

Division of Retirement Pay

Retirement pay is often the largest asset in divorces where one party is an active or retired military member. There is no federal right to receive a portion of your spouse's retired pay.

The passage of the Uniformed Services Former Spouse's Protection Act allows a state court to treat military disposable retired pay as a marital asset to be divided as support, alimony or property.

State law controls whether or not retired pay can be apportioned, and it determines the method that will be used. However, all state courts have allowed for the division of military retired pay.

Additionally, a former spouse receives retired pay pursuant to a court order only if and when a military member retires. No authority (including any court) may order a military member to retire in order to provide retired pay to a former spouse.

The following courts are authorized to divide military pay: a court of competent jurisdiction of any state, territory, or possession; any federal court of competent jurisdiction; or any foreign court of competent jurisdiction if there is a treaty requiring the U.S. to honor court orders of the particular foreign nation. *Japan does not have such an agreement with the U.S.*, which means no Japanese court can award military retired pay.

Jurisdiction for the division of retired pay as a *matter of property distribution* is further limited based on the member's domicile in the territorial jurisdiction of the court, the member's residence within the state other than because of military assignment, **or** the member's consent to jurisdiction.

OTHER RESOURCES:

Defense Finance and Accounting Service
(DFAS):

<https://www.dfas.mil/garnishment/usfspa/faqs.html>

Legal Assistance Hours:
By Appointment Only

Notary Hours:
Monday–Thursday
0900-1500



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DIVORCE & RETIREMENT PAY

This Brochure Includes:

- Amount Subject to Division
- Tax Implications of Division
- Direct Payment by DFAS
- Other Former Spouse Benefits
- Other Resources



The information in this brochure is of a general nature and is not intended as a substitute for legal counsel.

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What amount of retired pay is subject to division?

Although a state court may divide retired pay in whatever way it wants, DFAS limits the portion of retired pay it will pay directly to the former spouse. Other methods of collecting additional retired pay may be possible under state law (for example, attaching the military retiree's property). For DFAS, only disposable retired pay is subject to division and a former spouse cannot get more than 50 percent of the disposable retired pay pursuant to a court order for property settlement. Payment for up to an additional 15 percent of disposable retired pay is authorized to honor garnishment orders for child support and alimony.

Is there a formula to determine my percentage?

There is no federal formula, however many states use formulas similar to the one below:

Y = Length of overlap of marriage and military service, in months. Z = Total time in military service, in months.
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What is "disposable retired pay"?

Disposable retired pay is the total monthly retired pay (gross) to which a member is entitled less certain authorized deductions. There are also special rules concerning disability pay.

What happens if my ex-spouse also receives disability pay?

Retired members who are moderately disabled can receive benefits from the Veterans' Administration (VA). To receive these benefits, they must first waive an equivalent amount of retired pay. These VA benefits are not taxable and are not "disposable retired pay." The money waived to receive VA benefits is excluded from the term "disposable retired pay."

How can a former spouse get direct payments from DFAS?

1. The Uniformed Services Former Spouse's Protection Act authorizes DFAS to make direct payments to a former spouse of a service member from retired pay in response to court-ordered alimony, child support, or division of marital property. For all direct payment orders, there must be:
 - A. A final decree of divorce, dissolution, legal separation or court approval of a property settlement agreement; and
 - B. A statement that the military member's rights under The Soldiers' and Sailors' Civil Relief Act were observed (if the member was not represented in court).
2. For direct payment of retired pay as part of a property distribution, the following additional requirements apply:
 - A. A "10 year" test must be met: There must be at least 10 years of marriage which overlap with 10 years of creditable service toward retirement.
 - B. The court order must provide for payment from military retired pay, and the amount must be a specific dollar figure or specific percentage of disposable retired pay; and
 - C. The order must show that the court has jurisdiction over the member as discussed above

NOTE: There are no special requirements for a former spouse to receive direct payment of child support and alimony awards.

How does a former spouse apply for direct payment?

The former spouse should complete a DD Form 2293 (Sep 2013), which is available at the Military Personnel Flight, Customer Service Section (225-9913). The former spouse should send the completed form along with a certified copy of the divorce decree ordering a division of retirement pay and other required/specified documents to the appropriate address listed on the form.

When does payment terminate?

It terminates upon the death of the member or former spouse, unless the applicable court order provides that the payment terminate earlier. Additionally, a court order may be modified in a subsequent court proceeding.

A court may also order a spouse to make the former spouse a beneficiary for a survivor benefit plan. The beneficiary of this plan will receive an annuity upon the death of the retired member.

What are the tax implications of receiving direct pay?

Amounts paid directly to a former spouse by DFAS will not be treated as retired pay earned by the retiree. Direct payments of retired pay received from DFAS by the former spouse are now subject to withholding. DFAS will withhold taxes on amounts paid directly to ex-spouses. Separate W-2 forms are issued to the retiree and the former spouse.

Other Former Spouse Benefits

Former spouses are eligible for full medical, commissary, and exchange privileges if married to a service member for at least 20 years AND the service member completed 20 years active duty AND the marriage coincides with active duty for at least 20 years (20-20-20).

If the marriage coincides with active duty for less than 20 years but at least 15 years (20-20-15), the former spouse is entitled only to full health insurance for one year, after which a conversion policy may be purchased. Former spouses who do not meet either criteria can purchase a group policy from Mutual of Omaha. All these privileges are lost upon remarriage of the former spouse.

*NOTE: A former spouse may still be the beneficiary of Servicemembers' Group Life Insurance (SGLI), unless the member changes that designation manually.