

UNIFORMED SERVICE FORMER SPOUSES' PROTECTION ACT

PACKET TO CLEVELAND SHOULD CONSIST OF THE FOLLOWING:

- (1) DD Form 2293 (attached)
 - (2) Certified Copy of Divorce Decree (Not Over 90 Days Can not be Zerox)
 - (3) W-4 Form (Tax Exemptions)
 - (4) DFAS-CL Form 1059 (Bank information where check is to go)
 - (5) Copy of Marriage Certificate (Can be a zerox copy)
-

Prepared By:
Army Retirement Services
Deputy Chief of Staff for Personnel
Alexandria, VA 22331-0470

10 February 2006

GARNISHMENT DIRECTORY

UPON COMPLETION OF THE FORMER SPOUSE PROTECTION ACT PACKET

MAIL TO: (Certified Mail with Return Receipt)

**DEFENSE FINANCE AND ACCOUNTING SERVICE
CLEVELAND DFAS-GAG/CL
PO BOX 998002
CLEVELAND, OHIO 44199-8002
(216) 522-5301 (Customer Service), 1-866-859-1845 (Toll Free Customer Service)**

Email: www.dfas.mil/money/garnishment/index.htm

FAX: (216) 522-6960

****When faxing documents, ensure you have your Social Security, a correspondence address and phone number on each page.**

SUVIVOR BENEFIT PLAN

All correspondence regarding the Survivor Benefit Plan (SBP) coverage (i.e. deemed election) should be sent directly to the Retired Pay office. When mailing deemed election, send certified mail with return receipt.

**Defense Finance and Accounting Service
US Military Retirement Pay
PO Box 7130
London, KY 40742-7130
Toll free 1-800-321-1080**

UNIFORMED SERVICES FORMER SPOUSES PROTECTION ACT

The following is a general discussion of the legislative provisions of Public Law (PL) 97-252, September 8, 1982, the Uniformed Services Former Spouses Protection Act (USFSPA) which is incorporated in Section 1408 of Title 10, U.S. Code. The points outlined are not designed to answer detailed questions concerning individual cases; rather, they serve as general information for use by retired members and their spouses and former spouses. This paper does not provide legal or judicial interpretation of enacted laws and does not deal with case law. Individuals seeking legal assistance are encouraged to contact a military lawyer or to retain civilian counsel. **This paper is not a legal brief nor does it state a legal position.** It cannot be used as evidence of intent, interpretation, or precedent in any legal action.

PL 9-252 has been amended by Public Laws 98-94, September 24, 1983; 98-252, September 27, 1984; 99-145; November 8, 1985, 99-661, November 14, 1986; 100-180, December 4, 1987; and 101-510, November 5, 1990. Further amendment is possible at any time.

DIVISION OF RETIRED PAY AS PROPERTY, ALIMONY, OR CHILD SUPPORT

Background. Prior to the 1981 *McCarty vs McCarty* case, state courts disagreed on whether they were authorized or constrained by federal legal precedent in dividing military retired pay in divorce-related property settlements. On June 26, 1981, the U.S. Supreme Court ruled in the *McCarty vs McCarty* case that military retired pay could not be treated as community property in divorce cases. In response, Congress enacted the Uniformed Services Former Spouses Protection Act (USFSPA) which decreed that state courts could treat military retired pay as community property in divorce cases if they so chose.

The USFSPA allows the Defense Finance & Accounting service (DFAS) to make direct payment of state-court-ordered divisions of military retired pay as property to certain former spouses. Essentially, USFSPA allows direct payment to an ex-spouse where state law treats military retired pay as marital property in a divorce. **The Act does not create a Federal right to any portion of the military retired pay on behalf of the former spouse,**

but rather recognizes that the states may treat it as such, and acts as an enforcement mechanism.

Disposable pay. One of the provisions of USFSPA is that direct payment may be made on disposable pay only. For court orders issued on or before November 14, 1986, (or amendments thereto), disposable retired pay does not include the retired pay of member retired for disability under 10 USC Chapter 61 (disability). Disposable pay is defined as retired pay to which a member is entitled less amounts which—

- (1) Are owed by that member to the United States for previous overpayments of retired pay and for recoupment required by law resulting from entitlement to retired pay.
- (2) Are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court martial or as a result of a waiver of retired pay required by law in order to receive compensation under Title 5 (civil service) or Title 38 (Dept. of Veterans Affairs (VA) compensation).
- (3) In the case of a court order on or after November 14, 1986, the amount of the member's retired pay under Chapter 61, Title 10, USC, computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list).
- (4) Are deducted because of an election under Chapter 73, Title 10 (Survivor Benefit Plan), to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired of retainer pay is being made pursuant to a court order.
- (5) If the court order was issued before February 3, 1991, are withheld for federal and state income taxes to the extent that amount is consistent with the member's tax liability. This includes amounts for supplemental withholding under 26 USC 3402 (i) when the member presents satisfactory evidence of the tax liability (See 42 USC 659).

Direct payment to the former spouse. The law does not confer an entitlement to a portion of the retired pay as property, alimony, or child support, to a former spouse as a result of length of marriage or number of years that overlap in the marriage and service. However, once a court has awarded a former spouse a portion of retired pay as property, alimony, or child support, the former spouse may apply to the military finance center to receive that pay as a “direct payment.” To qualify for a direct payment of “property”, the law requires a former spouse to have been married to the member during at least 10 years of the member’s service creditable for retired pay. There is not 10 year marriage requirement for payment of alimony or child support (See 10 USC 1408).

The law further stipulates that service finance centers may not send more than 50 percent of a member’s disposable retired pay as a direct payment unless there are additional garnishments for alimony or child support under Title 42, USC, section 659. In those cases, up to 65 percent of the disposable pay may be sent as a direct payment.

Before passage of PL 101-510, some courts amended pre June 26, 1981 divorce settlements to provide for a division of retired pay as property. PL 101-510 stipulates that a court may not treat retired pay as property of the member and the spouse if the final decree of divorce, dissolution, annulment, or legal separation (including a court-ordered, ratified, or approved property settlement incident to such decree) (1) was issued before June 25, 1981, and (2) did not treat (or reserve jurisdiction to treat) any amount of retired pay as property of the member and spouse. Judgement issued before November 5, 1990, to amend pre June 26, 1981, divorce settlements to provide for a division of retired pay as property, may be annulled or modified by this amendment on or after November 5, 1992.

When more than one former spouse has been awarded a division of a member’s retired pay, payment will be handled on a first come, first served basis. When conflicting court orders exist, the law instructs the service concerned to send the amount specified in the lower of the two conflicting orders (not to exceed 50% of disposable pay), and retain the difference until the matter is resolved.

DFAS must begin direct payment to the former spouse within 90 days of receipt of all required documents. If a member is not retired at the time of the court order, payments will begin after the required notification of the

new retired member, but no later than 90 days after the member retires. USFSPA does not allow a state court to order a member to apply for retirement or to retire at a specified time in order to start payment.

Remarriage of a former spouse does not stop the direct payment of retired pay as property unless the court so orders. To apply for a direct payment contact:

Defense Finance and Accounting Service-
Cleveland DFAS-GAG/CL
P.O. Box 998002
Cleveland, OH 44199-8002
Toll free, 1-866-859-1845

All correspondence between a former spouse and the finance center must include the member's social security number.

Court orders sent to the finance center must meet the following criteria:

- (1) Be certified within 90 days immediately preceding its service on the Finance Center.
- (2) Have an original raised or multi-colored court seal. Photocopies of certified photocopies are not acceptable.
- (3) If issued while the member was on active duty, and the member was not represented in court, show that the rights of 1940, 50 USC APP., Section 501 et seq., were honored. A statement by the former spouse or his/her attorney is insufficient.
- (4) Show that the former spouse and the member were married for at least 10 years of service creditable towards retirement. Otherwise, the former spouse must furnish evidence that such a requirement was met; for example, a copy of the marriage certificate.
- (5) Appear that the court had jurisdiction over the member by reason of (1) the member's residence, other than because of military assignment, in the territorial jurisdiction of the court, or (2) the

member's domicile in the territorial jurisdiction of the court, or
(3) the member's consent to the jurisdiction of the court.

Requests for direct payment must be sent certified mail, return-receipt-requested. Requests will not be accomplished until all required information is received by the finance center.

Within 30 days of receiving all required information, the service finance center shall contact the member with a notification which includes:

- (1) A copy of the court order and accompany documentation.
- (2) An explanation of the limitations affecting direct payment to a former spouse from a member's retired pay.
- (3) A request that the member submit notification to the designated agent if the court order has been amended, superseded, or set aside. The member must provide an authenticated or certified copy of the operative court documents when there are conflicting court orders.
- (4) The amount or percentage of retirement pay that will be deducted if the member fails to respond to the notification.
- (5) The tentative effective date when direct payments to the former spouse will begin.
- (6) Notice to the member that failure to respond within 30 days of the date the notice was mailed may result in the division of retired pay as provided in the notification.
- (7) Notice that if the member submits information in response to the notification, the member thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

The service finance center shall not honor the court order if it is defective, modified, superseded, or set aside.

Payments to the former spouse shall begin within 90 days after the service finance center receives the completed paperwork. Payments shall conform with the normal pay and disbursement bible of the member's retired pay. Payments that are a percentage of retired pay as property will change in direct proportion to and on the effective date of future cost-of-living adjustments to retired pay, unless the court order directs otherwise. Payments stop if the member or former spouse dies, or as stated in the court order, whichever occurs first.

For court orders finalized on or after February 3, 1991, payment to a former spouse for division of retired pay as property is taxable. An IRS Form 1099R is sent to the former spouse.

When a member remains on active duty following divorce, the former spouse should send a copy of the divorce decree or property settlement to the service finance center (**If SBP was awarded, this must be done within a year of the final decree of property settlement. See the SBP section below**).

SURVIVOR BENEFIT PLAN (SBP) (10 USC §§1447 et seq.)

Voluntary vs court-ordered. Until passage of the 1987 Defense Authorization Act, the USAFSPA provided members the option of voluntarily electing SBP coverage for a former spouse as part of, or incident to, a divorce-related property settlement. State courts were not authorized to order an active duty or retired member to elect SBP coverage for a former spouse. Further, a retired member could not voluntarily elect coverage for a former spouse for whom spouse coverage had not been elected. The 1987 Defense Authorization Act permitted state courts for the first time to order a member to provide SBP coverage for a former spouse. This provision applies only to divorces finalized after 14 November 1986. As with voluntary elections, courts cannot order a retired member to provide this coverage unless the retired member had elected spouse coverage for the former spouse.

Remarriage. Former spouse SBP coverage is generally irrevocable. However, if the retired member remarries and wishes to cover the new spouse, a change in coverage may be requested within one year of remarriage. Any such change requires the consent of the former spouse. Further, if the former spouse SBP coverage was, ratified or approved by a

court order, the court order must be amended before the year is up if a change in coverage is desired.

Similarity to spouse coverage. SBP coverage for a former spouse will be in the same amount as SBP coverage for the spouse. For former spouse elections made after March 1986, the cost annuity, and remarriage provisions are exactly like those for spouse coverage. A former spouse who remarries before age 55 loses SBP eligibility; however, if the marriage ends in death, divorce, or annulment, eligibility is reinstated. A former spouse who remarries after age 55 does not lose eligibility (PL 99-661 change the age from 60 to 55; this provision was not retroactive.)

Requesting a deemed election. If a member has voluntarily agreed to elect SBP coverage for a former spouse and that agreement has been ratified or approved by a court order, or, in divorces finalized after November 14, 1986, the member has been ordered to elect SBP coverage for a former spouse, the retired member must make that election within one year of the date of the divorce or dissolution. If the retired member fails to make the former spouse SBP election, the former spouse will not be covered unless, within a year of the final decree, the former spouse has requested in writing, from the finance center, that a “deemed” SBP election be established for him or her. Therefore, former spouses are encouraged to send the court order to the Finance Center and request a deemed SBP election as soon after the court order is finalized as possible, even if the member is still on active duty. That way, if the member fails to make the required election, the former spouse will have met the one year deadline to request the deemed election. If neither party elects requests former spouse SBP coverage within the prescribed timeframe, former spouse coverage will not be established. KEEP COPIES OF WHAT IS SENT AND CERTIFIED MAIL RECEIPTS.

