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The Survivor Benefit Plan Explained

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5.4—Survivor Benefit Plan

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One of the most important retirement benefits for uniformed services personnel is the death benefit associated with retired pay. This survivor annuity is known as the Survivor Benefit Plan, or SBP. Whether you are advising a servicemember, a spouse, a former spouse, a military retiree, or a Guard/Reserve member, it pays to understand the costs and benefits, the rules, and exceptions for SBP. This article covers the basic information which a family law practitioner needs to know in a divorce case, in the form of questions which might be asked by a client, followed by proposed answers by the attorney.

1. Q. WHAT IS THE SURVIVOR BENEFIT PLAN, AND HOW DOES IT WORK?

A. The Survivor Benefit Plan (SBP) is an annuity paid to a designated beneficiary of a deceased servicemember (SM) or retiree. Since the military retirement pay ends when the retiree dies, this is the primary way of ensuring a continued flow of income for a survivor. SBP is a death benefit which enables uniformed services personnel to provide monthly payments to surviving beneficiaries. The beneficiary of one's SBP

¹ We invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,100 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997 and we add new articles each month.

can be a spouse, former spouse, dependent children, or any other person with an insurable interest.

2. Q. HOW DO I DECIDE HOW MUCH MY BENEFICIARY WILL RECEIVE?

A. To determine how much the beneficiary will receive, you must first designate a "base amount," and this is related to your retirement pay. The minimum base amount is \$300 per month, but the base may be any greater amount up to the full amount of your monthly retired pay.

The annuity payment is 55% of the designated base amount. For example, if the designated base amount is \$2,000, then the monthly annuity payment to the beneficiary will be \$1,100.

The cost for SBP depends on who your beneficiary is and what base amount you select. Former spouse coverage, for example, costs 6.5% of the selected base amount for those on active duty. It's about 7-10% of the base for Guard/Reserve personnel who select immediate coverage when they get their Notice of Eligibility (i.e., "20-year letter") upon the completion of 20 years of service creditable toward receipt of retired pay.

The SBP premium is deducted from gross retired pay. Thus, in a divorce situation involving the division of the military pension between the retiree and the former spouse, the cost winds up being shared by the parties in the same ratio as they share in the military pension that is divided in a divorce.

3. Q. DO I HAVE TO SIGN UP... OR DO I HAVE A CHOICE?

A. SBP participation is optional, but if you are on active duty and married, you will not be able to reject full spousal SBP coverage without your spouse's written consent. There is also a Guard/Reserve SBP program; once enrolled, a member of the Guard/Reserve must elect the maximum coverage for the spouse unless the spouse consents in writing to a lesser amount. The options are set out in the "20-year letter" and the Guard/Reserve form which accompanies it, DD Form 2656-5.

4. Q. WHEN DO I HAVE TO DECIDE?

A. There are three points to remember:

Ø If you are married and on active duty, you must make your SBP election at the time that you retire. If you elect to participate, you cannot cancel the SBP coverage later,

except under very limited circumstances. If you decline to participate, this decision is basically irrevocable.

Ø Guard or Reserve members receive a Notice of Eligibility, or NOE (also known as the “20-year letter”) when they’ve attained 20 “good years” of Guard/Reserve service. That’s the time for you to make an election for SBP. Option A leaves the decision until later; you can make it at age 60, but you will not be covered until then. Option B means deferred coverage (starting at age 60) and - once again - there’s no coverage before that time. Option C, the only one which does not require spousal consent, is called RCSBP, or Reserve Component SBP; it results in immediate coverage with full retired pay as the base amount. If you fail to make an election, you default to Option C. The cost for Option B is 6.5% of the base amount, and the cost for RCSBP can be 7-10% of the base, depending on the parties’ ages, who is the older one, and the number of years between their ages.

Ø You cannot save part of the SBP for a future spouse if you’re going through a divorce. SBP is a unitary benefit, and you are only allowed one adult SBP beneficiary. “Your ex or your next” is the way we explain it.

