

VOLUME 7B, CHAPTER 29: “FORMER SPOUSE PAYMENTS FROM RETIRED PAY”

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [***bold, italic, blue, and underlined font***](#).

The previous version dated [June 2019](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, renumbered, and formatted chapter to comply with current administrative instructions.	Revision
4.2 (290402)	Revised by expanding on the additional documentation that may need to be provided by the former spouse for the application process.	Revision
6.10 (290610)	Added a note specifying the requirements for a deemed election for former spouse coverage under the Survivor Benefit Plan.	Addition
6.12.3 (290612.C)	Added language for when court orders vacate or does not vacate prior court orders.	Addition
10.1.4 (291001.D)	Added language to consider implication of retroactive awards of disability compensation or Combat-Related Special Compensation.	Addition
References	Updated formatting to comply with administrative instructions.	Revision

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CHAPTER 29

FORMER SPOUSE PAYMENTS FROM RETIRED PAY

1.0 GENERAL (2901)

1.1 Purpose (290101)

This chapter explains how a former spouse can apply for direct payments from a military member's military retired pay and how the former spouse's payments will be administered.

1.2 Authoritative Guidance (290102)

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 15, 28, 31, 38, 42 and 50. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS (2902)

2.1 Alimony (290201)

Alimony is a legal obligation where a member is ordered to pay an amount for the support and maintenance of a spouse or former spouse. This definition includes attorney's fees, interest, and court costs. Alimony does not include child support, property settlement, equitable distribution of property, or any other division of property.

2.2 Child Support (290202)

Child support is a legal obligation where a member is ordered to pay an amount for the support and maintenance of a child. This definition includes costs for health care, arrearages, attorney's fees, interest, penalties, and other related relief.

2.3 Court (290203)

Court means any court of competent jurisdiction of any state (in the United States), the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and any court of the United States, as defined in [28 U.S.C. § 451](#). Court also includes a court of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

2.4 Court Order (290204)

Court order means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a property settlement incorporated into such an order. Court order also includes orders issued incident to a divorce, such as an order dividing military retired pay or a domestic relations order (DRO) that divides military retired pay. NOTE: A DRO is not required, but will be accepted. A court order also includes a support order as defined in section 453 of the Social Security Act ([42 U.S.C. § 653\(p\)](#)).

2.5 Creditable Service (290205)

Creditable service means years and full months of military service creditable for the purpose of computing a member's retired pay entitlement if the member is on active duty or the Reserve retirement points creditable if the member is a Reserve component member. See [10 U.S.C. §§ 1405](#) and 12733, Chapter 1, and Chapter 3.

2.6 Designated Agent (290206)

Designated agent is the agent authorized to review applications for direct payments made. See paragraph [4.0](#) for specific designations.

2.7 Disposable Retired Pay (290207)

Disposable retired pay is defined in paragraphs [7.1](#) and [8.2](#).

2.8 Entitlement (290208)

Entitlement is the legal right of a military member to receive military retired pay. The term refers to members who actually receive retired pay rather than those who qualify by completing the required years of service.

2.9 Final Decree (290209)

A final decree is an order from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

2.10 Former Spouse (290210)

Former spouse is the former husband or wife, or if the parties are legally separated, the current husband or wife, of a military member.

2.11 Formula Award (290211)

A formula award computes a former spouse's property interest in a military member's retired pay based on the relationship of the length of the parties' marriage during the member's creditable service (numerator) to the member's total service that is creditable toward retirement (denominator). A formula award is stated as a marital fraction in which the numerator and denominator are multiplied by a given percentage.

2.11.1. For members qualifying for an active duty (i.e., regular service) retirement, the numerator is the number of months the parties were married while the member was performing creditable military service and the denominator is the number of months of the member's total creditable military service. [The elements must be expressed in terms of whole months.](#) The former spouse's award is usually calculated by multiplying the marital fraction by one-half or 50 percent, or any other given percentage amount. See paragraph 6.7 for acceptable active duty formula award language.

2.11.2. For members qualifying for a Reserve (i.e., non-regular service) retirement, the numerator is the number of Reserve retirement points earned during the parties' marriage, and the denominator is the member's total number of Reserve retirement points. [The elements must be expressed in terms of Reserve retirement points.](#) The former spouse's award is usually calculated by multiplying the marital fraction by one-half or 50 percent, or any other given percentage amount. See subparagraph 6.7.2 for acceptable Reserve formula award language.

2.12 Garnishment Order (290212)

A garnishment order is an order directing the designated agent to issue payments from a member's pay to satisfy a legal obligation for child support, alimony, or division of property other than a division of military retired pay, or a monetary judgment rendered against a member for the physical, sexual, or emotional abuse of a child. See Public Law [\(PL\) 115-91, section 534.](#)

2.13 Hypothetical Retired Pay Award (290213)

Hypothetical retired pay award is an award based on a percentage of retired pay that is calculated using variables provided in a court order that are different from the member's actual retirement variables (i.e., [hypothetically what would the member's retired pay be if the member retired on this date](#)). The retired pay calculated using the court ordered variables is called the member's hypothetical retired pay. A hypothetical award typically attempts to define the property interest in the retired pay as if the member had retired at the time the court divided the member's military retired pay based upon the member's rank, or high-3 amount, and years of service accrued to that point in time. Thus, the former spouse does not benefit from the member's pay increases due to promotions or increased service time after the divorce.

2.14 Member (290214)

A member is an individual who is on active duty, one who is a reservist, or one who is retired from military service.

2.15 Renounced Pay (290215)

Renounced pay is military retired pay to which a member is entitled, but which the member has waived receipt.

2.16 Retired Pay (290216)

Retired pay is the statutory entitlement due a member based on conditions of the retirement law, pay grade or high-3 pay amount, years of service, and the date of retirement. Retired pay includes “retainer pay.”