**IDENTIFICATION AND PRIVILEGE CARD (ID CARD)
(DD FORM 1173)**

Minimum eligibility requirements. The USFSPA and subsequent amendments authorize military benefits to certain former spouses. Benefits are authorized only if all three of the following criteria are met:

- (1) The marriage lasted at least 20 years, and

- (2) The member served at least 20 years service creditable for retired pay and
- (3) The marriage overlapped the service creditable for retired pay by 15 or more years.

Benefits authorized. The number of years the marriage overlapped the service creditable for retired pay determines the extent of benefits authorized as shown below.

- (1) **20/20/20 Rule:** If the marriage and service overlapped by at least 20 years, full privileges (commissary, exchange, theater, and medical care – military and CHAMPUS) are authorized.
- (2) **20/20/15 Rule:** If the marriage and the service overlapped by at least 15 but fewer than 20 years, medical care only (military and CHAMPUS) is authorized for one year from the date of the divorce. At the end of that year, the former spouse has the option of enrolling in the Continued Health Care Benefit Program (CHCBP). See below for more information on CHCBP.

Restrictions. The following restrictions apply to medical benefits for either the 20-20-20 or 20-20-25 former spouse categories:

- (1) Medical benefits (military and CHAMPUS) are not granted if the former spouse is covered by an employer-sponsored health care plan. However, the former spouse may cancel the employer-sponsored health care plan in order to become eligible.
- (2) Medical benefits are terminated if the former spouse remarries. They are not reinstated if the remarriage ends in death or divorce. Commissary and exchange benefits are terminated if the former spouse remarries. They are reinstated if the remarriage ends in death or divorce.
- (3) Normally, CHAMPUS benefits terminate when a former spouse becomes eligible for Part A of Social Security Medicare benefits. This normally occurs when the former spouse turns 65. However, in cases where the former spouse becomes disabled before 65 (except from end-stage kidney disease), qualifies for Part A

Medicare, and is enrolled in Medicare Part B, CHAMPUS benefits do not terminate.

Effective October 1, 1994, CHCBP replaced U.S. VIP as the health insurance program available to former spouses who lose entitlement to military health care. CHCBP is a **premium-based**, temporary transitional health care program that provides health care coverage via **standard CHAMPUS**. Application for CHCBP must be made within 60 days of loss of eligibility for military health care. Thereafter, it may be renewed every 90 days for at least a 36 month period. To find out if you qualify for a longer enrollment period, contact CHCBP. The address and phone number are listed below.

Other provisions of CHCBP include:

- The quarterly premium for a former spouse is \$410 in FY 95. This rate will increase annually on October 1st.
- Beneficiaries of CHCBP are subject to the same deductibles, co-payments, and catastrophic caps that apply to regular standard CHAMPUS beneficiaries.
- Pre-existing conditions are covered to the extent they could have been covered under standard CHAMPUS.

For more information on CHCBP contact:

Continuing Health Care Benefit Program
P.O. Box 1608
Rockville, MD 20849-1608
Toll-free, 1-800-809-6119

Application for former spouse ID card. To apply for a former spouse ID card:

- (1) Complete DD Form 1172 (Application for Uniformed Services Identification & Privilege Card). DD 1172 is available from an ID card issuing facility of any branch of service.

- (2) Attach:
- (a) State-certified marriage certificate
 - (b) Final divorce decree
 - (c) If the member is retired, DD Form 214 (Discharge from Military Service) covering the 20 years of creditable service. (Note: Until a few years ago, enlisted personnel received a DD Form 214 each time they reenlisted. Officers usually have only one unless they have prior enlisted service). A state of service may be submitted in lieu of a complete set of DD Forms 214. A statement of service may be obtained as shown in paragraph 4 below.
 - (d) A statement certifying that the former spouse is not enrolled in an employer-sponsored health insurance plan.
 - (e) A statement certifying that the former spouse has not remarried. If the former spouse has remarried, but the remarriage has terminated, a copy of the termination document.
- (3) A former spouse who has all the required documents may present everything to a local ID card issuing facility of the parent service for immediate issue of a card.
- (4) The former spouse of a retired Army member should apply for a statement of service from: Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-VSE-C, 9700 Page Boulevard, St. Louis, MO 63132-5200, telephone (314) 538-3570. The former spouse of an active duty Army member may apply for a statement of service from the member's military personnel office. If the ID card will be obtained from another service branch ID card issuing facility, a DD Form 1172 and other supporting documents should accompany the request. Ask that the application be verified so that it may be presented to another service branch ID card issuing facility who will issue the card.

- (5) Always check on the current procedures by contacting an ID card issuing facility before attempting to obtain an ID card in person or by mail.

For additional information on the USFSPA, contact the nearest military legal assistance office.

Prepared by Army Retirement Services, Alexandria, Virginia 22331-0470

Legal assistance attorneys often use this chart from the Judge Advocate General's School, U.S. Army, to review and summarize military benefits available to former spouses during divorce consultations.

Uniformed Services Former Spouses' Protection Act ¹	Length of Time that Marriage Overlaps with Service Creditable for Retirement Purposes ³			
	Number of years			
Benefit for Former Spouses ²	0 to <10	10 to <15	15 to <20	20 or more
Division of Retired Pay ⁴	X	X	X	X
Designation as an SBP Beneficiary ⁵	X	X	X	X
DFAS Direct Payment⁶ of -				
Child Support	X	X	X	X
Alimony	X	X	X	X
Property Division ⁷		X	X	X
Health Care⁸				
Transitional ⁹			X	
Full ¹⁰				X
Insurance ¹¹	X	X	X	X
Commissary¹²				X
PX¹²				X
Dependent Abuse				
Retired Pay Property Share Equivalent ¹³		X	X	X
Transitional Compensation ¹⁴	X	X	X	X

► **Chart notes:**

▼ **Selected Former Spouses' Protection Act Information sites:**

<http://www.dfas.mil/money/garnish/index.htm>, DFAS Fact Sheet/Q&As, Application for Former Spouse Payments from Retired Pay

<http://www.odcsper.army.mil/default.asp?pageid=16f>, scroll down for FSPA information

http://www.odcsper.army.mil/Directorates/retire/former_spouses_protection_act/Default.asp, Retirement Services Office FSPA information

<http://usmilitary.about.com/careers/usmilitary/cs/divusfspa/index.htm>, About.com's USFSPA information collection.

<http://www.americanretirees.com/others.htm>, a "What others say" page with links to other comments on the FSPA. From The American Retirees Association,

<http://www.americanretirees.com/index.htm>, founded in 1984 for the exclusive purpose of addressing inequities in the Uniformed Services Former Spouses' Protection Act (USFSPA), Public Law 97-252 (Title 10 USC 1408).

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UNIFORMED SERVICES FORMER SPOUSE PROTECTION ACT DIVIDING MILITARY RETIRED PAY

I. HISTORY.

The Uniformed Services Former Spouse Protection Act (USFSPA) was passed by Congress in 1982. The USFSPA gives a State court the authority to treat military retired pay as marital property and divide it between the spouses. Congress' passage of the USFSPA was prompted by the United States Supreme Court's decision in *McCarty v. McCarty* in 1981.¹

The *McCarty* decision effectively precluded state courts from dividing military retired pay as an asset of the marriage. Justice Blackmun, writing for the majority, stated that allowing a state to divide retired pay would threaten "grave harm to 'clear and substantial' federal interests."² Accordingly, the Supremacy Clause of Article VI preempted the State's attempt to divide military retired pay. Congress, by enacting the USFSPA, clarified its intent that State courts have the power to divide what can be the largest asset of a marriage.

With the passage of the USFSPA, Congress took the opportunity to set forth various requirements to govern the division of military retired pay. Congress sought to make a fair system for military members, considering that their situation often exposes them to difficulties with civil litigation. Therefore, if a member is divorced while on active duty, the requirements of the Soldiers' and Sailors' Civil Relief Act (SSCRA)³ must be met before an award dividing military retired pay can be enforced under the USFSPA.⁴ The USFSPA contains its own jurisdictional requirement.⁵ It limits the amount of the member's retired pay which can be paid to a former spouse to 50% of the member's disposable retired pay (gross retired pay less authorized deductions).⁶ It requires that the parties must have been married for at least 10 years while the member performed at least 10 years of active duty service before a division of retired pay is enforceable under the USFSPA.⁷ It specifies how an award of military retired pay must be expressed.⁸

II. DOCUMENTS NEEDED TO DIVIDE MILITARY RETIRED PAY.

The USFSPA defines a "court order" dividing military retired pay enforceable under the Act as a "final decree of divorce, dissolution, annulment, or legal separation issued by a

¹ *McCarty v. McCarty*, 453 U.S. 210 (1981)

² *Id.* at 232.

³ See Soldier's and Sailor's Civil Relief Act, 10 U.S.C. App. § 501 et seq.

⁴ 10 U.S.C. § 1408(b)(1)(D).

⁵ 10 U.S.C. § 1408(c)(4).

⁶ 10 U.S.C. § 1408 (e)(1).

⁷ 10 U.S.C. § 1408 (d)(2).

⁸ 10 U.S.C. § 1408 (a)(2)(C).

court, or a court ordered, ratified, or approved property settlement incident to such a decree.”⁹ This also includes an order modifying a previously issued “court order.”

Since military retired pay is a Federal entitlement, and not a qualified pension plan, there is no requirement that a Qualified Domestic Relations Order (QDRO) be used. As long as the award is set forth in the divorce decree or other court order in an acceptable manner, that is sufficient. It is also not necessary to judicially join the “member’s plan” as a part of the divorce proceeding. There is no Federal statutory authority for this. The award may also be set forth in a court ratified or approved separation agreement, or other court order issued incident to the divorce.

In order to submit an application for payments under the USFSPA, a former spouse needs to submit a copy of the applicable court order certified by the clerk of court within 90 days immediately preceding its service on the designated agent,¹⁰ along with a completed application form (DD Form 2293).¹¹ Instructions, including designated agent names and addresses, are on the back of the DD Form 2293. The Defense Finance and Accounting Service (DFAS) is the designated agent for all uniformed military services. The Form and instructions can be downloaded from our DFAS website at www.dfas.mil. Click on Money Matters, then Garnishments.

III. REQUIREMENTS FOR ENFORCEABILITY UNDER USFSPA.

a. Soldiers’ and Sailors’ Civil Relief Act.

The provision of the SSCRA that has primary application to the USFSPA and the division of military retired pay is the section concerning default judgments against active duty service members. This section requires that if an active duty defendant fails to make an appearance in a legal proceeding, the plaintiff must file an affidavit with the court informing the court of the member’s military status. The court shall appoint an attorney to represent the interests of the absent defendant.¹² Since a member has 90 days after separation from active duty service to apply to a court rendering a judgment to re-open a case on SSCRA grounds¹³, the SSCRA is not a USFSPA issue where a member has been retired for more than 90 days.

b. The 10/10 requirement.

This is a “killer” requirement. For a division of retired pay as property award to be enforceable under the USFSPA, the former spouse must have been married to the member for a period of 10 years or more during which the member performed at least 10

⁹ 10 U.S.C. § 1408(a)(2).

¹⁰ 32 CFR § 63.6(c)(2).

¹¹ 32 CFR § 63.6(b)(1).

¹² 10 U.S.C. App. § 520(1).

¹³ 10 U.S.C. App. § 520(4).

years of service creditable towards retirement eligibility.¹⁴ This requirement does not apply to the Court's authority to divide military retired pay, but only to the ability of the former spouse to get direct payments from DFAS. This is a statutory requirement, and not a personal right of the member that can be waived. Although this requirement was probably included in the USFSPA to protect members, we have had more complaints about it from members than from former spouses. Assuming that a member intends to meet his or her legal obligations, the member would much rather have us pay the former spouse directly rather than have to write a check each month. It would lessen contact with the former spouse, and the former spouse would receive her or his own IRS Form 1099, instead of the member being taxed on the entire amount of military retired pay.