5. Q. IS THIS REALLY A GOOD DEAL?

A. SBP is generally a good plan, and it is heavily subsidized to make it attractive for servicemembers and retirees. But there are some situations in which it may not be the smartest or most economical option for a death benefit. Here are some thoughts and tips on the SBP decision:

- The minimum SBP plan premium for \$300 per month as the base amount is cheaper than almost every private insurance program, but the benefit (55% of \$300, or \$165 per month) is pretty small. In other words, you get what you pay for.
- When your full retirement pay is the base amount, however, SBP coverage will probably be much more expensive than life insurance, which can provide better or cheaper protection for a younger surviving spouse.
- The beneficiary can never outlive SBP, which will be paid each month, even if the spouse or former spouse lives to be 102 or beyond, with annual cost-of-living adjustments (COLAs) when they apply.
- When a divorce is pending and the member’s spouse is several years older than the SM, SBP coverage may not be advisable; the spouse may not outlive the SM.

- If the marriage is of relatively short duration, it doesn't make sense in most cases to consume the entire SBP, at 55% of the SM's full monthly pension. Some lawyers call this "excess survivorship." Either forego the SBP in favor of life insurance, or else select a modest base amount instead of full retired pay.

- If you're going through a divorce and the SBP has not been designated for your soon-to-be-ex, consider "saving" the SBP for a future spouse if your soon-to-be former spouse is likely to remarry before 55, which means that eligibility for SBP payments is suspended.

- SBP is a lifetime annuity and it will never become "too expensive," as might be the case with life insurance and rising premiums. For better comparison information on life insurance, check with an insurance agent who is familiar with the costs and benefits of SBP, such as a military retiree or an agent who is in the Reserves or the National Guard. The best advice is: "Shop around!"

SBP CHECKLIST

This attorney checklist will help to explain the Survivor Benefit Plan and coverage for the non-military spouse.

✓	Action or issue	Comments
	SBP is a unitary benefit.	This means that it cannot be divided between current spouse and former spouse.
	Election – <u>Active Duty</u> : SM is automatically covered; at retirement, an election must be made.	If SM is married, then written consent of spouse is necessary to elect NO SBP, child-only coverage, or base amount less than full retired pay.
	Election – <u>Guard/Reserve</u> : After 20 years of creditable Guard/Reserve service, SM can defer decision, opt for coverage at age 60, or elect immediate coverage.	Spouse concurrence as above, except for immediate coverage.
	If representing the nonmilitary spouse, be sure to mandate former-spouse coverage with member selecting full retired pay as base amount.	SBP benefit payments equal 55% of the selected base amount, which can be from \$300 up to the full retired pay.
	If representing the member/retiree, ensure that base amount selected yields an SBP payment not to exceed the amount of retired pay awarded to the former spouse, so that spouse doesn't profit by retiree's death.	Selection of a base amount lower than full retired pay means that the death benefit payments from SBP can be about the same as the lifetime spousal payment. This "mirror benefit" approach may be difficult to calculate before retirement, depending on the federal and state rules of pension division.
	If representing the member/retiree, try to negotiate a reduction of the spouse's share of the military pension	For former spouse coverage, SBP premium is 6.5% of selected base amount, payable out of retired pay, and it is "taken off the top" and deducted before

