



Legal Briefs

From the Fort Knox Legal Assistance Office

THE UNIFORMED SERVICES FORMER SPOUSES PROTECTION ACT

Facts:

The Uniformed Services Former Spouses Protection Act (USFSPA) gives state courts the right to distribute military retired pay to a spouse or former spouse. Kentucky is one of many states that recognize military retired pay as an item of marital property that can be distributed as part of a divorce decree.

The USFSPA, does not establish a right to any specific 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.

Other benefits available to the former spouse depend on the former spouse's "category."

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 or retirees may have additional benefits under the Survivor's Benefit Plan (SBP), certain separation incentive programs, and in certain domestic abuse situations.

Processing Requests for Allotment under the USFSPA:

The USFSPA also provides a method for enforcing the court's decree on retired pay. If a former spouse has been awarded a portion of the military member's retired pay as marital property, the former spouse can apply to receive direct payment from the Government through the Defense Finance and Accounting Service (DFAS). However, the former spouse must meet certain requirements:

- The former spouse must have been awarded a portion of the member's retired pay as an item of marital property in the final court order. The USFSPA only gives state courts authority to award retired pay to the former spouse if the court chooses to do so; it does not require the court do so. Unless the court has issued a final order awarding a portion of the member's retired pay to the former spouse, then DFAS cannot give the pay directly to the former spouse.
- The court order must show that the member's rights under the Servicemembers' Civil Relief Act (SCRA) were observed during the court proceeding.
- The court order must show that the court had jurisdiction over the member by reason of (1) the member's residence within the territorial jurisdiction of the court (other than because of military assignment); (2) the member's domicile in the territorial jurisdiction of the court; or (3) the member's consent to the court's jurisdiction, usually shown by the member taking some affirmative action to appear or defend in the legal proceeding.

- There must be a “10/10 overlap”: At least 10 years of marriage between the former spouse and the member, during which the member performed at least 10 years of military service creditable for retirement purposes. The court order should reflect the 10/10 overlap by containing information regarding the date of marriage and the Soldier’s period of military service.
- The court order must set forth the award of retired pay as either a fixed dollar amount or as a percentage of disposable retired pay. (The percentage method is more often used because it is generally fairer to the former spouse; it allows for Cost of Living Adjustments (COLA), which members routinely receive. If the order sets forth the award as a fixed dollar amount, the former spouse cannot receive any amount above that dollar figure, and the former spouse’s percentage of retired pay effectively decreases with each COLA.)

There is no “magic language” required to express a percentage: For example, “[Former spouse] is awarded ____ percent of [Servicemember]’s military retired pay” is sufficient for enforcement of the order under the USFSPA. In fact, most of the problems arise in cases where the court order contains a formula or hypothetical for computation of the award of retired pay. In completing a formula, the only number DFAS will supply is the amount of time creditable for retirement. All other information must be provided in the court order. If more information than that is needed to fill in the formula numbers and compute an amount of retired pay, DFAS will reject the application and require that the former spouse obtain an order from the court supplying the other numbers necessary to complete the formula. This type of order is known as a “clarifying order.”

DFAS has stated that the following is an acceptable way to express an active-duty award of retired pay by means of a formula:

The former spouse is awarded a percentage of the member’s disposable 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.

How to Apply for an Allotment of Retired Pay under the USFSPA:

In order to apply for payments under the USFSPA, the former spouse must complete and sign DD Form 2293, Application for Former Spouse Payments from Retired Pay (available at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf> and is attached to this document as well). The form is fairly self-explanatory and also has directions on the back. The applicant must also provide a copy of the final court order that has been certified within 90 days of being mailed to DFAS. If the order was entered earlier than that, the former spouse must obtain another certified copy of the order from the court clerk’s office.

The maximum that can be paid to the former spouse by DFAS is 50% of a member’s disposable retired pay, which is generally defined as retired pay to which the member is entitled less money owed to the Government, money awarded as disability pay, and money deducted because of election of Survivors’ Benefit Plan. However, if there are additional garnishments for alimony or child support, up to 65% may be sent to the applicant.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771 or visit our website at www.knox.army.mil/center/sja/. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall at the corner of Knox and Third Street.

