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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 111

[Docket ID: DOD-2016-OS-0116]

RIN 0790-AI99

Transitional Compensation (TC) for Abused Dependents

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: Transitional compensation is one of the many resources available to victims of domestic abuse. The Transitional Compensation for Abused Dependents program is a congressionally-authorized program that provides temporary monetary payments and military benefits to dependents of Service members, when the member has been separated from the military due to a dependent-abuse or child abuse offense. This rulemaking establishes requirements and describes authorized benefits for an abused spouse and/or abused children affected by the separation or forfeiture of pay and allowances of a military Service member.

DATES: This rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: CDR David T. Clark, 703-693-1068.

SUPPLEMENTARY INFORMATION:

PUBLIC COMMENTS

On Monday, November 5, 2018 (83 FR 55329-55332), the Department of Defense published a proposed rule titled “Transitional Compensation (TC) for Abused Dependents” for a 60-day

public comment period. Fifteen public comments were received, and all were supportive of the program. The Department thanks the commenters for their support. This section of the preamble responds to the public comments.

Four of the 15 comments discussed the general eligibility of dependents for the program, specifically the inclusion of step and adopted children, unborn children, and non-married domestic partners. With regard to general eligibility for dependents, the definition of “dependent child” is provided in section 1059(i) of title 10, United States Code (U.S.C.). It includes step, adopted, and unborn children, so long as the step/adopted children resided with the Service member at the time of the abuse offense or the dependent spouse was pregnant with the unborn child at the time of the offense. Non-married domestic partners, to include boyfriends, girlfriends, or roommates, are not military dependents and are therefore not eligible to receive any military benefits. No changes were made to the rule as a result of these comments.

Three comments questioned the duration of payments. Two suggested that the 36-month payment duration is unnecessarily long, and the third supported the use of the full 36-month duration of payments to allow the abused dependents ample time to recover financially. Section 1059(e) of title 10, U.S.C., read in conjunction with 10 U.S.C. §101(a)(9), authorizes the Secretaries of the Military Departments to make TC payments to abused dependents for a period of between 12 and 36 months at their discretion pursuant to policies prescribed for this purpose. By policy, the DoD has further restricted the payment duration to be no less than either the remaining unserved portion of the Service member’s obligated service contract length or 12 months, whichever is greater. In practice, the majority of abused dependents receive TC benefits for the full 36-month period authorized by law. No changes were made to the rule as a result of these comments.

Additionally, three comments expressed concerns over the program's recertification eligibility restrictions that require recipients to forfeit benefits if they cohabitate with the abusive former Service member or remarry. Two of these comments stressed that a large percentage of abuse victims return at some point to the abuser before eventually leaving for good.

The purpose of the Department's TC program is to remove the financial disincentive that could otherwise discourage abuse victims from reporting and ultimately leaving an abusive environment. Continuing to pay recipients who return to the abusive environment runs counter to the policy's purpose. Abuse victims may return to the abuser, as referenced by the commenters, due to financial hardships; the Department's TC program helps alleviate that potential incentive to return. Another purpose of the Department's TC program is to assist abuse victims in rebuilding their lives after the abuse incidents and resultant loss of household military income. Remarriage by an abuse victim is a key indication that they have begun that new life and no longer require government assistance. Other support programs, to include ex-spousal support, survivor benefits, and annuitant programs typically include similar remarriage forfeiture provisions. No changes were made to the rule as a result of these comments.

As the result of additional internal review, clarifying and style-related edits were made throughout the rule.

Legal Authority for this Program

This program was established by Congress for abused dependents of military personnel through the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160). This rule consolidates and clarifies existing procedural requirements established by the Act and currently found in internal DoD guidance, DoD Instruction (DoDI) 1342.24, Transitional Compensation

for Abused Dependents which was last updated in January 16, 1997 and can be found at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134224p.pdf>.

