

TITLE 10 - ARMED FORCES**Subtitle A - General Military Law****PART II - PERSONNEL****CHAPTER 71 - COMPUTATION OF RETIRED PAY****§ 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 Servicemembers Civil Relief Act (50 App. U.S.C. 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)),¹ 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 August 22, 1996, 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) (A) 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.
- (B) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides for the payment as child support of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible dependent child of the 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 dependent child.
- (2) A spouse or former spouse, or a dependent child, 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 Homeland Security);
- (B) in the case of eligibility of a spouse or former spouse under paragraph (1)(A), 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; and
- (C) in the case of eligibility of a dependent child under paragraph (1)(B), the other parent of the child died as a result of the misconduct that resulted in the termination of retired pay.
- (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, or an eligible dependent child, 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, or the dependent child, 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, or to a dependent child, 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 Homeland Security 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.

Footnotes

¹ See References in Text note below.

(Added Pub. L. 97–252, title X, § 1002(a), Sept. 8, 1982, 96 Stat. 730; amended Pub. L. 98–525, title VI, § 643(a)–(d), Oct. 19, 1984, 98 Stat. 2547; Pub. L. 99–661, div. A, title VI, § 644(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, §§ 3(3), 7 (h)(1), Apr. 21, 1987, 101 Stat. 273, 282; Pub. L. 101–189, div. A, title VI, § 653(a)(5), title XVI, § 1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1605; Pub. L. 101–510, div. A, title V, § 555(a)–(d), (f), (g), Nov. 5, 1990, 104 Stat. 1569, 1570; Pub. L. 102–190, div. A, title X, § 1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title VI, § 653(a), Oct. 23, 1992, 106 Stat. 2426; Pub. L. 103–160, div. A, title V, § 555(a), (b), title XI, § 1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771; Pub. L. 104–106, div. A, title XV, § 1501(c)(16), Feb. 10, 1996, 110 Stat. 499; Pub. L. 104–193, title III, §§ 362(c), 363 (c)(1)–(3), Aug. 22, 1996, 110 Stat. 2246, 2249; Pub. L. 104–201, div. A, title VI, § 636, Sept. 23, 1996, 110 Stat. 2579; Pub. L. 105–85, div. A, title X, § 1073(a)(24), (25), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–107, div. A, title X, § 1048(c)(9), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–189, § 2(c), Dec. 19, 2003, 117 Stat. 2866; Pub. L. 109–163, div. A, title VI, § 665(a), Jan. 6, 2006, 119 Stat. 3317; Pub. L. 111–84, div. A, title X, § 1073(a)(15), Oct. 28, 2009, 123 Stat. 2473.)

References in Text

The Social Security Act, referred to in subsecs. (a)(1)(D) and (d)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part D of title IV of the Act is classified generally to part D (§ 651 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Section 454B of the Act is classified to section 654b of Title 42. Section 408(a)(3) of the Act is classified to section 608 (a)(3) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Servicemembers Civil Relief Act, referred to in subsec. (b)(1)(D), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix and Tables.

Amendments

2009—Subsec. (h)(2)(A). Pub. L. 111–84 struck out “and” at end.

2006—Subsec. (h)(1). Pub. L. 109–163, § 665(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(2). Pub. L. 109–163, § 665(a)(2)(A), inserted “, or a dependent child,” after “former spouse” in introductory provisions.

Subsec. (h)(2)(B). Pub. L. 109–163, § 665(a)(2)(B)(i), inserted “in the case of eligibility of a spouse or former spouse under paragraph (1)(A),” after “(B)”.

Subsec. (h)(2)(C). Pub. L. 109–163, § 665(a)(2)(B)(ii), (C), added subpar. (C).

Subsec. (h)(4). Pub. L. 109–163, § 665(a)(3), inserted “, or an eligible dependent child,” after “former spouse” in introductory provisions.

Subsec. (h)(5). Pub. L. 109–163, § 665(a)(4), inserted “, or the dependent child,” after “former spouse”.

Subsec. (h)(6). Pub. L. 109–163, § 665(a)(5), inserted “, or to a dependent child,” after “former spouse”.

2003—Subsec. (b)(1)(D). Pub. L. 108–189 substituted “Servicemembers Civil Relief Act” for “Soldiers’ and Sailors’ Civil Relief Act of 1940”.

2002—Subsec. (h)(2)(A), (8). Pub. L. 107–296 substituted “of Homeland Security” for “of Transportation”.

2001—Subsec. (d)(6). Pub. L. 107–107 substituted “August 22, 1996,” for “the date of the enactment of this paragraph”.

