



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

UNIFORMED SERVICES FORMER SPOUSES PROTECTION ACT (USFSPA)

Q: What is the Uniform Services Former Spouses Protection Act (USFSPA)? The USFSPA is a law (10 United States Code section 1408) that provides benefits to certain former spouses of military members. The benefits may affect receipt of retirement pay, receipt of free medical care, use of the post-exchange and commissary, and eligibility under the Survivor Benefit Plan.

Q: Is a former spouse automatically entitled to a portion of the service member's military retirement based upon the length of their marriage? No. There is no automatic entitlement to division of retired pay upon divorce. The parties may agree, in the separation agreement, to divide retirement pay. In addition, the USFSPA authorizes state courts, if they so choose, to treat military retirement as marital property that may be equitably divided during the divorce proceeding. In the absence of an agreement, the decision whether to divide the retirement pay is in the discretion of the state court and the amount awarded to the former spouse will vary in each case.

Q: Can former spouses receive their court-ordered share of the retirement directly from the Department of Finance and Accounting (DFAS)? If a state court awards a portion of the retirement pay to the former spouse, or the court approves a property settlement incident to the divorce decree that awards a portion of the retirement pay, he or she may receive direct payments from DFAS if the parties were married for ten years or more during which the member performed at least ten years of service creditable in determining the member's eligibility for retirement.

Q: How much of the disposable retirement pay can be directly paid to the former spouse? Direct payments to the former spouse cannot exceed fifty percent of the disposable retirement pay. Even if a former spouse is awarded more than fifty percent of the retirement in the divorce decree, the direct payments under USFSPA are limited to fifty percent of disposable retirement pay. However, in cases where there are payments both under USFSPA and pursuant to a garnishment for child or spousal support, the total amount of direct payments to the former spouse may not exceed sixty-five percent of the disposable retirement pay.

Q: How can a former spouse apply for direct payments of the court-ordered retirement pay? In order to apply for payments under USFSPA, a completed application form (DD Form 2293) signed by the former spouse together with a certified copy of the court order certified by the clerk of court within 90 days of the application should be served, by facsimile or by mail, upon DFAS. For more information, you may contact the ASA Dix Retirement Office at (609) 562-2666 or DFAS at 1-888-332-7411. The completed application can be mailed to DFAS at the following address:

Defense Finance and Accounting Service
Cleveland DFAS-DGG/CL
PO BOX 998002
Cleveland, Ohio 44199-8002

Q: When will the former spouse begin to receive direct payments of retirement pay? Payments to the former spouse must begin within 90 days after DFAS receives the completed application. If the application has been submitted prior to the military member's retirement, then payments to the divorced spouse will begin no later than 90 days after the member becomes entitled to receive retired pay.

Q: Is disability compensation received by the retired service member considered part of his or her disposable retirement pay that can be automatically paid under USFSPA? No. The USFSPA excludes Department of Defense and Veterans Administration disability pay from the definition of disposable retired pay. Consequently, neither is subject to allocation to the former spouse.

Q: Can arrearages of court-ordered retirement pay be automatically paid under USFSPA? No. USFSPA does not provide for the collection of arrearages of retired pay.

Q: If a former spouse remarries, is she still entitled to receive her share of the court-ordered retirement pay? The former spouse is still entitled to receive her share of the retirement pay unless there is a state court order, or court-approved separation agreement, indicating the entitlement will end upon remarriage.

Q: Are former spouses authorized to use the commissary, post-exchange, and receive free medical care? A spouse who was married to the military member for twenty years or more during which the member performed at least twenty years of creditable service is authorized to receive these benefits. The benefits will be suspended if the spouse remarries. While commissary and exchange privileges may be revived if the subsequent marriage is terminated, medical benefits are not restored even if the subsequent marriage is terminated. A spouse who was married to the military member for twenty years or more during which the member performed at least fifteen years of creditable service may be authorized to receive medical benefits for one year upon which the former spouse may purchase a conversion health policy. Former spouses who do not meet the above length of marriage/length of service tests may be eligible for the Department of Defense Continued Health Care Benefit Program, which is a premium based program for 36 months of coverage.

Q: What is the Survivor Benefit Plan (SBP)? SBP is an annuity that allows retired service members to provide continued income to a named beneficiary in the event of the retiree's death. A retiring service member will be enrolled in the SBP unless he or she specifically declines to participate.

Q: Will a spouse's coverage under the SBP continue after divorce? A spouse's coverage under the SBP stops on the date of divorce since the status as spouse ends on that date. If the divorce decree requires the retiree to provide the former spouse with SBP coverage, then he or she must make a "former spouse SBP election" with DFAS within one year of the date of divorce in order for the former spouse coverage to be implemented. The former spouse may also make a "deemed election" within one year of the divorce, but only if the member elected SBP coverage when he or she first became eligible to do so.

Q: Can former spouse SBP coverage be terminated if the retiree remarries and wants to provide coverage for the new spouse? Former spouse coverage may be changed to coverage for a newly acquired spouse and/or child. If the former spouse was designated as beneficiary by written agreement, then you must submit a statement signed by the former spouse agreeing to the change. If the former spouse was designated on the basis of a court-approved written agreement, then a copy of a court order modifying all previous orders relating to the agreement must be submitted with your change request.

Q: Will former spouse SBP coverage terminate if the former spouse remarries? If the former spouse remarries before reaching the age of 55, SBP payments will stop, but may be resumed, if the marriage later ends due to death or divorce. If the former spouse remarries after the age of 55, SBP payments may continue.