

DIVORCE AND MILITARY BENEFITS



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INTRODUCTION

Divorces involving a military member or retired military member create issues not found in typical divorces. Members and their spouses often have questions about division of retired pay, commissary and exchange privileges for former spouses, and medical care for former spouses. This handout addresses these issues.

RETIREMENT PAY

In 1982, Congress enacted the Uniformed Services Former Spouses' Protection Act ("USFSPA"), which enables state courts to divide disposable military retired pay between the member and spouse *if* the state court desires. ***There is no requirement that the couple be married a certain length of time for the court to award the dependent a portion of the member's retirement pay.***

Disposable military retired pay is the member's monthly retired pay minus certain deductions, such as Survivor Benefit Plan premiums, and disability pay, which is the product of the member's monthly retired pay multiplied by the percentage of his or her disability.

USFSPA does not set any limits on the amount of retirement pay that can be awarded to a former spouse. Courts are required only to make an equitable division. The definition of

"equitable" will be different in every case. Depending on the facts of the case, it may range from zero to more than fifty percent. The court will consider the length of the marriage and the number of married years coinciding with retirement creditable military service, but there is no magic number. Essentially, states are allowed to treat military retired pay as marital property, similar to civilian pensions. Division of retired pay does not affect award of alimony. In fact, the military member may be ordered to pay alimony in addition to giving up a portion of his or her retirement pay.

DIRECT PAYMENT TO FORMER SPOUSE

If a court does award division of retired pay, the former spouse may be able to receive the payment directly from DFAS. This way, the former spouse is not left to rely on their ex-spouse for payment. Direct payment is available if (1) the member and former spouse were married for at least ten years during which the military member performed retirement creditable service *and* (2) the divorce decree expresses payment in dollars or a percentage of the member's disposable retirement pay. Direct payment is limited to fifty percent of the military member's disposable retired pay.

The court is not limited to awarding fifty percent, but any portion of an award exceeding fifty percent must be paid by the member.

A certified copy of the court order providing for division of retired pay is necessary to receive direct payment.

COMMISSARY & EXCHANGE PRIVILEGES

Former spouses are entitled to commissary and exchange privileges only if they meet the following requirements of the 20/20/20 rule:

- (1) The former spouse and military member must have been married for 20 years; **and**
- (2) The member must have performed at least 20 years of retirement creditable service; **and**
- (3) At least 20 years of the marriage must have coincided with 20 years of retirement creditable service.

Furthermore, exchange and commissary privileges terminate if the former spouse remarries. The privileges can, however, be regained upon dissolution of the disqualifying marriage or death of the spouse.

MEDICAL BENEFITS

Former spouses are eligible for space available medical care if they meet the following requirements:

- (1) They must remain unmarried; **and**
- (2) They must not have medical coverage under an employer sponsored health plan; **and**
- (3) The former spouse and military member must have been married for 20 years, during which the member performed at least:

- (a) 20 years of retirement creditable service (the 20/20/20 rule); **or**
- (b) 15 but not 20 years of retirement creditable service (20/20/15 rule) **but only if the divorce became final prior to 1 April 1985.**

SURVIVOR BENEFIT PLAN (SBP)

SBP is essentially a government subsidized annuity that provides continued financial security for dependents after retired pay stops when the member dies. Beneficiaries may include a widow or widower, surviving dependent children, and former spouses if not remarried before age 55 (a former spouse may regain eligibility if the remarriage ended before the former spouse turns 55).

The former spouse may be designated SBP beneficiary by a court order (voluntary or involuntary) or by a voluntary, written agreement with the member. Once a member becomes SBP eligible and makes an election to provide an annuity for a specific eligible beneficiary, the election is usually irrevocable. To revoke an election to provide an SBP annuity to a former spouse, the member must furnish the Secretary of the Air Force with:

- (1) A certified court order, that is regular on its face, that modifies or deletes an earlier requirement to designate the former spouse as a SBP beneficiary; **or**
- (2) If the former spouse election was made by a voluntary, written agreement that was not incorporated, approved or ratified by a court order, the member must provide a written statement, signed by the former spouse, evidencing the former spouse's consent to revoke the election.

***The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.**