The statute authorized temporary payments for families in which the Service member had been court-martialed with a qualifying sentence (forfeiture of all pay and allowances, or bad conduct discharge, or dishonorable discharge, or in the instance of officers and commissioned warrant officers, dismissal from the Service) or was being administratively separated from the military as a result of a dependent-abuse offense. DoD began authorizing payments in August 1995 in accordance with DoDI 1342.24.

Eligibility Requirements for the Program

To be eligible for the benefit, a family member (spouse or dependent child) must have been living in the home of the Service member. The Service member must have been administratively separated for a dependent-abuse offense; or convicted of a dependent-abuse offense and either separated or sentenced to a forfeiture of all pay and allowances (under a court-martial sentence). A dependent-abuse offense must be the basis for the administrative separation or conviction, although it does not have to be the primary reason. In exceptional cases where a member was separated for a reason other than a dependent abuse offense but a dependent abuse event was still determined to have occurred, the Secretary of the Military Department concerned may grant transitional compensation benefits to the dependents. Active duty victims of dependent-abuse are also eligible for transitional compensation, when the offender is also active duty.

Summary of Benefits Under this Program.

- **Amount of the benefit:** The compensation amount is based on the Dependency and Indemnity Compensation rate, which changes annually. Current amounts can be found at

the Department of Veterans Affairs Dependency and Indemnity Compensation website at https://benefits.va.gov/compensation/types-dependency_and_indemnity.asp.

- **Length of the benefit:** The transitional compensation benefit is available for no less than the longer of 12 months or the unserved portion of the Service member's obligated active service. Compensation will not extend beyond 36 months.
- **Maintaining eligibility:** Individuals become ineligible for compensation and benefits if they remarry or move back in with the former Service member while receiving benefits.
- **Recertifying eligibility:** If compensation is available for more than 12 months, recertification is required annually to ensure eligibility for transitional compensation.
- **Other benefits:** As part of the Transitional Compensation Program, individuals may be eligible for other benefits including medical care, exchange privileges, and commissary privileges.

Transitional compensation is one of the many resources available to military families. Each installation's Family Advocacy Program or legal assistance office can help a family apply for transitional compensation as well as other means of assistance.

Per DoD's Financial Management Regulation at

https://comptroller.defense.gov/Portals/45/documents/fmr/current/07b/07b_60.pdf, transitional compensation payments are not taxable. Transitional compensation recipients should not expect to receive a Form 1099 for tax purposes. Also, recipients need not report transitional compensation payments on their tax return.

According to law and DoD Policy, transitional compensation for a dependent spouse or former spouse is at the same rate as defined in 38 U.S.C. §1311 – Dependency & Indemnity Compensation to a Surviving Spouse. There is also an additional amount for children under this

section. For children without a mil-spouse parent, the amount is the same as the rate defined in 38 U.S.C. 1313 – Dependency & Indemnity Compensation to Children. You can find annual updates to these rates on the DoD Comptroller’s website at

https://comptroller.defense.gov/Portals/45/documents/fmr/Volume_07b.pdf.

EXPECTED IMPACT OF THE FINAL RULE

The intent of this program is to encourage victims of dependent abuse to come forward and report abuse, provide assistance to victims in separating from an abuser, inform victims of resources available to them as victims of dependent-abuse, ensure the safety and well-being of victims, and ensure the Department of Defense does not leave a spouse and family financially destitute when an abusing Service member is discharged from the military for a dependent-abuse offense. In accordance with statute, the rate of payment varies based on the number of dependents impacted, and is designed to assist with living expenses such as food, clothing and housing. The Department spends approximately \$17M each fiscal year in transitional compensation payments. This final rule will not result in any changes to the number of TC recipients or the amount they are paid.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563,

“Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. This rule is not a “significant regulatory action,” nor is it economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This final rule is not subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because this final rule is not significant under EO 12866.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

2 U.S.C. Ch. 25, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Ch. 6)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

Section 111.6(f)(1) of this final rule contains information collection requirements. These reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 0704-0578, “Transitional Compensation for Abused Dependents (TCAD).”