If we cannot determine from the court order whether the 10/10 requirement has been met, we may ask the former spouse to provide a copy of the parties' marriage certificate. A recitation in the court order such as, "The parties were married for 10 years or more while the member performed 10 years or more of military service creditable for retirement purposes" will satisfy the 10/10 requirement.

c. Jurisdiction.

The USFSPA's jurisdictional requirement is found in 10 U.S.C. § 1408(c)(4). This is another "killer" requirement. If it is not met, the former spouse's application for retired pay as property payments under the USFSPA will be rejected. For a court to have the authority to divide military retired pay, the USFSPA requires that the court have "C-4" jurisdiction over the military member in one of three ways. One way is for the member to consent to the jurisdiction of the court. The member indicates his or her consent to the court's jurisdiction by taking some affirmative action with regard to the legal proceeding, such as filing any responsive pleading in the case. Simply receiving notice of filing of the divorce complaint or petition is not sufficient. Consent is the most common way for a court to have "C-4" jurisdiction over a member.

The other ways for the court to have C-4 jurisdiction is for the member to be a resident of the State other than because of his or her military assignment, or for the court to find that the member was domiciled in the particular State. Now, the key with regard to domicile is that it should be the court making this determination, and it should be noted in the divorce decree.

IV. LANGUAGE DIVIDING MILITARY RETIRED PAY.

a. Fixed dollar amount or percentage awards.

The major reason for rejecting applications for payments under the USFSPA is that the language dividing retired pay is faulty. The USFSPA states that for an award to be

¹⁴ 10 U.S.C. § 1408(d)(2).

enforceable, it must be expressed either as a fixed dollar amount or as a percentage of disposable retired pay.¹⁵ If a fixed dollar amount award is used, the former spouse would not be entitled to any of the member's retired pay cost of living adjustments (COLA's).¹⁶ Because of the significant effect of COLA's over time, it is infrequent that an award is stated as a fixed dollar amount. The more common method of expressing the former spouse's award is as a percentage of the member's disposable retired pay. This has the benefit to the former spouse of increasing the amount of the former spouse's award over time due to periodic retired pay COLA's.

All percentage awards are figured based on a member's disposable retired pay, which is a member's gross retired pay less authorized deductions.¹⁷ The authorized deductions vary based on the date of the parties' divorce. The principal deductions now include retired pay waived to receive VA disability compensation, disability retired pay, and Survivor Benefit Plan premiums where the former spouse is elected as the beneficiary. Since the United States Supreme Court has ruled that Congress authorized the division of only disposable retired pay, not gross retired pay,¹⁸ the regulation provides that all percentage awards are to be construed as a percentage of disposable retired pay.¹⁹

Set-offs against the former spouse's award are not permitted. If the former spouse's award is expressed in terms which require an amount to be deducted from the award, such as a percentage of disposable retired pay less some set-off amount (e.g., the Survivor Benefit Plan premium or the former spouse's child support obligation or some other debt), the entire award is unenforceable. This type of award language does not meet the statutory requirement of a fixed dollar amount or percentage. If the award language does meet the requirements of the statute and is acceptable, but has subsequent language in the court order that requires a set-off amount be deducted from the former spouse's share, only the set-off is unenforceable. These determinations are because there is no provision of the USFSPA that authorizes set-off's. State courts have authority to divide military retired pay only as set forth by the USFSPA.²⁰ Thus, state court provisions not in accordance with the USFSPA are unenforceable.

There is no magic language required to express a percentage or fixed dollar award. All the divorce decree needs to say is that: **"(Plaintiff/Defendant) is awarded ___ percent [or dollar amount] of the (Defendant/Plaintiff)'s military retired pay."**

b. Formula and hypothetical awards for divorces while the member is on active duty.

¹⁵ 10 U.S.C. §1408(a)(2)(C).

¹⁶ 32 CFR § 63.6(h)(2) provides for automatic COLA's only for awards expressed as a percentage of disposable retired pay.

¹⁷ 10 U.S.C. § 1408(a)(4)(amended 1986, 1990).

¹⁸ Mansell v. Mansell, 490 U.S. 581.

¹⁹ 32 CFR § 63.6(c)(8).

²⁰ Mansell, 490 U.S. at 581, illustrates the general principal that state courts may deal with military retired pay only in accordance with the provisions of the USFSPA.

Most of the problems with award language have arisen in cases where the parties were divorced while the member was still on active duty. In these cases, the former spouse's award is indeterminate since the member has not yet retired. Since the parties do not know how much longer the member will remain in military service after the divorce, a straight percentage award may not be suitable. Also, many States take the approach that the former spouse should not benefit from any of the member's post-divorce promotions or pay increases based on length of service after the divorce.

A proposed regulation was issued in 1995 that allowed the use of formula and hypothetical awards to divide military retired pay when the parties were divorced prior to the member's becoming eligible to receive retired pay.²¹ This proposed regulation still governs our processing of these types of awards. These awards are often drafted in such a way that we cannot determine the amount of the award. This causes the parties to have to go back to court and obtain a clarifying order. We have draft language to make the process easier that is pending review by DoD.

1. Formula awards.

A formula award is an award expressed in terms of a marital fraction, where the numerator covers the period of the parties' marriage while the member was performing creditable military service, and the denominator covers the member's total period of creditable military service. The former spouse's award is usually calculated by multiplying the marital fraction by $\frac{1}{2}$.

(A) For members retiring from active duty, the numerator is the total period of time from marriage to divorce or separation while the member was performing creditable military service. The numerator, expressed in terms of whole months, must be provided in the court order. Days or partial months will be dropped. DFAS will supply the denominator in terms of whole months of service creditable for retirement, and then work out the formula to calculate the former spouse's award as a percentage of disposable retired pay. All fractions will be carried out to six decimal places.

For example, assume you have a marriage that lasted exactly 12 years or 144 months. The member serves for 25 years and then retires. Using the above formula, the former spouse would be entitled to $\frac{1}{2} \times (144/300) = 24.0000\%$ of the member's disposable retired pay.

The following language is an example of an acceptable way to express an active duty formula award:

“The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying _____% times a fraction, the numerator of which is _____ months of marriage during the member's

²¹ Former Spouse Payments From Retired Pay, 60 Fed. Reg. 17507 (1995) (to be codified at 32 C.F.R. pt. 63)(proposed Apr 5, 1995).

creditable military service, divided by the member's total number of months of creditable military service."

(B) In the case of members retiring from reserve duty, a marital fraction award must be expressed in terms of reserve retirement points rather than in terms of whole months. The numerator, which for reservists is the total number of reserve retirement points earned from marriage to divorce or separation, must be provided in the court order.²² DFAS will supply the member's total reserve retirement points for the denominator. All fractions will be carried out to six decimal places.

The following language is an example of an acceptable way to express a reserve duty formula award.

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying _____% times a fraction, the numerator of which is _____ reserve retirement points earned during the period of the marriage, divided by the member's total number of reserve retirement points earned."

2. Hypothetical awards.

A hypothetical award is an award based on a hypothetical retired pay amount computed using one or more variables different from those used to compute the member's actual retired pay amount. It is usually figured using a member's rank and years of creditable service as of the date of divorce or separation. Many jurisdictions use hypothetical awards. They arrive at a specific dollar amount which in turn does not give the former spouse the benefit of any increases in pay the member receives after the divorce due to promotions or increased service time.

The basic method for computing military retired pay is to multiply the active duty basic pay for the member's rank at retirement times two and one-half percent times the years of creditable military service.²³ The years of creditable service for a reservist are computed by dividing the reserve retirement points on which the award is to be based by 360.²⁴ A hypothetical retired pay amount is computed the same way, but based on the hypothetical rank, hypothetical years of creditable service, and hypothetical retirement date, if provided.

Anyone can obtain the basic pay figures from military pay tables available at the DFAS website at www.dfas.mil, under Money Matters. According to the proposed rule, a hypothetical award must be based on at least 15 years of military service.²⁵ Also, if the

²² Id.

²³ Department of Defense Financial Management Regulation (DoDFMR), Volume 7B, Paragraph 30102.

²⁴ Id. at Subparagraph 010301.F.

²⁵ Former Spouse Payments From Retired Pay, 60 Fed. Reg. 17507, 17508 (1995) (to be codified at 32 C.F.R. pt. 63)(proposed Apr 5, 1995).

former spouse is explicitly awarded COLA's in the court order, the hypothetical award has to be converted to a proportional percentage of the member's actual disposable retired pay. If the former spouse is not awarded COLA's, then the former spouse's award is figured as a fixed dollar amount.²⁶

The principal problem we find with hypothetical awards is that one or more of the necessary variables for the hypothetical retired pay computation is often left out of the court order. This leaves us in the position of having to make assumptions about the parties' intentions, which we are reluctant to do. At the very minimum, the court order must give us a hypothetical rank and the hypothetical years of service. If we are not able to compute a hypothetical retired pay figure from the information provided, the parties will have to have the award clarified by the court.

If the order is silent as to a hypothetical retirement date, we will compute the hypothetical retired pay amount as of the member's actual retirement date (i.e., using the pay table applicable to the member's actual retirement date, but for the hypothetical rank and years of service). If the order specifies a hypothetical retirement date, we will compute the hypothetical retired pay using the pay table applicable as of that date.

In cases where the member retires from active duty military service, we will use the number of hypothetical years of service in the court order as both years of service for basic pay purposes and years of creditable service for retirement computation purposes. For hypothetical awards dividing the retired pay of members retiring from reserve duty, years of service for basic pay purposes must be stated in the court order.

We assume that the member would have been eligible to receive military retired pay as of the hypothetical retirement date, as long as the hypothetical retired pay amount is based on at least 15 years of service. In the case of reserve members (who must attain age 60 before receiving military retired pay²⁷), we will assume that the reserve member had attained age 60 as of the hypothetical retirement date.

We will convert all hypothetical awards where the former spouse is awarded COLA's into a percentage of the member's actual disposable retired pay according to the following method set forth in the proposed regulation.²⁸ Assume that the court order awards the former spouse 25% of the retired pay of an E-6 with 20 years of service retiring on the member's actual retirement date. The member later retires on June 1, 1999, as an E-7 with 25 years of service. At the time the member retires, the monthly retired pay of an E-6 with 20 years of service is \$1,086. The monthly retired pay of an E-7 with 25 years of service is \$1,736. The former spouse's award is converted to a percentage of the member's actual disposable retired pay by multiplying 25% times \$1,086/\$1,736, which equals 15.6394%. This new proportional percentage is the former spouse's award, and will be set up in the retired pay system. While the percentage

²⁶ Id.

²⁷ DoDFMR, Volume 7B, Subparagraph 010108.B.

²⁸ Former Spouse Payments From Retired Pay, 60 Fed. Reg. 17507, 17508 (1995) (to be codified at 32 C.F.R. pt. 63)(proposed Apr 5, 1995).

number has been reduced, the amount the former spouse receives is the correct amount intended by the court, because the lower percentage is multiplied against the higher dollar amount of the member's actual disposable retired pay. The percentage will be applied each month to the member's disposable retired pay to determine the amount the former spouse receives.

The following language is an example of an acceptable way to express an active duty hypothetical award.

“The former spouse shall receive ____%* of the disposable military retired pay the member would have received had the member retired on ____ (Date) at the rank of ____ with ____ years of creditable service.”

*Percentage may be computed using a marital fraction as discussed above.

The following proposed language is an example of an acceptable way to express a reserve duty hypothetical award.

“The former spouse shall receive ____%* of the disposable military retired pay the member would have received had the member become eligible to receive military retired pay on ____ (Date) at the rank of ____ with ____ reserve retirement points and ____ years of service for basic pay purposes.”**

*Percentage may be computed using a marital fraction.

**Assumes member has attained age 60 and is eligible to receive military retired pay. Date member actually attains age 60 may be used here.

3. Awards expressed using both a formula and hypothetical award.

The following proposed language is an example of an acceptable way to express an award using both an active duty marital fraction and an active duty hypothetical award together.

“The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying ____% times a fraction, the numerator of which is ____ months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service at retirement. For the purpose of this computation, the member's military retired pay is defined as the military retired pay the member would have received had the member retired on ____ (Date) at the rank of ____ with ____ years of creditable service.”