APPLICATION FOR FORMER SPOUSE PAYMENTS FROM RETIRED PAY <i>(Please read instructions on back and the Privacy Act Statement before completing this form.)</i>		<i>Form Approved</i> <i>OMB No. 0730-0008</i> <i>Expires Nov 30, 2004</i>
<small>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 Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0730-0008), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. 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.</small>		FOR OFFICIAL USE
PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE SERVICE ADDRESS LISTED ON BACK.		
PRIVACY ACT STATEMENT		
<p>AUTHORITY: Title 10 USC 1408; EO 9397.</p> <p>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.</p> <p>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.</p> <p>DISCLOSURE: Voluntary; however, failure to provide requested information may delay or make impossible processing this direct payment request.</p>		
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		
<p>I request direct payment from the retired pay of the above named Uniformed Service member based on the enclosed court order.</p> <p>I request payment of:</p> <p>(1) Child support in the amount of \$ _____ per month.</p> <p>(2) Alimony, spousal support or maintenance in the amount of \$ _____, or _____ percent of disposable retired pay per month.</p> <p>(3) A division of property in the amount of \$ _____, or _____ percent of disposable retired pay per month.</p> <p>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.</p>		

4. I HAVE ENCLOSED ALL PERTINENT DOCUMENTATION TO INCLUDE: (X as applicable)

	a. A copy of the operative court order and other accompanying documents that provide for payment of child support, alimony or a division of retired pay as property, containing a certification dated by the clerk of the court within 90 days preceding the date the application is received by the designated agent.	
	b. Evidence of the date(s) of my marriage to the member if the application is for the direct payment of a division of the member's disposable retired pay as property. Give MARRIAGE DATE (YYYYMMDD) in this block unless stated in court order.	
	c. If payment request includes child support, give name(s) and birth date(s) of child(ren):	
	(1) NAME OF CHILD (Last, First, Middle Initial)	(2) DATE OF BIRTH (YYYYMMDD)
	d. Other information (please identify) or remarks.	

5a. APPLICANT'S SIGNATURE	5b. DATE SIGNED
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INSTRUCTIONS FOR COMPLETION OF DD FORM 2293

GENERAL. These instructions govern an application for direct payment from retired pay of a Uniformed Service member in response to court ordered child support, alimony, or a division of property, under the authority of 10 USC 1408.

SERVICE OF APPLICATION. You may serve the application by mail on the appropriate Uniformed Service designated agent. The Uniformed Services' designated agents are:

(1) **ARMY, NAVY, AIR FORCE, AND MARINE CORPS:** Attn: DFAS-CL/GAG, Assistant General Counsel for Garnishment Operations, DEFENSE FINANCE AND ACCOUNTING SERVICE - CLEVELAND, P.O. Box 998002, Cleveland, OH 44199-8002;

(2) **COAST GUARD:** Commanding Officer (LGL), United States Coast Guard, Human Resources Service and Information Center, 444 S.E. Quincy Street, Topeka, KS 66683-3591;

(3) **PUBLIC HEALTH SERVICE:** Attn: Retired Pay Section, CB, Division of Commissioned Personnel, PUBLIC HEALTH SERVICE, Room 4-50, 5600 Fishers Lane, Rockville, MD 20857-0001;

(4) **NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:** Same as U.S. Coast Guard.

IMPORTANT NOTE: Making a false statement or claim against the United States Government is punishable. The penalty for willfully making a false claim or false statement is a maximum fine of \$10,000 or maximum imprisonment of 5 years or both (18 USC 287 and 1001).

<p>ITEM 1.</p> <p>a. Enter full name as it appears on the court order.</p> <p>b. Enter current name if different than it appears on court order.</p> <p>c. Enter Social Security Number.</p> <p>d. Enter current address.</p> <p>ITEM 2.</p> <p>a. Enter former spouse's full name as it appears on the court order.</p> <p>b. Enter former spouse's Social Security Number.</p> <p>c. Enter former spouse's branch of service.</p> <p>d. Enter former spouse's current address, if known.</p> <p>ITEM 3. Read the Request Statement carefully.</p>	<p>ITEM 4. A certified copy of a court order can be obtained from the court that issued the court order. Other documents include, but are not limited to, final divorce decree, property settlement order, and any appellate court orders. If the court order does not state that the former spouse was married to the member for ten years or more while the member performed ten years creditable service and the request is for payment of a division of property, the applicant must provide evidence to substantiate the ten years' marriage condition. Additional evidence must show that the ten years' requirement has been met, including: Uniformed Service orders, marriage certificate, and other documents that establish the period of marriage. Other information or documents included with the request should be clearly identified by the document's title and date. Remarks may be provided to clarify specific points.</p> <p>ITEM 5. Self-explanatory.</p>
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