DEFENSE FINANCE AND ACCOUNTING SERVICE
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MAY 12 2000

DFAS-HQ/FMM

MEMORANDUM FOR DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
CLEVELAND CENTER
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
DENVER CENTER

SUBJECT: Update to the Department of Defense Financial Management Regulation (DoDFMR), Volume 7B, regarding Transitional Compensation for Abused Dependent Not Residing With the Spouse or Former Spouse (DFAS Item H-49)

This is DFAS Interim Change Number **R05-00** to the DoDFMR, Volume 7B. This change is effective immediately.

We have evaluated your comments on the draft change of the DoDFMR, Volume 7B. The attached final version of the change includes your comments where appropriate. Assignment of an interim change number is your authority to initiate a procedural modification to facilitate this change. For the Denver Center, use the attached to initiate the formal change to the DoDFMR, Volume 7B.

Jerry S. Hinton
Acting Director for Finance

Attachment:
As stated

cc: DASD (MMP) (COMP)
OUSD (C) ODCFO (FC)
ODGC (F)
DFAS-DE/DG
Services Liaisons
USCG/NOAA/PHS Liaisons

1. Revise Chapter 60 to read:

CHAPTER 60

★VICTIMS OF ABUSE - NON-RETIREMENT ELIGIBLE MEMBERS (Transitional Compensation)

6001 GENERAL

This chapter covers transitional compensation to abused dependents of non-retirement eligible members of the Armed Forces for up to 3 years. Chapter 59 of this volume identifies benefits for spouses and former spouses of retirement-eligible members who lose eligibility for retired pay as a result of misconduct involving abuse of dependents.

600101. Definitions

A. Dependent-Abuse Offense. A criminal offense defined by 10 U.S.C. 801-940 (reference (c)) or other criminal code applicable to the jurisdiction where the act of abuse is committed. Crimes that may qualify as "dependent-abuse offenses" are ones such as sexual assault, rape, sodomy, assault, battery, murder, and manslaughter. This is not an exhaustive or exclusive listing of dependent-abuse offenses.

B. Punitive or Other Adverse Action. An action in which a member of the Armed Forces on active duty more than 30 days is:

1. Convicted of a dependent-abuse offense and whose conviction results in separation from active duty under a court-martial sentence or forfeiture of all pay and allowances under a court-martial sentence; or

2. Administratively separated from active duty under applicable Military Service regulations if the basis for separation includes a dependent-abuse offense.

C. Cohabitation. The spouse or former spouse residing in the same household as the former member after punitive or other adverse action is executed.

D. Dependent Child. An unmarried child, including an adopted child or a stepchild, who is residing with the member at the time of the dependent-abuse which results in the separation of the former member and who is:

1. Under age 18;

2. Age 18 or older and incapable of self-support due to a mental or physical incapacity that existed before age 18 and who is (or, when a punitive or other adverse action was carried out on the member, was) dependent on the member for over one-half of the child's support; or

3. Age 18 or older, but less than age 23, enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, when a punitive or other adverse action was carried out on the member, was) dependent on the member for over one-half of the child's support.

E. Spouse or Former Spouse. The individual who:

1. Is married to the member or former member at the time of the commission of the dependent-abuse offense resulting in separation;

2. Does not cohabit with the member or former member after the punitive or other adverse action; and

3. Was not an active participant in the conduct constituting the dependent-abuse offense.

★ 600102. Eligibility for Transitional Compensation Payment. The dependents of a member who separates on or after November 30, 1993, are eligible for transitional compensation payments. Payments begin on or after December 1, 1993, for qualified dependents. If a recipient is incapable of handling his or her own affairs, payments may be made only to a court-appointed guardian. In the case of a dependent child under 18 years of age, payments are made only to a court-appointed guardian or to a natural parent (who is not a spouse of the member), if the natural parent has custody of the dependent child.

★ A. Spouse or Former Spouse. In the case of a separation from active duty under punitive or other adverse action, payments are made to the person who was the member's spouse at the time of the offense. The spouse or former spouse does not have to be the victim in order to receive transitional compensation.

