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**Senate Bill 567: National Defense Authorization Act for Fiscal year 2008** has some proposed changes to retired pay, survivor benefits, direct payment, cost of living adjustments and lump sum payments. The complete portions of each proposal are attached. Below are the highlights in summary:

- Section 621. Waiver of recoupment of overpayments of retired pay to a spouse or former spouse as a result of retroactive disability determination. Currently, if a former spouse is receiving disposable retired pay and if the member is subsequently found fully or partially disabled, if benefits are retroactive, the former spouse must return portions of the retired pay deemed VA waiver because disability benefits are not “disposable retired pay” as that term is defined in section 1408(a)(4).
- Section 622. Survivor Benefit Plan; Extension of Period for Election Deemed to Have Been Made. Currently, the former spouse has one year to make a survivor benefit election or such coverage is lost. The time will change from one year to five years.
- Section 625. Increases for Divisions of Retired Pay Expressed as a Dollar Amount. Currently, if the division of retired pay is expressed in a dollar amount a cost of living increase will not apply. The new rule would automatically include cost of living adjustments to retired pay awarded to a former spouse and expressed in a dollar amount.
- Section 628. Revocation of the Ten-Year Rule for Direct payment of Retired Pay. Currently, a former spouse must have been married for ten years and those ten years must have overlapped with the member’s military service to receive retired pay directly. The new rule will repeal this rule and allow direct payments regardless of the length of marriage and/or overlap with military service.
- Section 629. Survivor Benefit Plan; Multiple Beneficiaries. Currently if the former spouse is deemed the “surviving spouse” of the military member for surviving spouse benefits, no other beneficiaries are allowed, including a subsequent spouse. The new rule will allow multiple spouses and former spouses to be deemed survivors to portions of the survivor benefit.
- Section 630. Survivor Benefit Plan; Financial Responsibility for Survivor Benefit Plan Participation. Currently, the cost for survivor benefits can only be paid through a reduction from the member’s retired pay. The new rule will allow you to allocate the cost of the survivor annuity (currently 6.5%) to the former spouse or member.

Allowing Member to Submit Application for Direct payment.2774 of title 10, United States Code, is amended by adding at the end the following new subsection: The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, shall waive any claim for overpayment against a spouse or former spouse of a member if--

### **Subtitle C-Retired Pay and Survivor Benefits**

#### **SEC. 621. WAIVER OF RECOUPMENT OF OVERPAYMENTS OF RETIRED PAY TO SPOUSE OR FORMER SPOUSE AS A RESULT OF RETROACTIVE DISABILITY DETERMINATION.**

Section 2774 of title 10, United States Code, is amended by adding at the end the following new subsection: The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, shall waive any claim for overpayment against a spouse or former spouse of a member if--

the payment was disposable retired pay that, pursuant to section 1408 of this title, a court treated as property for the purpose of issuing a final decree of divorce, dissolution, annulment, or legal separation, including a court ordered, ratified, or approved property settlement incident to such decree; and

the claim for overpayment is attributable to a determination of entitlement to disability compensation under title 38.

'(2) In this section:

The term 'court' has the meaning given such term in section 1408(a)(1) of this title.

The term 'disposable retired pay' has the meaning given such term in section 1408(a)(4) of this title.

The term 'final decree' has the meaning given such term in section 1408(a)(3) of this title.

The term 'member' has the meaning given such term in section 1408(a)(5) of this title.

The term 'spouse or former spouse' has the meaning given such term in section 1408(a)(6) of this title.'

#### **SEC. 622. SURVIVOR BENEFIT PLAN; EXTENSION OF PERIOD FOR ELECTION DEEMED TO HAVE BEEN MADE.**

In General- Section 1450(f)(3)(C) of title 10, United States Code, is amended by striking 'one year' and inserting 'five years'.

Effective Date- the amendment made by this section shall apply with respect to divorces, dissolutions, annulments, or legal separations that become effective after the end of the 90-day period beginning on the date of enactment of this Act.

#### **SEC. 623. ALLOWING MEMBER TO SUBMIT APPLICATION FOR DIRECT PAYMENT,**

(a) Permit Application for Direct Payment by Member- Section 1408(d) of title 10, United

States Code, is amended in the first sentence of paragraph (1) by inserting 'by a member or former member or the spouse or former spouse of such member' after 'the Secretary concerned'.

