

Uniformed Services Former Spouses' Protection Act (USFSPA)

OFFICE OF THE COMMAND JUDGE ADVOCATE

CAMP SHELBY JOINT FORCES TRAINING CENTER

CAMP SHELBY, MS.

What is the USFSPA?: The USFSPA is a law enacted by Congress in 1982 to offer some financial protection to certain former spouses of servicemembers. It allows states to divide military disposable retired pay as marital property upon divorce. It allows some former spouses (through a court order) to be awarded a share of military retired pay by direct payment from a military finance center and to obtain medical care and certain other benefits.

How Does the USFSPA Affect Military Pensions?: It allows state courts to divide disposable military retired pay as marital property upon divorce under certain circumstances. Disposable military retired pay is defined as the soldier's monthly retired pay minus qualified deductions. The USFSPA, however, does not establish a right to any specific amount of retirement pay that a former spouse may be awarded in a divorce settlement. The decision whether to award retirement pay is solely in the discretion of the state court and the amount awarded will vary amongst states. A general guideline is that a former spouse is entitled to 2.5% of the retirement per year of marriage that overlaps with service. For example, if the couple had been married for 15 years, and soldier was in the military for 10 of those years, the former spouse would be entitled to $10 \times 2.5\% = 25\%$ of the military spouse's retirement.

What Is Disposable Retired Pay?: Retired pay is the total monthly pay to which a retired servicemember is entitled, less most VA disability pay, federal debt repayments, fines, forfeitures and Survivor Benefit Plan premiums.

How May a Former Spouse Receive His or Her Share of the Pension?: If a court awards 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 marriage overlapped the soldier's military service for 10 years or more, and only if the original divorce decree divides the military retired pay. A certified copy of the court order providing division of retired pay is necessary to receive direct payment. The court order must specifically state that the award shall be made as direct payment of retired pay. These payments will normally begin within 90 days after submission of the proper paperwork. No more than 50% of disposable military retired pay can be provided via direct payments. A former spouse will be entitled to receive the payments after the soldier becomes entitled to receive retired pay.

What Other Benefits are Available under the USFSPA?: The other benefits available depend upon what "category" the former spouse falls into. A spouse that passes the 20/20/20 test (the military member has completed at least 20 years of creditable service; the spouse has been married to the military member for at least 20 years at date of final decree of divorce; and the

period of marriage overlaps the period of creditable service by at least 20 years) can receive commissary and PX privileges and full medical benefits. These benefits will be suspended if the spouse remarries; however, they will be revived if the subsequent marriage is terminated.

A 20/20/15 spouse (at least 15 years of overlap between the marriage and the creditable service) may be entitled to full military medical benefits for a one-year period after which the spouse may purchase a DoD-negotiated conversion health policy. These benefits will be suspended if the spouse remarries and will not be revived unless the subsequent marriage is annulled.

Former spouses of military members/retirees may have additional benefits under the Survivor's Benefit Plan (SBP), certain separation incentive programs, and in certain domestic abuse situations.

Can I Get Child Support or Alimony Taken Out of My Spouse's Retired Pay and Sent Directly to Me?: Yes. In order to receive direct payment from a finance center for alimony and child support under the Act, you will first need to get a court order requiring the payment of child support or alimony. The court order does not have to state specifically that the award is made as direct payment of retired pay. The court order and/or other documents served with the court order must identify the soldier concerned and, if possible, state his or her Social Security Number. The USFSPA provides that not more than 65% of a retired military member's retired pay can be garnished for spousal and child support.

Do All States Allow Military Retired Pay to Be Divided as Marital or Community Property?: Yes. Only Puerto Rico bars the division of pension rights upon divorce. All states have one method or another of granting the division of military pensions as marital property. You should check the laws of the state where you presently live and the "home state" or domicile of the servicemember. You should also consult a military legal assistance attorney as to pension division in specific states.

How Much of The Retired Pay Will Be Divided or Awarded?: The court can only divide "marital portion" of the pension, that is, the portion that was earned during the marriage (before the date of separation). The rest of the pension (that earned before marriage or after separation) is separate, nondivisible property. Federal law says that no more than half of the pension can, under most circumstances, be divided. Individual state's have their own laws concerning division of all marital property, including retirement rights. Other than this, there is no way of telling how much marital property will be awarded or how much of the pension will be granted to you.