2.17 Retired Pay Award (290217)

Retired pay award is a portion of a member’s disposable military retired pay awarded to a former spouse or current spouse by a court of competent jurisdiction as a property division.

2.18 Standard Retired Pay Multiplier (290218)

The standard retired pay multiplier used to compute retired pay for members with a Date of Initial Entry into Military Service (DIEMS) prior to January 1, 2018 who have not elected to participate in the Blended Retirement System (BRS) is 2.5 percent times the member’s years of creditable service. See Chapter 3. The retired pay or retainer pay multiplier for a member with a DIEMS on or after January 1, 2018, or a member with a DIEMS before January 1, 2018, who elected to enroll in the BRS, is 2 percent times the years of creditable service. See Chapter 3.

2.19 Uniformed Services Former Spouses’ Protection Act (USFSPA) (290219)

PL 97-252, enacted on September 8, 1982, states that the section of Title 10 addressing former spouse protection may be cited as the “USFSPA.” Therefore, USFSPA is used throughout and refers to the provisions of [10 U.S.C. § 1408](#).

3.0 AWARDS THAT CAN BE COLLECTED UNDER THE USFSPA (2903)

3.1 Child Support (290301)

A former spouse can collect child support if there is a court order that awards child support, and the former spouse and military member have ever been married to each other.

3.2 Child Support Arrearages (290302)

To collect child support arrearages, a former spouse must submit a recent court order that lists the total arrearages. The order cannot be older than two years from the date the designated agent receives it.

3.3 Alimony (290303)

A former spouse can collect current alimony under the USFSPA, but not alimony arrearages.

3.4 Retired Pay Award (290304)

A former spouse can collect current retired pay award payments, but not retired pay award arrearages.

3.5 Property Other Than a Division of Retired Pay (290305)

A former spouse can collect a property division, other than a retired pay award, by garnishment if an order awards it to the former spouse and if the former spouse was also awarded alimony, child support, or a division of retired pay. [A former spouse must be receiving at least one type of payment \(i.e., division of property, alimony, or child support\) from the designated agent and must provide the designated agent a garnishment writ to commence payments under this provision.](#) See subparagraph 4.1.2 for more information.

3.6 Child Abuse Garnishments (290306)

Garnishment of a military retiree's retired pay in satisfaction of a judgment for physical, sexual or emotional abuse of a child under 18 years of age.

3.6.1. Subject to a court order, any payment of retired pay that would otherwise be made to a member shall be paid (in whole or in part) by the [designated agent](#) to another person [as](#) provided for in the terms of a child abuse garnishment order. The total amount payable under a child abuse garnishment order cannot exceed 25 percent of the member's disposable retired pay.

3.6.2. A court order providing for the payment of child support, alimony, or division of property, to the spouse or a former spouse of the member, is given priority over a child abuse garnishment order.

3.7 Blended Retirement System (BRS) Lump Sum Awards (290307)

3.7.1. A member who retires under the BRS has the option of electing to receive a lump sum of a portion of their retired pay (either 25 or 50 percent) as a "discounted present value of his or her retired pay." The lump sum amount is classified as retired pay and therefore is subject to division between a member and a spouse or former spouse pursuant to the provisions of a court order. A member has several options of how to receive the lump sum, including a number of annual payments. A spouse or former spouse who is entitled to receive a portion of those payments will be paid at the time the member receives each payment.

3.7.2. In order for a spouse or former spouse to receive a portion of lump sum payments made to a member pursuant to the member's election under the BRS, the designated agent must have received and approved the application for former spouse payments prior to the member's receipt of the lump sum amount. Lump sum payments will not be divided retroactively if the application for former spouse payments was not received prior to the members' receipt of the lump sum payment. For example, if the retiree elects to receive the lump sum amount in four annual payments, (June 2026, 2027, 2028 and 2029) but the former spouse does not submit an application for former spouse payments until January 2028, the designated agent **upon approval of the application,** will only divide the June 2028 and June 2029 annual lump sum payments. See [10 U.S.C. § 1415](#) and Chapter 3 for complete information on the BRS.

4.0 APPLICATION BY FORMER SPOUSE (2904)

4.1 Application Process (290401)

4.1.1. The former spouse must submit a completed [DoD \(DD\) Form 2293](#), Application for Former Spouse Payments From Retired Pay, and a certified copy of the court order awarding alimony, child support, or military retired pay. A court order for child support arrearages cannot be older than 2 years from the date the designated agent receives it. The court order must be certified by the clerk of the court that issued the order.

4.1.2. If the former spouse is applying for a property division other than a retired pay award, the former spouse must submit a garnishment order ([writ of garnishment](#)) in addition to the DD Form 2293 and the court order. **To be eligible for payments under this section, a former spouse must be receiving at least one type of payment (i.e., division of property, alimony, or child support) from the designated agent.**

4.1.3. The former spouse may mail the application to the appropriate designated agent given in paragraph 4.3, or may fax it to the number provided in paragraph 4.3. Please read the instructions and certification on the DD Form 2293 carefully.

*4.2 Additional Documentation (290402)

4.2.1. A former spouse may need to provide additional documentation if the designated agent cannot determine whether the former spouse is eligible for USFSPA payments based solely on the DD Form 2293 and the court order.

4.2.2. A person designated by the former spouse in a Power of Attorney (POA) form may assist the former spouse in completing the DD Form 2293 and in notifying the designated agent of address changes. However, a person designated in the POA form cannot change the payment account number. Only the former spouse can request such changes. Additionally, payments can only be made to the account in the name of the former spouse. A copy of a POA form that properly references entitlement of payments under USFSPA must be provided.

4.2.3. A person appointed by the court to hold fiduciary responsibilities over the estate and/or property of the former spouse may make address and account changes on behalf of the former spouse. A certified copy of the order (i.e., conservatorship and guardianship) must be provided within one year of the appointment or before the specified termination date.