1997—Subsec. (d). Pub. L. 105–85, § 1073(a)(24)(A), substituted “to” for “To” in heading.

Subsec. (d)(6). Pub. L. 105–85, § 1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7). Pub. L. 105–85, § 1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7)(A). Pub. L. 105–85, § 1073(a)(24)(C), substituted “out-of-State” for “out-of State”.

Subsec. (g). Pub. L. 105–85, § 1073(a)(25), in heading, substituted “to” for “To” and “on” for “On”.

1996—Subsec. (a)(1)(D). Pub. L. 104–193, § 362(c)(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 104–193, § 362(c)(2)(A), inserted “or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)),” before “which—”.

Subsec. (a)(2)(B)(i). Pub. L. 104–193, § 362(c)(2)(B), substituted “(as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659 (i)(2)))” for “(as defined in section 462(b) of the Social Security Act (42 U.S.C. 662 (b)))”.

Subsec. (a)(2)(B)(ii). Pub. L. 104–193, § 362(c)(2)(C), substituted “(as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659 (i)(3)))” for “(as defined in section 462(c) of the Social Security Act (42 U.S.C. 662 (c)))”.

Subsec. (a)(5). Pub. L. 104–106 substituted “section 12731” for “section 1331”.

Subsec. (b)(1)(A). Pub. L. 104–201, § 636(a), substituted “facsimile or electronic transmission or by mail” for “certified or registered mail, return receipt requested”.

Subsec. (d). Pub. L. 104–193, § 362(c)(3)(A), inserted “(or for benefit of)” before “Spouse or” in heading.

Subsec. (d)(1). Pub. L. 104–193, § 363(c)(2), inserted after first sentence “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.”

Pub. L. 104–193, § 362(c)(3)(B), in first sentence, inserted “(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)” before “in an amount sufficient”.

Subsec. (d)(6). Pub. L. 104–201, § 636(b), added par. (6) relating to court order which is out-of-State modification.

Pub. L. 104–193, § 363(c)(3), added par. (6) relating to use of disposable retired pay of member to satisfy amount of child support set forth in court order.

Subsec. (i). Pub. L. 104–193, § 363(c)(1), added subsec. (i). Former subsec. (i) redesignated (j).

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- Subsec. (j). Pub. L. 104–193, § 363(c)(1), redesignated subsec. (j) as (k).
- Pub. L. 104–193, § 362(c)(4), added subsec. (j).
- Subsec. (k). Pub. L. 104–193, § 363(c)(1), redesignated subsec. (j) as (k).
- 1993—Subsecs. (b)(1)(A), (f)(1), (2). Pub. L. 103–160, § 1182(a)(2)(A), substituted “subsection (i)” for “subsection (h)”.
- Subsec. (h)(2)(A). Pub. L. 103–160, § 555(b)(1), inserted “or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation” after “Secretary of Defense”.
- Subsec. (h)(4)(B). Pub. L. 103–160, § 1182(a)(2)(B), inserted “of” after “of that termination”.
- Subsec. (h)(8). Pub. L. 103–160, § 555(b)(2), inserted before period at end “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”.
- Subsec. (h)(10), (11). Pub. L. 103–160, § 555(a), added par. (10) and redesignated former par. (10) as (11).
- 1992—Subsecs. (h), (i). Pub. L. 102–484 added subsec. (h) and redesignated former subsec. (h) as (i).
- 1991—Pub. L. 102–190 inserted “or retainer” after “retired” in section catchline.
- 1990—Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay” in section catchline.
- Subsec. (a). Pub. L. 101–510, § 555(g)(1), inserted heading.
- Subsec. (a)(2)(C). Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing.
- Subsec. (a)(4). Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing in introductory provisions and in subpar. (D).
- Subsec. (a)(4)(A). Pub. L. 101–510, § 555(b)(1), inserted before semicolon at end “for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay”.
- Subsec. (a)(4)(B). Pub. L. 101–510, § 555(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;”.
- Subsec. (a)(4)(C) to (F). Pub. L. 101–510, § 555(b)(3), (4), redesignated subpars. (E) and (F) as (C) and (D), respectively, and struck out former subpars. (C) and (D) which read as follows:
- “(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;
- “(D) are withheld under section 3402(i) of the Internal Revenue Code of 1986 if such member presents evidence of a tax obligation which supports such withholding;”.
- Subsec. (a)(7). Pub. L. 101–510, § 555(f)(1), added par. (7).
- Subsec. (b). Pub. L. 101–510, § 555(g)(2), inserted heading.
- Subsec. (c). Pub. L. 101–510, § 555(g)(3), inserted heading.
- Subsec. (c)(1). Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay”.
- Pub. L. 101–510, § 555(a), inserted at end “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.”
- Subsec. (c)(2). Pub. L. 101–510, § 555(c), inserted at end “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.”
- Subsec. (c)(4). Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay”.
- Subsec. (d). Pub. L. 101–510, § 555(g)(4), inserted heading.
- Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing.

