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UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT

What the USFSPA does. The Uniformed Services Former Spouses' Protection Act (USFSPA) (the Act) allows, but does not require, states to treat disposable military retired pay as marital property upon divorce. Where courts adjudge a division of retired pay as part of a property settlement, former spouses whose marriage to the servicemember overlapped with 10 years of the service member's military service may receive their share of retired pay directly from DFAS. The USFSPA permits some former spouses to continue to receive certain military benefits (commissary, PX, healthcare) even after the divorce. The two primary classes eligible for these benefits are "20/20/20" spouses and "20/20/15" spouses. The USFSPA permits former spouses to be designated as Survivor Benefit Plan (SBP) beneficiaries. This typically occurs as part of the court order for divorce, in which the court orders the service member to designate to DFAS the former spouses as his SBP beneficiary. If the service member fails to do so, the former spouse has one year from the date of divorce to notify DFAS and to submit the application.

What the USFSPA does not do. The USFSPA does not require courts to divide military retired pay, nor does it establish a blanket formula for dividing retired pay. The USFSPA does not require a minimum overlap of military service and marriage as a prerequisite to the division of military retired pay as property (DFAS requires 10 years of overlap in order for the former spouse to receive *direct* payment of military retired pay).

Amount Paid Under the Act. The maximum that can be paid to a former spouse under the Act is 50% of a member's disposable retired pay (gross retired pay less allowable deductions including VA disability pay). An award of a percentage of a member's retired pay is automatically construed under the Act as a percentage of disposable retired pay. In cases where there are payments both under the Act and pursuant to a garnishment for child support or alimony under 42 U.S.C. 659, the total amount payable cannot exceed 65% of the member's disposable retired pay. The amount awarded to a former spouse can change if the member's authorized deductions change.

Termination at Death. The right to payments under the Act terminates upon the death of the member or former spouse to whom payments are being made, whichever occurs first, unless the applicable court order provides that the payments terminate earlier.

Commissary and Exchange Benefits. A 20/20/20 un-remarried former spouse (i.e. 20 years of creditable military service and 20 years of marriage and 20 years of overlap between marriage and the creditable service) is treated the same as the military retiree and is authorized full commissary and exchange benefits, and is eligible to use and renew his/her Military ID. While these benefits are suspended upon subsequent marriage, the privileges "revive" if the subsequent marriage is terminated in any manner. These benefits are not available to former spouses who do not meet the 20/20/20 rule.

Medical Benefits. An un-remarried former spouse is treated the same as the spouse of a deceased military retiree. The 20/20/20 former spouse is authorized full medical care. These benefits are extinguished upon subsequent marriage and the privileges do not revive when the subsequent marriage is terminated by any cause other than annulment. The un-remarried 20/20/15 spouse is entitled to full military medical benefits only for a transitional period of 1 year, after which the former spouse may purchase a DoD-negotiated conversion health policy. The DoD Continued Health Care Benefit Program (CHCBP) is a premium based temporary health care coverage program designed to mirror the benefits offered under the basic TRICARE system. One must enroll with 60 days of losing TRICARE benefits and premiums must be paid 3 months in advance.

Victims of Domestic Abuse. Section 1408(h) of the Act allows for former spouses to collect their portion of retirement pay and other benefits even though the service member does not retire due to domestic abuse he has committed. In order to qualify, the former spouse must satisfy the following criteria: 1) there is a court order awarding as a property settlement (not child support or alimony) a portion of disposable retired pay; 2) military member is eligible *by years* for retirement but loses right to retire due to misconduct involving dependent abuse. The right to payments under this Section terminates upon the death of either party, or upon the remarriage of the former spouse. If the latter happens, the benefit can be revived by divorce, annulment or death of the subsequent spouse.

Application. To apply for payments under the Act, complete a DD Form 2293 and together with a certified copy of the court order certified by the clerk of court, fax to 216-522-6960 or 877-622-5930 or send by regular mail to: DFAS-HGA/CL, Assistant General Counsel for Garnishment Operations, P.O. Box 998002, Cleveland, OH 44199-8002. For a step by step guide about application and to download the DD Form 2293 go to: <http://www.dfas.mil/garnishment/usfspace/apply.html>.

You should specify on the form which awards the former spouse is seeking to enforce under the Act (i.e., alimony, child support, and/or division of retired pay as property). If the application does not contain this information, only awards of retired pay as property will be enforced under the Act. A former spouse should also indicate the priority of the awards to be enforced, in case there is not sufficient disposable retired pay to cover multiple awards. The court order must contain sufficient information for DFAS to determine whether the SCRA, and the Act's jurisdictional and 10/10 requirements (if applicable), have been met. If DFAS cannot determine the parties' marriage date from the court order, the former spouse must submit a photocopy of the marriage certificate. The best practice is to submit the photocopy of the marriage certificate with all applications. If the former spouse is requesting child support, and the court order does not contain the birth dates of the children, the former spouse must provide photocopies of their birth certificates.

Payments. If the requirements of the Act have been met, DFAS must begin payments to a former spouse no later than 90 days after the date of service of a complete application. If the member has not yet retired at the time the DFAS approves the application, the agency will retain it, and payments must begin no later than 90 days after the date on which the member first becomes entitled to receive retired pay.

More Information. For more information you may contact DFAS at 888-332-7411 or consult the website <http://www.dfas.mil/garnishment/usfspace/faqs.html>. For additional information or assistance, you may contact the Fort Campbell Client Services Office, Building 2765 Tennessee Ave., across from the Military Courthouse, (270) 798-4432.