4.3 Where to Send an Application for USFSPA Payments (290403)

The former spouse should send the application and all supporting documents to the following designated agent for the appropriate Uniformed Service.

4.3.1. For Army, Navy, Air Force, and Marine Corps mail to:

DFAS Office of General Counsel
Attn: Garnishment Law Directorate
P.O. Box 998002
Cleveland, OH 44199-8002
Fax: 877-622-5930

4.3.2. For U.S. Coast Guard, Public Health Services, and National Oceanic and Atmospheric Administration mail to:

Commanding Officer (LGL)
Pay and Personnel Center
444 S.E. Quincy Street
Topeka, KS 66683-3591
Fax: 785-339-3788

4.4 When to Apply for USFSPA Payments (290404)

A former spouse may apply for payments any time after the court has issued a court order enforceable under the USFSPA. Although payments will not start under the USFSPA until after the member starts to receive retired pay, the designated agent can conditionally approve a former spouse's application prior to that, and retain the application pending the member's retirement.

4.5 Conditional Preapproval (290405)

4.5.1. If the former spouse applies prior to the member receiving retired pay, the designated agent will perform a legal review of the application, and may conditionally approve it based on information available at the time of the review concerning the member's duty status (active or Reserve).

4.5.2. At the time the member begins to receive retired pay, the designated agent will perform a second review prior to establishing the former spouse's direct payments. If the former spouse's award was based on a formula or hypothetical retired pay amount, and the member's status has changed since the initial legal review, it may be necessary to reject the application and require the former spouse to submit a clarifying order providing the necessary information. For

example, if the formula or hypothetical award lists the Reserve retirement points, but the member retires from active duty, the designated agent **will** need a new court order that lists a **valid** active duty formula. See paragraph 6.7 concerning formula awards and paragraph 6.8 concerning hypothetical retired pay awards.

5.0 NOTIFICATION (2905)

5.1 Notification to Former Spouse of Approval or Disapproval (290501)

Within 30 days of the date of receipt of a former spouse's application, the designated agent will notify the former spouse if his or her application has been approved or disapproved. If approved, the designated agent will state the month the former spouse's payments will tentatively begin. If the designated agent cannot approve the application, the notice will include an explanation regarding the reason(s) why.

5.2 Notification to the Member of Approval of an Application (290502)

If a former spouse's application is approved, the designated agent will notify the member affected within 30 days of the date of receipt of the application. The member will not be notified if the application is not approved.

5.3 Second Notice (290503)

If the designated agent notified the member as part of a conditional preapproval more than 90 days prior to the member's becoming entitled to receive retired pay, the designated agent will provide a second notice to the member when the designated agent establishes the former spouse's payments at the time the member begins to receive retired pay.

5.4 Contents of Notice to Member (290504)

5.4.1. The notice will explain that payments issued under the USFSPA cannot exceed 50 percent of the member's disposable retired pay (or 65 percent of the member's disposable pay when also withholding for an income withholding order issued pursuant to [42 U.S.C. § 659](#)), and will contain the month that the payments will tentatively begin.

5.4.2. The notice will inform the member that he or she must notify the designated agent if the court order has been amended, superseded, or set aside.

5.4.3. The notice will inform the member that if he or she submits information in response to this notice, he or she consents to the disclosure of that information.

5.4.4. The notice will include a copy of the court order.

5.4.5. The notice will advise that the member's failure to respond within 30 days of the date that the notification is mailed may result in the payment of a portion of the member's retired pay to a spouse or former spouse as set out in the notice to the member.

5.5 How to Prevent USFSPA Payments From Starting (290505)

The member must provide documentary evidence that a former spouse's court order is legally defective or has been appealed, amended, or set aside. If the designated agent determines that the documentary evidence is sufficient to bar payments to a former spouse, the designated agent will not start the payments. The designated agent will then inform the former spouse that payments will not start, and provide copies of the documentary evidence to the former spouse.

6.0 COURT ORDERS (2906)

6.1 Contents of Court Order (290601)

6.1.1. The court order must be regular on its face. This means that a court of competent jurisdiction issued the order and nothing on its face provides reasonable notice that it was issued without authority of law.

6.1.2. If the court order awarding child support or alimony appears on its face to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the member.

6.1.3. The court order must award former spouse alimony, child support, or a retired pay award. There is no requirement in Federal law that specifies how military retired pay is to be divided.

6.1.4. If the order contains a retired pay award, that award must be expressed as a fixed dollar amount or as a percentage of disposable retired pay. A retired pay award expressed as a percentage will automatically receive a proportionate share of the member's cost-of-living adjustments (COLA), while one expressed as a fixed amount will not. There is no authority for a retired pay award to state a fixed dollar amount and also order COLAs. Retired pay awards phrased in that manner will be construed as a fixed dollar amount **and will not receive COLAs**.

6.1.5. The designated agent will construe percentage awards such as a percentage of gross retired pay, as a percentage of disposable retired pay regardless of the language in the order.

6.1.6. If the former spouse and the member were divorced before the member became entitled to receive military retired pay, the retired pay award may be expressed as a formula or hypothetical retired pay award in accordance with paragraphs 6.7 and 6.8. Since the computation of formula and hypothetical retired pay awards result in a percentage, they are considered a type of percentage award, and would automatically receive a proportionate share of the member's retired pay COLAs.

6.2 Divorces Finalized While the Member is Still on Active Duty (290602)

6.2.1. For court orders issued prior to December 19, 2003, the court order must show that the member's rights under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. Appendix 501 et. seq.) were complied with.

6.2.2. For court orders issued on or after December 19, 2003, the court order must show that the member's rights under the Servicemembers Civil Relief Act [50 U.S.C. § 3901](#) et. seq. (formerly cited as 50 U.S.C. Appendix 501 et. seq.) were complied with.

