

General Irrevocability

Elections are permanent with the following exceptions:

1. *DISENROLLMENT OPTION*--A retiree can disenroll, with the former spouse's written consent, between the 25th and 36th month after start of retired pay.
2. *RETIREE'S REMARRIAGE*--If a retiree remarries, former spouse coverage may be changed to spouse coverage at any time **if** the following occurs:
 - If the former spouse election is court-ordered, or an agreement to make the election is incorporated in or ratified or approved by a court order, the member furnishes a certified valid court order modifying the provisions of all prior court orders relating to the election.
 - If the former spouse election is the result of a written agreement which is not incorporated, ratified, or approved by a court order, the former spouse provides written concurrence with the change of election.
 - If the former spouse election is purely voluntary, with no written agreement existing, the former spouse is notified.

Deemed Elections

A former spouse has ***one year from the date of the court order*** to make a written request to DFAS-CL for a deemed former spouse election. Providing DFAS-CL a copy of the divorce decree does not constitute a request for a deemed election. By law, a ***written request*** must be made. Former spouses are advised to take this action, both when the divorce occurs when the member is on active duty and after retirement. It is the only way that a former spouse election will be made if the member fails to comply with the court order within one year. All members are similarly advised to voluntarily request in writing that former spouse coverage be implemented if court-ordered, so as not to be in contempt of court.

IV. ID Cards

The USFSPA and its subsequent amendments authorized military benefits to certain unmarried former spouses.

Minimum Eligibility Requirements

ALL of the following criteria must be met in order to receive a military ID card:

- Marriage of at least 20 years
- Creditable service of at least 20 years
- Marriage overlaps with service by at least 15 years:
 - if at least 20 years: full privileges
 - if between 15 and 20 years: medical care only, for one year from divorce. After one year, enrollment in a premium-based, temporary transitional health care program, "Continued Health Care Benefit Program" (CHCBP), is available to the former spouse



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Monday & Wednesday: 1530 – 1630
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UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT



31st FW Legal Office

In 1982, Congress passed the Uniformed Services Former Spouses' Protection Act (USFSPA) to provide certain benefits to the former spouses of military members.

I. Division of Retired Pay

The Act granted two main authorities:

1. That state courts may treat military retired pay as they would other marital property to permit a qualified division; and
2. That the appropriate government agency (the Defense Finance & Accounting Service - Cleveland Center, DFAS-CL) could make direct payments to former spouses under certain conditions.

No Automatic Entitlement

The USFSPA does not provide for an automatic entitlement to a division of military retired pay. For example, a couple may have been married throughout a full military career, yet the USFSPA does not compel a state court to award a division of retired pay to the former spouse.

10/10 Requirement

Even when payments are court-ordered, *direct* payments to former spouses cannot be made unless the parties were married to each other for at least 10 years, during which time the member performed at least 10 years of creditable military service.

Limitations

1. The court order will not be honored by DFAS-CL unless the court issuing the order held jurisdiction over the member.
2. Regardless of the award made by the state court, the government restricts *direct* payment to the former spouse to 50% of the member's "disposable" retired pay.* This amount can be raised to 65% for enforcement of child support garnishment orders.
**Disposable retired pay* is the product of the gross retired pay entitlement minus the following:

- Amounts owed by the member for previous overpayments or recoupments;
- Amounts deducted for court martial fines;
- Amounts waived under Title 5 for Civil Service employment or under Title 38 for VA disability compensation

- Survivor Benefit Plan (SBP) premiums (only if the former spouse to receive the division is also the former spouse SBP beneficiary)
- For post-Nov. 14, 1986 court order dates: amounts of retired pay based on disability (per Title 10, Chap. 61)
- For pre-Feb. 3, 1991 court order dates: amounts owed the U.S.;
- For post-Feb. 3, 1991 court order dates: amounts withheld for federal and state income taxes, consistent with the member's tax liability

Former Spouse Remarriage

Remarriage by the former spouse does not cause the former spouse to lose entitlement to receive direct payment of retired pay which was awarded as property, unless so specified by the court.

II. Procedure to Request Direct Pay

Steps

In order to apply for payments under the USFSPA, a former spouse must:

1. Complete and sign DD Form 2293.
2. Send that form and a certified copy of the applicable court order, certified by the clerk of court within 90 days immediately preceding its service, to the following location either by facsimile or by mail:

Defense Finance and Accounting Service
Cleveland DFAS-HGA/CL
PO Box 998002
Cleveland Ohio 44199-8002
Toll Free Customer Service:
1-888-DFAS411 (1-888-332-7411)
Toll Free Fax Line: 1 877-622-5930

Additional Instructions

1. The application form should state which awards the former spouse is seeking to enforce under USFSPA (i.e., alimony, child support, and/or division of retired pay as property). If the application does not contain this information, then only awards of retired pay, as property will be enforced under the USFSPA.
2. A former spouse should also indicate the priority of the awards to be enforced in case

there is not sufficient disposable retired pay to cover multiple awards.

3. The court order should contain sufficient information for us to determine whether the SCRA, and the USFSPA's jurisdictional and 10/10 requirements (if applicable), have been met.

When do payments begin?

If the requirements of the USFSPA have been met, payments to a former spouse must begin no later than 90 days after the date of effective service of a complete application. If the member has not yet retired at the time the former spouse submits his or her application, payments must begin no later than 90 days after the date on which the member first becomes entitled to receive retired pay.

III. The Survivor Benefit Plan (SBP)

Voluntary or Court-Ordered?

Since 1986, state courts have been permitted to order a member to participate in SBP for the member's former spouse. This pertains both to active duty members who can be ordered to elect former spouse coverage at retirement, and to retirees with spouse coverage. Courts cannot order a retiree to provide former spouse coverage unless the member had previously made a spouse election for that former spouse.

Timing of Divorce & Coverage

When divorce occurs after retirement, former spouse coverage will be in the same amount as spouse coverage. In active duty divorces, the specific level of coverage to be elected should be directed by the court order.

Loss of Eligibility.

If the former spouse remarries before age 55, eligibility is lost, SBP participation is suspended, with no costs owed during the period of ineligibility. However, if that remarriage ends, eligibility is restored, participation is resumed and costs are owed. Marital status changes must be reported to DFAS-CL immediately.