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DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC42--Pay and Allowance Administration
Subchapter CC42.5--Miscellaneous Pay Provisions
Personnel INSTRUCTION 1--Former Spouse Payments From Retired Pay

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	Authority: 10 U.S.C. 1408	

This INSTRUCTION provides the text of the joint regulation promulgated by the uniformed services to implement the division of retired pay portion of the "Former Spouses' Protection Act," Section 1002 of Title X, Public Law 97-252, as amended. This law requires the uniformed services to issue a joint regulation implementing uniform procedures for the division of retired pay pursuant to a divorce settlement. The format and text are identical to that published in the Federal Register, Volume 50, Number 13, Friday, January 18, 1985, which amends 32 Code of Federal Regulations, Chapter 1, Part 63. This regulation has also been published as Department of Defense Directive Number 1340.16, dated January 2, 1985.

**PART 63-FORMER SPOUSE
PAYMENTS PF40M RETIRED PAY**

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§ 63.1 Purpose.

Under 10 U.S.C. 1401L this part establishes policy and authorizes direct payments to a former spouse of a member from retired pay in response to court-ordered alimony, child support, or division of property.

§ 63.2 Applicability and Scope

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Coast Guard (under agreement with the Department of Transportation), the Public Health Service (PHS) (under agreement with the Department of Health and Human Services), and the National Oceanic and Atmospheric Administration (NOAA) (under agreement with the Department of Commerce). The term “Uniformed Services,” as used herein refers to the Army, Navy, Air Force, Marine Corps, Coast Guard commissioned corps of the PHS, and the commissioned corps of the NOAA.

(b) This part covers members retired from the active and reserve components of the Uniformed Services who are subject to court orders awarding alimony, child support or division of property.

§ 63.3 Definitions

(a) **Alimony.** Periodic payments for the support and maintenance of a spouse or former spouse in accordance with State law under 42 U.S.C. 882(c). It includes but is not limited to, spousal support, separate maintenance and maintenance. Alimony does not include any payment for the division of property.

(b) **Annuitant.** A person receiving a monthly **payment** under a survivor benefit plan related to retired pay.

(c) **Child Support.** Periodic payments for the support and maintenance of a child or children, subject to and in accordance with State law under 42 U.S.C. 662(b). It includes, but is not limited to, payments to provide for health care, education, recreation, and clothing or to meet other specific needs of such a child or children.

(d) **Court.** 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 and any court of the United States as defined in 28 U.S.C. 451 having competent jurisdiction; or 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.

(e) **Court Order.** As defined under 10 U.S.C. 1408(a)(2), a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court order, ratified or approved property settlement incident to such a decree, it includes a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court order, ratified or approved property settlement incident to such previously issued decree. The court order must provide for the payment to a member's former spouse of alimony, child support or a division of property. In the case of a division of property, the court order must specify that the payment is to be made from the member's disposable retired pay.

(f) **Creditable Service.** Service counted towards the establishment of any entitlement for retired pay. See paragraphs 10102 through 10208 of DoD 1340-1z-K 42 U.S.C. 212 for the PHS, and 33 U.S.C. 804 and 10 U.S.C. a= for NOAA.

(g) **Designated Agent.** A representative of a Uniformed Service who will receive and process court orders under this part.

(h) **Division of Property.** Any transfer of property or its value by an individual to his or her former spouse in compliance with any community property settlement equitable distribution of property, or other distribution of property between spouse* or former spouses.

(1) **Entitlement.** The legal right of a member to receive retired pay.

(j) **Final Decree.** As defined under 10 U.S.C. 2408(a)(3), 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.

(k) **Former Spouse.** The former husband or former wife, or the husband or wife, of a member.

(1) **Garnishment.** The legal procedure through which payment is made from an individual's pay that is due or payable to another party in order to satisfy a legal obligation to provide child support, to make alimony payments, or both, under 5 CFR Part 581 and 42 U.S.C. or to enforce a division of

property than a division of retired pay as Property under 10 U.S.C. 1408(d)(5).

(in) **Member.** A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired from the regular or reserve component of the Uniformed Service concerned.

(n) **Renounced Pay.** Retired pay to which a member has an entitlement, but for which receipt of payment has been waived by the member.

(o) **Retired Pay.** The gross entitlement due a member based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, if applicable, and date of retirement (transfer to the Fleet Reserve or Fleet Marine Corps Reserve); also known as retainer pay. It does not include benefits paid to a member retired for disability under 10 USA, Chapter 61.

§ 63.4 Policy

It is the policy of the Uniformed Services to honor a former spouse's request for direct payment from a given member's retired pay in enforcement of a court order that provides for a alimony, child support, or division of property, when the terms, condition and requirements in this part are satisfied.

