

**APPENDIX E**

<b>Uniformed Services Former Spouses' Protection Act<sup>1</sup></b>	<b>Length of Time that Marriage Overlaps with Service Creditable for Retirement Purposes<sup>3</sup></b>			
	<b>Number of Years</b>			
	<b>0 to &lt;10</b>	<b>10 to &lt;15</b>	<b>15 to &lt;20</b>	<b>20 or more</b>
<b>Benefits for Former Spouses<sup>2</sup></b>				
Division of Retired Pay <sup>4</sup>	X	X	X	X
Designation as an SBP Beneficiary <sup>5</sup>	X	X	X	X
Direct Payment <sup>6</sup>				
Child Support	X	X	X	X
Alimony	X	X	X	X
Property Division <sup>7</sup>		X	X	X
Health Care <sup>8</sup>				
Transitional <sup>9</sup>			X	
Full <sup>10</sup>				X
Insurance <sup>11</sup>	X	X	X	X
Commissary <sup>12</sup>				X
PX <sup>12</sup>				X
Dependent Abuse				
Retired Pay Property Share Equivalent <sup>13</sup>		X	X	X
Transitional Compensation <sup>14</sup>	X	X	X	X

## FOOTNOTES

- <sup>1</sup> Pub. L. 97-252, Title X, 96 Stat. 730 (1982), as amended. This chart reflects all changes to the Act through the amendments in the National Defense Authorization Act, Fiscal Year 1994, Pub. L. 103-160 (1993).
- <sup>2</sup> For guidance on obtaining a military identification card to establish entitlement for health care, commissary, and PX benefits, see appropriate service regulations (e.g., AR 640-3). Former spouses of reserve component members may be entitled to these benefits; see the following notes for applicable benefits.
- <sup>3</sup> Except for Dependent Abuse Victims Transitional Compensation payments, this chart assumes that the member serves long enough to retire from an active duty component or reserve component of the Armed Forces (generally this will mean (s)he has twenty years of service creditable for retirement purposes, but can mean fifteen years in the case of the Voluntary Early Release and Retirement Program [statutory authority for this program expires in 1999]).
- <sup>4</sup> At least one court has awarded a portion of military retired pay to a spouse whom the retiree married after he retired, Konzen v. Konzen, 103 Wash.2d 470, 693 P.2d 97, cert. denied, 473 U.S. 906 (1985).
- <sup>5</sup> Federal law does not create any minimum length of overlap for this benefit; the parties' agreement or state law will control a former spouse's entitlement to designation as an SBP beneficiary.
- <sup>6</sup> See 10 U.S.C. §§ 1408(d) & 1408(e) and 32 C.F.R. part 63 for further guidance on mandatory language in the divorce decree or court-approved separation agreement. The former spouse initiates the direct payment process by sending a written request to the appropriate finance center.
- <sup>7</sup> While eligibility for direct payment does not extend to former spouses whose overlap of marriage and service is less than ten years, this is not a prerequisite to award of a share of retired pay as property to the former spouse (see Note 4).
- <sup>8</sup> To qualify for any health care provided or paid for by the military, the former spouse must be unremarried and must not be covered by an employer-sponsored health care plan; see 10 U.S.C. §§ 1072(2)(F), 1072(2)(G) & 1072(2)(H). Department of the Army interpretation of this provision holds that termination of a subsequent marriage by divorce or death does not revive this benefit, but an annulment does. These remarriage and employer-insurance restrictions do not limit eligibility to enroll in the civilian health care insurance plan discussed in Note 11.

<sup>9</sup>. "Transitional health care" was created by Pub. L. 98-625, § 645(c) (not codified), as a stop-gap measure while a civilian health care plan was negotiated for former spouses and other who lose an entitlement to receive military health care (see Note 11). The program subsequently was modified and narrowed by the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100-456, Title VI, § 651, 102 Stat. 1990 (1988). Current program benefits are described at 10 U.S.C. § 1078a, titled "Continued Health Benefits Coverage." Qualifying former spouses are those who are unremarried, who have no employer-sponsored health insurance, and who meet the "20/20/15" requirement (i.e., married to the member for at least 20 years, and the member has at least 20 years of service that are creditable for retirement purposes, and the marriage overlaps at least 15 years of the creditable service). Transitional health care now includes full military health care for 1 year after the date of the divorce, and during this period the former spouse is eligible to enroll in the civilian group health care plan negotiated by DOD (see Note 11).

