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NATIONAL ASSOCIATION FOR UNIFORMED SERVICES®

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Frequently **A**sked **Q**uestions

Restoration of Full Survivor Benefit Plan (SBP)/Dependency and Indemnity Compensation (DIC) for Remarried Widows (after age 57)

Overview: The Veterans Benefits Act of 2003 restored eligibility for Department of Veterans Affairs (VA) Dependency and Indemnity Compensation (DIC) to military surviving spouses who remarry after age 57. However, DoD continued to apply the offset to these widows – until three of them, NAUS members Patricia Sharp and Margaret Haverkamp along with Iva Dean Rogers, won a recent court decision. The decision restores full SBP and DIC if a widow has remarried after age 57. The Defense Finance and Accounting Service (DFAS) finalized the implementation and repayment plans for the original three widows and another approximately 800 known survivors who fall into the category. All SBP annuitants who are entitled to both DIC and SBP because of their remarriage after age 57 are currently being identified. DFAS will no longer deduct DIC payments from annuitants' monthly annuity that meet these criteria and they will begin receiving their full monthly SBP annuity entitlement in addition to the full monthly DIC. The first group of eligible annuitants will have their SBP annuity increased in February 2010.

Frequently Asked Questions:

When will I be notified if I am eligible for this benefit? The Defense Finance and Accounting Service (DFAS) is currently working with the Department of Veterans Affairs (VA) to determine those individuals who meet the criteria. We expect that DIC offsets will be stopped for payments that are made around the first of February. You will receive a letter from DFAS if research shows you to be eligible.

Is common-law marriage considered valid for this change? Yes, if it is recognized by the state in which the marriage occurred. If entitlement to this benefit is based on a common-law marriage, sufficient proof of a valid marriage will be required.

Do I have to apply for this new benefit? You will automatically be notified if DFAS can determine your eligibility. If on or before April 1, 2010, your SBP annuity payment is not increased and you believe you may be eligible to have your SBP payments adjusted due to a remarriage after age 57, you will need to provide DFAS proof of status and request a review of their record.

How do I apply for this benefit? Will I be able to apply online? There is no application process since DFAS will determine from existing records whether an individual is eligible. Eligible annuitants will be notified if additional documentation is required.

Will this benefit be retroactive? If so, what is the date? This benefit becomes effective on the date of remarriage, but not earlier than January 1, 2004, which is the effective date of the entitling legislation.

Will I be taxed on any retroactive SBP? Yes, taxes will be withheld in an amount equal to 10% of the retroactive benefit, unless the individual submits a new W-4P, "Withholding Certificate for Pension or Annuity Payments," that requests no withholding from the retroactive amount.

Will I have to repay the partial refund of premiums that I received? Yes. Any refund of SBP premiums, not previously recovered by DFAS, will be collected first from any retroactive entitlement and then from the increased monthly SBP entitlement.

How do I get the taxes back that I paid on the partial refund of premiums? You may or may not be able to recover the taxes. For each year in which repayment is made, you may claim the amount of the repayment as a miscellaneous itemized deduction if you itemize deductions on your tax return. This deduction will be subject to the 2-percent floor of your adjusted gross income. In some circumstances, you may be able to claim a tax credit under section 1341 of the Internal Revenue Code if the amount of repayment exceeds \$3,000. It is recommended that you consult with an accountant or a tax advisor.

If I remarried after the age of 57, but before the effective date of the law, will I qualify to receive this benefit? Yes, provided you made application to the VA to restore Dependency and Indemnity Compensation (DIC) before December 16, 2004 and were granted such entitlement by the VA. However, if your DIC payments were restored because the post-57 remarriage ended prior to December 16, 2003, then you are not eligible to receive full SBP without offset for DIC.

If my first husband died in 1990 and I remarried after 57, but my 2nd husband died will I qualify? If you qualified under the criteria of the previous question, the death of your second spouse will not result in loss of entitlement.

If I remarried after December 16, 2003 and after the age of 57, and my second marriage is terminated, will I continue to receive full SBP and DIC? The entitlement to DIC by reason of remarriage after age 57 is the single criterion for entitlement to SBP without offset. If you qualify based on remarriage after age 57, dissolution of your subsequent marriage will not result in loss of the dual entitlement unless, upon investigation, the circumstances of the remarriage reveal intent to defraud the government.

Is there a web site that I can track about the progress of implementation? Due to the limited scope of this court ruling (there are about 800 widows affected) there will not be a dedicated web site. However, DFAS has posted some information on its website [here](#), and will communicate progress and status through NAUS, SMW and other military survivor organizations.