The following proposed language is an example of an acceptable way to express an award using both a reserve duty marital fraction and a reserve duty hypothetical award together.

“The former spouse is awarded a percentage of the member’s disposable military retired pay, to be computed by multiplying _____% times a fraction, the numerator of which is _____ reserve retirement points earned during the period of the marriage, divided by the member’s total number of reserve retirement points earned. For the purpose of this computation, the member’s military retired pay is defined as the military retired pay the member would have received had the member become eligible to receive military retired pay on _____(Date)* at the rank of _____ with _____ reserve retirement points and _____ years of service for basic pay purposes.”

*Assumes member has attained age 60 and is eligible to receive military retired pay.

c. Examples of unacceptable former spouse award language.

1. “The former spouse is awarded one-half of the community interest in the member’s military retired pay.”

Here, there is no way for us to determine the community interest unless a formula for calculating it is provided elsewhere in the court order.

2. “The former spouse is awarded one-half of the member’s military retirement that vested during the time of the marriage.”

The problem here is that there is no way for us to determine an amount or percentage. Military retired pay is a Federal entitlement, which the member either qualifies for or does not. It does not vest in any way prior to the member’s retirement.

3. “The former spouse is awarded one-half of the accrued value of the member’s military retirement benefits as of the date of the divorce.”

The problem here is similar to that above. Since military retired pay is a statutory entitlement, there is no value that accrues prior to the member’s retiring.

4. “The former spouse shall be entitled to 42% of the member’s military retirement based on the amount he would have received had he retired as of the date of the divorce.”

Since we do not have access to the member’s active duty service information, there is no way for us to determine the member’s rank or years of active duty service as of the date of divorce. Thus, there is no way for us to compute a hypothetical retired pay amount.

5. “The former spouse is awarded a portion of the member’s military retired pay calculated according to the Bangs formula.”

Here, the court order presupposes that we are familiar with that State's laws and know what the Bangs formula is, or that we are able to do legal research to resolve an ambiguity in a court order.

6. "The former spouse is awarded an amount equal to 50% of the member's disposable retired pay less the amount of the Survivor Benefit Plan Premium."

The amount of the former spouse's award must be expressed either as a fixed dollar amount or as a percentage of disposable retired pay. This award does not meet that requirement.

This handout is prepared by the Garnishment Operations Directorate, Defense Finance and Accounting Service, Cleveland Center. It may be freely circulated, but not altered without permission. Revised 9/14/01.

G-1 RETIREMENT SERVICES OFFICE
USFSPA FAQ's

If you have a question concerning the Uniformed Services Former Spouse's Protection Act (USFSPA) and you can not find the answer in the Information Paper on the USFSPA section of this web site, or within this Frequently Asked Questions section, contact your Retirement Services Office (RSO).

DIVISION OF RETIRED PAY

What law addresses division of retired pay, and where can I get a copy?

The division of retired pay in accordance with a valid court order is covered in Title 10, United States Code, Section 1408. Get a copy at your local library or from web site www4.law.cornell.edu/uscode/10/1405.html.

I was the spouse of a military person during 17 years of his active service. Where do I sign up for my entitlement to 50 percent of his retired pay?

While state courts can treat retired pay as marital property, the Uniformed Services Former Spouses' Protection Act (USFSPA) does not confer automatic entitlement to any former spouse, regardless of length of marriage, amount of overlap of service and marriage, career contribution, steadfast support, etc.

My attorney tells me that only "disposable pay" can be divided as marital property. What does that mean?

Disposable pay is the amount of gross retired pay remaining after the following deductions are made:

1) garnishments; 2) court martial fines/costs; 3) waivers due to civil service and VA disability compensation receipt; 4) SBP premiums; 5) taxes (if before 3 Feb 1991). An example of an item not counted in determining disposable pay is an allotment into a savings account.

I hear "10 years of marriage" mentioned all the time in relation to division of retired pay. What's the significance?

The answer is in this illustration. 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 pay to a former spouse. However, when the court does order a division, "10 years" comes into play because there must have been 10 years of marriage that overlapped with 10 years of creditable military service in order for a former spouse to receive direct payments from DFAS-Cleveland Center (DFAS-CL). Without it, the government will not be the payer.

Do you mean that my former spouse could have been married to me for only 8 of my 20 active duty years and still get even if not paid from the government) some of my retired pay?

Yes. A state court can do whatever they deem appropriate when settling marital property (retired pay has been considered marital property since 1982).

Where can I get a copy of the law that spells out the formula for retired pay division entitlement based on "X" amount of years of marriage and service overlap?

There is no "official" document saying, for example, that 10 years of a 20 year career entitles one to 50 percent of retired pay. However, we've heard that many attorneys and Judge Advocate Generals use an unofficial matrix as guidance when formulating or advising on retired pay division matters.

A friend of mine told me that he was ordered by the court to give up all his retired pay to his former spouse. Can that be true?

Yes. Any or all of your retired pay can be awarded to a former spouse. However, a limit ("cap") is imposed by federal law, which restricts DFAS-CL in the amount of disposable pay they can directly pay to a former spouse.

I read that a former spouse cannot receive from DFAS-CL directly more than 50 percent of a retiree's disposable retired pay. Is there any case where that is not true?

Yes. If child support is an ordered garnishment from military retired pay, the "cap" is 65 percent of disposable pay.

Will my former spouse have to pay his own taxes on the amount he receives as a division of my retired pay?

Yes - if the divorce occurred after 3 Feb 1991. Since that date, each party is responsible for their own taxable income, and each receives a separate 1099R.

ID CARDS

I am a former spouse who was married to a military member for 12 years. My divorce decree ordered that I should retain my military ID card. Why am I being denied a card?

A state court does not have the authority to confer entitlement to a military ID card. Federal law defines minimum eligibility requirements, one of which is completion of a minimum of 20 years of marriage to a military member.

I know about the so-called "20/20/20" and "20/20/15" minimum requirements pertaining to a former spouse getting an ID card (i.e., 20 years service/20 years marriage/15-20 years overlap of the two). I meet the 20-year marriage and 15-year overlap requirements, but my ex-spouse just retired for disability after completing only 18 years active service. Can I still get an ID card since it was not my fault that 20 years of service was not completed?

No. We know of no exceptions being made regarding minimum ID card eligibility requirements. Completing 20 years creditable service is a must. A retirement with less than 20 creditable years service (e.g., disability, or Temporary Early Retirement Authority, TERA) doesn't meet the "service 20."

SURVIVOR BENEFIT PLAN (SBP)

When I retired in 1990, my spouse and I jointly decided we didn't want SBP, so I declined participation. Now that we're divorcing, she says she's changed her mind and wants the coverage. Do I have to enroll her now?

No. You cannot enroll her now, voluntarily or by court order. Since you initially declined spouse coverage, the only time you can enter the program is during a future Open Season (and, there have only been 4 in SBP's 28-year history).

My husband is retired and I am his spouse beneficiary in SBP. We are getting divorced, and the state court will order him to continue to cover me in SBP. If I send DFAS-CL a copy of the divorce decree, will I remain covered automatically?

No. When DFAS-CL is informed that the retiree is divorced (i.e., has no spouse), they simply stop his spouse coverage/premiums. Because SBP elections are "by category," when there is no eligible spouse, spouse coverage is suspended. This is not DFAS-CL policy - it's federal law! (Read on...)

I am retired and have spouse SBP coverage. I recently divorced and was ordered to continue covering Susie in SBP. I sent the decree to DFAS-CL just to keep my records updated, but I did not ask them to take Susie off my coverage -- yet DFAS-CL suspended my spouse coverage. What's going on?

DFAS-CL's action was appropriate. Since SBP elections are made by category, not individual, when DFAS-CL learned you did not have a spouse, they properly suspended your "spouse" coverage. On date of divorce, Susie is no longer your spouse, and cannot be covered under the spouse category. To facilitate the change (assuming you are still within one year of the divorce), write to DFAS, US Military Retirement Pay, PO Box 7130, London, KY 40742-7103, and request that your SBP category be changed from "spouse" to "former spouse." The law requires a written request. Your former spouse, Susie, will then be covered, and you will be in compliance with the court order. If it's more than one year since divorce, you'll have to address the matter to the SBP Board of Corrections. Recommend you contact your Retirement Services Officer (RSO) before doing that.

I am a retiree with spouse coverage. The court has ordered me to cover my former spouse in SBP upon divorce. They've also ordered her to start paying the SBP premiums. How do I get the payment responsibility switched to her?

You don't. Federal law currently allows only the retired member to have SBP premiums deducted (tax-free) from retired pay. The state court, being a lower court, cannot legally order otherwise. You would need to explore reimbursement privately.

I know that SBP rules say that a former spouse beneficiary remains eligible as long as he/she doesn't marry before age 55. But, my divorce decree wording goes one step further and specifies that my former spouse will lose SBP eligibility if she remarries AT ANY AGE. Is that legal?

No, it is not legal. SBP runs by federal law, not state law. In reality, a state court can incorporate anything it or the parties desire into a divorce decree. However, federal law dictates the conditions of eligibility for SBP - one of which is age of remarriage. (See Title 10, U.S. Code, Chapter 73.)

I heard through the grapevine that my 50-year old former spouse, who is my court-ordered SBP beneficiary, has remarried. Since she's under age 55, how do I stop coverage for her and enroll my new spouse?

You can't "stop" former spouse coverage; you can "suspend" it; and, you can't enroll your new spouse. It's true that your former spouse's remarriage affects her eligibility, but it does not terminate your obligation to cover your former spouse - only your obligation to make payments.

In other words, once you prove to DFAS-CL that your beneficiary has remarried before age 55 (i.e., provide marriage and birth certificates), your former spouse premiums will be suspended - as long as she remains ineligible by being married. However, should that remarriage end due to divorce or death, the former spouse will regain eligibility and appropriate coverage and premiums will resume. YOU are responsible to keep DFAS-CL notified of all beneficiary changes. In summary, loss of a former spouse's eligibility does not signal a new opportunity for a member to make a new election.

If my former spouse should die, what would happen to my court-ordered SBP election? Could I cover my spouse?

Your court ordered former spouse coverage would be voided by your former spouse's death. You would be free to enroll your current spouse. Provide DFAS-CL appropriate documents.

My divorce will soon be final and I'm still on active duty. The court is ordering me to participate in SBP for my former spouse when I retire. What action do I have to take now to stay out of hot water?

None - now. As an active member not yet eligible for retirement, you have no action to take until retirement. At retirement, in order to comply with the court order, you would elect former spouse coverage. If you don't, you will be in contempt of court. On the other hand, your former spouse has one year from date of divorce to write to DFAS-CL requesting a deemed election.

I am a former spouse of an active duty member. Two months ago, we divorced and the court ordered her to enroll me in SBP when she retires. Since we don't plan to keep in touch, how can I ensure that happens?

The USFSPA gives you a tool to use to make sure you are covered in SBP in the future if it is court-ordered -- that is a "deemed election." Within one year of divorce, YOU (or your attorney) can send DFAS-CL a copy of your divorce decree along with a simple letter requesting a deemed election. It will be kept in suspense, awaiting your ex-spouse's future retirement and SBP election. If she fails to elect former spouse coverage, the deemed election will override that failure. You will be notified when that occurs.

Whom can I turn to for information on the USFSPA?

While your Army Retirement Services Officers (RSO) are not attorneys, they are knowledgeable on most aspects of the USFSPA, and will refer you to others who can answer any questions they cannot.

I am a former spouse whose divorce occurred more than one year ago. I never heard of being able to deem an election that was court-ordered. And, I just learned that my former spouse did not follow the court's order and is covering his current spouse. Wasn't it the government's responsibility to inform me of my rights under the USFSPA?

No. While there are certainly many people/agencies within the government who are knowledgeable on the USFSPA, the bottom line is that it is YOUR private attorney's role to properly advise you on all aspects of divorce. When hiring an attorney, we strongly recommend that you inquire as to their knowledge of and experience with USFSPA issues, to ensure that your interests are protected. The attorney can also advise you of what steps can be taken to address a contempt of court issue.