★ B. Dependent Child. Effective November 1, 1998, a dependent child of the member who does not reside in the same household as the member's spouse or former spouse may be paid transitional compensation benefits. Payments may be made to such a dependent child without regard to whether there is an eligible spouse or former spouse who also is receiving transitional compensation payments. A dependent child's eligibility is determined as of the date on which the member is convicted of the dependent-abuse offense or the date on which the member is administratively separated. Prior to November 1, 1998, dependent children of the member could receive transitional compensation benefits in their own right only if the member's spouse or former spouse was ineligible to receive the benefits (because of remarriage, cohabitation, or active participation in the abuse) and the dependent children did not reside in the same household as the spouse, former spouse, or the member; or, if there was no eligible spouse or former spouse (e.g., the member was not married or the spouse died), payment could be made to the dependent children of the member who did not reside in the household of the member.

600103. Commencement and Duration of Payment

A. Payment of transitional compensation begins on the date that:

1. The court-martial sentence was approved by the person acting under 10 U.S.C. 860(c) (reference (c)) if the member has been convicted by a court-martial for a dependent-abuse offense and the court-martial sentence as approved includes a dismissal, dishonorable discharge, or bad conduct discharge; or

2. Separation action was initiated by the commander under regulations of the Secretary concerned, if administratively separated.

B. Payments are made for a period of 36 months. EXCEPTION: 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 is the greater of the unserved portion or 12 months. For enlisted members, the "obligated active duty service" is the time remaining on their term of enlistment. For officers, the "obligated active duty service" is indefinite unless the officer has a date of separation established, in which case it is the time remaining until the date of separation.

600104. Amount of Payment

A. A spouse or former spouse receives transitional compensation at the same rate as monthly Dependency and Indemnity Compensation (DIC) under 38 U.S.C. 1311(a)(1) (reference (ar)).

DIC Rate	Effective Date
$769	December 1, 1993
790	December 1, 1994
810	December 1, 1995
833	December 1, 1996
★850	December 1, 1997
★861	December 1, 1998
★881	December 1, 1999

★ B. The transitional compensation for the spouse or former spouse who has custody of a dependent child or children of the member who reside in the same household as the spouse or former spouse is increased for each child by an amount equal to the monthly DIC amount payable for dependent children under 38 U.S.C. 1311(b) (reference (ar)).

	DIC Rate	Effective Date
	$150	October 1, 1993
	200	October 1, 1994
	205	December 1, 1995
	211	December 1, 1996
★	215	December 1, 1997
★	217	December 1, 1998
★	222	December 1, 1999

★ C. If transitional compensation benefits are payable to a dependent child under paragraph 600102.B, payments are made in equal shares in an amount equal to the monthly DIC amount payable for dependent children under 38 U.S.C. 1313 (reference (ar)).

	DIC Child Rate Eff December 1, 1993	DIC Child Rate Eff December 1, 1994	DIC Child Rate Eff December 1, 1995
1 child	$327	$336	$344
2 children	471	484	496
3 children	610	627	643
Over 3	610 + $120 for each child over 3	627 + $123 for each child over 3	643 + $126 for each child over 3

	DIC Child Rate Eff December 1, 1996	★DIC Child Rate Eff December 1, 1997	★DIC Child Rate Eff December 1, 1998
1 child	$354	$361	$365
2 children	510	520	526
3 children	662	675	683
Over 3	$662 + $130 for each child over 3	$675+ $132 for each child over 3	$683+ $133 for each child over 3

	★ DIC Child Rate Eff December 1, 1999
1 child	$373
2 children	538
3 children	699
Over 3	$699 + $136 for each child over 3

★ D. Payments will be prorated for months when payments start or stop in the middle of a month (e.g., if the former spouse receiving transitional compensation remarries, compensation terminates effective as of the date of the marriage).

E. When paying multiple children and the payment amount does not divide equally, the youngest child shall receive the odd cent(s).

F. Arrears of compensation, in the event of the death of a spouse, former spouse or dependent child, will not be paid.

★ G. Advance payment of transitional compensation benefits is not authorized.

