

Uniformed Services Retirement System

(Revised June 2019)

The Uniformed Services Retirement System provides generous pensions to its members after retirement. The retirement benefits are statutorily authorized under Section 10 of the U. S. Code. These pensions are funded by tax revenues without separate pension funds in trust. The benefits paid are in the nature of a defined benefit plan. However, the benefits do not vest until retirement with at least 20 years of creditable service (for participants in the military reserves and National Guard, there is a different pension system, with retirement at age 60).

The Uniformed Services Former Spouses' Protection Act (USFSPA)

The Uniformed Services Former Spouses' Protection Act (USFSPA) (Public Law 97-252, 96 Stat. 730(1982)) was signed into law in 1982 to deal with uniformed services retirement benefits (including military reserves and National Guard) awarded to former spouses. The basic characteristics of the USFSPA are as follows:

1. Applies to all uniformed service divorces subsequent to June 25, 1981.
2. Prohibits some, but not all, retroactive awards of uniformed services retired pay payable prior to June 25, 1981.
3. Permits uniformed services retired pay to be classified as property for purposes of divorce settlement.
4. Permits the former spouse to receive up to 50 percent of the uniformed services member's retired pay (or up to 65 percent including court-ordered child support).
5. Prohibits courts from ordering a uniformed services member to retire in order to commence USFSPA payments.
6. Does not allow courts to order a uniformed services member to begin making USFSPA payments before the member actually retires.
7. Provides for payments of retired pay to the abused former spouse of uniformed services personnel whose entitlement to retired pay has been terminated or denied.
8. There is no statute of limitations on when the former spouse must file to receive the retired pay.

9. Award of uniformed services retirement pay to former spouses under USFSPA is based on the member's pay grade at the date of divorce, not at the time of retirement.

10. Uniformed services retired pay awarded to former spouses may be subject to cost-of-living-allowances (COLAs).

11. Uniformed services retirement benefits are subject to the Survivor Benefit Plan (SBP). The award of the SBP is exclusive from the award of retired pay. In other words, a former spouse might not be awarded any portion of the retired pay, but might be named as the SBP beneficiary (as could children).

12. The USFSPA prohibits the partitioning of certain disability pay. Uniformed services disability pensions are not marital property subject to division. Some state courts are ignoring this provision of USFSPA. The only disability pay protected by the USFSPA is that awarded under Title 10, Section 61 of the U. S. Code, where the military member waives a portion of his or her retired pay in order to receive equivalent compensation from the Department of Veterans Affairs.

13. In order for the former spouse to receive direct payment from the Defense Finance and Accounting Service Center (or other agency administering retired pay for that branch of service), the marriage must have lasted at least 10 years during which the member has performed at least 10 years of creditable service, often referred to as the "10-and-10 rule".

14. The 10-and-10 rule does not apply to orders providing for alimony, child support or Survivor Benefit Plan.

Uniformed service credits may count in other pension systems to increase a pension, such as in plans for civilian employees of the federal government (CSRS and FERS), certain teacher's programs and police and firemen's pension programs.

Award of Retirement Pay

Awards of uniformed services retired pay to former spouses are based on the member's pay grade at the time of divorce, as opposed to the accrued benefits as of the date of retirement.

Survivor Benefit Plan

A provision in PL 99-661 (Nov. 14, 1986) allows a court to require a member to elect the SBP for a former spouse or both a former spouse and child.

The former spouse's SBP will be discontinued if he/she remarries before age 55. However, if the second marriage ends because of death or divorce, benefits will be resumed.

Election of SBP coverage is a financial decision. There are advantages and disadvantages when compared to the purchase of a similar insurance policy:

1. SBP benefits are paid as an annuity in monthly installments. Insurance benefits are paid in a lump-sum.
2. Amounts withheld for SBP are not included in taxable income. Premiums for life insurance are paid after tax.
3. The cost of SBP will generally be lower. No physical qualification for SBP when insurability is in question.
4. SBP is subject to COLAs. Interest on lump-sum insurance benefits could exceed COLAs.
5. Lump-sum from insurance benefits can be passed to a beneficiary. SBP terminates upon the death of the former spouse.

Before making a decision regarding the SBP, a former spouse should consult with an insurance agent, financial planner or tax accountant.

If the member elected (or SBP was awarded to the former spouse) to participate in the SBP for spouse, the divorce affects this election. Since SBP elections are made by category, losing the person in the spouse category suspends coverage. In order to affect coverage the member has to properly notify the designated agent for his or her branch of the service of the divorce. If premiums continue to be withheld following a divorce, do not assume that the now-former spouse is the covered beneficiary. That is not the case unless the member has taken two specific actions with the designated agent to make that happen as follows:

1. Provide a certified copy of the divorce decree or other order which specifically names the former spouse as a beneficiary of the member and;
2. Requests in writing that the deemed election be changed from "spouse" to "former spouse."

Practice Tip: Be sure to include in the decree or separate order that the member will cooperate by signing any and all documents required to transmit this request to the designated agent. Better yet, have the request prepared prior to entry and have the member sign it before entry of the decree.

Should the member not take both steps outlined above, the former spouse's coverage is invalid, regardless of whether or not the costs are being deducted. If the court orders that the former spouse is to be named as a beneficiary of the SBP, the former spouse can take the same steps outlined above to effect the change, sometimes referred to as a "deemed" election.

In either case, **you have (1) ONE YEAR from the date of the divorce to effect the change.**

If the divorce instrument did not refer the SPB and the parties intended (or the Court Ordered) that the former spouse was to be entitled to the SPB, the one-year limitation may be appealed. In order to appeal the one-year limitation, the original divorce instrument has to be amended to include an award or Order of the SBP benefit.

Designated Agents:

The designated agent for each of the Uniformed Services is:

U. S. Army and Reserves, Army National Guard and Air National Guard: Commander, Defense Finance and Accounting Service, DFAS-Cleveland Center, ATTN: DG, P. O. Box 998002, Cleveland, OH 44199-1126; (800) 321-1080.

U. S. Air Force and Reserves: Commander, Defense Finance and Accounting Service, DFAS-Cleveland Center, ATTN: DG, P. O. Box 998002, Cleveland, OH 44199-1126; (800) 321-1080.

U. S. Navy and Reserves: Commander, Defense Finance and Accounting Service, DFAS-Cleveland Center, ATTN: DG, P. O. Box 998002, Cleveland, OH 44199-1126; (800) 321-1080.

U. S. Marine Corps and Reserves: Commander, Defense Finance and Accounting Service, DFAS-Cleveland Center, ATTN: DG, P. O. Box 998002, Cleveland, OH 44199-1126; (800) 321-1080.

U. S. Coast Guard and Reserves: Commanding Officer (LGL), Coast Guard Pay and Personnel Center, 444 SE Quincy Street, Topeka, Kansas 66683-3591; (913) 295-2516.

U. S. Public Health Service: Compensation Branch, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Public Information:

1. The following information is considered public information:

- a. A member's Gross Retired Pay
- b. The member's dates of entry into the service and date of separation from service.
- c. The member's Survivor Benefit Plan election
- d. If member was retired for disability under Title 10, Chapter 61 of the U. S. Code

2. This information may be obtained by requesting it from the designated agents for each of the Uniformed Services or the National Personnel Records Center at the following address:

National Personnel Records Center
1 Archives Drive
St. Louis, MO 63138-1002