

FINALLY, an SBP premium-shifting calculator for military cases (revised)

BACKGROUND: One of the most important parts of any military retirement benefits (“MRB”) case is the Survivor’s Benefit Plan (“SBP”) benefit – the only way of providing a continuing stream of payments to the former spouse if the military member should die first. The usual questions are whether the spouse should receive the survivor’s benefit and, if so, how much the benefit should be, and who should pay for it, any variation of which can be negotiated, or ordered.

By default, the military pay center (“DFAS”) will always take the premium “off the top,” and then split what remains according to the percentages set out in the order. In other words, the parties bear the premium cost in proportion to whatever share of the military retirement benefits they are receiving.

13 years ago, while writing the original “Military Retirement Benefits in Divorce” book for the ABA, I included a chapter on Survivor’s Benefit Plan premium-cost-shifting (i.e., providing that he pay it, or she pay it, in any way other than the default percentages). This is extremely difficult in the military system because DFAS will not honor a court order that says, for example, “split the retired pay 50/50, and then deduct the cost of the SBP from the member’s [or spouse’s] portion.”

The only way to effect premium-shifting in the military system is *indirectly*, by altering the percentages payable to each party so when the military does what it will do, the result is what the parties (or court) intended to cause.

For the book, I cooked up two tables showing the effect on the spousal percentage of causing the spouse, or the member, to pay the entirety of the SBP premium. But this was not adequate, because it did not allow for other common forms of orders (for example, that the parties equally divide the premium), and because the percentages are set out to only two decimal places, and they should be set out to four decimal places to avoid rounding errors.

SOLUTION: I finally had a case where the spouse’s time-rule share of the military retirement benefits would be altered in the future, when the member actually retired, in such a way as to split the SBP premium equally. Since several of the components of the formula are unknown at this time, it was necessary to come up with a *formula* for doing so, rather than just hit-or-missing an actual altered percentage (which I confess had been my means of coping with this problem in prior cases).

The two steps, to first calculate the dollars payable to the former spouse, and then convert that sum into a percentage of the military retirement benefits payable is:

A. The monthly dollar amount the former spouse will receive after adjustment for desired SBP premium cost = (former spouse’s percentage share per time rule x gross military retirement benefits payable) - (.065 x base amount x percentage of premium desired to be paid by former spouse).

B. Former spouse’s percentage of the military retirement benefits after reduction for her share of the SBP cost = The dollar sum reached in step “A” ÷ gross military retirement

benefits - (.065 x base amount).

All percentages should be taken out to four digits after the decimal point. Since no SBP premiums are charged until actual retirement, this adjustment should only be made at the time of *actual* retirement, even if the former spouse is getting a time-rule portion of a member's retirement benefits at the time of *eligibility* for retirement under *Luciano/Gillmore/Gemma/Fondi*.

And the same formulas can be used to figure the same variables for the member rather than the former spouse – they should be complementary, add up to the full military retirement benefits being divided, and total 100%.

These formulas have been turned into a calculator, so that anyone with Excel (or Quattro) can pull it up and modify the parties' final percentages of military retirement benefits to include their desired payment of the SBP premium.¹ We have posted the calculator, with other military-specific forms, checklists, CLE materials, etc., on the Military Retirement Benefits page of our website.

LIMITATIONS: This thing is only a calculator; although those more literate with spreadsheets could probably get it to return an "error" when the calculation is legally impermissible (for example, requiring DFAS to pay the former spouse more than half of the disposable retired pay), no such limits have been programmed in to this version of the spreadsheet. So while I think the math will be right, users must still know the applicable law to use it.

With that caveat, I believe that the calculator is working the way it should, whether it is desired that a party pay any, all, or some portion of the SBP premium. I encourage its use for making those calculations a little easier, and certainly request feedback if anyone spots an error, or wishes to suggest an improvement.

¹ Special thanks to Jennifer Abrams, Esq., who actually solved the math problem and created the calculator, and without whose assistance this would not have been possible.