The applicable Systems of Records Notice (SORN) is T7347b, Defense Military Retiree and Annuity Pay System Records (January 7, 2009, 74 FR 696).

[http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-](http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570196/t7347b/)

[View/Article/570196/t7347b/](http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570196/t7347b/). The Privacy Impact Assessment (PIA) is available at

[https://www.dfas.mil/dam/jcr:5cf8a068-89c7-47eb-b844-](https://www.dfas.mil/dam/jcr:5cf8a068-89c7-47eb-b844-1e2020ed5f73/Defense%20Retiree%20and%20Annuitant%20Pay%20System%20(DRAS)%202016.pdf)

[1e2020ed5f73/Defense%20Retiree%20and%20Annuitant%20Pay%20System%20\(DRAS\)%202016.pdf](https://www.dfas.mil/dam/jcr:5cf8a068-89c7-47eb-b844-1e2020ed5f73/Defense%20Retiree%20and%20Annuitant%20Pay%20System%20(DRAS)%202016.pdf); or <https://www.dfas.mil/dfas/foia/privacyimpactassessments.html>.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 111

Abuse, Dependent children, Transitional compensation.

Accordingly, 32 CFR part 111 is added to read as follows:

PART 111—TRANSITIONAL COMPENSATION FOR ABUSED DEPENDENTS

Sec.

111.1 Purpose.

111.2 Applicability.

111.3 Definitions.

111.4 Policy.

111.5 Responsibilities.

111.6 Procedures.

Authority: 10 U.S.C. 1059.

§111.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the payment of monthly Transitional Compensation (TC) to dependents of Service members separated for dependent abuse.

§111.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD.

§111.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

Dependent abuse offense. Conduct by an individual while a Military Service member on active duty for a period of more than 30 days that involves abuse of a then-current spouse or a dependent child of the Service member and that is a criminal offense under the Uniform Code of Military Justice or another criminal code applicable to the jurisdiction where the act of abuse is committed. The term “involves abuse of the then-current spouse or a dependent child” means that the criminal offense is against the person of that spouse or a dependent child. Crimes that may qualify as dependent-abuse offenses include sexual assault, rape, sodomy, assault, battery, murder, and manslaughter. (This is not an exhaustive or exclusive listing of dependent-abuse offenses, but is provided for illustrative purposes only. The facts and circumstances of a particular case should always be interpreted in a manner most favorable to the spouse or a dependent child of the member when determining whether the conduct constitutes a “dependent abuse offense.”)

Dependent child. As defined in 10 U.S.C. 1059.

Exchange stores. The Army and Air Force Exchange Service, the Navy Exchange, the Marine Corps Exchange, and the Coast Guard Exchange.

Parent. The natural father or mother, or father or mother through adoption. For purposes of TC, parent does not include persons who have stood “in loco parentis” to a dependent child.

Secretary concerned. Includes the Secretary of the cognizant Military Department and the Secretary of the Department of Homeland Security, when applicable.

Service member. Includes former Service members, where appropriate.

Spouse. An individual married to a Service member, but does not include a domestic partner.

§111.4 Policy.

The DoD will make monthly TC payments and provide other benefits described in this part for spouses or dependents of Service members who meet the eligibility requirements of 10 U.S.C. 1059 and this part.

§111.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) Establishes and prescribes procedures for the payment of TC to dependents of Service members separated for dependent abuse.

(2) Oversees compliance with this part.

(b) The Secretaries of the Military Departments and the Secretary of the Department of Homeland Security, when applicable:

(1) Appoint representatives to coordinate requests for TC, approve requests (except exceptional eligibility requests), and forward those requests for payment in accordance with Chapter 60, Volume 7B of DoD 7000.14-R, “Department of Defense Financial Management Regulations (FMRs): Military Pay Policy—Retired Pay” (available at http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_07b.pdf).

(2) Review and approve or disapprove requests for TC benefits in accordance with the exceptional eligibility authority in accordance with 10 U.S.C. 1059. This responsibility may not be delegated.