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Subsec. (e). Pub. L. 101–510, § 555(g)(5), inserted heading.

Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing.

Subsec. (e)(1). Pub. L. 101–510, § 555(d)(1), substituted “payable under all court orders pursuant to subsection (c)” for “payable under subsection (d)”.

Subsec. (e)(4)(B). Pub. L. 101–510, § 555(d)(2), substituted “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” for “the disposable retired or retainer pay payable to such member”.

Subsec. (f). Pub. L. 101–510, § 555(g)(6), inserted heading.

Subsec. (f)(1). Pub. L. 101–510, § 555(f)(2), substituted “retired pay” for “retired or retainer pay”.

Subsec. (g). Pub. L. 101–510, § 555(g)(7), inserted heading.

Subsec. (h). Pub. L. 101–510, § 555(g)(8), inserted heading.

1989—Subsec. (a)(1), (2). Pub. L. 101–189, § 1622(e)(6), substituted “The term ‘court’ for “ ‘Court’ in introductory provisions.

Subsec. (a)(3). Pub. L. 101–189, § 1622(e)(6), substituted “The term ‘final’ for “ ‘Final’.

Subsec. (a)(4). Pub. L. 101–189, § 1622(e)(6), substituted “The term ‘disposable’ for “ ‘Disposable’ in introductory provisions.

Subsec. (a)(4)(D). Pub. L. 101–189, § 653(a)(5)(A), struck out “(26 U.S.C. 3402 (i))” after “Code of 1986”.

Subsec. (a)(5). Pub. L. 101–189, §§ 653(a)(5)(B), 1622 (e)(6), substituted “The term ‘member’ for “ ‘Member’ and inserted “entitled to retired pay under section 1331 of this title” after “a former member”.

Subsec. (a)(6). Pub. L. 101–189, § 1622(e)(6), substituted “The term ‘spouse’ for “ ‘Spouse’.

1987—Subsec. (a)(4). Pub. L. 100–26, § 3(3), made technical amendment to directory language of Pub. L. 99–661, § 644(a). See 1986 Amendment note below.

Subsec. (a)(4)(D). Pub. L. 100–26, § 7(h)(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1986—Subsec. (a)(4). Pub. L. 99–661, § 644(a), as amended by Pub. L. 100–26, § 3(3), struck out “(other than the retired pay of a member retired for disability under chapter 61 of this title)” before “less amounts” in introductory text, added subpar. (E), and struck out former subpar. (E) which read as follows: “are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or”.

1984—Subsec. (a)(2)(C). Pub. L. 98–525, § 643(a), inserted “in the case of a division of property,”.

Subsec. (b)(1)(C). Pub. L. 98–525, § 643(b), inserted “, if possible,”.

Subsec. (d)(1). Pub. L. 98–525, § 643(c)(1), substituted “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 or retainer 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 or retainer pay of the member to the spouse or former spouse 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 or retainer pay specifically provided for in the court order” for “After effective service on the Secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order”.

Subsec. (d)(5). Pub. L. 98–525, § 643(c)(2), substituted “child support or alimony or the payment of an amount of disposable retired or retainer 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 or retainer pay of the member to the spouse or former spouse of the member, any part” for “disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part”.

Subsec. (e)(2). Pub. L. 98–525, § 643(d)(1), substituted “, the disposable retired or retainer pay of the member” for “from the disposable retired or retainer pay of a member, such pay” before “shall be used to satisfy”.

Subsec. (e)(3)(A). Pub. L. 98–525, § 643(d)(2)(A), struck out “from the disposable retired or retainer pay” before “of the same member”.

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Subsec. (e)(3)(A)(i). Pub. L. 98–525, § 643(d)(2)(B), substituted “from the member’s disposable retired or retainer pay the least amount” for “the least amount of disposable retired or retainer pay” before “directed to be paid”.

Subsec. (e)(2)(A)(ii)(I). Pub. L. 98–525, § 643(d)(2)(C), struck out “of retired or retainer pay” before “required by any conflicting”.

Subsec. (e)(4)(A). Pub. L. 98–525, § 643(d)(3), struck out “the retired or retainer pay of” before “the same member” and substituted “satisfaction of such court orders and legal process from the retired or retainer pay of the members shall be” for “such court orders and legal process shall be satisfied”.