Note that for health care purposes, 10 U.S.C. § 1072(2)(G) treats a 20/20/15 former spouse as if he or she were a full 20/20/20 former spouse (20 years of marriage, 20 years of service, and 20 years of overlap) if the divorce decree is dated before April 1, 1995. A 20/20/15 former spouse of a reserve component retiree with a divorce decree prior to April 1, 1985, can receive full health care too, but only if the member survives to age 60 or if he or she elected to participate in the Reserve Component Survivor Benefit Program upon becoming retirement eligible.

<sup>10</sup>. "Full health care" includes health care at military treatment facilities and that provided through the TRICARE insurance program. A former spouse of a reserve component retiree is eligible for this benefit upon the retiree's 60th birthday (or on the day the retiree would have been 60 if (s)he dies before reaching age 60) if (s)he meets the normal qualification rules (i.e., an unremarried 20/20/20 former spouse who is not covered by an employer-sponsored health care plan); see 10 U.S.C. § 1076(b)(2).

<sup>11</sup>. Implementation of the Department of Defense Continued Health Care Benefit Program (CHCBP) was directed by Congress in the National Defense Authorization Act for Fiscal Year 1993 (see 10 U.S.C. § 1078a). It is a premium based program of temporary continued health benefits coverage available to eligible beneficiaries. Medical benefits mirror those available under the standard TRICARE program, but CHCBP is not part of TRICARE. For further information on this program, contact a military medical treatment facility health benefits advisor, or contact the CHCBP Administrator, P.O. Box 1608, Rockville, MD 20849-1608 (1-800-809-6119). The CHCBP replaces the Uniformed Services Voluntary Insurance Program (USVIP).

12. Pursuant to statute and service regulations, commissary and PX benefits are to be available to a former spouse "to the same extent and on the same basis as the surviving spouse of a retired member..." Pub. L. 97-252, Title X, § 1005, 96 Stat. 737 (1982); see Army Regulation 640-3. The date of the divorce is no longer relevant for commissary and PX purposes. See Pub. L. 98-525; Title IV, § 645, 98 Stat. 2549 (1984) (amending Uniformed Services Former Spouses' Protection Act § 1006(d)). The former spouse must be "unmarried," and, unlike the rules for health care, any termination of a subsequent marriage revives these benefits. Qualified former spouses of reserve component retirees receive commissary and PX benefits when the retiree reaches age 60 (or when (s)he would have reached age 60 if the retiree dies before that time, but in such cases the entitlement arises only if the retiree elected to participate in the Reserve Component Survivor Benefit Plan when (s)he became retirement eligible; see AR 640-3). Notwithstanding the provision of the Act and the regulation, however, the extent of commissary and exchange privileges in overseas locations may be restricted by host-nation customs law.

13. When a retirement-eligible member receives a punitive discharge via court-martial, or is discharged via administrative separation processing, the member's retirement benefits are lost. In certain cases where the court-martial or separation action was based on dependent abuse, eligible spouses may receive their court-ordered share of retired pay (divided as property) as if the member had actually retired. Authority for these payments was created in the National Defense Authorization Act, Fiscal Year 1993, § 653, Pub. L. 103-484. An overlap of marriage and service of at least ten years is a prerequisite to receipt of payments. The National Defense Authorization Act, Fiscal Year 1994, § 555, Pub. L. 103-160, clarifies that eligibility begins on the date the sentence is approved and does not have to wait until the member is actually discharged.

14. The National Defense Authorization Act, Fiscal Year 1994, § 554, Pub. L. 103-160, also creates authority for monthly transitional compensation to dependents of a non-retirement eligible member separated from the service by reason of dependent abuse.

