

Divorce and Military Benefits

The material in this handout represents general legal principles. Since the law is continuously changing, some provisions in this pamphlet may change with time. If further assistance is required, consult with an attorney about your legal rights and responsibilities regarding your particular situation.

Divorces involving a military member create additional questions about division of retired pay, commissary and exchange privileges, and medical care for former spouses.

RETIREMENT PAY

In 1982, Congress enacted the Uniformed Services Former Spouses' Protection Act ("USFSPA"), which enables state courts to divide disposable military retired pay between the member and spouse if the state court desires.

There is no federal requirement that the couple be married a certain length of time for the court to award the former spouse a portion of the member's retirement pay. USFSPA does not set any limits on the amount of retirement pay that can be awarded to a former spouse, but any portion of an award exceeding fifty percent must be paid by the member directly (not through DFAS).

Courts are required only to make an equitable division. The definition of "equitable" will be different in every case; it may range from zero to more than fifty percent. Essentially, states are allowed to treat military retired pay as marital property, similar to civilian pensions. Most states use a formula to calculate an award of retirement pay based on the length of the marriage and the number of married years coinciding with retirement creditable military service.

Division of retired pay does not affect an award of **alimony**. In fact, the military member may be ordered to pay alimony in addition to giving up a portion of his or her retirement pay.

COMMISSARY & EXCHANGE PRIVILEGES

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

- (1) The former spouse and military member must have been married for 20 years; **and**
- (2) The member must have performed at least 20 years of retirement creditable service; **and**
- (3) At least 20 years of the marriage must have overlapped with 20 years of retirement creditable service.

Furthermore, exchange and commissary privileges terminate if the former spouse remarries. The privileges can, however, be regained upon dissolution of the disqualifying marriage or death of the spouse.

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 DFAS. Direct payment is available if (1) the member and former spouse were married for at least **ten years** during which the military member performed retirement creditable service **and** (2) the divorce decree expresses payment in dollars or a percentage of the member's disposable retirement pay not left to rely on their ex-spouse for payment. Direct payment from DFAS is limited to **fifty percent** of the military member's disposable retired pay.

Disposable military retired pay is the member's monthly retired pay minus certain deductions, such as Survivor Benefit Plan premiums, and disability pay. A certified copy of the court order providing for division of retired pay is necessary to receive direct payment. For more information, see www.dfas.mil.

MEDICAL BENEFITS

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

- (1) They must remain unmarried; **and**
- (2) They must not have medical coverage under an employer sponsored health plan; **and**
- (3) The former spouse and military member must have been married for 20 years, during which the member performed at least 20 years of retirement creditable service (the 20/20/20 rule).

For those spouses who were married to a military member for 20 years, and that member served 20 years in the military, but only 15 years or more of the marriage were during the period of military service, the spouse will be entitled to **one year of free continued medical coverage**. Former spouses may be able to continue to see their Tri-Care medical providers by enrolling in the Continuation of Health Care Benefits Program (CHCBP). Contact Tricare for current premiums and rates.

SURVIVOR BENEFIT PLAN (SBP)

SBP is a government subsidized annuity that provides continued financial security for dependents after retired pay stops when the member dies.

Beneficiaries may include a widow or widower, surviving dependent children, and former spouses if not remarried before age 55 (a former spouse may regain eligibility if the later marriage ends, even after the former spouse turns 55).

The former spouse may be designated a SBP beneficiary by a court order (voluntary or involuntary) or by a voluntary, written agreement with the member. Once a member becomes SBP eligible and makes an election to provide an annuity for a specific eligible beneficiary, the election is usually irrevocable. To revoke an election to provide an SBP annuity to a former spouse, the member must furnish the Secretary of the Air Force with:

- (1) A certified court order, that is regular on its face and that modifies or deletes an earlier requirement to designate the former spouse as a SBP beneficiary; or
- (2) If the former spouse election was made by a voluntary, written agreement that was not incorporated, approved or ratified by a court order, the member must provide a written statement, signed by the former spouse, evidencing the former spouse's consent to revoke the election.

RESOURCES

- **USFSPA:** 10 USC 1408, <http://www.law.cornell.edu/uscode/text/10/1408>
- **DFAS:** <http://www.dfas.mil/customerservice.html>; <http://www.dfas.mil/garnishment/usfspa/faqs.html>
1-888-332-7411, Customer Service
- **SBP:** <http://www.dfas.mil/retiredmilitary/provide/sbp.html>
1-800-321-1080, Customer Service

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