

Uniformed Services Former Spouses' Protection Act

*Office of the Staff Judge Advocate
Legal Assistance Office
Fort Bliss, Texas*

What is the USFSPA? The Uniformed Services Former Spouses' Protection Act is a law enacted by Congress in 1982 to provide benefits to certain former spouses of service members.

How Does the USFSPA Affect Military Pensions? It allows state courts to divide disposable military retired pay as marital property upon divorce under certain circumstances. Disposable military retired pay is defined as the Soldier's monthly retired pay minus qualified deductions. The USFSPA, however, does not establish a right to any amount of retirement pay that a former spouse may be awarded in a divorce settlement. The decision whether to award retirement pay is solely in the discretion of the state court and the amount awarded will vary amongst states. A general guideline is that a former spouse is entitled to 2.5% of the retirement per year of marriage that overlaps with service. For example, if the couple had been married for 15 years, and Soldier was in the military for 10 of those years, the former spouse would be entitled to $10 \times 2.5\% = 25\%$ of the military spouse's retirement.

How May a Former Spouse Receive His or Her Share of the Pension? If a court awards division of retired pay, the former spouse may be able to receive the payment directly from the military pay center. Direct payment is available if the marriage overlapped the Soldier's military service for 10 years or more, and only if the original divorce decree divides the military retired pay. A certified copy of the court order providing division of retired pay is necessary to receive direct payment. These payments will normally begin within 90 days after submission of the proper paperwork. No more than 50% of disposable military retired pay can be provided via direct payments. A former spouse will be entitled to receive the payments after the Soldier becomes entitled to receive retired pay.

What Other Benefits are Available under the USFSPA? The other benefits available depend upon what "category" the former spouse falls into. A spouse that passes the 20/20/20 test (the military member has completed at least 20 years of creditable service; the spouse has been married to the military member for at least 20 years at date of final decree of divorce; and the period of marriage overlaps the period of creditable service by at least 20 years) can receive Commissary and PX privileges and full medical benefits. These benefits will be suspended if the spouse remarries; however, they will be revived if the subsequent marriage is terminated.

A 20/20/15 spouse (at least 15 years of overlap between the marriage and the creditable service) may be entitled to full military medical benefits for a one-year period after which the spouse may purchase a DoD-negotiated conversion health policy. These benefits will be suspended if the spouse remarries and will not be revived unless the subsequent marriage is annulled.

Former spouses of military members/retirees may have additional benefits under the Survivor's Benefit Plan, certain separation incentive programs, and in certain domestic abuse situations.