How can I conduct research on the USFSPA in order to minimize my attorney's fees?

Call your RSO (listed on this web site and in each issue of "Army Echoes") for information. If you are a member of a military service organization, ask them what assistance, if any, they can provide. Some keep a database of area attorneys who are considered to be well versed in military divorce. Avail yourself of USFSPA information on (or refer your attorney to) this web site and the www.dfas.mil web site.

§ 1408. Payment of retired or retainer pay in compliance with court orders

Release date: 2005-07-12

(a) Definitions.— In this **section**:

(1) The term “court” means—

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in **section 451** of **title 28**) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of **title IV** of the Social Security Act), and, for purposes of this subparagraph, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term “court order” means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in **section 453(p)** of the Social Security Act (42 U.S.C. 653 (p)), which—

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for—

(i) payment of child support (as defined in **section 459(i)(2)** of the Social Security Act (42 U.S.C. 659 (i)(2)));

(ii) payment of alimony (as defined in **section 459(i)(3)** of the Social Security Act (42 U.S.C. 659 (i)(3))); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the **spouse** or **former spouse**

of that member.

(3) The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under **title 5** or **title 38**;

(C) in the case of a member entitled to retired pay under chapter 61 of this **title**, are equal to the amount of retired pay of the member under that chapter computed **using** the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this **title** to provide an annuity to a **spouse** or **former spouse** to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this **section**.

(5) The term "member" includes a **former** member entitled to retired pay under **section 12731** of this **title**.

(6) The term "**spouse** or **former spouse**" means the husband or wife, or **former** husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term "retired pay" includes retainer pay.

(b) Effective Service of Process.— For the purposes of this **section**—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Servicemembers Civil Relief Act (50 App. U.S.C. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order—

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) Authority for Court To Treat Retired Pay as Property of the Member and Spouse.—

(1) Subject to the limitations of this **section**, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his **spouse** in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's **spouse** or **former spouse** if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's **spouse** or **former spouse**

(A) was issued before June 25, 1981, and

(B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's **spouse** or **former spouse**.

(2) Notwithstanding any other provision of law, this **section** does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a **spouse** or **former spouse**. Payments by the Secretary concerned under subsection (d) to a **spouse** or **former spouse** with respect to a division of retired pay as the property of a member and the member's **spouse** under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This **section** does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this **section**.

(4) A court may not treat the disposable retired pay of a member in the manner

described in paragraph (1) unless the court has jurisdiction over the member by reason of

(A) his residence, other than because of military assignment, in the territorial jurisdiction of the court,

(B) his domicile in the territorial jurisdiction of the court, or

(C) his consent to the jurisdiction of the court.

(d) Payments by Secretary Concerned to (or for Benefit of)

Spouse or Former Spouse.—

(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the **spouse** or a **former spouse** of the member, the Secretary shall make payments (subject to the limitations of this **section**) from the disposable retired pay of the member to the **spouse** or **former spouse** (or for the benefit of such **spouse** or **former spouse** to a State disbursement unit established pursuant to **section** 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of **title** IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a **spouse** or **former spouse** who, pursuant to **section** 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the **spouse** or **former spouse** to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the **spouse** or **former spouse** to whom payments are to be made under this **section** was not married to the member for a period of **10** years or more during which the member performed at least **10** years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this **section** to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his **spouse**.

(3) Payments under this **section** shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court

order.

(4) Payments from the disposable retired pay of a member pursuant to this **section** shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the **spouse** or **former spouse** to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his **spouse**, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the **spouse** or **former spouse** of the member, any part of the amount payable to the **spouse** or **former spouse** under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after August 22, 1996, and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)

(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the **spouse** or **former spouse** involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order—

(i) modifies a previous court order under this **section** upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(e) Limitations.—

(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a **spouse** and one or more **former spouses** or to more than one **former spouse**, the disposable retired pay of the member shall be **used** to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)

(A) In the event of effective service of conflicting court orders under this **section** which assert to direct that different amounts be paid during a month to the same **spouse** or **former spouse** of the same member, the Secretary concerned shall—

(i) pay to that **spouse** from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the **spouse** or **former spouse** and the amount payable to the **spouse** or **former spouse** under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under **section** 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus—

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the **spouse** or **former spouse** to

be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4) (A) In the event of effective service of a court order under this **section** and the service of legal process pursuant to **section** 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this **section** and all legal processes pursuant to **section** 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under **section** 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under **section** 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this **section** by the payment to the **spouse** or **former spouse** of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this **section** shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this **section** have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this **section** in any case in which the maximum amount permitted under paragraph (1) has been paid and under **section** 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) Immunity of Officers and Employees of United States.—

(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member,

spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this **section** and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) Notice to Member of Service of Court Order on Secretary Concerned.—

A person receiving effective service of a court order under this **section** shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) Benefits for Dependents Who Are Victims of Abuse by Members Losing Right to Retired Pay.—

(1) If, in the case of a member or **former** member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or **former** member (as certified under paragraph (4)) to an eligible **spouse** or **former spouse** of that member or **former** member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such **spouse** or **former spouse**.

(2) A **spouse** or **former spouse** of a member or **former** member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or **former** member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a **spouse** or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security); and

(B) the **spouse** or **former spouse**—

(i) was the victim of the abuse and was married to the member or **former** member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or **former** member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or **former** member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or **former** member for the purposes of this subsection.

(4) Upon the request of a court or an eligible **spouse** or **former spouse** of a member or **former** member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or **former** member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or **former** member would have been entitled to receive as of the date of the certification—

(A) if the member or **former** member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or **former** member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or **former** member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under **section 1401a** of this **title** (or any other provision of law), the amount payable under the court order to the **spouse** or **former spouse** of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or **former** member would have been increased if the member or **former** member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or **former** member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this **section** to a **spouse** or **former spouse** of the member or former member.

(7)

(A) If a **former spouse** receiving payments under this subsection with respect to a member or **former** member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the **former spouse** to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's **spouse** or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by **section 1461** of this title or, in the case of the Coast Guard, out of funds appropriated to

the Department of Homeland Security for payment of retired pay for the Coast Guard.

(9) (A) A **spouse** or **former spouse** of a member or **former** member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to **use** commissary and exchange stores, and to receive any other benefit that a **spouse** or a **former spouse** of a retired member of the armed forces is entitled to receive on the basis of being a **spouse** or **former spouse**, as the case may be, of a retired member of the armed forces in the same manner as if the member or **former** member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or **former** member referred to in paragraph (2)(A) who was a member of the household of the member or **former** member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a **spouse** or **former spouse** or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that **spouse** or **former spouse** or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10) (A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under **section** 860 (c) of this **title** (article 60(c) of the Uniform **Code** of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term "dependent child", with respect to a member or **former** member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or **former** member, who—

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or **former** member for over one-half of the child's support.

(i) Certification Date.— It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this **section** be recent in relation to the date of receipt by the Secretary.

(j) Regulations.— The Secretaries concerned shall prescribe uniform regulations for the administration of this **section**.

(k) Relationship to Other Laws.— In any case involving an order providing for payment of child support (as defined in **section** 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this **section** shall not apply, and the case shall be subject to the provisions of **section** 459 of such Act.

G-1 RETIREMENT SERVICES OFFICE
Uniformed Services Former Spouses' Protection Act (USFSPA)

For more information [USFSPA FAQ](#) or the [USFSPA Trifold](#)

General Information Facts: This is not a legal brief nor a position. It cannot be used as evidence of intent, interpretation, or precedent in any legal action. This paper is not a legal or judicial interpretation of enacted laws and does not deal with case law. Because of the complexity of the USFSPA, state divorce laws, and personal situations involved, individuals involved in a divorce process are encouraged to obtain legal counsel.

Prior to the 1981 state courts disagreed on whether they were authorized or constrained by federal law in dividing military retired pay in divorce-related property settlements. On 26 June 1981, the U.S. Supreme Court ruled (*McCarty vs. McCarty*) that military retired pay could not be treated as community property in divorce cases.

The USFSPA (Section 1408, Title 10 USC) established by PL 97-252 (8 September 1982) and amended by PL 98-94 (24 September, 1983); PL 98-525 (27 September 1984); PL 99-145 (8 November 1985); PL 99-661 (14 November 1986); PL 100-180 (4 December 1987); and PL 101-510 (5 November 1990) decrees that state divorce courts, if they chose, may treat military retired pay as community property. The USFSPA does not create a Federal right to any portion of the military retired pay on behalf of the former spouse, but rather recognizes that the states may treat it as such. The USFSPA does not allow the law to confer an entitlement to a portion of retired based solely on length of marriage.

If a court awards a portion of retired pay as property, the former spouse may apply to the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), Operations Directorate, PO Box 998002, Cleveland, OH 44199-8002 to receive it as a "direct payment". To qualify for direct payment, the USFSPA requires that a former spouse must have been married to the member during at least 10 years of the member's service creditable for retired pay.

Under the USFSPA no more than 50 percent of a member's disposable retired pay will be sent as a direct payment. However, if there are garnishments for alimony or child support, up to 65 percent may be sent as a direct payment.

Depending upon date of court order, disposable pay is generally defined as retired pay to which a member is entitled less amounts:

owed to the United States for previous overpayments of retired pay and for recoupment required by law resulting from entitlement to retired pay.

deducted from the retired pay as a result of forfeitures of retired pay ordered by a court martial or as a result of a waiver of retired pay required by law in order to receive compensation under Title 5 or Title 38.

of the member's retired pay under Chapter 61, Title 10, USC, as computed using the percentage of the member's disability on the date when the member was temporarily or permanently retired, if the court order is dated on or after November 14, 1986.

deducted because of an SBP election.

PL 101-510 stipulates that a court may not treat retired pay as property if the final decree of divorce, dissolution, annulment, or legal separation (including a court-ordered, ratified, or approved property settlement incident to such decree) was (1) issued before 25 June 25 1981,

and (2) did not treat (or reserve jurisdiction to treat) any amount of retired pay as property. Judgments issued before 5 November 1990, to amend pre-26 June 1981 divorce settlements, to provide for a division of retired pay as property, may be annulled or modified by PL 101-510 on or after 5 November 1992.

When more than one former spouse has been awarded a division of a member's retired pay, payment will be handled on a first-come, first-served basis. When conflicting court orders exist, DFAS-CL will send the amount specified in the lower of the two conflicting orders (not to exceed 50% of disposable pay), and retain the difference until the matter is resolved.

The USFSPA does not allow a state court to order a member to apply for or to specify a date of retirement.

Unless court ordered, remarriage of a former spouse will not stop the direct payment of retired pay as property.

For court orders finalized on or after February 3, 1991, payment of retired pay as property is taxable. DFAS-CL will send an IRS Form 1099R to the former spouse.

If a member remains on active duty following divorce, the former spouse should send a copy of the divorce decree or property settlement to DFAS-CL. If SBP is awarded, DFAS-CL must be notified within one year of the final decree or property settlement date. If the court order meets the criteria of the law, it will be retained until the member retires. The former spouse must inform DFAS-CL of changes in address or marital status.

Prior to PL 99-661 members could voluntarily elect SBP coverage for a former spouse under the Insurable Interest category.

For divorces finalized on or after November 14, 1986, PL 99-661 permits state courts to order SBP coverage.

If a member voluntarily elects SBP coverage for a former spouse and that agreement has been ratified or approved by a court order, or, if the member has been ordered to elect SBP coverage for a former spouse, the retired member must make that election within one year of the date of the divorce. A former spouse, within one year of the date of divorce may submit to DFAS-CL a request that a "deemed" SBP election be established. If neither the retiree nor the former spouse requests former spouse SBP coverage within one year of date of divorce, former spouse coverage will not be established.

A retired member can not voluntarily elect nor can a court order former spouse SBP coverage if the retired member had not elected SBP spouse coverage at time of retirement.

SBP coverage for a former spouse will be no more than the amount of SBP coverage for the spouse.

A former spouse who remarries before age 55 loses SBP eligibility; however, if the marriage ends in death, divorce, or annulment, eligibility is reinstated. A former spouse who remarries after age 55 does not lose eligibility.