6.3 Domestic Relations Order (DRO) (290603)

There is no requirement in USFSPA that a former spouse submit a DRO, but the designated agent will accept one if it is submitted and if it meets the requirements of the USFSPA.

6.4 Requirements Specific to a Retired Pay Award (290604)

6.4.1. In the case of a retired pay award, the designated agent must be able to determine from the court order that the court dividing military retired pay had jurisdiction over the member in one of the following ways:

6.4.1.1. The member resided in the territorial jurisdiction of the court at the time of the legal proceeding due to other than military assignment;

6.4.1.2. The court finds that member's domicile was in the territorial jurisdiction of the court at the time of the legal proceeding; or

6.4.1.3. The member consented to the jurisdiction of the court. If the court order does not "explicitly" state that the member consented to the court's jurisdiction, the designated agent will regard the member's participation in the legal proceeding, other than to contest the court's jurisdiction, as evidence of the member's consent to the court's jurisdiction in the proceeding dividing the member's military retired pay.

6.4.2. Also, in the case of a retired pay award, the designated agent must be able to determine from the application that the former spouse and the member were married for at least 10 years during which the member performed 10 years or more of service creditable toward retirement eligibility (the "10/10" requirement). The 10 years of creditable service is determined upon the effective date of the divorce, dissolution, legal separation, or annulment. There is no "10/10" requirement for payment of alimony, child support awards, or child abuse garnishments under USFSPA.

6.5 State Law Jurisdiction (290605)

The satisfaction of state law jurisdictional requirements is not sufficient alone to satisfy the additional jurisdictional requirement stated in paragraph 6.4. If the court states that it has USFSPA jurisdiction, it must state the basis for the finding, i.e., member's residence, member's domicile or member's consent.

6.6 Member's Consent to a Separation Agreement (290606)

If the member signed a separation agreement, the designated agent will presume that the member consented to the jurisdiction of any court that at any time incorporates the agreement into a court order.

6.7 Acceptable Formula Awards (290607)

6.7.1. If the former spouse's award is expressed in terms of a formula, all the variables needed to calculate the formula must be included in the court order, with the exception of a member's total number of months of creditable service or total number of Reserve retirement points, which the designated agent will provide in accordance with subparagraphs 6.7.2 and 6.7.3. If the order provides all the variables needed to do the calculation, including total months of military service or total Reserve retirement points, the designated agent will calculate the formula using the variables provided, even if the figure is different from the member's actual total. If the member disagrees with the number listed in the court order (i.e., the denominator), the member will have to petition the court to get the order corrected to show the member's actual total months or points of military service. If any needed variable besides the total number of months of creditable service or total number of Reserve retirement points is not provided in the order, the applicant will have to provide the designated agent with a clarifying court order, which provides the necessary variable. The designated agent will carry out any percentages derived from formulas to four decimal places.

6.7.2. If the court order requires the designated agent to supply the denominator of a marital or coverture fraction, and the member qualifies for an active duty (i.e., regular service) retirement, the formula award must be expressed in terms of whole months. The numerator of the formula fraction is the number of months of marriage during military service. This number must specifically be provided in the court order. The denominator of the formula is the member's total number of months of creditable military service. The designated agent will provide the denominator if needed to compute the formula. Any days or partial months of service will not be considered. If the award is expressed in terms of years instead of months, the designated agent will convert years into whole months by rounding down to the nearest month.

6.7.3. If the court order requires the designated agent to supply the denominator of a marital or coverture fraction, and the member qualifies for a Reserve (i.e., non-regular service) retirement, the formula award must be expressed in terms of Reserve retirement points. In the case of a Reserve retirement, the numerator of the formula is the number of Reserve retirement points earned during the marriage. [The Reserve retirement points that are to be used for the numerator must be provided in the court order.](#) The denominator of the formula is the member's total number of Reserve retirement points at the time of retirement. [If needed, the designated agent will provide the denominator if the order states it represents the member's total number of Reserve retirement points at the time of retirement.](#) [If the denominator represents anything other than the member's total Reserve retirement points at the time of the retirement \(for example, Reserve retirement points as of the date of divorce\), the designated agent is unable to provide it.](#) [The designated agent cannot honor a formula award for a member that qualifies for Reserve retirement that is expressed in terms of whole months, even if both the numerator and denominator are provided.](#)

6.7.4. The sample Military Retired Pay Division Orders (see Figures 29-1 and 29-2) provide examples of acceptable formula award language. All the blanks in the sample awards represent variables that must be provided in the court order. The sample language is not required, but any award expressed using the applicable sample language will be acceptable.

Example of active duty formula: The court order awarded the former spouse a percentage of the member's disposable retired pay calculated by multiplying 50 percent times a fraction, where the numerator is 144 months of marriage during military service, and the denominator is the member's total months of active duty service. The member later retired after 20 years (or 240 months) of creditable service. The former spouse's award would be computed as follows: $50\% \times 144 \text{ months} / 240 \text{ months} = 30\%$. The designated agent would pay 30 percent of the member's disposable retired pay.

6.8 Hypothetical Retired Pay Awards (290608)

6.8.1. Military retired pay is computed at the time the member retires and it is based on two possible methods depending on when the member initially enters service. It will either be computed by using the member's rank and total years of service at the time of retirement, or the member's [retired pay base, also known as high-3](#) (highest 36 months of earnings), and total years of service at the time of retirement. For members who entered military service before September 8, 1980, the member's rank is used. For members who entered military service on or after September 8, 1980, the member's [retired pay base \(high-3\)](#) is used.

6.8.2. A hypothetical retired pay award determines the amount awarded to a former spouse by using retirement information different [from](#) what will exist at the time a member actually retires. Typically, the court will use variables to determine the retired pay award as though the member had retired at the time of the court order dividing military retired pay or some other date prior to the member's actual retirement. In this manner, the former spouse is awarded a portion of the member's retirement without accounting for promotions or service completed after the date of the order.