If I Die, What Happens To The Pension Division Award?: Under USFSPA, your rights to a portion of military retired pay end upon your death. Payments cannot be made to your estate, survivors or heirs.

Do I Still Continue To Receive The Benefits After The Servicemember Dies?: It depends. Federal law states that, in the event the servicemember dies, the person receiving the award shall receive no further benefits unless the Survivor Benefit Plan (SBP) has been elected by the member. Payments will continue if SBP coverage has been chosen (but not necessarily in the amount of payments under USFSPA). The court can order a spouse to provide SBP coverage for

the non-service spouse. The order, to be effective, must be served on DFAS within one year after the divorce; otherwise it will not be honored.

Is There a Maximum Amount That I Can Receive Under USFSPA?: Yes. USFSPA limits pension division awards to 50 percent of the net retired pay, regardless of whether the pay is awarded as child support, alimony, or marital property to be directly paid from the finance center. There are certain exceptions in the event of multiple court orders involving different spouses.

What Can I Do If The Soldier Is Required By Court Order To Pay More Than The Maximum Allowable Amount Under USFSPA?: If this happens, DFAS cannot help you. You will need to take action directly against the individual soldier through the courts for amounts in excess of 50 percent of the monthly retired pay.

How Can I Receive Full Benefits?: You can receive full benefits if you meet the "20/20/20 test". This three-part test requires that you must have been married to the soldier for at least 20 years. The soldier must have performed at least 20 years of creditable service toward retirement. Finally, at least 20 years of the marriage must overlap at least 20 years of active service. You must meet all three parts of the test.

Does The Date of The Divorce Decree Matter If I Meet The "20/20/20 Test"?: No. If you meet the test, you are eligible to receive full benefits regardless of the date of the divorce decree.

If I Do Not Meet The "20/20/20 Test" For Full Benefits, Are There Other Benefits Available?: Yes. You may be able to receive permanent medical benefits if the divorce decree was final before 1 April 1985 and you meet the "20/20/15 test".

What are The Criteria For The "20/20/15 Test"?: You must have been married to the soldier for at least 20 years and the member must have performed at least 20 years of creditable service towards retirement. Finally, at least 15 years of the marriage must be during military of service. Again, as with the "20/20/20 test", you must meet all parts of the test.

If I Receive Full Benefits, Can I Be Covered By Other Medical Insurance?: Under either test, if you receive full benefits you cannot be covered by any type of employer-sponsored medical coverage. However, you can refuse your employer-sponsored medical benefits and retain the military medical benefits. You would also be disqualified if you have individually obtained medical insurance.

May I Retain Full Benefits If I Remarry?: No. You must remain unmarried under either test. Any subsequent remarriage eliminates the benefits, even if you are widowed or divorced later.

If I Meet The "20/20/15 Test", But My Divorce Decree Is Final After 1 April 1985, Am I Still Eligible For Some Benefits?: Yes. You are entitled to two years of transitional benefits, after which you have the right to convert to a private health plan set up by the Defense Department. However, you must remain unmarried and not be covered under employer-sponsored medical coverage.

Are There Any Civilian Agencies Available To Help Me?: EXPOSE is an organization that has been lobbying Congress for increased military benefits for ex-military wives. EXPOSE can be reached at (703) 941-5844 or Post Office Box 11191, Alexandria, Virginia 22312. The American Retirees Association (ARA) is an organization that serves divorced military members-active-duty, Guard/Reserve and retired. The ARA can be reached at 2009 N. 14th Street, Suite 300, Arlington, Virginia 22201 (703-527-3065). The ARA has also published a book, "Divorce and the Military II" that covers in depth most of the issues discussed here.

If I Have Questions About My Rights Under USFSPA, What Should I Do?: Please consult a military legal assistance attorney or civilian lawyer of your choice as soon as possible. Your lawyer can answer the many questions that arise under USFSPA and help you to make a fair and intelligent decision about your options and alternatives.

All information compiled from materials provided by the Judge Advocate General's School of the Army and Legal Assistance website, as well as, information provided by other Army Legal Assistance Offices and by the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel.