

Deemed Elections

A former spouse **has one year from the date of the court order** to make a written request to DFAS-CL for a deemed former spouse election. Providing DFAS-CL a copy of the divorce decree does not constitute a request for a deemed election. By law, a written request must be made. Former spouses are advised to take this action, both when the divorce occurs when the member is on active duty and after retirement. It is the only way a former spouse election will be made if the member fails to comply with the court order within one year. All members are similarly advised to voluntarily request in writing that former spouse coverage be implemented if court-ordered, so as not to be in contempt of court.

Two Common Errors

Some SBP participants mistakenly believe that SBP elections are made by individual, rather than by category. The result of that belief often is that the member fails to notify DFAS-CL of the divorce, assuming coverage will continue for that person, by name. Or, if notification is made, the required written request is not, and thus the election category is not changed from "spouse" to "former spouse."

Costs continue to be withheld (for a nonexistent spouse beneficiary), and the retiree assumes that continued costs = continued coverage. Too often, the grim discovery following the retiree's death, is that no valid election exists and no annuity is paid.

By the same token, many former spouses are unaware that simply providing the divorce decree to DFAS-CL is not requesting a deemed election. Again, by law, a written request must be made within one year after the date of the court order. Failing that timely action, future inquiry will reveal an invalid former spouse election, if it was also not accomplished by the retiree.

III. ID CARDS

Except as noted below, this includes commissary, exchange and medical benefits. In addition to the minimum eligibility requirements following, the former spouse will not be eligible for medical benefits if enrolled in an employer-sponsored health care plan. The USFSPA and its subsequent amendments authorized military benefits to certain unremarried former spouses.

Minimum Eligibility Requirements

ALL of the following criteria must be met in order to receive a military ID card:

- 1) Marriage of at least 20 years
- 2) Creditable service of at least 20 years
- 3) Marriage overlaps with service by at least 15 years:
 - if at least 20 years - full privileges
 - if between 15 and 20 years - medical care only, for one year from divorce. After one year, enrollment in a premium-based, temporary transitional health care program, "Continued Health Care Benefit Program" (CHCBP), is available to the former spouse.

Note: A retiree who fails to notify DEERS that a former spouse is no longer eligible for care may be liable for the former spouse's medical care costs.

A former spouse who meets these requirements but remarries loses ID card privileges. If that remarriage ends in death or divorce, the unmarried former spouse can regain commissary and Exchange benefits but not medical benefits. If that remarriage is annulled, the unremarried former spouse can regain medical benefits.

Note: former spouses in this category whose divorces were finalized on or before Apr. 1, 1985, were granted indefinite medical benefits.

Call your nearest military ID card office for additional information on Topic III. Call your Retirement Services Officer (RSO) for information on Topics I and II.

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See also: www.armyg1.army.mil/retire



A Basic Guide to Uniformed Services Former Spouses' Protection Act



This pamphlet offers a general discussion of the Uniformed Services Former Spouse Protection Act (USFSPA). It is not a legal brief nor does it state a legal position. It cannot be used as evidence of intent, interpretation, or precedent in any legal action. The points made are not designed to answer detailed questions concerning individual cases. Parties impacted by the USFSPA should consult a military or civilian attorney for more information.

This pamphlet addresses three main topics and their treatment under the USFSPA:

- division of retired pay
- the Survivor Benefit Plan (SBP)
- identification and privilege card



BACKGROUND

The 1981 landmark case, *McCarty v. McCarty*, brought the issue of whether or not a court could consider military retired pay as marital property and order a division of it, to the highest court in the land - the U.S. Supreme Court. The Court ruled that retired pay could not be divided as community property without congressional authorization. Shortly afterward, in 1982, Congress provided that authority by enacting Public Law 97-252, commonly known as the Uniformed Services Former Spouses' Protection Act, or USFSPA.

I. DIVISION OF RETIRED PAY

The Act granted two main authorities:

- 1) that state courts may treat military retired pay as they would other marital property to permit a qualified division; and
- 2) that the appropriate government agency (the Defense Finance & Accounting Service - Cleveland Center, DFAS-CL) could make direct payments to former spouses under certain conditions.