6.8.3. The hypothetical retired pay amount is calculated by multiplying the hypothetical retired pay multiplier (see subparagraph [6.8.4](#)) times the hypothetical retired pay base (i.e., the member's active duty pay based on their rank and years of service or the average of their monthly pay for their highest 36 months of pay; their "high-3"). If the initial retired pay computation is not a multiple of \$1, it is rounded down to the next lower multiple of \$1. See Chapter 3 for retired pay calculations.

6.8.4. Retired Pay Multiplier

6.8.4.1. The standard retired pay multiplier is 2.5 percent multiplied by the member's years of creditable service. For example, the retired pay multiplier for an active duty member who serves 20 years will be 50 percent ($2.5\% \times 20 \text{ years} = 50\%$). In the case of a hypothetical retired pay award, the hypothetical retired pay multiplier is determined by multiplying

2.5 percent times the hypothetical years of creditable service provided in the court order. The resulting percentage is rounded to two decimal places. See Chapter 3 for retired pay calculations.

6.8.4.2. For members who retire under the BRS, the retired pay multiplier is 2 percent multiplied by the member's years of creditable service.

6.8.4.3. A hypothetical retired pay award for a reservist must be expressed in terms of Reserve retirement points rather than years of creditable service. The Reserve retirement points are converted into years of creditable service by dividing the Reserve retirement points on which the award is based by 360. The resultant figure is carried to three decimal places; then rounded to two. (See Chapter 3.) This resultant figure is used to compute the hypothetical retired pay multiplier. For example: 5,258 Reserve retirement points would convert to 14.61 years of service for multiplier purposes ($5,258 \text{ points} / 360 = 14.61 \text{ years}$).

6.8.5. Retired Pay Base

6.8.5.1. For members entering military service before September 8, 1980, the retired pay base is the member's basic pay at retirement based on the member's rank and years of service for basic pay purposes. See Chapter 3. When computing a hypothetical award for one of these members, their hypothetical retired pay base would usually be their basic pay as of the hypothetical retirement date.

6.8.5.2. For members entering military service on or after September 8, 1980, the retired pay base is the average of the member's highest 36 months of basic pay at retirement (high-3 amount). See Chapter 3. For these members, their hypothetical retired pay base would usually be their average basic pay for the most recent 36 months prior to the hypothetical retirement date. If the court order provides the annual amount of retired pay base (high-3), the designated agent will convert it to a monthly amount by dividing the yearly amount by 12 to arrive at the monthly average.

6.8.6. In order to enable the designated agent to calculate the hypothetical retired pay amount, the court order must provide:

6.8.5.1. The percentage the former spouse was awarded;

6.8.5.2. The hypothetical years of creditable service, or, in the case of a reservist, the Reserve retirement points on which the hypothetical retired pay is to be based;

6.8.5.3. The hypothetical retired pay base (high-3). In the case of members entering military service before September 8, 1980, the court order may provide either the member's hypothetical retired pay base or the member's hypothetical rank and years of service for basic pay purposes; and

6.8.5.4. The hypothetical retirement date.

6.8.7. For members whose divorce, dissolution, legal separation, or annulment was effective on or before December 23, 2016 (the effective date of the National Defense Authorization Act (NDAA) 2017), if the court intends that the hypothetical retired pay be calculated based on the pay tables in effect at the time the member becomes entitled to receive military retired pay, the designated agent will use as the retired pay base either the basic pay for the hypothetical rank and years of service as of the date the member becomes eligible to receive retired pay, or the member's actual retired pay base, whichever is lower. The court order must provide:

6.8.7.1. The percentage the former spouse is awarded;

6.8.7.2. The hypothetical years of creditable service, or, in the case of a reservist, the Reserve retirement points on which the hypothetical retired pay is to be based and the member's years of service for basic pay purposes;

6.8.7.3. The member's hypothetical rank; and

6.8.7.4. An unequivocal statement that the calculation is to be made as of the member's actual retirement date.

6.8.8. If the award language is missing any necessary variables, the court will have to clarify the award. See the sample Military Retired Pay Division Order (Figures 29-1 and 29-2) for examples of acceptable hypothetical retired pay award language.

6.8.9. All percentage hypothetical retired pay awards will be converted into a percentage of a member's actual disposable retired pay according to the following example:

The court order awarded the former spouse 50 percent of the disposable retired pay the member would have received had the member retired with 17 years of creditable service, a retired pay base of \$2,200.00 per month, and a hypothetical retirement date of June 1, 1999. The member actually retired on June 1, 2002, with 20 years of creditable service, a retired pay base of \$2,400.00 per month, and an initial gross retired pay of \$1,200.00 per month ($2.5\% \times 20 \text{ years} = 50\%$; $50\% \times \$2,400.00 = \$1,200.00$).

First, the designated agent will calculate the member's hypothetical retired pay multiplier, which in this example is 42.5 percent ($2.5\% \times 17 \text{ years} = 42.5\%$).

Next, the designated agent will calculate the hypothetical retired pay amount, which in this example is \$935.00 per month ($42.5\% \times \$2,200.00 = \935.00).

Then, the designated agent will apply retired pay COLAs to the hypothetical retired pay amount from the hypothetical retirement date to the date the member became eligible to receive retired pay, unless the court order directs otherwise.

This calculation will determine the present value of the hypothetical retired pay as of the member's actual retirement date. In this case, if the member had become eligible to receive retired pay on June 1, 1999, the hypothetical retirement date, the hypothetical retired pay, after adding the COLAs, would have been \$1,008 per month on June 1, 2002, the actual retirement date.