600105. Forfeiture Provisions

★ A. Transitional compensation payments are forfeited as a result of:

1. Cohabitation. A punitive or other adverse action has been executed and the former member resides in the same household as the spouse or former spouse or child who is receiving the compensation. Compensation terminates as of the date the former member begins residing in that household. Any compensation paid before the member resides in the household shall not be recouped. Once terminated for cohabitation, the payments do not resume.

★ 2. Remarriage. The former spouse who is receiving the compensation remarries. Compensation terminates effective as of the date of the former spouse's remarriage. Payments do not resume if the remarriage is terminated.

★ 3. Active Participation. If the victim was a dependent child, and the spouse has been found by competent authority designated by the Secretary concerned to have been an active participant in the conduct constituting the criminal offense, or to have actively aided or abetted the member in such conduct against that dependent child, the spouse may not be paid transitional compensation.

★ B. Annual Certification. The spouse or former spouse certifies annually to the DFAS-Denver Center that he or she has not remarried and has not been cohabiting with the offender. The form to be used is a Certificate of Eligibility (COE). The spouse or former spouse must notify the DFAS-Denver Center within 30 days of the date of remarriage or the date the member begins residing in the same household as the spouse or former spouse or dependent child. Dependent children, parent, or court-approved guardian annually will certify that the children are not residing with the offender or ineligible spouse via the COE process. If the COE is not received within 60 days of date of COE, payments will be suspended until verification of eligibility is received.

600106. Effect of Military Pay Continuation. Transitional compensation is not payable when a member's court-martial sentence, which includes a dismissal, total forfeiture, dishonorable discharge, or bad conduct discharge, is remitted, set aside, or mitigated to a lesser punishment that does not include such punishment; or, the administrative separation is disapproved. Any payment of transitional compensation that has started shall stop effective the first day of the month after the Secretary of the Military Department concerned notifies the recipient in writing that payment shall cease for such reason. The recipient is not required to repay transitional compensation received before the effective date of cessation, excluding erroneous payments.

★ 600107. Multiple Benefits. A spouse or former spouse may not receive both payments of transitional compensation and payments under 10 U.S.C. 1408(h) (reference (c)) of benefits for spouses and former spouses of retirement-eligible members who lost eligibility for retired pay as a result of misconduct involving abuse of dependents. See Chapter 59 of this volume. The spouse or former spouse must elect which benefit he or she chooses to receive. If a spouse or former spouse begins receiving transitional compensation payments and later is determined to be eligible for and receives payments under 10 U.S.C. 1408(h), any amounts of transitional compensation received must be recouped.

600108. Effective Date. Transitional compensation provisions apply to members who, on or after November 30, 1993, separate from active duty under a court-martial sentence resulting from a dependent-abuse offense; who separate from active duty for administrative reasons if the basis for separation includes a dependent-abuse offense; or who are sentenced to forfeiture of all pay and allowances by a court-martial which has convicted the member of a dependent-abuse offense.

★ A. Transitional compensation is payable to dependents who qualify on or after December 1, 1993, for periods on or after December 1, 1993. However, in cases where a spouse or former spouse is receiving payments and there is an eligible dependent child or children not residing in the same household as the spouse, former spouse, or member, transitional compensation is payable to the dependent children for periods on or after November 1, 1998.

B. If payments for the period December 1, 1993, through the expiration of member's active obligated service (ETS) represent less than 12 months, payments continue until the 12-month minimum period is met.

600109. Applications. An individual requests transitional compensation through a Military Service representative. The Military Service representative approves payment, provides the O&M fund cite, and forwards the application to the DFAS at:

DFAS-DE/FRA
6760 East Irvington Place
Denver, CO 80279-6000

Facsimile numbers: DSN 926-4667
COMM (303) 676-4667

600110. Taxability. Transitional compensation payments are considered to be benefits that are excludable from taxation and should not be reported on a Treasury Form 1099R.

2. Bibliography changes/additions.

Paragraph	Citation
600102.B	Public Law 105-61, Section 570, October 17, 1998
600108.A	Public Law 105-61, Section 570, October 17, 1998
600110	Armed Forces Tax Council memo December 16, 1994