



Uniformed Services Former Spouses' Protection Act **USFSPA**



What is the USFSPA and why should I care?

The USFSPA is a federal law that protects former spouses of service members. Its primary effect, and the one most service members care about, is that it allows state courts to divide military retired pay between divorcing spouses in the same way that the courts would divide a couple's house or other assets. This means that your ex-spouse may be entitled to part of your retired pay. The USFSPA also permits some former spouses to retain commissary and PX privileges as well as TRICARE benefits, even after the divorce.

But I'm not even retired yet! How can my pay be divided?

A divorce court can either require some kind of property division at divorce that seeks to compensate the non-military spouse now for forgoing his portion of your retired pay in the future, or the court can require that you send part of your retired pay to your former spouse when and for as long as you receive it.

Who decides if my spouse receives part of my retirement?

The same court that handles your divorce. The court will take into account the total amount of property and assets to be divided and include the value of your retirement benefits. The court then will determine how the total property, including your retirement, will be split between you. You and your spouse may also come to an agreement on how the retirement benefits will be divided. Each state treats these benefits differently.

How much of my retirement will my spouse receive and how is it calculated?

The USFSPA does not set a particular formula for how to divide retirement benefits. States may use any formula they want. However, a standard formula is used by many states:

Percentage of benefits awarded to spouse =

$$\frac{\text{Length of overlap of marriage and service}}{\text{Total time in service}} \times 0.5 \times 100$$

Example: You served 20 years of active military service. Twelve (12) years of your marriage overlapped with the military service.

$$12 \text{ years of marriage} / 20 \text{ years of service} \times 0.5 \times 100 = 30\%$$

If the state court follows this standard formula, your former spouse would be entitled to 30% of your retirement pay. States have different variations on this formula and use other means also. Generally, the court will award your spouse either a fixed percentage or a fixed dollar amount to be taken out of each month's retirement pay.

Will my spouse receive her award directly from DFAS?

Your spouse may receive any award of retirement pay as alimony or child support directly. Your spouse will qualify for direct payment of benefits awarded as property if certain conditions are met:

1. You must have been married for 10 years while in the Army.
2. A final decree of divorce, dissolution, legal separation or court approval of a separation agreement must have been issued by the court.
3. The decree must state that your Servicemember's Civil Relief Act (SCRA) rights were followed.

4. The order must show that the court has jurisdiction over you.
5. The order must award either a fixed percentage or a fixed amount.
6. DFAS may only pay up to 50% of your disposable retirement pay to your spouse directly.

If your spouse does not qualify for direct payment, then you will have to make the payments yourself in an amount equal to the order.

What about if we were married for only a couple years? Does my former spouse still get half of my retired pay?

No, for two reasons. First, spouses are not entitled to retirement pay until the length of the marriage and the length of the soldier’s service overlap for at least ten years. Second, a former spouse is never *automatically* entitled to half of your retired pay, regardless of the amount of time you were married. A court will determine how much of your retired pay your former spouse is entitled to using a number of factors, one of which is length of marriage. The exact formula the court uses depends on state law.

Can my spouse waive his/her interest in my retirement?

Your spouse may waive his/her right to a portion of your retirement. Your retirement is an asset that is subject to negotiation. For example, your spouse may waive her interest in your retirement in exchange for you taking on all of the marital debts. Or you keep your retirement and he/she keeps the house.

Does my spouse have a right to a part of my disability pay?

The USFSPA only allows courts to divide “disposable” retirement pay. Under current law, disability payments from the Veterans Administration or Department of Defense are not included in the definition of disposable retirement pay. Therefore, your spouse does not have a right to any portion of your disability pay under the USFSPA.

What other benefits will my spouse be eligible for after a divorce?

Your spouse may also qualify for medical benefits or commissary/PX privileges after the divorce. If you have been married for 20 years with 20 years of service and 20 years of overlap between your marriage and service time (the 20/20/20 rule), your spouse is eligible for full medical, commissary, and PX benefits. The benefits will be suspended if the spouse remarries. While commissary and exchange privileges may be revived if the subsequent marriage is terminated by divorce or death of the second spouse, medical benefits are **not** restored in the same way (although an annulment can revive medical benefits). Commissary and PX privileges require the full 20 years of overlap. However, if there is a 15 year overlap between marriage and service time, your spouse may be entitled to one year of full medical benefits with the option to purchase a DOD health policy afterwards. In addition, a former spouse may be eligible to be listed as a beneficiary of the Survivor Benefit Plan, but this election must be made within one year of the divorce.

I want further information, where should I go?

For more information you may consult with a Legal Assistance Attorney. If you are involved in divorce proceedings in which retirement pay is at issue, you should hire a civilian attorney, in the state where the proceedings are taking place, to represent you. Your Legal Assistance Attorney will work with your civilian attorney to clarify any issues involving your military retirement pay.

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