

12-1. Overview.

The legal ramifications associated with the dissolution of a marriage should not be taken lightly. Competent legal advice should always be sought. Each person must seek legal advice to feel satisfied, not confused, by the proceedings. Title 10, USC, is a public document, available to all lawyers. In addition, because state laws differ and because it is state law that governs divorce proceedings and decrees, it is important that your legal advisor have complete knowledge of the divorce laws applicable to the state under which the divorce will be granted, and in particular, be well-versed in military divorce procedures.

12-2. Effective Date.

Public law 97-252 enacted on September 8, 1982 contained the provisions commonly known as the Uniformed Services Former Spouses' Protection Act (USFSPA). USFSPA prevents the division of retired pay when the divorce was finalized prior to June 26, 1981.

12-3. Disposable Retired Pay.

Only "disposable" retired pay can be divided between the Retired Soldier and the former spouse. The term disposable retired pay means the total monthly retired pay to which a member is entitled:

- less amounts owed by that member to the United States for previous overpayments of retired pay and for recoupment required by law resulting from entitlement to retired pay;
- less amounts deducted from the retired pay of such member as a result of forfeiture 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 and/or Title 38, USC;
- (in the case of a member entitled to retired pay under chapter 61 of Title 10 USC) equal to the amount of retired pay of the member under that chapter of law computed using the percentage of the member's disability on the date when the member was retired, or the date on which the member's name was placed on the temporary disability TDRL; or
- less amounts deducted because of an election under chapter 73, Title 10, USC to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

12-4. Authority for a Court to Treat Retired Pay as Property of the Member and Spouse.

Subject to the limitations of Title 10, USC, a state court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member, or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceedings to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 26, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) T10 USC §1408 - Payment of Retired or Retainer Pay in Compliance with Court Orders to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services. IAW T10 USC §1408.

This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

A court may not treat the disposable retired pay of a member in the manner described above unless the court has jurisdiction over the member by reason of: (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court; (B) his domicile in the territorial jurisdiction of the court; or (C) his consent to the jurisdiction of the court.

12-5. Court-Ordered SBP.

Since November 14, 1986, state 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 SBP coverage for a former spouse at retirement, and to Retired Soldiers with spouse coverage, who must convert the category to "former spouse." Note that courts cannot order a Retired Soldier to provide former spouse coverage unless the member previously had spouse coverage for the now-former spouse.

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

If the former spouse remarries before age 55, SBP eligibility is lost and SBP participation by the Retired Soldier is suspended, with no costs owed during the period of ineligibility. The SBP remains the Former Spouse's property if court ordered, by written agreement, or voluntary. Therefore, if that remarriage ends, eligibility is restored; participation is resumed, as are SBP costs. Marital status changes must be documented and reported to DFAS-CL immediately.

A former spouse has one-year from the date of the first court order awarding former spouse SBP 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 specific written request must be made. The form to request a deemed former spouse election is DD Form 2656-10, Survivor Benefit Plan (SBP) Reserve Component (RC) SBP Request for Deemed Election. If a Retired Soldier or retiring Soldier fails to make the former spouse election, based on a timely correct DD Form 2656-10, DFAS will change the election to former spouse or former spouse and child as if the election was made by the Retired Soldier. A member, if retired, has one-year from the date of the court order to change his/her election from spouse to former spouse.

12-6. Additional Information.

More complete information may be obtained by contacting a Retirement Services Officer; an installation Judge Advocate General (JAG) officer; or by going online to the Army Retirement Services Office Web site: <https://soldierforlife.army.mil/retirement/former-spouses>.