G-1 RETIREMENT SERVICES OFFICE  
**Uniformed Services Former Spouses' Protection Act (USFSPA)**

For more information [USFSPA FAQ](#) or the [USFSPA Trifold](#)

**General Information Facts:** This is not a legal brief nor a position. It cannot be used as evidence of intent, interpretation, or precedent in any legal action. This paper is not a legal or judicial interpretation of enacted laws and does not deal with case law. Because of the complexity of the USFSPA, state divorce laws, and personal situations involved, individuals involved in a divorce process are encouraged to obtain legal counsel.

Prior to the 1981 state courts disagreed on whether they were authorized or constrained by federal law in dividing military retired pay in divorce-related property settlements. On 26 June 1981, the U.S. Supreme Court ruled (*McCarty vs. McCarty*) that military retired pay could not be treated as community property in divorce cases.

The USFSPA (Section 1408, Title 10 USC) established by PL 97-252 (8 September 1982) and amended by PL 98-94 (24 September, 1983); PL 98-525 (27 September 1984); PL 99-145 (8 November 1985); PL 99-661 (14 November 1986); PL 100-180 (4 December 1987); and PL 101-510 (5 November 1990) decrees that state divorce courts, if they chose, may treat military retired pay as community property. The USFSPA does not create a Federal right to any portion of the military retired pay on behalf of the former spouse, but rather recognizes that the states may treat it as such. The USFSPA does not allow the law to confer an entitlement to a portion of retired pay based solely on length of marriage.

If a court awards a portion of retired pay as property, the former spouse may apply to the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), Operations Directorate, PO Box 998002, Cleveland, OH 44199-8002 to receive it as a "direct payment". To qualify for direct payment, the USFSPA requires that a former spouse must have been married to the member during at least 10 years of the member's service creditable for retired pay.

Under the USFSPA no more than 50 percent of a member's disposable retired pay will be sent as a direct payment. However, if there are garnishments for alimony or child support, up to 65 percent may be sent as a direct payment.

Depending upon date of court order, disposable pay is generally defined as retired pay to which a member is entitled less amounts:

- owed to the United States for previous overpayments of retired pay and for recoupment required by law resulting from entitlement to retired pay.

- deducted from the retired pay as a result of forfeitures of retired pay ordered by a court martial or as a result of a waiver of retired pay required by law in order to receive compensation under Title 5 or Title 38.

- of the member's retired pay under Chapter 61, Title 10, USC, as computed using the percentage of the member's disability on the date when the member was temporarily or permanently retired, if the court order is dated on or after November 14, 1986.

- deducted because of an SBP election.

PL 101-510 stipulates that a court may not treat retired pay as property if the final decree of divorce, dissolution, annulment, or legal separation (including a court-ordered, ratified, or approved property settlement incident to such decree) was (1) issued before 25 June 25 1981,

and (2) did not treat (or reserve jurisdiction to treat) any amount of retired pay as property. Judgments issued before 5 November 1990, to amend pre-26 June 1981 divorce settlements, to provide for a division of retired pay as property, may be annulled or modified by PL 101-510 on or after 5 November 1992.

When more than one former spouse has been awarded a division of a member's retired pay, payment will be handled on a first-come, first-served basis. When conflicting court orders exist, DFAS-CL will send the amount specified in the lower of the two conflicting orders (not to exceed 50% of disposable pay), and retain the difference until the matter is resolved.

The USFSPA does not allow a state court to order a member to apply for or to specify a date of retirement.

Unless court ordered, remarriage of a former spouse will not stop the direct payment of retired pay as property.

For court orders finalized on or after February 3, 1991, payment of retired pay as property is taxable. DFAS-CL will send an IRS Form 1099R to the former spouse.

If a member remains on active duty following divorce, the former spouse should send a copy of the divorce decree or property settlement to DFAS-CL. If SBP is awarded, DFAS-CL must be notified within one year of the final decree or property settlement date. If the court order meets the criteria of the law, it will be retained until the member retires. The former spouse must inform DFAS-CL of changes in address or marital status.

Prior to PL 99-661 members could voluntarily elect SBP coverage for a former spouse under the Insurable Interest category.

For divorces finalized on or after November 14, 1986, PL 99-661 permits state courts to order SBP coverage.

If a member voluntarily elects SBP coverage for a former spouse and that agreement has been ratified or approved by a court order, or, if the member has been ordered to elect SBP coverage for a former spouse, the retired member must make that election within one year of the date of the divorce. A former spouse, within one year of the date of divorce may submit to DFAS-CL a request that a "deemed" SBP election be established. If neither the retiree nor the former spouse requests former spouse SBP coverage within one year of date of divorce, former spouse coverage will not be established.

A retired member can not voluntarily elect nor can a court order former spouse SBP coverage if the retired member had not elected SBP spouse coverage at time of retirement.

SBP coverage for a former spouse will be no more than the amount of SBP coverage for the spouse.

A former spouse who remarries before age 55 loses SBP eligibility; however, if the marriage ends in death, divorce, or annulment, eligibility is reinstated. A former spouse who remarries after age 55 does not lose eligibility.

Former spouse SBP coverage is generally irrevocable. However, if a retired member remarries a change from former spouse to spouse coverage, may be made with the former spouses written consent. Such a request for change must be submitted to DFAS-CL within one year of the date of remarriage. If the former spouse SBP coverage was ratified or approved by a court order, the court order must be amended within one year.

Military ID cards cannot be ordered or decreed by a divorce court. Questions concerning eligibility should be directed to the nearest military ID card issuing facility. Generally former spouses are eligible if:

The marriage lasted 20 years or more, and

The member served 20 years or more of service creditable for retired pay, and

The marriage and the creditable service overlap 20 or more years. (In some cases, restricted benefits are authorized if the overlap is less than 20 but greater than 15)

For additional information on the USFSPA, contact the nearest military legal assistance office.

G-1 RETIREMENT SERVICES OFFICE  
**USFSPA FAQ's**

If you have a question concerning the Uniformed Services Former Spouse's Protection Act (USFSPA) and you can not find the answer in the Information Paper on the USFSPA section of this web site, or within this Frequently Asked Questions section, contact your Retirement Services Office (RSO).

**DIVISION OF RETIRED PAY**

**What law addresses division of retired pay, and where can I get a copy?**

The division of retired pay in accordance with a valid court order is covered in Title 10, United States Code, Section 1408. Get a copy at your local library or from web site [www4.law.cornell.edu/uscode/10/1405.html](http://www4.law.cornell.edu/uscode/10/1405.html).

**I was the spouse of a military person during 17 years of his active service. Where do I sign up for my entitlement to 50 percent of his retired pay?**

While state courts can treat retired pay as marital property, the Uniformed Services Former Spouses' Protection Act (USFSPA) does not confer automatic entitlement to any former spouse, regardless of length of marriage, amount of overlap of service and marriage, career contribution, steadfast support, etc.

**My attorney tells me that only "disposable pay" can be divided as marital property. What does that mean?**

Disposable pay is the amount of gross retired pay remaining after the following deductions are made:

1) garnishments; 2) court martial fines/costs; 3) waivers due to civil service and VA disability compensation receipt; 4) SBP premiums; 5) taxes (if before 3 Feb 1991). An example of an item not counted in determining disposable pay is an allotment into a savings account.

**I hear "10 years of marriage" mentioned all the time in relation to division of retired pay. What's the significance?**

The answer is in this illustration. 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 pay to a former spouse. However, when the court does order a division, "10 years" comes into play because there must have been 10 years of marriage that overlapped with 10 years of creditable military service in order for a former spouse to receive direct payments from DFAS-Cleveland Center (DFAS-CL). Without it, the government will not be the payer.

**Do you mean that my former spouse could have been married to me for only 8 of my 20 active duty years and still get even if not paid from the government) some of my retired pay?**

Yes. A state court can do whatever they deem appropriate when settling marital property (retired pay has been considered marital property since 1982).

**Where can I get a copy of the law that spells out the formula for retired pay division entitlement based on "X" amount of years of marriage and service overlap?**

There is no "official" document saying, for example, that 10 years of a 20-year career entitles one to 50 percent of retired pay. However, we've heard that many attorneys and Judge Advocate Generals use an unofficial matrix as guidance when formulating or advising on retired pay division matters.

