



## THE UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT (USFSPA) FACT SHEET



### What is USFSPA?

The Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. 1408, accomplishes two things:

1. It recognizes the right of state courts to distribute military retired pay to a spouse or former spouse (hereafter, the former spouse), and
2. It provides a method of enforcing these orders through the Department of Defense.

The USFSPA does not create a federal right to any portion of the military retired pay on behalf of the former spouse, but rather recognizes that the states may treat it as such. The USFSPA does not allow the law to confer an entitlement to a portion of retired pay based solely on length of marriage. Rather, the law permits a state to treat military disposable retired pay as marital property and therefore divide it in a divorce action. A former spouse must have been awarded a portion of a member's military retired pay as property in their final court order.

If a court awards a portion of retired pay as property, the former spouse may apply to the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), Operations Directorate, PO Box 998002, Cleveland, OH 44199-8002 to receive it as a "direct payment." To qualify for direct payment, the USFSPA requires that a former spouse must have been married to the member during at least 10 years of the member's service creditable for retired pay.

### How much retirement pay will I receive?

Under the USFSPA no more than 50 percent of a member's disposable retired pay will be sent as a direct payment. However, if there are garnishments for alimony or child support, up to 65 percent may be sent as a direct payment.

### Dividing Retired Pay as a Marital Asset or Community Property

Retired pay as property awards must be expressed as:

a fixed dollar amount, or

a percentage of disposable retired pay (gross retired pay less allowable deductions)

## **What is considered disposable pay?**

Depending upon the date of the court order, disposable pay is generally defined as retired pay to which a member is entitled less the amounts:

- owed to the United States for previous overpayments of retired pay and for recoupment required by law resulting from entitlement to retired pay.
- deducted from the retired pay as a result of forfeitures of retired pay ordered by a court martial or as a result of a waiver of retired pay required by law in order to receive compensation under Title 5 or Title 38.
- of the member's retired pay under Chapter 61, Title 10, USC, as computed using the percentage of the member's disability on the date when the member was temporarily or permanently retired, if the court order is dated on or after November 14, 1986.
- deducted because of an SBP election.

Unless court ordered, remarriage of a former spouse will not stop the direct payment of retired pay as property.

## **When should I notify DFAS?**

If a member remains on active duty following divorce, the former spouse should send a copy of the divorce decree or property settlement to DFAS-CL. If SBP is awarded, DFAS-CL must be notified within one year of the final decree or property settlement date. If the court order meets the criteria of the law, it will be retained until the member retires. The former spouse must inform DFAS-CL of changes in address or marital status.

## **Will the retired pay be taxed?**

For court orders finalized on or after February 3, 1991, payment of retired pay as property is taxable. DFAS-CL will send an IRS Form 1099R to the former spouse.

## **Will I keep my ID card?**

Military ID cards cannot be ordered or decreed by a divorce court. Questions concerning eligibility should be directed to the nearest military ID card issuing facility. Generally former spouses are eligible if:

- The marriage lasted 20 years or more, and
- The member served 20 years or more of service creditable for retired pay, and
- The marriage and the creditable service overlap 20 or more years. (In some cases, restricted benefits are authorized if the overlap is less than 20 but greater than 15)

The USFSPA also permits former spouses to continue receiving commissary, exchange, and health care benefits after a divorce in certain cases. In order to qualify for continued benefits, a former spouse must show that the service member served at least 20 years of creditable service, that the marriage lasted at least 20 years and that the period of the marriage overlapped the period of service by at least 20 years. A former spouse who meets these requirements is known as a 20/20/20. These benefits include TRICARE and inpatient and out-patient care at a military treatment facility. Former spouses who do not meet these requirements lose their commissary and exchange privileges once the divorce is final.



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