§ 63.5 Responsibilities.

(a) The Assistant Secretary of Defense (Comptroller) shall establish policy and procedures, provide guidance, coordinate changes with the Uniformed Services, and monitor the implementation of this part within the Department of Defense.

(b) The Secretaries of the Military Departments and Heads of the other Uniformed Services shall implement this part.

§ 63.6 Procedures.

(a) **Eligibility of Former Spouse.** (1) A former spouse of a member is eligible to receive direct payment from the retired pay of that member only pursuant to a court order that satisfies the requirements and conditions specified in this part. In the case of a division of property, the court order must specifically provide that payment is to be made from disposable retired pay.

(2) For establishing eligibility for direct payment under a court order that provides for a division of retired pay as property, a former spouse must have been married to the member

for 10v or more, during which the member performed 10 years or more of credit service. There is no 10-year marriage requirement for payment of child support, alimony, or both.

(b) Application By Former Spouse. (1) A former spouse shall deliver to the designated agent of the member's Uniformed Service a signed DD Form 2293, Request for Former Spouse Payments from Retired Pay, or a signed statement that includes:

(I) Notice to make direct payment to the former spouse from the member's retired pay.

(ii) A copy of the court order and other accompanying documents certified by an official of the issuing court that provides for payment of child support, alimony, or division of property.

(III) A statement that the court order has not been amended, superseded, or set aside.

(iv) Sufficient identifying information about the member to enable processing of the application. The identification should give the member's full name, social security number, and Uniformed Service.

(v) The full name, address, and social security number of the former spouse.

(A) Before payment, the former "use shall agree personally that any future overpayments are recoverable and subject to involuntary collection from the former spouse or his or her estate.

(vii) As a condition precedent to payment, the former spouse shall agree personally to notify the designated agent promptly if the operative court order upon which payment is based is vacated, modified, or set aside. This shall include notice of the former spouse's remarriage if all or a part of the payment is for alimony or notice of a change in eligibility for child support payments under circumstances of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through direct payment to a former spouse from retired pay.

(2) If the court order is for a division of retired pay as property and it does not state that the former spouse satisfied the eligibility criteria found in I 63.8.(a)(2), of this Part, the former spouse shall furnish sufficient evidence for the designated agent to verify that the requirement was met.

(3) The notification of the designated agent shall be accomplished by certified or registered mail, return receipt requested, or by personal

service. Effective service is not accomplished until a complete application providing all information required by this part is received in the office of the designated agent, who shall note the date and time of receipt on the notification document.

(4) Not later than 90 days after effective service, the designated agent shall respond to the former spouse as follows: (I) If the court order will be honored, the former spouse shall be informed of the date that payments tentatively begin; the amount of each payment, the amount of gross retired pay, total deductions, and disposable retired pay (except in cases where full payment of a court-ordered fixed amount will be made); and other relevant information if, applicable; or (II) If the court order will not be honored, the designated agent shall explain in writing to the former spouse why the court order was not honored.

(5) The designated agent for each Uniformed Service is:

(i) Army: Commander, Army Finance and Accounting Center, Attn: FINCL-G, Indianapolis, IN 46249, (317) 542-2155.

(ii) Navy: Director, Navy Family Allowance Activity, Anthony 1. Celebrezze Federal Building, Cleveland, OH 44199. (216) 522-5301.

(iii) Air Force: Commander, Air Force Accounting and Finance Center, ATTN: JA, Denver, CO 80279, (303) 370-7524.

(iv) Marine Corps: Commanding Officer, Marine Corps Finance Center (Code AA), Kansas City, MO 64197, (816) 926-7103.

(v) Coast Guard: Commandant (GLGL), General Law Division, United States Coast Guard Headquarters, 2100 2nd Street SW., Washington, D.C. 20593, (202) 426-1553.

(vi) Public Health Service: Office of General Counsel, Department of Health and Human Services, Room 722A, Humphrey Building, 200

Independence Avenue SW., Washington, D.C. 20201. (202) 245-7741.

(vii) National Oceanic and Atmospheric Administration: Director, Navy Family Allowance Activity, Anthony 1. Celebrezze Federal Building, Cleveland, OH 44199. (216) 522-5301.

(6) U.S. Attorneys are not designated agents authorized to receive court orders or garnishments under this part.

(c) Review of Court Orders. (1) The court order must be regular on its face, meaning that it is issued by a court of competent jurisdiction in accordance with the laws of the jurisdiction.

(2) The court order must be *low* in form and must include nothing on its face that provides reasonable notice that it is issued without authority of law. It is required that the court order be authenticated or certified within 20 days immediately preceding its service on the designated agent.

(3) The court order must be a final decree.