**A friend of mine told me that he was ordered by the court to give up all his retired pay to his former spouse. Can that be true?**

Yes. Any or all of your retired pay can be awarded to a former spouse. However, a limit ("cap") is imposed by federal law, which restricts DFAS-CL in the amount of disposable pay they can directly pay to a former spouse.

**I read that a former spouse cannot receive from DFAS-CL directly more than 50 percent of a retiree's disposable retired pay. Is there any case where that is not true?**

Yes. If child support is an ordered garnishment from military retired pay, the "cap" is 65 percent of disposable pay.

**Will my former spouse have to pay his own taxes on the amount he receives as a division of my retired pay?**

Yes - if the divorce occurred after 3 Feb 1991. Since that date, each party is responsible for their own taxable income, and each receives a separate 1099R.

#### **ID CARDS**

**I am a former spouse who was married to a military member for 12 years. My divorce decree ordered that I should retain my military ID card. Why am I being denied a card?**

A state court does not have the authority to confer entitlement to a military ID card. Federal law defines minimum eligibility requirements, one of which is completion of a minimum of 20 years of marriage to a military member.

**I know about the so-called "20/20/20" and "20/20/15" minimum requirements pertaining to a former spouse getting an ID card (i.e., 20 years service/20 years marriage/15-20 years overlap of the two). I meet the 20-year marriage and 15-year overlap requirements, but my ex-spouse just retired for disability after completing only 18 years active service. Can I still get an ID card since it was not my fault that 20 years of service was not completed?**

No. We know of no exceptions being made regarding minimum ID card eligibility requirements. Completing 20 years creditable service is a must. A retirement with less than 20 creditable years service (e.g., disability, or Temporary Early Retirement Authority, TERA) doesn't meet the "service 20."

#### **SURVIVOR BENEFIT PLAN (SBP)**

**When I retired in 1990, my spouse and I jointly decided we didn't want SBP, so I declined participation. Now that we're divorcing, she says she's changed her mind and wants the coverage. Do I have to enroll her now?**

No. You cannot enroll her now, voluntarily or by court order. Since you initially declined spouse coverage, the only time you can enter the program is during a future Open Season (and, there have only been 4 in SBP's 28-year history).

**My husband is retired and I am his spouse beneficiary in SBP. We are getting divorced, and the state court will order him to continue to cover me in SBP. If I send DFAS-CL a copy of the divorce decree, will I remain covered automatically?**

No. When DFAS-CL is informed that the retiree is divorced (i.e., has no spouse), they simply stop his spouse coverage/premiums. Because SBP elections are "by category," when there is no eligible spouse, spouse coverage is suspended. This is not DFAS-CL policy - it's federal law! (Read on...)

**I am retired and have spouse SBP coverage. I recently divorced and was ordered to continue covering Susie in SBP. I sent the decree to DFAS-CL just to keep my records updated, but I did not ask them to take Susie off my coverage -- yet DFAS-CL suspended my spouse coverage. What's going on?**

DFAS-CL's action was appropriate. Since SBP elections are made by category, not individual, when DFAS-CL learned you did not have a spouse, they properly suspended your "spouse" coverage. On date of divorce, Susie is no longer your spouse, and cannot be covered under the spouse category. To facilitate the change (assuming you are still within one year of the divorce), write to DFAS, US Military Retirement Pay, PO Box 7130, London, KY 40742-7103, and request that your SBP category be changed from "spouse" to "former spouse." The law requires a written request. Your former spouse, Susie, will then be covered, and you will be in compliance with the court order. If it's more than one year since divorce, you'll have to address the matter to the SBP Board of Corrections. Recommend you contact your Retirement Services Officer (RSO) before doing that.

**I am a retiree with spouse coverage. The court has ordered me to cover my former spouse in SBP upon divorce. They've also ordered her to start paying the SBP premiums. How do I get the payment responsibility switched to her?**

You don't. Federal law currently allows only the retired member to have SBP premiums deducted (tax-free) from retired pay. The state court, being a lower court, cannot legally order otherwise. You would need to explore reimbursement privately.