In these examples, the addition of the partial annual COLAs would be as follows:

<u>Year</u>	<u>COLA</u>	<u>Formula</u>
12/1/1999	1.7 percent	$\$935.00 \times 1.017 = \950.00 (rounded down)
12/1/2000	3.5 percent	$\$950.00 \times 1.035 = \983.00 (rounded down)
12/1/2001	2.6 percent	$\$983.00 \times 1.026 = \$1,008.00$ (rounded down)

Finally, the designated agent will convert the former spouse's percentage of hypothetical retired pay to a percentage of the member's actual disposable retired pay as follows: $50\% \times \$1,008.00 / \$1,200.00 = 42\%$. (All percentages derived from hypothetical computations will be carried out to four decimal places if applicable without rounding). In this example, 42 percent is the amount that the designated agent would enter into the retired pay system as the spouse/former spouse's retired pay award.

6.8.10. The military retired pay of a post-July 1986 member who has accepted a Career Status Bonus (CSB) is calculated using a reduced multiplier. (See Chapter 3.) However, when computing a retired pay award based on a hypothetical, the CSB member's hypothetical retired pay will be calculated using the standard multiplier. The retired pay of a member who has accepted a CSB will be recomputed using a standard multiplier effective the first day of the month after the member attains age 62. The former spouse's percentage will also be adjusted at the same time in accordance with subparagraph 6.8.8, using the member's recomputed retired pay in the denominator of the conversion fraction. This adjustment will result in a lower percentage being applied to a higher disposable pay figure, and will ensure that the former spouse continues to receive the amount intended in the court order.

6.8.11. When computing hypothetical awards for members under the BRS the former spouse's hypothetical award (percentage) will be calculated in accordance with subparagraph 6.8.8. However, since the actual military retired pay for members who retire under the BRS is calculated using the 2 percent multiplier, the BRS member's hypothetical retired pay will also be calculated using the 2 percent multiplier. Additionally, the designated agent will use the unreduced gross retired pay in the denominator of the conversion fraction, even if the member elects to receive a lump sum payment. Using the unreduced gross retired pay for the denominator ensures that the numerator and denominator are computed in an equalized manner (i.e., the same variables are used and one is not reduced).

6.9 Orders Issued Before June 26, 1981 That Did Not Divide Retired Pay (290609)

Any court order that contains a retired pay award [that](#) was issued before June 26, 1981 will be honored if it otherwise satisfies the requirements and conditions shown in this chapter. If a pre-June 26, 1981 decree or property settlement incident to the decree did not divide the member's military retired pay, and did not reserve jurisdiction to divide it, the designated agent cannot honor an application for payment based on a subsequent order issued on or after June 26, 1981, dividing retired pay as property.

6.10 Survivor Benefit Plan (SBP) Premium (290610)

6.10.1. Pursuant to [10 U.S.C. § 1452](#), the SBP premium must be deducted from the member's retired pay. The SBP premium cannot be deducted from the former spouse's portion of the member's retired pay. Any provision in a court order stating that the premium should be deducted from the former spouse's portion is unenforceable by the designated agent. Any adjustments between the parties for the SBP premium payment will need to be made outside of the stated procedures. However, those adjustments will not be considered by the designated agent when computing the retired pay award.

6.10.2. SBP premiums for members who elect a lump sum payment or payments will not be collected from the lump sum payment. Premiums will be deducted from the portion of retired pay that the member receives as regular retired pay after the lump sum payment. For more information on SBP premiums and BRS see Chapters 3, 42, and 45.

**Note: A court order associated with a divorce that requires a retired member to establish former spouse Survivor Benefit Plan (SBP) coverage is not self-executing. If a former spouse seeks to be deemed as the former spouse SBP beneficiary (to commence or continue SBP coverage after a divorce) (s)he must complete a DD Form 2656-10 ("Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election") and submit it along with a copy of the relevant court order, within one year of the order requiring the member to elect former spouse coverage. See DoDFMR Volume 7B, Chapter 43, paragraphs [430302](#) and [430504\(C\)](#)."*

6.11 Conflicting Retired Pay Awards (290611)

6.11.1. If the designated agent is served with court orders issued by different jurisdictions which contain conflicting awards enforceable under the USFSPA, the designated agent will deduct an amount equal to the largest amount required to be paid to the former spouse by either order, but will pay to the former spouse the least amount directed to be paid. The designated agent will retain the difference between the upper and lower ordered amounts until served with an order certified by the member and former spouse to be valid, and then pay the retained funds in accordance with the order.

6.11.2. If the designated agent is served with a court order containing conflicting retired pay award language within the same court order, or two orders issued on the same date that do not contain a time stamp, the designated agent will pay the former spouse the lower award amount; if the orders contain a time stamp, the order issued last controls. If one of the parties disagrees with the amount being paid, that party must provide the designated agent with a new court order stating the correct amount.

6.12 Court Orders Modifying Retired Pay Awards (290612)

6.12.1. If the designated agent is served with a court order [containing valid award language in accordance with this chapter and the USFSPA, that modifies or clarifies a](#) retired pay award, the designated agent will implement the order issued most recently. The order [with valid award language](#) issued most recently supersedes all prior orders.

6.12.2. If the designated agent is served with a court order [containing valid award language that modifies or clarifies](#) a retired pay award that was issued by a court of a state other than the state that issued the prior court order, the designated agent may implement the new order [containing valid award language](#) only if the court issuing this order had jurisdiction over both the member and former spouse in the manner specified in subparagraph [6.4.1](#).

* [6.12.3. If the designated agent is served with a court order containing invalid award language that modifies or clarifies a retired pay award and the order does not vacate or set aside a prior order with valid award language, the designated agent will continue to honor the prior valid court order. If the designated agent is served with a subsequent court order containing invalid award language that vacates or sets aside a prior order with valid award language, the designated agent will terminate former spouse payments until served with a subsequent order containing valid award language.](#)

6.13 Conditional Awards (290613)

The designated agent cannot honor a court order that makes the former spouse's payments conditional on the occurrence of some other event. There is no authority for the designated agent to ascertain whether a condition in a court order has been satisfied. The former spouse will need to obtain a modified court order without the condition.