(b) Conditions for Direct Payment- Section 1408(d) of such title is further amended by adding at the end the following new paragraph:

'(8) A former spouse who accepts payment shall be deemed--  
to have consented and agreed to the recovery of any future overpayments, including recovery by involuntary collection from the former spouse or his or her estate; and

to have agreed to give prompt notice in writing to the Secretary if—

the operative court order upon which payment is based is vacated, modified, or set aside;

the former spouse remarries, if all or a part of the payment is for alimony; or

'(iii) the former spouse is ineligible for child support payments due to 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.'

(c) Effective Date- the amendments made by this section shall apply to applications for direct payment of retired pay submitted to the Secretary concerned after the end of the 90-day period beginning on the date of enactment of this Act.

#### **SEC. 624. DIVISION OF RETIRED PAY TO BE BASED ON MEMBER'S LENGTH OF SERVICE AND PAY GRADE AT TIME OF DIVORCE.**

(a) In General- Section 1408(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

'(5) In the case of a member as to whom a decree of divorce, dissolution, annulment, or legal separation becomes final before the date on which the member begins to receive retired pay, the total monthly retired pay to which a member is entitled, for purposes of determining 'disposable retired pay,' as defined in paragraph (4) of subsection (a), that a court may treat in the manner described in paragraph (1), shall be limited to retired pay computed based on the pay grade, and the length of service of the member while married, that are creditable toward entitlement to basic pay and to retired pay as of the date a marital property interest in retired pay terminates. Amounts so calculated shall be increased by the cumulative percentage of increases in basic pay and retired pay between the date a marital property interest in retired pay terminates and the effective date of the member's retirement. Upon request and pursuant to regulations, the Secretary concerned shall calculate disposable retired pay described in this paragraph.'

Effective Date- the amendment made by subsection (a) shall apply with respect to divorces, dissolutions, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of enactment of this Act.

#### **SEC. 625. INCREASES FOR DIVISIONS OF RETIRED PAY EXPRESSED AS A DOLLAR AMOUNT.**

Monetary Amount Adjustment- Section 1408(a)(2)(C) of title 10, United States Code, is amended by striking `expressed in dollars' and inserting 'expressed as a specific dollar amount, with such amount, if so ordered, being adjusted in the same manner and at the same time as retired pay is adjusted to reflect changes in the Consumer Price Index under section 1401a of this title,'.

Effective Date- The amendment made by subsection (a) shall apply with respect to court orders that become effective after the end of the 90-day period beginning on the date of enactment of this Act.

## **SEC. 626. LUMP SUM PAYMENTS TO FORMER SPOUSES OF MEMBERS OF THE UNIFORMED SERVICES.**

(a) Authority for Lump Sum Payment- (1) Chapter 74 of title 10, United States Code, is amended by adding at the end the following new section:

### **'Sec. 1468. Lump sum payments for certain amounts payable to former spouse**

If the present value of a periodic amount described in subsection (b) payable to a former spouse does not exceed \$5,000, the Secretary concerned shall pay, in a lump sum, an amount equal to such present value to the former spouse eligible for such benefit.

A periodic amount described in this subsection means:

'(1) An annuity under the Survivor Benefit Plan (subchapter II of chapter 73 of this title).'(2) Payment of retired pay pursuant to a court order resulting from the treatment by the court under section 1408(c) of this title of disposable retired pay of a member of the uniformed services as the property of the member and his spouse. With the consent of the former spouse, the Secretary concerned may pay, in a lump sum, an amount equal to the present value of a periodic amount described in subsection (b) in excess of \$5,000. Payment of a lump sum under subsection (a) or (c) of this section shall constitute full payment of the amounts described in subsection (b) to the former spouse. For purposes of this section, the term 'present value' means the present value calculated by using the mortality table, interest rate, and actuarial assumptions pursuant to regulations prescribed by the Secretary of Defense.

If a former spouse eligible for a payment under subsection (b) or (c) of this section elects to have all or a portion of such payment paid directly to an eligible retirement plan, and specifies the eligible retirement plan to which such payment is to be paid (in such form and at such time as the Secretary concerned may prescribe), such payment shall be made in the form of a transfer by the Secretary concerned to the trustee of the eligible retirement plan so specified. For purposes of the preceding sentence, the term `eligible retirement plan' has the same meaning as `eligible retirement plan' for purposes of section 414(v)(2)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 414(v)(2)(B)).'