No Automatic Entitlement

The USFSPA does not provide for an automatic entitlement to a division of military retired pay.

For example, a couple may have been married throughout a full military career, yet the USFSPA does not compel a state court to award a division of retired pay to the former spouse.

Enforcement

The USFSPA affords the retiree protection in that even when payments are court-ordered, direct payments to former spouses cannot be made unless the parties were married to each other for at least 10 years, during which time the member performed at least 10 years of creditable military service.

To illustrate, marriages need not meet the 10 years of marriage overlapping with service requirements in order for the state court to direct that retired pay be divided. However, DFAS-CL will not make direct payments to the former spouse if those two requirements are not met.

Child Support or Alimony

The 10 years of marriage/overlap with service requirements do not apply to direct payment of child support or alimony.

Limitations

The court order will not be honored by DFAS-CL unless the court issuing the order holds jurisdiction over the member. This jurisdictional requirement, however, does not apply to child support or alimony.

Further, regardless of the award made by the state court, the government restricts direct payment to the former spouse to 50 percent of the member's "disposable" retired pay. The exception to this is in enforcement of child support garnishment orders, which can raise the direct pay amount to a total of 65 percent of disposable pay.

Disposable Pay

Disposable retired pay is the product of the gross retired pay entitlement minus the following:

- 1) Amounts owed by the member for previous overpayments or recoupments;
- 2) Amounts deducted for court martial fines;
- 3) Amounts waived under Title 5 for Civil Service employment or under Title 38 for VA disability compensation;
- 4) Survivor Benefit Plan (SBP) premiums (only if the former spouse to receive the division is also the named former spouse SBP beneficiary);
- 5) (For post-Nov. 14, 1986 court order dates): amounts of retired pay based on disability (per Title 10, Chap. 61);
- 6) (For pre-Feb. 3, 1991 court order dates): amounts owed the U.S.;
- 7) (For post-Feb. 3, 1991 court order dates): amounts withheld for federal and state income taxes, consistent with the member's tax liability.

Application Procedure

Only the former spouse or the former spouse's attorney can apply for direct pay under the USFSPA. The member cannot. Contact DFAS-CL at 800-321-1080 for specific guidance on procedures for applying. Once the process is successfully completed, payments to the former spouse begin within 90 days, in accordance with the normal retired pay cycle. If the member is not yet retired, payments begin within 90 days after date of retirement.

Former Spouse Remarriage

Remarriage by the former spouse does not cause the former spouse to lose entitlement to receive direct payment of retired pay which was awarded as property, unless so specified by the court.

II. THE SURVIVOR BENEFIT PLAN (SBP)

Voluntary or Court-Ordered

Since Nov. 14, 1986, states courts have been permitted to order a member to participate in SBP for the member's former spouse. This pertains both to active duty members who can be ordered to elect former spouse coverage at retirement, and to retirees with spouse coverage. Courts cannot order a retiree to provide former spouse coverage unless the member had previously made a spouse election for that former spouse.

Similarity to Spouse Coverage

When divorce occurs after retirement, former spouse coverage will be in the same amount as spouse coverage. In active duty divorces, the specific level of coverage to be elected should be directed by the court order.

Loss of Eligibility

If the former spouse remarries before age 55, eligibility is lost, SBP participation is suspended, with no costs owed during the period of ineligibility. However, if that remarriage ends, eligibility is restored, participation is resumed and costs are owed. Marital status changes must be reported to DFAS-CL immediately.

General Irrevocability

Elections are permanent with the following exceptions:

DISENROLLMENT OPTION — A retiree can disenroll, with the former spouse's written consent, between the 25th and 36th month after start of retired pay.

RETIREE'S REMARRIAGE — If a retiree remarries, former spouse coverage may be changed to spouse coverage at any time **if** the following occurs:

- If the former spouse election is court-ordered, or an agreement to make the election is incorporated in or ratified or approved by a court order, the member furnishes a certified valid court order modifying the provisions of all previous court orders relating to the election.
- If the former spouse election is the result of a written agreement which is not incorporated or ratified or approved by a court order, the former spouse provides written concurrence with the change of election.
- If the former spouse election is purely voluntary, with no written agreement existing, the former spouse is notified.