6.14 Awards Based on Retired Pay Accrued During Marriage (290614)

The designated agent cannot honor awards based on the value of the member's retired pay that has "accrued" during the marriage because military retired pay does not accrue over time. Military retired pay is not a pension. Rather, it is a statutory entitlement computed at the time the member retires and it is based on the member's rank and total years of service at the time of retirement, or member's high-3 and total years of service.

6.15 Awards of a Percentage of the Marital Portion (290615)

The designated agent cannot honor an award of a percentage of the “marital portion” or “marital share” of a member’s retired pay unless the court order also provides all variables necessary for the calculation of the marital portion/share. See paragraphs 6.7 and 6.8 for examples.

6.16 Factual Errors in Court Orders (290616)

If a party submits documentary evidence that shows a factual error in a court order, this will not be sufficient to modify or stop payments being made pursuant to the court order. Subject to compliance with existing law, if a court order provides elements needed to calculate a former spouse award, including but not limited to, formulas, hypotheticals, and/or NDAA awards, the designated agent will use the elements provided even if the elements vary from the member’s actual figures. The party asserting the error must petition the court to correct the order. The designated agent does not have the authority to correct errors in court orders.

7.0 DISPOSABLE RETIRED PAY (2907)

7.1 Disposable Retired Pay (290701)

7.1.1. Disposable retired pay is defined by the USFSPA as a member’s total monthly retired pay (gross pay) entitlement minus authorized deductions. See 10 U.S.C. § 1408(a)(4).

7.1.2. If the former spouse and member were divorced on or before February 2, 1991, then USFSPA authorizes the following deductions:

7.1.2.1. Amounts owed to the United States;

7.1.2.2. Amounts withheld as Federal and state income tax withholding, consistent with the member’s current actual tax liability;

7.1.2.3. Fines and forfeitures ordered by a court-martial;

7.1.2.4. Amounts waived in order to receive compensation under Titles 5 or 38 of the U.S.C.;

7.1.2.5. SBP premiums paid, but only if the former spouse applying for a retired pay award payment under USFSPA is the beneficiary of the SBP; and

7.1.2.6. The amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability.

7.1.3. If the former spouse and member were divorced on or after February 3, 1991, then the USFSPA authorizes the following deductions:

7.1.3.1. Amounts owed to the United States due to the overpayment of retired pay, or amounts required to be recouped due to the member's entitlement to retired pay;

7.1.3.2. Fines and forfeitures ordered by a court-martial;

7.1.3.3. Amounts waived in order to receive compensation under Titles 5 or 38 of the U.S.C.;

7.1.3.4. SBP premiums paid but only if the former spouse applying for a retired pay award payment under USFSPA is the beneficiary of the SBP; and

7.1.3.5. The amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability.

7.3 Other Deductions Included in Court Order (290702)

If a court order directs the use of deductions other than those authorized in paragraph 7.1 to compute the former spouse's award, that provision of the court order is unenforceable. The designated agent will use only the deductions authorized in paragraph 7.1 for the computation of disposable retired pay.

8.0 DISPOSABLE RETIRED PAY UNDER THE NDAA (2908)

8.1 Application of the NDAA (290801)

The provision of the NDAA FY 2017, section 641, applies to divorces, dissolutions, annulments, and legal separations effective after December 23, 2016, that award the former spouse a retired pay award and:

8.1.1. That occur prior to an active duty member receiving military retirement pay, or

8.1.2. That occur prior to a reserve member receiving retired pay (generally 60).

8.2 NDAA FY 2017 Disposable Pay Limits (290802)

In addition to the definition of Disposable Retired Pay in paragraph 7.1, and the authorized deductions in subparagraph 7.1.2, the NDAA also limits disposable retired pay as follows:

8.2.1. The amount of retired pay is limited to that which the member would have been entitled using the member's retired pay base (rank or high-3) and years of service on the date of the final decree of divorce, dissolution, annulment, or legal separation; and

8.2.2. Increased by any COLA awards added from the effective date of divorce, dissolution, annulment, or legal separation to the member's date of retirement. [A provision in a court order purporting to restrict COLAs from being applied to a former spouse's award of retired pay is not enforceable and will not be honored.](#)

8.3 Variables Required to Calculate the NDAA FY 2017 Disposable Retired Pay (290803)

In order to enable the designated agent to calculate the NDAA FY 2017 disposable retired pay amount, the court order must provide the three variables listed in subparagraphs 8.3.1 or 8.3.2:

8.3.1. If the member entered the service before September 8, 1980:

8.3.1.1. The fixed amount, the percentage, the formula, or the hypothetical award that the former spouse is granted;

8.3.1.2. The member's pay grade (rank) at the time of divorce, dissolution, legal separation, or annulment; and

8.3.1.3. The member's years of creditable service, on the date of divorce, dissolution, annulment, or legal separation. In the case of a reservist, the Reserve retirement points, on the date of divorce, dissolution, annulment, or legal separation and years of creditable service for basic pay purposes.

8.3.2. If the member entered the service on or after September 8, 1980:

8.3.2.1. The fixed amount, the percentage, the formula, or the hypothetical award that the former spouse is granted;

8.3.2.2. The member's retired pay base (high-3) amount at the time of divorce, dissolution, legal separation, or annulment (the actual dollar figure); and

8.3.2.3. The member's years of creditable service, on the date of divorce, dissolution, annulment, or legal separation. In the case of a reservist, the Reserve retirement points, on the date of divorce, dissolution, annulment, or legal separation.

8.4 Clarification Order (290804)

If the award language in the court order is missing any of the listed variables in paragraph 8.3, then the applicant will need to obtain a clarifying court order that provides the variables as described in paragraph 8.3.