Former spouse SBP coverage is generally irrevocable. However, if a retired member remarries a change from former spouse to spouse coverage, may be made with the former spouses written consent. Such a request for change must be submitted to DFAS-CL within one year of the date of remarriage. If the former spouse SBP coverage was ratified or approved by a court order, the court order must be amended within one year.

Military ID cards cannot be ordered or decreed by a divorce court. Questions concerning eligibility should be directed to the nearest military ID card issuing facility. Generally former spouses are eligible if:

The marriage lasted 20 years or more, and

The member served 20 years or more of service creditable for retired pay, and

The marriage and the creditable service overlap 20 or more years. (In some cases, restricted benefits are authorized if the overlap is less than 20 but greater than 15)

For additional information on the USFSPA, contact the nearest military legal assistance office.



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Uniformed Services Former Spouses' Protection Act Bulletin

The Uniformed Services Former Spouses' Protection Act (the Act), 10 U.S.C. 1408, recognizes the right of state courts to distribute military retired pay to a spouse or former spouse (hereafter, the former spouse) and provides a method of enforcing these orders through the Department of Defense. The Act itself does not provide for an automatic entitlement to a portion of the member's retired pay to a former spouse. A former spouse must have been awarded a portion of a member's military retired pay as property in their final decree of divorce, dissolution, annulment, or legal separation (the court order). The Act also provides a method of enforcing current child support and/or arrears and current alimony awarded in the court order.

Court orders enforceable under the Act include final decrees of divorce, dissolution, annulment, and legal separation, and court-ordered property settlements incident to such decrees. The pertinent court order must provide for the payment of child support, alimony, or retired pay as property, to a spouse/former spouse. Retired pay as property awards must provide for the payment of an amount expressed in dollars or as a percentage of disposable retired pay (gross retired pay less allowable deductions). An award of a percentage of a member's retired pay is automatically construed under the Act as a percentage of disposable retired pay. A Qualified Domestic Relations Order is not required to divide retired pay as long as the former spouse's award is set forth in the pertinent court order.

In all cases where the member is on active duty at the time of the divorce, the member's rights under the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) must have been observed during the state court proceeding. In addition, for orders dividing retired pay as property to be enforced under the Act, a member and former spouse must have been married to each other for at least 10 years during which the member performed at least 10 years of creditable military service (the 10/10 rule). Also, to enforce orders dividing retired pay as property, the state court must have had jurisdiction over the member by reason of, (1) the member's residence in the territorial jurisdiction of the court (other than because of his military assignment), (2) the member's domicile in the territorial jurisdiction of the court, or (3) the member's consent to the jurisdiction of the court, as indicated by the member's taking some affirmative action in the legal proceeding. The 10/10 rule and the jurisdictional requirement do not apply to enforcement of child support or alimony awards under the Act.

The maximum that can be paid to a former spouse under the Act is fifty percent (50%) of a member's disposable retired pay. In cases where there are payments both under the Act and pursuant to a garnishment for child support or alimony under 42 U.S.C. 659, the total amount payable cannot exceed sixty-five percent (65%) of the member's disposable retired pay. The right to payments under the Act terminates upon the death of the member or former spouse, unless the applicable court order provides that the

payments terminate earlier.

In order to apply for payments under the Act, a completed application form (DD Form 2293) signed by a former spouse together with a certified copy of the applicable court order certified by the clerk of court within 90 days immediately preceding its service on this Center should be served either by facsimile or by mail, upon the:

Defense Finance and Accounting Service.
Cleveland DFAS-DGG/CL.
PO Box 998002.
Cleveland Ohio 44199-8002.
(866) 859-1845 (toll free Customer Service).

The application form should state which awards the former spouse is seeking to enforce under the Act (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 Act. 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.

The court order should contain sufficient information for us to determine whether the SSCRA, and the Act's jurisdictional and 10/10 requirements (if applicable), have been met. If we cannot determine the parties' marriage date from the court order, then the former spouse must submit a photocopy of their marriage certificate. If the former spouse is requesting child support, and the court order does not contain the birth dates of the children, the former spouse must provide photocopies of their birth certificates.

If the requirements of the Act 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.

Court orders awarding a portion of military retired pay as property that were issued prior to June 26, 1981, can be honored if the requirements of the Act are met. However, amendments issued after June 25, 1981, to court orders issued prior to June 26, 1981, which were silent as to providing for a division of retired pay as property, cannot be enforced under the Act. Also, for court orders issued prior to November 14, 1986, if any portion of a member's military retired pay is based on disability retired pay, the orders are unenforceable under the Act.

Section 1408(h) of the Act provides benefits to former spouses who are victims of abuse by members who, as a result of the abuse of a spouse or dependent child, lose the right to retired pay after becoming retirement eligible. A former spouse may only enforce an order dividing retired pay as property under this Section, and all of the other requirements of the Act must be satisfied. The right to payments under this Section terminates upon the remarriage of the former spouse, or upon the death of either party.

Garnishment Operations Facsimile (FAX) Information:

Fax Phone Number: Commercial (216) 522-6960 or DSN 580-6960.

In improving the processes in the Garnishment Operations we are now using a fax

gateway directly into our Electronic Document Management System. To ensure your document is processed in a timely and efficient manner you must include the following information on the fax document and follow the additional guidance provided:

- Member/Employee Social Security Number (SSN) - Court Orders/Documents will not be processed if the SSN is not on the document.
- Return Phone Number.
- Return Fax Number.
- Ensure original documents are clear and legible.
- In each fax transmission, include only correspondence for one member or employee (if you have multiple documents for one member, they can be sent on one fax transmission).

Survivor Benefit Plan (SBP) Coverage:

A member may elect "former spouse" SBP coverage for a former spouse who was originally a "spouse" beneficiary under SBP, provided that the parties were divorced after the member became eligible to receive retired pay. In addition, a former spouse may initiate SBP coverage on her own behalf ("deemed election"), provided that this election is made within 1 year of the issuance of the court order requiring SBP coverage. All correspondence regarding SBP coverage should be sent directly to the Retired Pay office:

Defense Finance and Accounting Service
US Military Retirement Pay
PO Box 7130
London KY 40742-7130
Toll free 1-800-321-1080

Garnishment

Last updated: January 24, 2006 at 11:37

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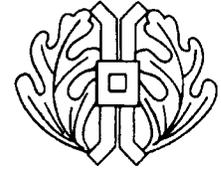
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PREVENTIVE LAW SERIES

UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT- ELIGIBILITY FOR BENEFITS



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San Diego, CA 92135-7042
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If you divorce a military service member, you might still be entitled to retain some, or all, of your military benefits under the Uniformed Services Former Spouses' Protection Act ("USFSPA").

WHEN THE USFSPA APPLIES:

Former spouses of military service members may be entitled to certain benefits under the USFSPA, assuming that the member has served long enough to retire from an active duty component or a reserve component of the Armed Forces (i.e., that (s)he has 20 years of service credible for retirement purposes).

FORMER SPOUSE ELIGIBILITY FOR BENEFITS UNDER THE USFSPA:

	Division of Retired Pay	Designation as an SBP Beneficiary ²	Direct Payment of Child Support ³	Direct Payment of Alimony ³	Direct Payment of Property Division ³	Transitional Health Care ^{4,5}	Full Health Care ⁴	Health Care Insurance ^{4,6}	Commissary	PX ⁷
0 years to less than 10 ¹	X	X	X	X				X		
10 years but less than 15	X	X	X	X	X			X		
15 years but less than 20	X	X	X	X	X	X		X		
20 or more years	X	X	X	X	X		X	X	X	X

1. Length of time that marriage overlaps with service credible for retirement purposes.
2. Federal law does not create any minimum length of overlap for this benefit; the parties' agreement or state law will control a former spouse's entitlement to designation as an SBP beneficiary.
3. The former spouse initiates the direct payment process by sending a written request to the appropriate finance center. Most likely this will be Defense Finance and Accounting Service, Cleveland Center, PO Box 998002, Cleveland, Ohio 44199-8802. (216) 522-5301 (Customer Service).
4. To qualify for any health care provided or paid for by the military, the former spouse must not be remarried and must not be covered by an employer-sponsored health care plan. Department of the Army interpretation of this provision holds that termination of a subsequent marriage by divorce or death does not revive this benefit, but an annulment does do so. These remarriage and employer-insurance restrictions do not limit eligibility to enroll in the civilian health care plan discussed in note 6.



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Uniformed Services Former Spouses' Protection Act

Frequently Asked Questions and Answers

1. ***The court awarded me 50% of my former spouse's retired pay which had accrued as of the date of our divorce. Why do I need to get a clarifying order to have my award enforced under the Uniformed Services Former Spouses' Protection Act (USFSPA)?***

Without a clarifying order, there is no way to determine the amount of what your award should be under the Act. Military retired pay is an entitlement based on the service member's rank and number of years of creditable service at the time of retirement. It is paid on a monthly basis and as such is not a fund which can be valued or divided as of some point in time, either before or after the member's retirement. Thus, it is not comparable to a company's private retirement plan, which can be identified as a specific amount and can be divided as of a particular date. The USFSPA requires that an award of a portion of a member's retired pay as property must be expressed in dollars or as a percentage of disposable retired pay. 10 U.S.C. 1408(a)(2)(C). Therefore, a clarifying order would be necessary in those cases where the award is not so expressed.

2. ***My award of a portion of the member's military retired pay as property is expressed as a formula with the numerator as the number of years we were married while the member performed military service creditable for retirement. I was told I had to get a clarifying order because this "number" was not provided in the court order. Why is this the case when our marriage and divorce dates, and the member's service entry date, were given in the court order?***

An award of military retired pay as property expressed as a formula or hypothetical retired pay amount may be enforced under the USFSPA without a clarifying order only if the requirements of the proposed regulations (60 Fed. Reg. 17,507 (1995)(to be codified at 32 CFR pt. 63)(proposed April 6, 1995) are met. With regard to an award expressed as a formula, the only number supplied by DFAS will be the number of years of creditable service. All other information must be contained in the court ordered formula. With regard to a hypothetical for payment of a retired pay amount, the award must be based on at least 15 years of creditable service, and the only information DFAS will supply is the date of retirement. All other information, such as the member's hypothetical rank or years of creditable service at hypothetical retirement, must be contained in the court order.

3. ***Why does it take so long for me to begin to receive payments under the Act after I apply?***

The USFSPA requires that your payments must begin not later than 90 days after effective service of your application for payments on the designated agent. 10

U.S.C. 1408(d)(1). This 90 day requirement gives DFAS enough time to process your application, and provide the member with the notice that the Act requires. The member has 30 days from the date the notice was mailed to provide evidence as to why payments should not begin. No payments can be made until after the 30 day notice period. Also, since payments of military retired pay are only made once each month, the commencement of your payments must be coordinated with the monthly retired pay cycle.

4. ***I applied for enforcement of both my child support and retired pay property awards under USFSPA. My application for child support was honored, but my application for property payments was not. I was told that the reason was that the court lacked jurisdiction over the member. What's the problem? My divorce decree stated that the court had jurisdiction over the member.***

The USFSPA has a separate jurisdiction requirement for enforcement of property awards. The Act states that the court must have had jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court. 10 U.S.C. 1408(c)(4). The court may have had jurisdiction over an absent member by reason of some state statute, but that type of jurisdiction may not be the type that legally satisfies the requirement for purposes of the USFSPA. This special jurisdiction requirement does not apply to enforcement of alimony and child support awards.

5. ***I was married to my former spouse for 8 years while my former spouse was performing military service creditable for retirement. I was awarded a portion of my former spouse's military retired pay as property in our divorce decree. My application for property payments under the USFSPA was turned down, even though my former spouse waived the ten year requirement in our divorce decree. Why?***

In order for a division of retired pay as property award to be enforced under the USFSPA, the former spouse must have been married to the military member for ten years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retirement. 10 U.S.C. 1408(d)(2). This is a requirement to receive payments under the USFSPA, which cannot be waived by either party. However, retired members may always make the payment themselves. This requirement does not apply to enforcement of awards for alimony or child support.