(2) Clerical Amendment- The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

'1468. Lump sum payments for certain amounts payable to former spouse.'

(b) Rollover Treatment for Lump Sum Payments Paid to Former Spouses of Members of the Uniformed Services- Section 414 of the Internal Revenue Code of 1986 (relating to

definitions and special rules) is amended by adding at the end the following new subsection:

'(w) Lump Sum Payments to Former Spouses of Members of the Uniformed Services-  
ELIGIBLE FOR ROLLOVER TREATMENT- For purposes of this part including section 408, relating to individual retirement accounts, any amount of a lump sum payment paid to an individual under the authority of section 1468 of title 10, United States Code, shall be considered an amount paid out of an individual retirement account to the individual for whose benefit the account is maintained and eligible for rollover treatment under section 402(c)(6).

TRANSFER BY SECRETARY CONCERNED TO TRUSTEE- Any amount of lump sum payment transferred by the Secretary concerned to a trustee of an eligible retirement plan in accordance with section 1468 of title 10, United States Code, shall be treated as an amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) and, as a result, shall not be includible in gross income for the taxable year of such transfer. For purposes of this paragraph, the term 'eligible retirement plan' has the meaning given such term by section 401(a)(31)(D).'

#### **SEC. 627. PROHIBIT COURT-ORDERED PAYMENTS BEFORE RETIREMENT BASED ON IMPUTATION OF RETIRED PAY.**

(a) Authority- Section 1408(c)(3) of title 10, United States Code, is amended--  
1) by inserting '(A)' after '(3)'; and 2) by adding at the end the following new subparagraph:

'(B) A court may not order a member to make payments based upon an imputation of a property interest in future retired pay of any kind to a spouse or former spouse before the date of the member's actual retirement.'

(b) Effective Date- The amendments made by subsection (a) shall apply to final court orders or court orders seeking enforcement of prior final decrees issued on or after the date of the enactment of this Act.

#### **SEC. 628. REVOCATION OF TEN-YEAR RULE FOR DIRECT PAYMENT OF RETIRED PAY.**

(a) Revocation of Ten-Year Rule- Section 1408(d) of title 10, United States Code, is amended-- by striking paragraph (2); and by re-designating paragraphs (3) through (7) as paragraphs (2) through (6), respectively.

(b) Effective Date- The amendments made by this section shall take effect on the first day of the first month which begins more than 120 days after the date of enactment of this Act and shall apply only to payments of retired pay for periods beginning on or after the effective date of this section in the case of any former spouse of a member or former member of the uniformed services.

#### **SEC. 629. SURVIVOR BENEFIT PLAN; MULTIPLE BENEFICIARIES.**

(a) Permit Spouse and Former Spouse Coverage- Section 1448(b)(2) of title 10, United States Code, is amended-- (1) in subparagraph (B)-- (A) by striking 'prevents payment' and inserting 'reduces the amount'; and (13) by striking 'including payment' and inserting 'including the amount of an annuity'; and in subparagraph (C), by striking 'which former spouse is to be provided the annuity' and inserting 'the base amount applicable in determining

the amount of the annuity of each former spouse'.

(b) Permit Spouse and Former Spouse Annuities- Section 1450(a)(1) of such title is amended to read as follows:

'(1) SURVIVING SPOUSE AND FORMER SPOUSE(S)- The eligible surviving spouse and every eligible former spouse.'

(c) Permit Reductions in Retired Pay in the Case of Multiple Beneficiaries- Section 1452 of such title is amended by adding at the end the following new subsection:

'(k) Reductions in Retired Pay in the Case of Multiple Beneficiaries- When a participant in the Plan has elected to provide an annuity to a spouse and to one or more former spouses, reductions in retired pay required by subsection (a) shall be made for each annuity elected, in an amount based on the base amount applicable to each annuity. In the case of a reduction in retired pay to provide an annuity to a former spouse to whom payment of a portion of a member's retired pay is being made pursuant to a court order under *section 1408 of this title*, *such reduction in retired pay* shall be deducted *from the* amounts paid to such member, to such former spouse, or both, as provided by court order or by agreement of the parties.'

