

# Transition Compensation For Abused Dependents of Active Duty Members of the Armed Forces

Congress passed section 1059 of title 10 to provide monthly payments for dependents abused by an active duty member of the armed forces. Certain eligibility requirements must be met to qualify for and receive payments. The abused dependent should be aware of these procedures so that they can take advantage of the compensation.

## I. ELIGIBILITY

The Department of Defense policy on Transition Compensation covers the dependents of members who are on active duty for more than 30 days and (1) the member has been convicted of a dependent-abuse offense resulting in separation pursuant to a court martial or (2) the member is administratively separated and the basis for separation includes a dependent-abuse.

A dependent-abuse offense is defined as an act which involves the abuse of the spouse or dependent child of the member and is a criminal offense as defined by the Uniform Code of Military Justice (UCMJ) or other applicable criminal codes. Such acts can include **but are not limited to**: sexual assault, rape, sodomy, assault, battery, murder, and manslaughter.

Eligibility Conditions (“spouse” and “member” includes “former spouse” and “former member”):

If the member was married when the offense occurred, payment will be made to that spouse. The spouse will receive compensation for themselves and each dependent child in their custody. A spouse can receive the child portion of the compensation even if the child resides away from the home (e.g., non-physical custody) as long as the spouse has legal custody.

If the spouse is ineligible to receive payment because of remarriage, cohabitation, or active participation, payments will be made to each dependent child of the member not residing in the household of the member or the spouse.

If there is no eligible spouse (EXAMPLE: The member had no dependent spouse or spouse has died), payments will be made to the dependent children of the member who do not reside in the household of the member.

Status as a “dependent child” is determined as of the date on which the member is convicted of the offense or as of the date of the member’s administrative separation, whichever is applicable.

If recipients are incapable of handling their affairs, payment may be made only to a court-appointed guardian. For a dependent child under 18 years of age, payments will be made only to a court-appointed guardian or a natural parent (who is not a spouse of the member), if the natural parent has legal custody.

Children residing away from and eligible spouse are not entitled to apply for compensation. (Example: A dependent child moves out of the home of the eligible spouse and moves in with a grandparent. That child would not be able to apply for compensation on their own right.)

A dependent child is defined as an unmarried child, including adopted and stepchildren, who resided with the member at the time of the dependent-abuse offense and:

is under 18 years of age; or

is 18 years of age or older and incapable of self-support because of mental or physical incapacity that existed before the age of 18 and is dependent on the member for over one-half of their support; or

is 18 years of age or older but less than 23 years of age and enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and is or was dependent upon the member for over one-half of their support.

Eligibility Responsibilities

The spouse will certify annually that he or she is not remarried or cohabiting with the offender on the Certificate of Eligibility (COE) which is submitted to the Defense Finance and Accounting Service (DFAS). Dependent children will also submit a COE with the DFAS that they are not cohabiting with either the offender or ineligible spouse. The spouse must notify the DFAS within 30 days of remarriage or residing in the same household as the spouse or dependent child.

If the spouse is eligible for compensation under 10 USC § 1059 or 10 USC § 1408(h) (compensation for abused dependents of members who lose their retirement pay), the spouse must choose under which law the payments will be made.

## II. FORFEITURE OF ELIGIBILITY

Eligibility for Transition Compensation can be lost upon:

Remarriage of the spouse. These payments do not begin again upon termination of the remarriage. Any payments going to a dependent child will continue as long as the child does not live in the same household as the spouse or member.

Cohabitation with the member convicted of the abuse. Once payments are terminated for this reason, they will not begin again. Any payments made before the former member resided in the household shall not be recouped by the government.

Active participation of the spouse in the abuse of the dependent child. Competent authority designated by the Secretary of Defense must conclude that the spouse was involved in the criminal conduct or actively aided or abetted in abusing the child. If a dependent child lives with the spouse, then the child will also lose their eligibility to receive compensation.

## III. PAYMENTS AND BENEFITS

Payment commences on the date: (1) the person acting under Title 10, U.S.C., Section 860(c) approves the court-martial sentence for a dependent-abuse offense that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; (2) the member's commander starts administrative separation action if the basis for separation includes a dependent-abuse offense. This date will be the date used in Item 20 of the DD Form 2698, **Application for Transitional Compensation**, and no payment will be made if the date is prior to 30 November 1993.

The duration of payments will be 36 months except, if as of the starting date of payment, The unserved portion of the member's obligated active duty service is less than 36 months, the duration of payment will be the greater of the unserved portion or 12 months.