6. ***My former spouse has been receiving military retired pay for several years, and has not paid me any of my portion of his retired pay as a property award. Can I collect any of the arrearages under USFSPA?***

No, the USFSPA does not provide for the collection of arrearages of retired pay as property or alimony. Payments under the Act are prospective only 32 CFR 63.6.(h)(10)

However, child support arrearages set forth in the pertinent court order may now be collected under the Act. 10 U.S.C. 1408(d)(6). Regulations to implement this statute have not been published yet. Alimony and child support arrearages may also be collectible by garnishment under a different statute, 42 U.S.C. 659. A former spouse should consult his or her attorney for additional assistance regarding garnishments. This website also contains information regarding this topic.

7. ***What are the current requirements for service of documents, and certification of documents?***

Court orders no longer need to be served by registered or certified mail, return receipt requested. They may now be served by facsimile or electronic transmission or by regular mail. Court orders must be copies of documents certified by the clerk of courts as to their authenticity within 90 days of effective service. Photocopies of certified documents are acceptable. Certified copies of court orders to enforce child support under USFSPA need not have been certified within 90 days of service.

8. ***I understand that because my former spouse was married to me for over ten years while I was on active duty that she is entitled to a portion of my military retired pay. Is this true?***

No. The USFSPA does not provide entitlement to military retired pay. However, the USFSPA does provide an avenue for former spouse to receive a direct payment of up to 50% of disposable retired pay when: the former spouse was married to a service member for 10 years or more concurrent with creditable service for retirement and a court treats the military retired pay as marital property.

9. ***Does the USFSPA require division of military retired pay in a divorce?***

USFSPA does NOT automatically divide retired pay as property. However, it does authorize state courts to treat military retired pay either as property of the retiree or as the property of the retiree and his spouse in accordance with the law of the jurisdiction of such courts, i.e. the USFSPA permits a court to award a portion Military retired pay to a former spouse as his or her property. (This is in addition to any other court award spousal and/or child support and/or division of other marital property.) A court may award more than 50 percent of a retired service member's pay check to the ex-spouse as property but the Government is authorized only to send up to 50 percent of "disposable" retired pay directly to the ex-spouse as property.

10. ***What constitutes "disposable" retired pay for division in a divorce?***

"Disposable" retired pay is defined in 10 U.S. Code, Section 1408(a) (4) of P.L. 97-252, as amended by P.L.99-661, Nov. 14, 1986 and Section 555 of P.L. 101-510, Nov. 5, 1990. Disposable retired pay is the gross monthly pay entitlement, including renounced pay, less authorized deductions.

For divorce, dissolution of marriage, annulments, and legal separations that become effective on or after February 3, 1991, the authorized deductions are:

- a. Amounts owed to the United States for previous overpayments of retired pay and the recoupments required by law resulting from entitlement to retired pay.
- b. Forfeitures of retired pay ordered by court-martial.
- c. Amounts waived in order to receive compensation under Title 5 or 38 of USC.
- d. Premiums paid as a result of an election under 10 U.S. Code Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order.
- e. The amount of the member's retired pay under 10 U.S. Code Chapter 61 computed using the percentage of the member's disability on the date when **the member was retired** (or the date on which the member's name was placed on the temporary disability retired list).

11. ***I was awarded a portion of the member's retired pay as a fixed dollar amount but I do not receive any cost of living increases (COLA) as ordered by the court. Why can't I receive COLAs?***

The implementing regulations for the USFSPA state, at 32 Code of Federal Regulations, Part 63.6 (h), that COLAs are payable only for those awards that are based on a division of retired pay awarded as a percentage or fraction of the member's retired pay.

12. ***I established an allotment to pay my former spouse her portion of my retirement one month after our divorce. She has now applied for direct payments and effective this month, DFAS began sending her payments. Since the allotment was not stopped I request that you recover the overpayment from my former spouse and return the funds to me.***

We are required to provide you thirty (30) days notice prior to the commencement of payments to your former spouse. This affords you the opportunity to submit evidence that the court order is defective, or has been modified, superseded or set aside, and to cancel any voluntary allotments you may have established for the same obligation. It is a member's responsibility to stop any voluntary allotment for the same obligation. Our office has no authority to cancel a voluntary allotment. Therefore, we are unable to comply with your request to recover any overpayment made to your former spouse as a result of a voluntary allotment. We suggest that you contact the overpaid party directly for reimbursement.

13. ***Can I use an order from a court of a foreign country to collect my payments pursuant to the Uniformed Services Former Spouses' Protection Act (USFSPA)?***

No. We can honor orders issued by courts as defined in the USFSPA. The USFSPA defines "court" as "any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands." If your order was not issued by a court located in one of those named geographical areas, you should consult a private attorney for guidance regarding registering foreign court orders and whether such action will meet the requirements of the USFSPA.

You should be aware that unless all of the other requirements of the USFSPA were met by the original order, we would not be able to honor the request for payments under the USFSPA even after it is registered in a court located in an approved geographical area. Thus, the mere fact of registering a court order will not act as a means to correct Title 10, United States Code, Section 1408 deficiencies in the original court order.

Garnishment

Last updated: January 24, 2006 at 11:37

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Garnishment

DFAS Cleveland processes all court ordered garnishment for child support, alimony and commercial debts for all military members and all civilian employees paid by DFAS, plus court ordered divisions of military retired pay under the Uniformed Services Former Spouses' Protection Act.

PDFs below require [viewer software](#).

Current News Bulletin.

- [Combat Related Special Compensation \(CRSC\)](#).
- [Concurrent Receipt of Military Retired Pay and Disability Pay Procedures](#).
- [Partners in a Winning Team](#).

Finding the Military Status of an Individual.

- [New Web Tool - Find out if an individual is in the military](#) [PDF 15KB].

Child support and alimony.

- [Fact Sheet](#).
- [Questions and Answers](#).
- [Affidavit of current Family Status](#) [PDF 49KB].
- [Mobilized Reservist and Child Support](#) [PDF 108KB].
- [Obtaining Medical Support from Military Personnel](#) [PDF 85KB].
- [Reservists with child support obligations who are called to active duty](#).

If you are no longer activated and are back at your non-DoD civilian job and they are collecting your child support, please contact your local support enforcement agency to request a that they send us notice to terminate the order that was sent to effect your reserve pay. We cannot stop issuing support payments from your reserve pay unless we are served with a termination. Pay statements from your non-DoD civilian job are not sufficient to stop payments.

- [Garnishment Direct Deposit Form](#) [62KB PDF]. If you are receiving your garnishment support payment from a military retiree, directly from DFAS-Retired Pay, you may now have your payment sent by electronic fund transfer (EFT) to your financial institution. Submit your request to us in writing and include a copy of a voided check with the banking information clearly showing. As a convenience, you may use the direct deposit form provided herein. Please be sure to include your name, the member's name and member's social security number on all

correspondence.

Child Support Agencies Information .

- [DFAS Quick Guide](#) [PDF 100KB].

Commercial debt garnishments from federal civilian employees.

- [Fact Sheet](#).
- [Questions and Answers](#).

Involuntary allotments from military personnel for commercial debt.

- [Fact Sheet](#).
- [Questions and Answers](#).
- [Application for Involuntary Allotment \(DD2653\)](#) [Fill-in PDF form].

Uniformed Services Former Spouses' Protection Act .

- Former Spouses -- For Information regarding taxes, W-4Ps and 1099s forms on payments please contact the Retired Pay Department at their toll free Customer Service Number 1 800-321-1080, or their Web Site at <http://www.dfas.mil/money/retired/index.htm>.
- [New Concurrent Receipt Legislation](#) [PDF 10KB].
- [W-4 Employee's Withholding Allowance Certificate](#) [Fill-in PDF form].
- [W-4P Withholding Certificate for Pension or Annuity Payments](#) [Fill in PDF form].
- [Fact Sheet](#).
- [Attorney instructions for dividing retired pay and sample language for court orders](#) [PDF 330KB] . These instructions have been extensively revised to provide for hypothetical awards of military retired pay of "high 36 month" retirees.
- [Questions and Answers](#).
- [Application for Former Spouse Payments from Retired Pay](#) [Fill-in PDF form].
- [Former Spouse Direct Deposit Form](#) [62KB PDF]. Military Former Spouses can utilize this form to request Direct Deposit of your Former Spouse Protection Act payments. Please ensure form is filled out completely.

Bankruptcy .

DFAS-Garnishment Operations handles Chapter 13 bankruptcies for Military Retirees and active duty Navy personnel ONLY. For all other employees/military members, please consult the appropriate pay office directly.

Bankruptcy for Department of Defense (DOD) Civilians only. Please use the following Fax number:

IMAGING FAX #

Toll Free: 1-866-401-5849, or

Commercial: 1-850-473-6450 This is strictly for Civilian Pay only.

Payment Information regarding a Military Pay System .

Payments from the military pay systems are made the first business day following the monthly payroll processing from which the payments were deducted.

Thus, if our letter informs you that your payments will start with the month of January, it means that the payment will be deducted from the member's January pay and that you should receive your payment on or about February 1st.

For payment histories, please contact your pay office directly. The Office of the Assistant General Counsel for Garnishment Operations does not have access to pay records.

Receipt of Payment .

For payments issued from the accounts military members (active, retired or reserve), please allow 10 business days from the date your check was issued before inquiring on the status of your payment. Checks issued from military accounts are dated for the 1st business day of each month. For checks issued from the accounts of civilian employees of the Department of Defense, please allow 7 days from the date of the normal distribution of checks (bi-weekly cycle). By waiting the suggested timeframe, adequate time will have passed to allow for delivery of your check or postal/EFT returns.

Garnishment Court Order Copy Request .

- [Court Order Copy Request Information.](#)

Garnishment Operations Address Information:

**Defense Finance and Accounting Services - Cleveland .
Attention: DFAS-DGG/CL .
PO Box 998002 .
Cleveland OH 44199-8002.**

When submitting correspondence to the Garnishment Operations Directorate, ensure that you include the member's/employee's Social Security Number on documents. Also ensure that your return mailing address is included on the correspondence and not just on the mailing envelope.

Garnishment Operations Facsimile (FAX) Information .

- [Fax Facts.](#)

Garnishment Operations Customer Service .

- **Toll Free Phone: 1-866-859-1845.**
- **Garnishment Operations hours of operation are 7:30 AM to 6:00 PM Eastern Standard Time.**
- **The Garnishment Office does not process actions or service questions relating to the Bank of American (BOA)**

travel card debts. These are salary offsets and not garnishments. Please contact BOA or your travel card administrator for assistance.

**Send a message to DFAS Cleveland Garnishment Operations:
Contact Us.**

Please ensure that you include the member's/employee's Social Security Number on all messages to the Garnishment Operations Directorate. The SSN is required in order for us to identify a case.

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Child Support and Alimony

1. ***How can I collect the child support/alimony, which my ex-spouse was ordered to provide in our divorce decree or separation agreement?***

For child support, you might want to contact either an attorney, or your local child support enforcement agency in order to obtain an Income Deduction Order or Income Withholding Order. For alimony, you might want to contact an attorney to obtain a garnishment. To collect the support/alimony you were ordered to receive, we need an order from a court or child support enforcement agency (CSEA) that directs the government to pay monies for support or alimony. You do not need to send the underlying order, (e.g., a divorce/separation decree).

2. ***As a child support enforcement worker, how can I collect the fees to which my agency is entitled for processing child support income withholding orders?***

The federal regulation amended the definition of "child support" to include such items as court costs, administrative fees, and attorneys fees so those items can now be collected if the withholding order directs as such.

3. ***Can I collect a child support/alimony arrearage?***

Yes, if the withholding order directs the collection of an arrearage. The arrearage will be paid within the limits the law allows, as discussed below.

4. ***The non-custodial parent has been ordered to provide health insurance coverage for our child. How can I enforce that order?***

Send a copy of the order directing the provision of coverage to the non-custodial parent's personnel office. Do not send these orders to DFAS-DGG/CL because we cannot process them. Also, please see the posting on our Web site entitled Medical Support from Military Personnel for more information

5. ***Must I serve the child support income withholding order or alimony garnishment order on your office by certified mail, return receipt requested?***

No, you may serve child support income withholding orders or alimony garnishments on DFAS Cleveland Garnishment Operations by regular United States mail, or fax. There is no longer a requirement that child support orders be served upon us by certified mail.