(3) Ensure dependents who are victims of a dependent-abuse offense are aware of their eligibility to apply for TC.

(4) Establish departmental guidance to implement this part.

§111.6 Procedures.

(a) Recipients of payment. The Secretary concerned makes TC payments to Service member dependents, former dependents, or court-appointed guardians as described by 10 U.S.C. 1059. If a recipient is incapable of handling his or her own affairs, payments may be made only to a court-appointed guardian.

(b) Payments. (1) Payments begin in accordance with 10 U.S.C. 1059.

(2) Payments must continue for at least 12 months and no more than 36 months, as prescribed by the Secretary concerned. When the unserved portion of the Service member's obligated active duty service, as of the starting date of payment, is greater than 12 months and less than or equal to 36 months, payments continue for no less than the unserved portion.

(i) For enlisted Service members, obligated active duty service is the time remaining on their terms of enlistment.

(ii) For officers, obligated active duty service is indefinite unless an officer has a date of separation established. In that case, it is the time remaining until the date of separation.

(3) The amount of payment will be in accordance with 10 U.S.C. 1059. Partial month entitlements are pro-rated. If a recipient dies, arrears of payments are not paid.

(4) Payments will be stopped in accordance with 10 U.S.C. 1059.

(i) Payments will end on the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that the payment of TC will stop.

(ii) Recipients are not required to repay amounts of TC received before the effective date payment is stopped, in accordance with paragraph (b)(4)(i) of this section; however, TC may be recouped for erroneous payments or payments made based on false information provided.

(c) Forfeiture provisions. In addition to 10 U.S.C. 1059, the following requirements apply:

(1) The former spouse receiving TC must notify the Defense Finance and Accounting Services (DFAS) within 30 days of remarriage or if the spouse or former spouse begins residing in the same household as the spouse or former spouse.

(2) If a Service member's dependent child is not living in the same household as the spouse or former spouse who forfeits TC, payments are made to each dependent child or his or her court-appointed guardian.

(3) In order to continue benefits, the spouse or former spouse must annually certify to DFAS that he or she is not remarried and is not cohabitating with the Service member separated for the abuse. DFAS will provide a form for recertification of benefits.

(d) Coordination of benefits. A spouse or former spouse may not concurrently receive TC payments and retired pay payments pursuant to 10 U.S.C. 1059 and 1408(h), respectively. If a spouse or former spouse is eligible for both TC payments and retired pay payments, the spouse or former spouse chooses which of the two payments to receive. If the spouse or former spouse receives TC payments and later receives payments from a Service member's retired pay, any TC received concurrently with retired pay must be recouped.

(e) Source of funds. TC must be paid from operations and maintenance funds of the Department of the Service member.

(f) Application of procedures. An individual must initiate a request for TC through a Service-appointed representative. The Service-appointed representative:

(1) Collects data and validates the claim using DD Form 2698 (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2698.pdf>).

(2) Approves payment and forwards the application to DFAS unless otherwise submitted by the Secretary concerned in accordance with 10 U.S.C. 1059.

(g) Commissary and exchange benefits. (1) A recipient of TC is entitled to use commissary and exchange stores while receiving payments.

(2) If a recipient entitled to use commissary and exchange stores is also entitled to use commissary and exchange stores under another provision of law, the entitlement is determined under the other provision of law and not paragraph (g)(1).

(h) Medical benefits. (1) The Secretary concerned will determine appropriate medical and dental care eligibility for TC recipients and affected dependents. At a minimum, an abused dependent who is receiving TC in accordance with paragraph (a) of this section may receive medical and dental care, including mental health services, in facilities of the Uniformed Services or through the TRICARE program as outlined in 10 U.S.C. 1076, 1077, and 1079.

(2) Dental care may be provided on a space-available basis in facilities of the Military Services.

(3) Eligible dependents of a Service member who is retirement eligible, but who loses eligibility for retirement pay because of dependent-abuse misconduct, may receive medical and dental care in accordance with 10 U.S.C. 1408(h).

Dated: September 12, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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