voluntarily by the member as a part of or incident to the proceedings of the divorce, the former spouse must agree in writing to the change.

-- If the original election was voluntary on the member's part (not part of a court order or written agreement), the election can be changed to cover a new spouse, child, or spouse and child without submitting an amended court order or the former spouse's written agreement. The former spouse, however, will be informed of the change by DFAS.

-- If the former spouse dies, a copy of the former spouse's death certificate.

Former spouse beneficiary status terminates on the date of death. Public Law (PL) 114-92, FY 2016 NDAA, amended the SBP statute to allow a member with former spouse coverage to resume SBP participation for a new spouse beneficiary when the reason for discontinuance is death of the former spouse.

If married on the date of former spouse's death, and married for at least one year as of former spouse's death, the request for spouse coverage must be in writing to DFAS within one year after the date of the former spouse's death.

If married after the date of former spouse's death, or in the one-year period preceding the date of the former spouse's death, the member's request for spouse coverage must be in writing and received by DFAS within one year of the date of marriage.

PL 114-92 included provisions for an open season period, 25 November 2015 through 24 November 2016, to allow members, who had former spouse beneficiaries that were already deceased when the legislation was enacted to request spouse coverage. Members who participated in the open season were required to pay retroactive premiums within 24 months of the date of the election.

Member's Responsibilities

It is a retired member's responsibility to notify DFAS (Defense Finance and Accounting Service, U.S. Military Retirement Pay, 8899 E 56th St, Indianapolis IN 46249-1200) when the status of a beneficiary changes. Notification, with supporting documentation, should be made immediately after the change occurs so the appropriate adjustment may be made to your retired pay account.

Examples of documentation include: copy of death certificate when reporting death of former spouse; copy of divorce decree and property settlement (if applicable) when reporting a divorce of former spouse; copy of marriage certificate when reporting a remarriage of former spouse prior to age 55; etc.