	to reflect the additional cost of the SBP premium, which is taken out of the retired pay.	division of disposable retired pay, so the default is that both parties pay in same shares as their respective shares of the retired pay. RCSBP is about 7-10% of the SBP base amount. The math for cost-shifting is complicated; don't just shave off 6.5% (or 10%) from the former spouse's share. For details, see the <u>Silent Partner</u> infoletter, "Military Pension Division—The Servicemember's Strategy." ²
	SM/retiree must submit former-spouse SBP election to retired pay center within one year of divorce.	Enclose certified copy of divorce decree, order for SBP coverage, and SBP application form, DD Form 2656-1 (signed by both parties).
	When the divorce is before start of retired pay, SM sets up SBP for former spouse when applying for retired pay	This is found on DD Form 2656, "Data for Payment of Retired Personnel."
	If SM/retiree fails or refuses to make required election, spouse/former spouse may apply, using DD Form 2656-10 for deemed election request.	Transmit to retired pay center the completed and signed form, and certified copies of divorce decree and order for SBP coverage within one year of order requiring SBP coverage [this is different deadline from "one year after divorce" in some cases].
	If the deadlines above aren't met, apply to the appropriate Board for the Correction of Military Records for relief. Deadline in most cases is 3 years from discovery of problems.	Relief may be available if the retiree has not remarried, or if the new spouse consents. If current spouse will not consent, then get court to join the spouse as a party and obtain an order finding that the spouse has no interest in the Survivor Benefit Plan which was awarded to the former spouse.
	Send SBP documents to the address of retired pay center found on any of these SBP forms: DD Form 2656-1, 2656-5, 2656-10. Use any search engine to find these forms.	Send by certified mail, return receipt requested, or by facsimile, or use upload procedures found on the DFAS website.

6. Q. I'M GOING THROUGH A DIVORCE FROM MY HUSBAND. IS THERE ANYTHING I SHOULD KNOW ABOUT HIS SBP COVERAGE FOR ME?

A. Yes. Here are the most important points:

Ø First of all, it's not automatic in divorce court. You must ask for it, and the two of you must agree on this coverage (or the judge must order it) for SBP to be effective.

Ø The SBP requirement must be included in a court order, and the paperwork needs to be sent to the retired pay center if you want to be sure that this option will be honored.

² All Silent Partner infoletters can be found at the web page of the North Carolina State Bar's military committee, www.nclamp.gov > Publications.

The order and the election form must be transmitted within one year of the divorce (if by the retiree or servicemember) or within one year of the SBP order (if by the spouse when the SM fails or refuses to make the required election). If the divorce is before retirement, the SM needs to make the former-spouse SBP election at time of application for start of retired pay (using DD Form 2656), even if it occurs before the 1-year window expires.

Ø One of the perils of getting divorced before retirement is the danger of losing SBP. If the divorce precedes retirement, but the court order for SBP is issued after the member retires, a “deemed election request” can’t be made, according to the rules published by DFAS. The best plan is either to postpone the divorce until after retirement, or else to ensure that former-SBP coverage is dealt with at the time of divorce.

Ø Finally, if retirement is approaching soon, see an SBP counselor, a person from the Retirement Services Office on base, or a military legal assistance attorney right away, so you can make an informed decision.

7. Q. WON’T THIS BE TAKEN CARE OF WHEN MY DIVORCE GOES THROUGH?

A. Not necessarily. If your divorce is in an overseas court (such as Germany or Japan), then the court cannot do anything about military retirement benefits, including retired pay and the Survivor Benefit Plan. No order from an overseas court will be obeyed by the retired pay center regarding SBP. You’ll have to ask a court in the U.S. to make provisions for SBP if you want to be covered. You need to do that before the divorce goes through in the foreign court.

On the other hand, you may be proceeding with a divorce in an American court. In this case, you should ask your civilian attorney to be sure to include a request for property division in the divorce papers you file with the court. Your papers should specifically ask for division of any military pension rights, and for allocation of former-spouse coverage under the Survivor Benefit Plan in case your spouse dies. If the retired pay center is served with the proper form, divorce decree and SBP order within the appropriate deadlines, then it will honor that request, even if the servicemember or retiree refuses to sign an application to that effect.

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ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).³

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including *amicus curiae* (“friend of the court”) briefs that we file in the Supreme Court and

³ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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⁴ Congress recently established the United States Space Force as the eighth uniformed service.

⁵ You can also contribute on-line at www.roa.org.