

Former Spouses Protection Act



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The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and other personnel eligible for legal assistance from the Space Base Delta 1 Legal Office. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws change from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

FORMER SPOUSES PROTECTION ACT

Overview

The Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C. § 1408, provides significant protections to former spouses of military members. However, it does not automatically entitle a former spouse to a portion of a military member's retired pay. A former spouse must first be awarded a portion of this pay in a final court order.

Retirement Pay

The USFSPA enables state courts to treat disposable, military retired pay as a marital asset in divorce proceedings. Disposable, military retired pay is defined as the member's monthly retired pay minus qualified deductions such as certain disability compensation. Such deductions no longer include income tax withholdings or Survivor Benefit Plan premiums.

The USFSPA does not set any limits on the amount of retirement pay that can be awarded to a former spouse; courts are required only to make an equitable division. The definition of "equitable" will be different in every case. Depending on the facts of the case, it may range from 0-50%. The court will consider the length of the marriage and the number of married years coinciding with retirement creditable military service, but there is no magic number. Essentially, states are allowed to treat military retired pay as a piece of marital property, similar to civilian pensions. Division of retired pay does not affect award of alimony. For information regarding taxes, W-4Ps, and 1099s forms on payments please see the following web addresses:

- <http://www.dfas.mil/retiredmilitary.html>.
- <http://www.dfas.mil/garnishment/usfspa/apply.html>.

Direct Payment to Former Spouse

If a court does award division of retired pay, the former spouse may be able to receive the payment directly from the military pay center. Direct payment is available if the military member and former spouse were married for at least ten years during which the military member performed retirement-creditable service.

Direct payment is limited to 50% of the military member's disposable retired pay. The court is not limited to awarding 50%, but any portion of an award exceeding 50% must be paid by the military member. A certified copy of the court order providing division of retired pay is necessary to receive direct payment.

The 10/10 Rule

For court orders dividing retired pay as property to be enforced under the USFSPA, a member and former spouse must have been married to each other for 10 years or more during which the member performed at least 10 years of military service creditable towards retirement eligibility.

Commissary & Exchange

Former spouses are entitled to commissary and exchange privileges only if they meet the following requirements of the 20/20/20 rule:

- The former spouse and military member must have been married for 20 years.
- The member must have performed at least 20 years of retirement creditable service.
- At least 20 years of the marriage must have coincided with 20 years of retirement creditable service.

In addition, former spouses may also be entitled to commissary and exchange privileges. Children of the service member may also be entitled to these privileges on the same basis.

Furthermore, exchange and commissary privileges terminate, regardless of whether the recipient met the 20/20/20 rule, if the former spouse remarries. The privileges can, however, be regained upon dissolution of the disqualifying marriage.

Medical Benefits

Former spouses are eligible for available medical care if they meet the following requirements:

- They must remain unmarried;
- They must not have medical coverage under an employer sponsored health plan; and
- They must meet the requirements of the 20/20/20 rule outlined above. (If you were married for 15 years that overlapped with military service, check with an attorney to see whether the 20/20/15 rule applies to you).