



FORT SILL LEGAL ASSISTANCE

DIVORCE AND RETIREMENT PAY



1. The court awarded me 50% of my former spouse's retired pay which had accrued as of the date of our divorce. Why do I need to get a clarifying order to have my award enforced under the Uniformed Services Former Spouses' Protection Act (USFSPA)?

Without a clarifying order, there is no way to determine the amount of what your award should be under USFSPA. Military retired pay is an entitlement based on the service member's rank and number of years of creditable service at the time of retirement. It is paid on a monthly basis and as such is not a fund which can be valued or divided as of some point in time, either before or after the member's retirement. Thus, it is not comparable to a company's private retirement plan, which can be identified as a specific amount and can be divided as of a particular date. The USFSPA requires that an award of a portion of a member's retired pay as property must be expressed in dollars or as a percentage of disposable retired pay. Therefore, a clarifying order would be necessary in those cases where the award is not expressed in dollars or as a percentage of disposable retired pay.

2. My award of a portion of the member's military retired pay as property is expressed as a formula with the numerator as the number of years we were married while the member performed military service creditable for retirement. I was told I had to get a clarifying order because this "number" was not provided in the court order. Why is this the case when our marriage and divorce dates, and the member's service entry date, were given in the court order?

An award of military retired pay as property expressed as a formula or hypothetical retired pay amount may be enforced under the USFSPA without a clarifying order only if the requirements of the proposed regulations are met. The regulation is the DoD Financial Management Regulation and the citation is Volume 7b, DoD FMR Chapter 29. With regard to an award expressed as a formula, the only number supplied by DFAS will be the number of years of creditable service performed by the military member. All other information must be contained in the court ordered formula in order to be enforceable.

3. Why does it take so long for me to begin to receive payments under the Act after I apply?

The USFSPA requires that your payments must begin not later than 90 days after effective service of your application for payments on the designated agent. This 90 day requirement gives DFAS enough time to process your application, and provide the military member with the notice that USFSPA requires. The member has 30 days from the date the notice was mailed to provide evidence as to why payments should not begin. No payments can be made until after the 30 day notice period for the military

member. Also, since payments of military retired pay are only made once each month, the commencement of your payments must be coordinated with the monthly retired pay cycle.

4. I applied for enforcement of both my child support and retired pay property awards under USFSPA. My application for child support was honored, but my application for property payments was not. I was told that the reason was that the court lacked jurisdiction over the member. What's the problem? My divorce decree stated that the court had jurisdiction over the member.

The USFSPA has a separate jurisdiction requirement for enforcement of property awards. The USFSPA states that the court must have had 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. The court may have had jurisdiction over an absent member by reason of some state statute, but that type of jurisdiction may not be the type that legally satisfies the requirement for purposes of the USFSPA. This special jurisdiction requirement does not apply to enforcement of alimony and child support awards.

5. I was married to my former spouse for eight years while my former spouse was performing military service creditable for retirement. I was awarded a portion of my former spouse's military retired pay as property in our divorce decree. My application for property payments under the USFSPA was turned down, even though my former spouse waived the ten year requirement in our divorce decree. Why?

In order for a division of retired pay as property award to be enforced under the USFSPA, the former spouse must have been married to the military member for ten years or more during which the member performed at least ten years of service creditable in determining the member's eligibility for retirement. This is a requirement to receive payments under the USFSPA which cannot be waived by either party. However, retired members may always make the payment themselves. This requirement does not apply to enforcement of awards for alimony or child support.

6. My former spouse has been receiving military retired pay for several years, and has not paid me any of my portion of his retired pay as a property award. Can I collect any of the arrearages under USFSPA?

No, the USFSPA does not provide for the collection of arrearages of retired pay as property or alimony. Payments under USFSPA are prospective only.

7. I understand that because my former spouse was married to me for over ten years while I was on active duty that she is entitled to a portion of my military retired pay. Is this true?

No. The USFSPA does not provide entitlement to military retired pay. However, the USFSPA does provide an avenue for a former spouse to receive a direct payment of up to 50% of disposable retired pay when: the former spouse was married to a service

member for ten years or more concurrent with creditable service for retirement and a court treats the military retired pay as marital property.

8. Does the USFSPA require division of military retired pay in a divorce?

The USFSPA does NOT automatically divide retired pay as property. However, it does authorize state courts to treat military retired pay either as property of the retiree or as the property of the retiree and his or her former spouse in accordance with the law of the jurisdiction of such courts. A court may award more than 50 percent of a retired service member's pay check to the former spouse as property but the Government is authorized only to send up to 50 percent of "disposable retired pay" directly to the former spouse as property.

9. I was awarded a portion of the member's retired pay as a fixed dollar amount but I do not receive any cost of living increases (COLA) as ordered by the court. Why can't I receive COLAs?

The implementing regulations for the USFSPA state, that COLAs are payable only for those awards that are based on a division of retired pay awarded as a percentage or fraction of the member's retired pay.

10. I established an allotment to pay my former spouse her portion of my retirement one month after our divorce. She has now applied for direct payments and effective this month, DFAS began sending her payments. Since the allotment was not stopped I request that you recover the overpayment from my former spouse and return the funds to me.

DFAS is required to provide you thirty (30) days notice prior to the commencement of payments to your former spouse. This affords you the opportunity to submit evidence that the court order is defective, or has been modified, superseded or set aside, and to cancel any voluntary allotments you may have established for the same obligation. It is your responsibility to stop any voluntary allotment for the same obligation. DFAS has no authority to cancel a voluntary allotment. Therefore, DFAS is unable to comply with your request to recover any overpayment made to your former spouse as a result of a voluntary allotment. It is your responsibility to recover any overpayments.

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If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Sill Legal Assistance Office is located on the 4th floor of Building 4700, Hartell Hall (Welcome Center) on Mow-Way Road.