**I know that SBP rules say that a former spouse beneficiary remains eligible as long as he/she doesn't marry before age 55. But, my divorce decree wording goes one step further and specifies that my former spouse will lose SBP eligibility if she remarries AT ANY AGE. Is that legal?**

No, it is not legal. SBP runs by federal law, not state law. In reality, a state court can incorporate anything it or the parties desire into a divorce decree. However, federal law dictates the conditions of eligibility for SBP - one of which is age of remarriage. (See Title 10, U.S. Code, Chapter 73.)

**I heard through the grapevine that my 50-year old former spouse, who is my court-ordered SBP beneficiary, has remarried. Since she's under age 55, how do I stop coverage for her and enroll my new spouse?**

You can't "stop" former spouse coverage; you can "suspend" it; and, you can't enroll your new spouse. It's true that your former spouse's remarriage affects her eligibility, but it does not terminate your obligation to cover your former spouse - only your obligation to make payments.

In other words, once you prove to DFAS-CL that your beneficiary has remarried before age 55 (i.e., provide marriage and birth certificates), your former spouse premiums will be suspended - as long as she remains ineligible by being married. However, should that remarriage end due to divorce or death, the former spouse will regain eligibility and appropriate coverage and premiums will resume. YOU are responsible to keep DFAS-CL notified of all beneficiary changes. In summary, loss of a former spouse's eligibility does not signal a new opportunity for a member to make a new election.

**If my former spouse should die, what would happen to my court-ordered SBP election? Could I cover my spouse?**

Your court ordered former spouse coverage would be voided by your former spouse's death. You would be free to enroll your current spouse. Provide DFAS-CL appropriate documents.

**My divorce will soon be final and I'm still on active duty. The court is ordering me to participate in SBP for my former spouse when I retire. What action do I have to take now to stay out of hot water?**

None - now. As an active member not yet eligible for retirement, you have no action to take until retirement. At retirement, in order to comply with the court order, you would elect former spouse coverage. If you don't, you will be in contempt of court. On the other hand, your former spouse has one year from date of divorce to write to DFAS-CL requesting a deemed election.

**I am a former spouse of an active duty member. Two months ago, we divorced and the court ordered her to enroll me in SBP when she retires. Since we don't plan to keep in touch, how can I ensure that happens?**

The USFSPA gives you a tool to use to make sure you are covered in SBP in the future if it is court-ordered -- that is a "deemed election." Within one year of divorce, YOU (or your attorney) can send DFAS-CL a copy of your divorce decree along with a simple letter requesting a deemed election. It will be kept in suspense, awaiting your ex-spouse's future retirement and SBP election. If she fails to elect former spouse coverage, the deemed election will override that failure. You will be notified when that occurs.

**Whom can I turn to for information on the USFSPA?**

While your Army Retirement Services Officers (RSO) are not attorneys, they are knowledgeable on most aspects of the USFSPA, and will refer you to others who can answer any questions they cannot.

**I am a former spouse whose divorce occurred more than one year ago. I never heard of being able to deem an election that was court-ordered. And, I just learned that my former spouse did not follow the court's order and is covering his current spouse. Wasn't it the government's responsibility to inform me of my rights under the USFSPA?**

No. While there are certainly many people/agencies within the government who are knowledgeable on the USFSPA, the bottom line is that it is YOUR private attorney's role to properly advise you on all aspects of divorce. When hiring an attorney, we strongly recommend that you inquire as to their knowledge of and experience with USFSPA issues, to ensure that your interests are protected. The attorney can also advise you of what steps can be taken to address a contempt of court issue.

**How can I conduct research on the USFSPA in order to minimize my attorney's fees?**

Call your RSO (listed on this web site and in each issue of "Army Echoes") for information. If you are a member of a military service organization, ask them what assistance, if any, they can provide. Some keep a database of area attorneys who are considered to be well versed in military divorce. Avail yourself of USFSPA information on (or refer your attorney to) this web site and the [www.dfas.mil](http://www.dfas.mil) web site.