Subsec. (e)(5). Pub. L. 98–525, § 643(d)(4), struck out “of disposable retired or retainer pay” after “payment of an amount” in two places and substituted “disposable retired or retainer pay” for “such pay” before “available for payment”.

Effective Date of 2006 Amendment

Pub. L. 109–163, div. A, title VI, § 665(b), Jan. 6, 2006, 119 Stat. 3318, provided that: “A court order authorized by the amendments made by this section [amending this section] may not provide for a payment attributable to any period before the date of the enactment of this Act [Jan. 6, 2006], or the date of the court order, whichever is later.”

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

Effective Date of 1996 Amendments

Amendment by section 362(c) of Pub. L. 104–193 effective six months after Aug. 22, 1996, see section 362(d) of Pub. L. 104–193, set out as a note under section 659 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 363 (c)(1)–(3) of Pub. L. 104–193, see section 395 (a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

Effective Date of 1993 Amendment

Section 555(c) of Pub. L. 103–160 provided that: “The amendments made by this section [amending this section] shall take effect as of October 23, 1992, and shall apply as if the provisions of the paragraph (10) of section 1408 (h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102–484 (106 Stat. 2426) [amending this section].”

Effective Date of 1990 Amendment

Section 555(e) of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title X, § 1062(a)(1), Dec. 5, 1991, 105 Stat. 1475, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act [Nov. 5, 1990]. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

“(2) The amendments made by subsections (b), (c), and (d) [amending this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act.”

Effective Date of 1987 Amendment

Amendment by section 3(3) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

Effective Date of 1986 Amendment

Section 644(b) of Pub. L. 99–661 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to court orders issued after the date of the enactment of this Act [Nov. 14, 1986].”

Effective Date of 1984 Amendment

Section 643(e) of Pub. L. 98–525 provided that: “The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408 (b)(1) of title 10, United States Code, as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act [Oct. 19, 1984].”

Effective Date; Transition Provisions

Section 1006 of title X of Pub. L. 97–252, as amended by Pub. L. 98–94, title IX, § 941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub. L. 98–525, title VI, § 645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

“(a) The amendments made by this title [amending this section and sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title and enacting provisions set out as notes under this section and section 1401 of this title] shall take effect on the first day of the first month [February 1983] which begins more than one hundred and twenty days after the date of the enactment of this title [Sept. 8, 1982].

“(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002 (a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title [Feb. 1, 1983, provided in subsec. (a)], but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

“(c) The amendments made by section 1003 of this title [amending sections 1447, 1448, and 1450 of this title] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [section 1447 et seq. of this title], before, on, or after the effective date of such amendments.

“(d) The amendments made by section 1004 of this title [amending sections 1072, 1076, and 1086 of this title] and the provisions of section 1005 of this title [formerly set out as a note under this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

“(e) For the purposes of this section—

“(1) the term ‘court order’ has the same meaning as provided in section 1408 (a)(2) of title 10, United States Code (as added by section 1002 of this title);

“(2) the term ‘former spouse’ has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

“(3) the term ‘uniformed services’ has the same meaning as provided in section 1072 of title 10, United States Code.”

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Review of Federal Former Spouse Protection Laws

Pub. L. 105–85, div. A, title VI, § 643, Nov. 18, 1997, 111 Stat. 1799, directed the Secretary of Defense to carry out a comprehensive review of 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 to employees and former employees of the Government and former spouses of such persons and to submit to committees of Congress a report on the results of such review not later than Sept. 30, 1999.

Payroll Deductions for Enforcement of Child Support Obligations

Section 363(c)(4) of Pub. L. 104–193 provided that: “The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period.”

Accrual of Payments; Prospective Applicability

Section 653(c) of Pub. L. 102–484 provided that: “No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act [Oct. 23, 1992].”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Study Concerning Benefits for Dependents Who Are Victims of Abuse

Pub L. 102-484, div. A, title VI, § 653(e), Oct. 23, 1992, 106 Stat. 2429, directed the Secretary of Defense to conduct a study in order to estimate the number of persons who would become eligible to receive payments under subsec. (h) of this section during each of fiscal years 1993 through 2000 and the number of members of the Armed Forces who would be approved in each of fiscal years 1993 through 2000 for separation from the Armed Forces as a result of having abused a spouse or dependent child, and to submit to Congress a report on the results of such study not later than one year after Oct. 23, 1992.

Commissary and Exchange Privileges

Section 1005 of Pub. L. 97-252, which directed Secretary of Defense to prescribe regulations to provide that an unremarried former spouse described in 10 U.S.C. 1072 (2)(F)(i) is entitled to commissary and post exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services, was repealed and restated in section 1062 of this title by Pub. L. 100-370, § 1(c)(1), (5).