



# LEGAL BRIEF

## SURVIVOR BENEFITS PLAN

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### PREPARED BY

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### WHAT IS THE SURVIVOR BENEFITS (SBP)?

SBP is essentially a government-subsidized annuity that provides continued financial security for dependents after retired pay stops when the member dies. All active duty members are automatically covered by SBP if they die on active duty in the line of duty. No enrollment or election is required. No premiums are assessed.

As members retire they must elect to participate in SBP. Premiums are assessed, and retired pay is reduced to pay the premiums.

### SBP ADVANTAGES AND DISADVANTAGES

Advantage: You will leave a guaranteed income to your beneficiary

Eligible beneficiaries under the plan will receive 55 percent of the retiree's elected amount of coverage.

Advantage: Benefits are inflation indexed; coverage and cost are not affected by illness or age. Unlike many private life insurance policies, SBP coverage will not be cancelled or revoked due to any illness you may have or your age. Whether you retire at age 45 or 80, you or your spouse's age or health will never be considered a liability and never impact the cost of the program. In addition, the receipt of survivor benefits will not be affected by Social Security benefits. Finally, the SBP annuity is protected against inflation, increasing each December with a Cost of Living Adjustment based on the Consumer Price Index.

Advantage: You can pay for SBP benefits with a pre-tax payroll deduction

For nearly all retirees, Survivor Benefit Plan premiums are automatically deducted from your gross pay prior to the deduction of federal income tax. This decreases your total taxable income.

Disadvantage: Cost

SBP coverage is supplied at no cost while you are in active service. During your retirement, however, a monthly deduction is taken from your pay to pay for your SBP coverage. This can be as much as, but no more than, 6.5 percent of your gross retired pay.

You might consider the relationship between the cost of the program and its benefits. To earn an even return on your investment, your beneficiary typically must receive payment for seven months for every five years you pay SBP premiums.

Disadvantage: Once you enroll, changing your election is difficult

Although it may seem unnecessary to consider providing for your loved ones until later on in life, please be aware that the decisions you make at retirement regarding your SBP can be difficult to change. For example, if, at retirement, you have an eligible spouse or children and decide not to have them covered under the plan, it will be very difficult to have your current or any future spouse or children covered under the plan in the future.

## **WHO CAN BE A BENEFICIARY?**

Beneficiaries may include the following:

- Widow or widower;
- Surviving dependent children;
- Natural person with insurable interest in the member, if the member is unmarried and has no dependent children when the member becomes eligible to participate in the SBP;
- Former spouse, provided unremarried before age 55 (may regain eligibility if a remarriage ends before former spouse is 55).
  - If member was unmarried when he or she first became eligible to participate in SBP, a former spouse acquired after may only qualify as an SBP beneficiary if:
    - The marriage lasted at least one year, or
    - The former spouse is the parent of issue of that marriage.
  - Former spouse may be designated SBP beneficiary by court order (voluntary or involuntary if the court has proper jurisdiction) or by a voluntary, written agreement with the member.

## **CAN A MEMBER REVOKE AN ELECTION FOR A BENEFICIARY?**

Once a member becomes SBP eligible and makes an election to provide an annuity for a specific eligible beneficiary, the election cannot be revoked, except as noted below.

- A married member or member with a dependent child may change a decision not to participate in SBP, provided they do so before actually becoming eligible to receive retired pay with the actual retirement from active duty. The new election is irrevocable if they decide to participate. Participants may elect to discontinue participation in the SBP at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay commences.
- A member may change an election not to participate in SBP if they subsequently marry or gain a dependent child and they change the original election. There is no longer a time limit to change survivor benefit coverage from a former spouse to a spouse if there is a remarriage.

NOTE: A married participant may not make an election to discontinue payments without the written concurrence of the participant's spouse.

## **SUVIVOR BENEFITS PLAN AND FORMER SPOUSES**

A retiring member may elect SBP coverage for a former spouse. A member who makes an election for former spouse coverage is prohibited from concurrently electing coverage for his/her present spouse. Child coverage can be included in a former spouse election; however, only children resulting from the marriage of the member and the former spouse are eligible in a former spouse and child election. In this case, the former spouse is the primary beneficiary; eligible children receive an annuity only if the former spouse remarries before age 55 or dies.

The eligible child(ren) resulting from the marriage of the member and designated former spouse are covered when an election is made for former spouse and child coverage. Eligible child(ren) divide the annuity in equal shares. Children remain eligible as long as they are unmarried and under age 18, or at least 18 but under 22 if a full-time student in an accredited school. A child who is disabled and incapable of self-support remains eligible for life or as long as disabled and unmarried if the disability occurred before age 18 (or before age 22 if a full-time student when the disability occurred).

A surviving former spouse who is receiving an annuity may remarry at age 55 or older and continue to receive the annuity payments. If remarriage occurs before age 55, SBP annuity payments will stop but may be resumed if the remarriage later ends. It is the former spouse annuitant's responsibility to notify the DFAS-CL (DFAS-CL, U. S. Military Annuitant Pay, PO Box 7131, London, KY 40742-7131) of any changes in marital status.

### **BENEFIT PAYMENTS.**

The amount of the monthly SBP annuity is determined by the level of coverage or —base amount elected. The base amount is not the amount paid to the former spouse; rather, it is the amount used to compute both the monthly cost and annuity. The base amount may range from a minimum of \$300 up to a maximum of the member's gross retired pay. The annuity payable is 55 percent of the base amount elected for former spouses.

### **REVOKING ELECTIONS**

A member who was married when initially becoming SBP eligible may change an original election to provide for the now former spouse within one year of the divorce. In order to revoke an election to provide an SBP annuity to a former spouse, a member must furnish DFAS with the following:

- A certified court order that is regular on its face, that modifies or deletes an earlier requirement to designate the former spouse as a SBP beneficiary, OR
- If the former spouse election was made by a voluntary, written agreement that was not incorporated, approved or ratified by a court order, the member must provide a written statement, signed by the former spouse, evidencing the former spouse's consent to revoke the election.

## WHEN IS A MEMBER DEEMED TO HAVE ELECTED TO PROVIDE SBP TO A FORMER SPOUSE?

Even when a member did not actively elect to have a former spouse receive annuity payments, a member may be “deemed” to have made this election in two situations.

1. A member may be “deemed” to have designated a former spouse as an SBP beneficiary even if the member did not provide the agreement or court order to finance.
  - This "deemed" election is not automatic; it must be triggered by a request from the former spouse, and the request must be sent to the appropriate military finance center not later than one year after the date of the court order or for voluntary agreements, the date of divorce.
  - Once a timely request is made, the finance center will flag the service member's records. Upon the member's retirement, the former spouse will be designated as an SBP beneficiary.
2. If the member dies after becoming eligible to participate but before making an election.
  - The member is automatically deemed to have designated a widow(er) or dependent child as SBP beneficiaries.
  - A former spouse may also claim an annuity, but it is not automatically granted. A former spouse must:
    - (1) Request the annuity within one year of the member's death; and
    - (2) Show some evidence of entitlement to an SBP annuity (court order or divorce decree requiring member to designate former spouse as SBP beneficiary or voluntary, written agreement to so designate the former spouse).

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