(4) If the court order **was issued while the member was on active duty and the member was not represented in court**, the court order or other court documents must certify that the rights of the member under the 'Soldiers' and Sailors' Civil Relief Act of 19W (50 U.S.C. Appendix 501-591) were compiled with.

(5) Sufficient information must be

contained in the court order to identify the member.

(6) For court orders that provide the division of retired pay as property, the following conditions apply:

(i) The court must have jurisdiction over the member by reason of (A) the member's residence, other than because of military assignment in the territorial jurisdiction of the court; (B) the member's domicile in the territorial jurisdiction of the court; or (C) the member's consent to the jurisdiction of the court.

(ii) The treatment of retired pay as property solely of the member or as property of the member and the former spouse of that member must be in accordance with the law of the jurisdiction of such court.

(iii) The court order or other accompanying documents served with the court order must show the former spouse was married to the member 10 years at more, during which the member performed at least 20 years of creditable service.

(7) Court orders awarding a division of retired pay as property that were issued before June 26, 1981, shall be honored if they otherwise satisfy the requirements and conditions specified in this part. A modification on or after June 28, 1981, of a court order that originally awarded a division of retired pay as property before June 26, 1981, may be honored for subsequent court-ordered changes made for clarification, such as the interpretation of a computation formula in the original court order. For court orders issued before June 26, 1981, subsequent amendments after that date to provide for a division of retired pay as property are unenforceable under this part. If the court order awarding a division of retired pay as property is issued on or after June 26, 1981, subsequent modifications of that court order shall be honored if they otherwise satisfy the requirements and conditions specified in this part.

(8) In the case of a division of property, the court order must provide specifically for payment of a fixed amount expressed in U.S. dollars or payment as a percentage or fraction of disposable retired pay. Court orders specifying a percentage or fraction of retired pay shall be construed as a percentage or fraction of disposable retired pay. A court order that provides for a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court.

(d) *Garnishment Orders.* (1) If a court order provides for the division of property other than retired pay in addition to an amount of disposable retired pay to be paid to the member's former spouse, the former spouse may garnish that member's retired pay in order to enforce the division of property. The limitations of 15 U.S.C. 1673(a) and the limitations of I 63.6.(e) of this Part apply in determining the amount payable to a former spouse.

(2) The designated agents authorized to receive service of process of garnishment

orders under this part shall be those listed in I 63.6.(b)(5) of this Part.

(3) Garnishment orders under this part for enforcement of a division of property other than retired pay shall be processed in accordance with 5 CFR Part 581 to the extent that the procedures are consistent with this part.

(e) *Limitations.* (1) Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount paid does not exceed:

(i) 50 percent of the disposable retired pay for all court orders and garnishment actions paid under this part.

(ii) 65 percent of the disposable retired pay for all court orders and garnishments paid under this part and garnishments under 42 U.S.C. ON.

(2) Disposable retired pay is the gross pay entitlement, including renounced pay, less authorized reductions. Disposable retired pay does not include the retired pay of a member retired for disability under 10 U.S.C. Chapter 61 or annuitant payments under 10 U.S.C. Chapter 73. The authorized deductions are:

(i) Amounts owed to the United States.

(ii) Fines and forfeitures ordered by a court-martial.

(iii) Amounts waived in order to receive compensation under title 5 or 35 of United States Code.

(iv) Federal employment taxes and income taxes withheld to the extent that the amount deducted is consistent with the member's tax liability, including amounts for supplemental withholding under 28 U.S.C. 9402(i), when the member presents evidence to the satisfaction of the designated agent that supports such withholding. State employment taxes and income taxes when the member makes a voluntary request for such withholding from retired pay and the Uniformed Services have entered into an agreement with the State concerned for withholding from retired pay.

(v) Premiums paid as a result of an election under 10 U.S.C. Chapter 73 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 part

(vi) Other amounts required by law to be deducted.

(f) *Notification of Member.* (1) As soon as possible, but not later than 30 calendar days after effective service of a court order or garnishment action under this part, the designated agent shall send written notice to

the affected member at his or her last known address.

(2) This notice shall include:

(i) A copy of the court order and accompanying documentation.

(ii) An explanation of the limitations placed on the direct payment to a former spouse from a member's retired pay.

(iii) A request that the member submit notification to the designated agent if the court order has been amended, superseded, or set aside. The member is obligated to provide an authenticated or certified copy of the operative court documents when there are conflicting court orders.

(iv) The amount or percentage that will be deducted if the member fails to respond to the notification as prescribed by this part.

(v) The effective date that direct payments to the former spouse tentatively will begin.

(vi) Notice that the member's failure to respond within 30 days from the date that the notice is mailed may result in the payment of retired pay as provided in the notification.