6. ***Why am I not receiving the full amount of the ordered child support/alimony?***

Although there are many reasons that you might not be receiving the full ordered amount of child support/alimony from the income withholding, the most common reason is that the payor does not have sufficient disposable earnings to allow the deduction of the full amount. The Consumer Credit Protection Act (15 U.S.C. § 1673) limits the amount that can be deducted as child support/alimony from

earnings. The limit ranges from 50 percent (50%) of disposable earnings to sixty-five percent (65%). The full ordered amount of child support/alimony will be deducted as long as that amount does not exceed the maximum percentage allowable. The following is an explanation of when the different maximum percentages apply:

- 50% of disposable earnings is the maximum percentage allowable if the obligor provides proof that he/she is providing more than half the support of dependents other than those for whom the support is to be deducted, and if the payor has not accrued an arrearage.
- 55% of disposable earnings is the maximum percentage allowable if the obligor provides proof that he/she is providing more than half the support of dependents other than for those whom the support is to be deducted, and if the payor has accrued an arrearage.
- 60% of disposable earnings is the maximum percentage allowable if the obligor has not provided proof that he/she is providing more than half the support of dependents other than those for whom the support is to be deducted, and if the payor has not accrued an arrearage.
- 65% of disposable earnings is the maximum percentage allowable if the obligor has not provided proof that he/she is providing more than half the support of dependents other than those for whom the support is to be deducted, and if the payor has accrued an arrearage. 15 U.S.C. § 1673(b) (2)(A) and (B)

REMEMBER: THE PERCENTAGE AMOUNTS WILL ONLY BE DEDUCTED IF THE PAYOR DOES NOT HAVE SUFFICIENT DISPOSABLE EARNINGS TO ALLOW FOR THE FULL ORDERED AMOUNT TO BE DEDUCTED.

7. ***Must I include the obligor's social security number when I serve a child support income withholding order or alimony garnishment?***
Without the social security number of the obligor, we will not be able to process the child support income withholding order or alimony garnishment.
8. ***What happens if there are multiple child support income withholding orders in effect against the pay of the same obligor?***
If the obligor has sufficient available disposable earnings, we will authorize the payment for the full amounts of both/all orders. If there is insufficient available disposable earnings, and the Consumer Credit Protection Act limitations become applicable, federal law mandates that we allocate the available disposable earnings so that a pro rata share of the available earnings is paid toward each obligation. The pro rata shares are calculated by dividing the amounts of each order by the total amount of disposable earnings available to determine what percentage of the available disposable earnings will be paid toward each obligation. Although the method by which we allocate is internal to our operation, the pro rata calculation process is very similar to the allocation procedures followed by most states and U.S. Territories. Allocating ensures that all children are at least partially provided for by the obligor.
9. ***What happens when there are multiple child support orders for the same obligation?***
In cases where we can determine from the information provided in both orders, that both are ordering payment for the same child(ren) and payable to the same payee, we will honor the most recently served order.
10. ***Does your office charge a fee for withholding for child support/alimony obligations?***

No. There is no fee charged by this office for honoring income withholding orders for child support/alimony or child support/alimony arrearages.

11. ***How do I stop child support payments when my child is graduating from high school and past the legal age of majority in my state?***

The answer depends on the method used to start the payment. If the payment is made because an income withholding order was issued by a child support enforcement agency (CSEA) then in most cases, you will have to contact that particular agency to have them send us a termination order. The reason for this is that most withholding orders that are issued by CSEAs direct us to withhold "until further order." It is unusual that they would have given us a firm termination date. Therefore, until we receive another order telling us to stop payments, we are legally mandated to continue issuing payments.

If we are issuing payments from a retired military member's retired pay based on an application made under the authority of the Uniformed Services Former Spouse Protection Act, (USFSPA), 10 U.S.C. § 1408, then a review of the language in the divorce decree that sets forth the child support obligation may be determinative.

If the decree states when payments are supposed to stop, then that would be controlling. If it doesn't state when child support should stop, then the member will need to go back to court to obtain an order stopping the child support. There is no federal statute that controls this so it is up to the state court that issued the order to instruct us to terminate the payments.

If we are issuing payments under the USFSPA and the divorce decree does state that payments will stop upon some condition (usually turning 18 and graduated from high school), then the member will need to provide us proof of that condition being satisfied. Acceptable proof of graduation is a program from the commencement that lists the child's name, or a letter from the school stating the child has graduated or otherwise left school.

A problem arises when we are issuing payments under the USFSPA and the divorce decree orders support payments for more than one child. If the divorce decree does not state how much to reduce the payment when the first or subsequent child is no longer eligible to receive payment, then the parties will have to obtain a modified court order or CSEA order instructing us on this issue. There is no rule that makes it automatic that the emancipation of one child requires a proportional reduction in the amount of child support. Unless it is clearly stated in the decree what is to happen, we require the parties to go back to court or a CSEA to get the order modified.

12. ***Why does my child support stop when the obligor goes from active duty to retired status?***

Child support obligations can be garnished from the pay of active duty military personnel. Although we are notified when a member retires, it can take 30 to 60 days for the Office of Retired Pay to create the retired pay account. We can't start payments until the retired pay account is established, so there may be a delay in payment. If you are a member about to retire and have a support obligation that needs to continue, we encourage you to call our Customer Service Department at 1-866-859-1845 or send us an [e-mail](#). If you are the person receiving the funds and you know the member is about to retire, please contact us. As always, please include the member's SSN on all correspondence.

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APPLICATION FOR FORMER SPOUSE PAYMENTS FROM RETIRED PAY
(Please read instructions on back and the Privacy Act Statement before completing this form.)

OMB No. 0730-0008
 OMB approval expires
 Dec 31, 2007

The public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services Directorate (0704-0008). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

FOR OFFICIAL USE

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE SERVICE ADDRESS LISTED ON BACK.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC 1408; EO 9397.

PRINCIPAL PURPOSE(S): To request direct payment through a Uniformed Service designated agent of court ordered child support, alimony, or division of property to a former spouse from the retired pay of a Uniformed Service member.

ROUTINE USE(S): In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. Section 552a(b)(3) as follows:

Records are provided to the Internal Revenue Service for normal wage and tax withholding purposes. The "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices also apply.

DISCLOSURE: Voluntary; however, failure to provide requested information may delay or make impossible processing this direct payment request.

1. APPLICANT IDENTIFICATION	2. SERVICE MEMBER IDENTIFICATION
a. NAME <i>(As appears on court order) (Last, First, Middle Initial)</i>	a. NAME <i>(Last, First, Middle Initial)</i>
b. CURRENT NAME <i>(Last, First, Middle Initial)</i>	b. SOCIAL SECURITY NUMBER
c. SOCIAL SECURITY NUMBER	c. BRANCH OF SERVICE
d. ADDRESS <i>(Street, City, State, ZIP Code)</i>	d. ADDRESS <i>(Street, City, State, ZIP Code) (If known)</i>

3. REQUEST STATEMENT

I request direct payment from the retired pay of the above named Uniformed Service member based on the enclosed court order.

I request payment of:

- (1) Child support in the amount of \$ _____ per month.
- (2) Alimony, spousal support or maintenance in the amount of \$ _____, or _____ percent of disposable retired pay per month.
- (3) A division of property in the amount of \$ _____, or _____ percent of disposable retired pay per month.

I certify that any request for current child and/or spousal support is not being collected under any other wage withholding or garnishment procedure authorized by statute. Furthermore, I certify that the court order has not been amended, superseded or set aside and is not subject to appeal. As a condition precedent to payment, I agree to refund all overpayments and that they are otherwise recoverable and subject to involuntary collection from me or my estate, and I will notify the appropriate agent (as listed on back) if the operative court order, upon which payment is based, is vacated, modified, or set aside. I also agree to notify the appropriate agent (as listed on back) of a change in eligibility for payments. This includes notice of my remarriage, if under the terms of the court order or the laws of the jurisdiction where it was issued, remarriage causes the payments to be reduced or terminated; or notice of a change in eligibility for child support payments by reason of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through direct payments from retired pay. I hereby acknowledge that any payment to me must be paid from disposable retired pay as defined by the statute and implementing regulations.

PRIVACY ACT STATEMENT

Collection of the information you are requested to provide on this form is authorized under 31 CFR 209 and/or 210. The information is confidential and is needed to prove entitlement to payments. The information will be used to process payment data from the federal agency to the financial institution and/or its agent.

INSTRUCTIONS FOR PREPARING AUTHORIZATION

PURPOSE - You may use this form to provide instructions for processing your net pay. Failure to provide the requested information may affect the processing of this form and may delay or prevent the receipt of payments through the Direct Deposit / Electronic Funds Transfer Program.

SECTION I - EMPLOYEE / MEMBER / ANNUITANT INFORMATION (ITEMS 1-5)

You must complete all blocks after carefully reading the instructions and Privacy Act Statement. You must keep the agency informed of any address change to remain qualified for payments.

SECTION II - DIRECT DEPOSIT ACCOUNT INFORMATION

ITEM 6 - TYPE OF ACCOUNT - Place "X" in the appropriate box, to indicate if you want your payment to be sent to a checking or savings account.

ITEM 7 - TYPE OF PAYMENT - Place an "X" in the appropriate box to indicate what type of payment you want sent by Direct Deposit.

ITEM 8 - ROUTING TRANSIT NUMBER - Your financial institution's 9-digit routing transit number. See the illustration below.

ITEM 9 - ACCOUNT NUMBER - Your account number at your financial institution. See the illustration below.

ITEM 10 - ACCOUNT TITLE - The depositor's name on the account at the financial institution. See the illustration below.

ITEM 11 - FINANCIAL INSTITUTION NAME / ADDRESS - The institution to which payments are to be directed
See the illustration below.

The illustration shows a check with the following fields and labels:

- 10**: Points to the account title field containing "NAME OF DEPOSITOR", "STREET ADDRESS", and "CITY, STATE, ZIP CODE".
- 101**: Points to the check number field.
- 20**: Points to the amount field containing "20" and "\$" followed by a box for cents.
- 8**: Points to the routing transit number field containing "89999999 9 000 000 000" and "0101".
- 9**: Points to the account number field.
- 11**: Points to the financial institution name field containing "NAME OF YOUR BANK" and "Payable Through Another Bank".

8 - ROUTING TRANSIT NUMBER - Examine your deposit slip or check for items labeled 9 in the above sample. Is the Routing Transit Number (RTN) eight numbers in a row followed by a space and then one number? Is the first number of the RTN "0," "1," "2," or "3"? If the answer to both questions is "yes" enter the numbers from your deposit slip or check on the reverse of this form in Item 9. Otherwise, call your financial institution and ask them to provide you with their RTN.

9 - ACCOUNT NUMBER - Include dashes where the symbol " " appears on your check or deposit slip. Be sure not to include the check number (#101 in the example) or deposit slip number as part of your Account Number in Item 9. If you cannot determine your Account Number, contact your financial institution.

10 - ACCOUNT TITLE - Must include recipient's name.

11 - FINANCIAL INSTITUTION NAME / ADDRESS - If your check or sharedraft includes "Payable Through" under the bank name, contact the financial institution to help obtain the correct Routing Transit Number for Direct Deposit.

SECTION III - AUTHORIZATION

ITEMS 12 AND 13 - You must sign and date this form before the authorization can be processed.

FOR CHANGES - You must complete and submit a new "Direct Deposit Authorization" form to the applicable DoD agency. We recommend that you maintain accounts at both financial institutions until the new institution receives your Direct Deposit payments.

FOR CANCELLATIONS - This authorization will remain in effect until you cancel by providing a written notice to the DoD Agency or by your death or legal incapacity. Upon cancellation, you should notify the receiving financial institution. The authorization may be cancelled by the financial institution by providing you a written notice 30 days in advance of the cancellation date. You must immediately advise the DoD Agency if the authorization is cancelled by the financial institution. The financial institution cannot cancel the authorization by advice to the Government Agency.