Currently amount of payment is \$850.00 per month for the spouse; \$215.00 per month per child under 18; \$182.00 per month per child 18-23 in school; and \$361.00 per month per disabled child. The rate is set by 38 USC § 1311(a) and 38 USC § 1311 (b). If there is no eligible spouse, compensation paid to a dependent child or multiple dependent children will be paid in equal shares as governed by 38 USC § 1313. Payments will be prorated for months when payments start in the middle of the month. If there is an odd amount because of multiple children, then the odd cent will go to the youngest child.

Payments that have been commenced shall cease to be effective the first day of the first month in which the Secretary notifies a recipient of transitional compensation in writing that payment will cease because:

The member's sentence by a court martial to receive punishment that included a dismissal, dishonorable discharge, or bad conduct as a result of a conviction for dependent-abuse offense, is remitted, set aside, or mitigated to a lesser punishment that does not include any such punishment.

The administrative separation of a member from active duty for dependent-abuse offense is disapproved by competent authority under applicable regulations.

In either case, the recipient of payments shall not be required to repay any amount received before the effective date of cessation unless any amount was erroneously when paid.

Benefits available to the recipients of Transition Compensation include use of the commissary and exchange stores. These privileges will be the same as a dependent of a member of the armed forces on active duty for a period of more than 30

days. If the recipient is eligible to use the commissary or exchange under another provision of law, then the other provision will determine eligibility and entitlements.

Limited medical care is available to a dependent receiving Transition Compensation. The dependent must request the care and it must relate to an injury or illness caused by abuse. Contact the Victim/Witness Assistance Coordinator for more details on eligibility.

This is a brief overview of the Transition Compensation program of the Department of Defense. If you have further questions or need to obtain the proper forms to begin Transition Compensation payments, contact the Victim/Witness Assistance Coordinator at Robins AFB, (478) 222-7474.

## **Retired Pay For Abused Dependents**

Congress passed 10 USC § 1408(h) to provide for the payment of retirement benefits to the dependent spouse or former spouse of a military member convicted of dependent-abuse.

### **I. ELIGIBILITY**

For a spouse or former spouse to receive a portion of disposable retirement pay under § 1408(h), the member must be convicted of a dependent-abuse offense after becoming eligible for retirement and lose eligibility to receive retired pay as a result of the misconduct. To be eligible, the spouse or former spouse:

- was the victim of the abuse and was married to the member or former member at the time of that abuse;
- or
- is a natural or adopted parent of a dependent child of the member or former member who was a victim of abuse.

A court order is necessary to request a portion of disposable retired pay. The order should be submitted to the Secretary of the appropriate service. The member's loss of eligibility to retirement pay becomes effective when the sentence of the member is approved under the Uniform Code of Military Justice.

A dependent child is an unmarried child, including adopted and stepchildren, who resided with the member at the time of the dependent-abuse offense and:

- is under 18 years of age; or
- is 18 years of age or older and incapable of self-support because of mental or physical incapacity that existed before the age of 18 and is dependent on the member for over one-half of their support; or
- is 18 years of age or older but less than 23 years of age and enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and is or was dependent upon the member for over one-half of their support.

### **II. LOSS OF ELIGIBILITY**

A former spouse receiving payments under § 1408(h) will lose eligibility upon a subsequent remarriage. The payments may begin again after the termination of that marriage by annulment, divorce or death of the spouse.

### **III. PAYMENTS AND BENEFITS**

After a court order is sent to the appropriate service secretary, the service secretary will certify the amount of retirement that the member or former member would have received at retirement. The service secretary will determine the amount based on the date of certification as

- if the member or former member's eligibility had not been terminated as a result of a dependent-abuse case; and

if the member or former member had not received retired pay immediately before the termination of eligibility, then as if the member or former member had retired on the date of certification.

A court order can provide that when retired pay is increased under section 1401a of this title (or other provision of law), the amount payable shall increase at the same time and by the same percentage as if the member or former member was eligible to receive the retired pay.

If the punishment that results in the termination of the retirement benefits is remitted, set aside, or mitigated to a punishment that does not include the termination of eligibility for retirement, the payments will stop on the first day of the first month following the month in which the service secretary notifies the recipient the payments will cease. The recipient will not be required to repay any money except any amount which was erroneous when first paid.

A spouse and dependent child can use the commissary and exchange stores, receive medical and dental care, and any other benefits provided to dependents of retired members as if the member or former member was eligible for retired pay. If the spouse or child is eligible or entitled to receive a benefit under another provision of the law, the eligibility shall be determined by the other law.

This is a brief overview of the Retired Pay Compensation program of the Department of Defense. If you have further questions, contact the Victim/Witness Assistance Coordinator at Robins AFB, (478) 222-7474.