(vii) That if the member submits information in response to this notification, the member thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

(3) If the member responds to the notification, the designated agent shall consider the response and will not honor the court order whenever it is shown that the court order is defective, or the court order is modified, superseded, or set aside.

(g) *Designated Agent Liability.* (1) The United States and any officer or employee of the United States will not be liable with respect to any payment made from retired pay to any member or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this Part.

(2) An officer or employee of the United States, who under this part has the duty to respond to interrogatories, will 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 or her in carrying out any of the duties that directly or indirectly pertain to answering such interrogatories.

(3) If a court order on its face appears to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court has obtained personal jurisdiction over the member.

(4) Whenever a designated agent is effectively served with interrogatories concerning implementation of this part, the designated agent shall respond to such interrogatories within 30 calendar days of receipt or within such longer period as may be prescribed by applicable State law.

(h) Payments. (1) Subject to a member's eligibility for retired pay, effective service of a court order, and the limitations and requirements of this part the Uniformed Service concerned shall begin payments to the former spouse not later than go days after, date of effective service.

(2) Payments shall conform with the normal pay and disbursement cycle for retired pay. Payments may be expressed as fixed in amount or as a percentage or fraction of disposable retired pay. With regard to payments based on a percentage or fraction of disposable retired pay, the amount will change in direct proportion and at the effective date, of future cost-of-living adjustments that are authorized, unless the court order directs otherwise.

(3) Payments terminate on the date of the death of the member, death of the former spouse, or as stated in the applicable court order, whichever occurs first. Payments shall be terminated or shall be reduced upon the occurrence of a condition that requires termination or reduction under applicable State law.

(4) When several court orders are served with regard to a member's retired pay, payment shall be satisfied on a first-come, first-served basis within the amount limitations prescribed in J 63.6(e) of this Part.

(5) If conflicting court orders are served on the designated agent that direct that different amounts be paid during a month to the same former spouse from a given member's retirement pay, the designated agent shall authorize payment on the court order directing payment of the least amount. The difference in amounts on conflicting court orders shall be retained by the designated agent pending resolution by the court that has jurisdiction or by agreement of the parties. The amount retained shall be paid as provided in a subsequent court order or agreement. The total of all payments plus all moneys retained under this paragraph shall be within the limitation prescribed in J 63.6(e) of this Part.

(6) The designated agent shall comply with a stay of execution Issued by a court of competent jurisdiction and shall suspend payment of disputed amounts pending resolution of the issue.

(7) When service is made and the identified member is found not to be currently entitled to payments the designated agent shall advise the former spouse that no payments are due from or payable by the Uniformed Service to the named individual. If the member is on active duty when service is accomplished, the designated agent shall retain the application until the member's retirement. in such case, payments to the former spouse, if otherwise proper, shall begin not later than go days from the date the member first becomes entitled to receive retired pay. It the member becomes entitled to receive retired pay more than go days after first being notified under § 63.6(f) of this Part, the notification procedures prescribed by that section shall be repeated by the designated agent.

(8) In moneys are only temporarily exhausted or otherwise unavailable, the former spouse shall be fully advised of the reason or reasons why and for how long the moneys will be unavailable. Service shall be retained by the designated agent and payments to the former spouse, if otherwise proper, shall begin not later than 00 days from the date the member becomes entitled to receive retired pay. if the member becomes entitled to receive retired pay more than 90 days after first being notified under J 63.6(f) of this Part. the notification procedures prescribed by that section shall be repeated by the designated agent.

(9) The order of precedence for disbursement of retired pay when the gross amount is not sufficient to permit all authorized deductions and collections shall follow Volume I, Part 3, Section 7040, "Order of Payment," in the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies. Court-ordered payments to a former spouse from retired pay shall be enforced over voluntary deductions and allotments.

(10) Payments made shall be prospective in terms of the amount stated in the court order. Arrearages will not be considered in determining the amount payable from retired pay.

(11) No right, title, or interest that can be sold, assigned, transferred, or otherwise disposed of, including by inheritance, is created under this part.

(12) At the request of the designated agent, the former spouse may be required to provide a certification of eligibility that attests in writing to the former spouse's continued eligibility and that includes a notice of change in status or circumstances that affect eligibility. After notice to the former spouse, payments to the former spouse may be suspended, or terminated, when the former spouse fails to comply, or refuses to comply, with the certification requirement.

(i) *Reconsideration.* A former spouse or member may request that the designated agent reconsider the designated agent's determination in response to service of an application for payments under this part or the member's answer to the designated agent with respect to notice of such service. For reconsideration, the request must express the issues the former spouse or the member believes were incorrectly resolved by the designated agent. The designated agent shall respond to the request for reconsideration, giving an explanation of the determination reached.

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