(d) Effective Date- the amendments made by subsections (a), (b), and (c) apply with respect to elections made on or after the date of enactment of this Act. Any election to provide an annuity to a spouse or former spouse who was prevented from being a beneficiary under the laws in effect before the date of enactment of this Act shall be made within 180 days following the date of enactment of this Act.

(e) Coverage for Survivors of Retirement-Eligible Members Who Die on Active Duty- (1) Section 1448(d) of such title is amended-- in paragraph (3), by striking 'the Secretary--(A) may not pay an annuity under paragraph (1) or (2); but (B)' and inserting the Secretary'; and by amending paragraph (5) to read as follows:

'(5) COMPUTATION- (A) The amount of an annuity payable to a former spouse pursuant to paragraph (3) shall be computed on the basis of a base amount equal to the amount of retired pay that, under the authority of section 1408(c) of this title, is treated under a court order or spousal agreement as the property of such former spouse.

'(B) The amount of an annuity payable under paragraph (1) or (2) shall be computed under section 1451(c) of this title; however, the retired pay otherwise applicable with respect to such computation shall be reduced by an amount equal to the base amount that provides the basis for computing the amount of an annuity payable to a former spouse under paragraph (3) of this subsection.'

(2) Effective Date- the amendments made by paragraph (1) shall apply with respect to survivors of retirement-eligible members who die on active duty on or after the date of enactment of this Act.

(f) Coverage for Survivors of Persons Dying When Eligible To Elect Reserve Component Annuity- (1) Section 1448(f) of such title is amended(2); but (B)' and inserting 'the Secretary'; and

(B) by amending paragraph (4) to read as follows:

'(4) COMPUTATION- (A) The amount of an annuity payable to a former spouse pursuant to paragraph (3) shall be computed on the basis of a base amount equal to the amount of retired pay that, under the authority of section 1408(c) of this title, is treated under a court order or spousal agreement as the property of such former spouse.

'(B) The amount of an annuity payable under paragraph (1) or (2) shall be computed under section 1451(c) of this title; however, the retired pay otherwise applicable with respect to such computation shall be reduced by an amount equal to the base amount that provides the basis for computing the amount of an annuity payable to a former spouse under paragraph (3) of this subsection.'

(2) EFFECTIVE DATE- the amendments made by paragraph (1) shall apply with respect to survivors of persons eligible to elect reserve-component annuity retirement-eligible members who die on or after the date of enactment of this Act.

### **SEC. 630. SURVIVOR BENEFIT PLAN; FINANCIAL RESPONSIBILITY FOR SURVIVOR BENEFIT PLAN PARTICIPATION.**

(a) Spouse and Former Spouse Annuities- Section 1452(a) of title 10, United States Code, is amended--

in paragraph (1), by inserting 'paragraph (6) of this subsection or' after 'Except as provided in'; and by adding at the end the following new paragraph:

'(6) COURT ORDER- If a court order requires the former spouse to pay all or a part of the costs associated with providing an annuity to the former spouse, the participant's retired pay shall not be reduced by the portion that the former spouse is required to pay. The portion of Plan costs that a former spouse is required to pay pursuant to a Court order under this paragraph must either be paid by direct remittance or as a deduction from the former spouses share of the member's retired pay that is received by direct payment pursuant to section 1408 of this title.'

(b) Effective Date- the amendment made by this section shall apply with respect to divorces, dissolutions, annulments, or legal separations that become effective after the end of the 90-day period beginning on the date of enactment of this Act.

### **SEC. 631. SURVIVOR BENEFIT PLAN; PRESUMPTIVE PROPORTIONATE SHARE.**

(a) Presumptive Base Amount for Former Spouse- Section 1447(6) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

'(D) PRESUMPTIVE PROPORTIONATE AMOUNT FOR FORMER SPOUSE- In the case of an annuity provided under the Plan for a former spouse, unless otherwise agreed to by the member and former spouse or ordered by a court, such term means any amount of monthly retired pay, which is not less than \$300, payable to such former spouse as a result of a court treating disposable retired pay of a member as the property of the member and his spouse under the authority of section 1408(c).'

(b) Effective Date- the amendments made by this section shall apply with respect to divorces, dissolutions, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of enactment of this Act.