

PRESENTED AT

19<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts

February 9-10, 2023

Austin, TX

## **Military Pension Assigned to SNT: Dealing with DFAS**

**Katherine N. Barr, Esq.**

Author Contact Information:

Katherine N. Barr, Esq.

Dentons Sirote PC

Birmingham, AL 35205

[Katherine.barr@dentons.com](mailto:Katherine.barr@dentons.com)

(205) 930-5147

## **MILITARY PENSION ASSIGNED TO SNT: DEALING WITH DFAS**

**Katherine N. Barr, Esq.  
Dentons Sirote PC  
Birmingham, Alabama 35205**

### **I. The Military Child Protection Act.**

On December 15, 2014, after years of lobbying by organizations serving the needs of persons with disabilities, Congress passed what is commonly referred to as the Disabled Military Child Protection Act. This legislation implements Section 624 of the Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, which amends 10 U.S.C. §§1448, 1450 and 1455. The Act allows a military member to direct his/her Survivor Benefit Pension (SBP) payment at death to a qualified payback special needs trust (SNT) for the benefit of his/her child with a disability. **(See Exhibit 1)**. The SBP monthly payment for the child may be up to 55% (with annual inflation adjustments) of the military member's retirement pay. Because the SBP for a dependent child is only about \$20.00 a month, this is attractive to military parents of a child with disabilities.

The irrevocable assignment of the SBP to this type of SNT allows the payments to be used by the Trustee for the child without interfering with the child's eligibility for "means-tested" benefits such as Supplemental Security Income (SSI) and Medicaid. Prior to the Act, SBP annuity payments for a disabled child could only be paid directly to a person (i.e., the child or to a representative payee for the child), resulting in the monthly SBP payment counting as income

for the purposes of benefits eligibility. With SSI payments being reduced by the amount of the SBP payment, most children lost SSI as well as the Medicaid coverage that accompanies SSI in most states. While the SBP payment usually amounted to several thousand dollars, it was not enough to pay for housing and other services for the child being covered by SSI and especially Medicaid benefits.

## II. Regulations Implementing Procedures of the Act.

A. The 2015 Memo. By memorandum entitled *Enabling Payment of Survivor Benefit Plan Annuities to a Special Needs Trust* from the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs, dated December 31, 2015, regulations concerning how to implement the provisions of the Military Child Protection Act were issued. **(See Exhibit 2).**

The procedures required the following:

- Establishment of an irrevocable 1st-party, self-settled special needs trust pursuant to 42 U.S.C. §1396p(d)(4)(A) or (d)(4)(C).
- An irrevocable assignment of the SBP annuity to the SNT.
- A certification based on a provided template from an actively licensed attorney that the SNT created for the disabled dependent child is in compliance with all applicable federal and state laws and qualifies under 42 U.S.C. §1396p(d)(4)(A) or (d)(4)(C).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Military Pension Assigned to SNT: Dealing with DFAS

Also available as part of the eCourse

[2023 Special Needs Trusts eConference](#)

First appeared as part of the conference materials for the  
19<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"Military Pension Assigned to SNT: Dealing with DFAS"