

PREVENTIVE LAW

SERIES

Legal Assistance Program

TOPIC:

***UNIFORMED SERVICES FORMER SPOUSE'S
PROTECTION ACT RIGHTS AND BENEFITS***

September 2014

**If you have questions concerning the topic
of this pamphlet, please contact the
Legal Assistance Office**

For additional information & useful links, please visit:

<https://aflegalassistance.law.af.mil>

**Legal Assistance Office
Phone: 226-4022**

**Office of the
Staff Judge Advocate
Misawa AB, Japan**

UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT RIGHTS AND BENEFITS

The Uniformed Services Former Spouses' Protection Act (USFSPA) was designed, as its name would suggest, protecting the financial rights of military dependent spouses in the event of a divorce.

I. DIVISION OF RETIREMENT PAY AND DIRECT PAYMENT

A. USFSPA does not create an automatic entitlement to a portion of a military member's retirement pay based on the number of years married, or on the number of years of active duty service. However, under USFSPA, the former spouse of a retired military member may qualify for direct payment of a portion of the member's retirement pay through involuntary allotment. A number of qualifications must be met before direct payment under the Act can be ordered.

B. The first requirement is that the former spouse must have been awarded a portion of the military member's retirement pay by a court of a State or United States territory. Currently, all states have either statutory or common-law provisions permitting the division of military retirement pay as a marital asset.

C. Only decrees issued by courts having jurisdiction over a military member by reason of the military member's residence (other than because of military assignment); the member's domicile in the State or territory; or the member's consent will be recognized for purposes of direct payments. If a decree is issued in a jurisdiction other than those listed above, it will not affect the validity of the decree, nor will it affect the military member's obligations under the decree. However, it will render the former spouse ineligible for direct payments from the government under USFSPA. Also, foreign divorces must be recognized by a competent court of a State or territory under USFSPA to qualify. Even so, it often will be difficult to qualify under a foreign divorce decree. Therefore, the choice of forum for divorce is very important if USFSPA protections are applicable.

D. The second requirement is that the divorce decree award a specific dollar amount, or a specific percentage of the retirement pay. Therefore, the terms of the decree must be clear and unambiguous. Vagueness in drafting may render an otherwise eligible applicant ineligible.

E. The third requirement is that the marriage must have lasted for a minimum period of 10 years, and that during that 10 years, the military member must have served at least 10 years of retirement creditable service. If the marriage is of less than 10 years duration, or the military has less than 10 years of service during the marriage, direct payment under USFSPA is inapplicable. However, USFSPA's inapplicability does not affect the dependent spouse's ability to receive a portion of the member's retirement pay under state law. It only affects direct payment through involuntary allotment by the government.

F. The fourth requirement is that the court order or decree awarding a portion of the military member's retirement pay demonstrate that the provisions of the Soldier's and Sailor's

Civil Relief Act was complied with. This provision is only mandatory in those cases in which a divorce was initiated while the military member was on active duty.

G. Only disposable retirement pay is eligible for award under USFSPA. Disposable retirement pay is defined as gross pay less authorized deductions, including Survivor Benefit Plan Premiums. Direct payments under USFSPA may not exceed 50 % of disposable retirement pay.

H. Direct payments under USFSPA may only be made prospectively. That is to say, payments may only be made from the time of the acceptance of the application forward. Arrearages will not be paid by the government unless a valid garnishment order is produced. Otherwise, arrearages may be collected through the regular collection procedures which normally include the court's power to enforce its decrees by its powers of civil and criminal contempt.

I. A former spouse need not wait until the military member retires to apply for direct payment. Upon acceptance of the application and meeting all of the Act's requirements, payments will begin automatically 90 days after the military member retires. A court may not order a military member to retire early so a spouse can collect retirement pay.

J. To apply for direct payment, the former spouse should send a completed DD Form 2293, a certified copy of the divorce decree ordering a division of the retirement pay, and other required or specified documents to the appropriate address listed on the form.

K. The DD Form 2293 may also be used to apply for direct alimony or child support payments. These payments are not governed by USFSPA or its restrictions. USFSPA applies only to direct payments of retirement pay.

II. BENEFITS UNDER USFSPA

A. Generally former spouses of military members are not entitled to any military benefits by virtue of their marriage to a military spouse. Dependent children normally retain most benefits after a divorce without regard to the custodial parent. (See Handout on Military Entitlements Upon Separation or Divorce.)

B. The most significant exception to the rule against former spouses retaining military benefits is a provision under USFSPA which deals with unremarried former spouses of military members, who were married to the military member for at least twenty years, during which period the military member performed at least twenty years of retirement creditable service. If this provision is applicable, former spouses may receive full AAFES and Commissary privileges, retain their military identification card, and are eligible for medical treatment in military medical facilities on a space available basis, and CHAMPUS coverage if they certify in writing that they are not covered under another employer-sponsored health plan. (Former spouses over the age of 65 are not eligible for CHAMPUS medical care unless they have a Letter of Disallowance for Medicare, Part A, from the Social Security Administration.)

C. If a former spouse was married to a military member for 20 years, and the military member performed over 20 years of creditable service, and there was only 15 or more years

overlap of the marriage and creditable service, the former spouse may be eligible for some transitional medical benefits. Contact the CHAMPUS benefits advisor for more information.

III. This pamphlet only provides a general overview of the USFSPA. You should not rely on the pamphlet alone if you think you qualify for coverage under the Act. For more information about how the USFSPA applies to you contact an attorney or your legal assistance office. Particularly overseas, this act can be significantly affected by your choice of forum and the Soldier's and Sailor's Civil Relief Act. Protect your rights.

THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT YOUR CIVILIAN ATTORNEY OR THE MISAWA AIR BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.