9.0 STARTING PAYMENTS (2909)

9.1 Starting Payments (290901)

If the former spouse's application is approved, payments will start no later than 90 days after the date the designated agent received the former spouse's complete application, or no later than 90 days after the date the member becomes entitled to receive military retired pay, whichever is later.

9.2 Timing of Payments (290902)

Payments will be issued in conformity with normal pay and disbursement cycles, which mean that payments will be issued monthly. Payments will be deducted from the month's pay and paid on the first business day of the following month. For example, a payment issued for the month of March would be sent at the beginning of April.

10.0 PAYMENT AMOUNT (2910)

10.1 Limitations (291001)

10.1.1. If the spouse or former spouse applies for payments under the USFSPA only, the maximum amount a former spouse can receive is 50 percent of the member's disposable retired pay.

10.1.2. If the spouse or former spouse applies for payments under the USFSPA and there is also a garnishment order for support, the maximum amount that can be paid toward both obligations is 65 percent of the member's disposable earnings calculated in accordance with 42 U.S.C. § 659 (child and spousal support statute) and its implementing regulation.

10.1.3. For garnishments for property other than a retired pay award, the maximum amount payable is 25 percent of disposable earnings in accordance with [15 U.S.C. § 1673](#).

* 10.1.4. In the event a member receives a retroactive award for Disability Compensation (under Title 38 of the U.S. Code) or a retroactive award for Combat-Related Special Compensation (under 10 U.S.C. § 1413a), the payments of retired pay previously made to a former spouse pursuant to a valid court order that were proper when paid do not become erroneous overpayments.

10.2 COLA (291002)

If a retired pay award is expressed as a percentage of disposable retired pay, the former spouse will automatically receive a proportionate share of the member's COLAs [regardless of any language in a court order to the contrary](#). Formula and hypothetical retired pay awards are considered a type of percentage award, and thus will automatically include a proportionate share of the member's COLAs. If a court order on a non-NDAA 2017 case awards a percentage, formula, or hypothetical retired pay award and specifically states that COLAs are not to be added, we will calculate the award and setup as a fixed amount to avoid COLAs. If the retired pay award is a fixed amount, COLAs cannot be added, even if awarded in the court order, and the former spouse's payments will remain fixed. In an NDAA applicable case, COLAs will be added to the disposable income calculation on all awards regardless of what the court order states. Also, the former spouse will automatically receive a proportionate share of the member's COLAs on all NDAA applicable cases in which the award is a percentage, formula, or hypothetical regardless of what the court order states.

10.3 Offset of Former Spouse's Payment for Garnishment or Other Obligation (291003)

A former spouse's payment cannot be offset or garnished by the designated agent for any legal obligation, including child support owed to the member.

11.0 PRIORITY OF PAYMENTS (2911)

11.1 Multiple Awards (291101)

If a court order includes multiple types of awards to a former spouse, the former spouse may designate the priority of payments on the DD Form 2293. If the former spouse does not specify otherwise, the designated agent will pay the retired pay award first, child support second and spousal support third.

11.2 Multiple Former Spouses (291102)

If the designated agent is served with applications from more than one former spouse, the designated agent will honor the applications on a first-come, first-served basis. Subsequently served USFSPA applications shall be satisfied out of the disposable retired pay that remains after the satisfaction of all previously served court orders, subject to the limitations of paragraph 10.1.

11.3 Garnishment Orders for Support and Applications under USFSPA (291103)

If the designated agent is served with both a garnishment for support and an application under USFSPA, the designated agent will pay whichever is served first. If the garnishment is served first and is payable directly to the former spouse, the former spouse may reverse the priority of payments by instructing the designated agent to terminate deductions pursuant to the garnishment, and then later requesting that garnishment deductions be reestablished. The designated agent will not change the priority of payments between a retired pay award and a support garnishment if the garnishment was served by an IV-D agency unless the agency agrees to withdraw (terminate) the support order in order to allow the retired pay award to have priority over the support order.

12.0 STOPPING PAYMENTS (2912)

12.1 Erroneous Payment Information from Former Spouse (291201)

The former spouse has a continuing duty to provide the designated agent with correct payment instructions and current contact information. If a former spouse's payments are returned due to erroneous payment instructions (i.e., invalid address or incorrect account number for direct deposit payments), the designated agent will send notice to the last known correspondence address that, unless new payment instructions are received within 30 days of the date of the notice, payments will stop. If the former spouse submits new payment instructions after the payments have terminated, the designated agent will restart the payments on a current basis, and will not make up any missed payments.

12.2 Termination and Suspension of Retired Pay Award Payments (291202)

12.2.1. Unless the court order specifies otherwise, payments will stop upon the designated agent's receipt of notice of the death of either party. Payments will be prorated for the month of the death of either party.

12.2.2. Unless the court order specifies otherwise, retired pay award payments will not stop upon the designated agent's receipt of notice of the former spouse's remarriage.

12.2.3. If the designated agent is served with an order staying payments, the designated agent will stop the payments until served with an order indicating that the former spouse's payments are to resume.

12.2.4. If the designated agent has already started payments and is served with documentation showing that an appeal of the order has been filed within the forum state's appeal timeframe, payments will stop. The designated agent will not recoup any payments already issued.

12.2.5. A former spouse may stop payments under USFSPA by sending the designated agent a letter with his or her signature notarized withdrawing their application for payments under the USFSPA. A former spouse can later reapply for payments by submitting a new DD Form 2293 and a certified copy of the court order that awards him/her the division of military retired pay.

12.3 Termination of Child Support Payments under USFSPA (291203)

Child support payments will stop in accordance with the provisions of the court order. If the court order is silent as to when the payments should stop, payments will stop in accordance with the law of the state that issued the court order. The member has the burden of providing sufficient documentation to justify stopping payments on or before a child's age of majority. The former spouse has the burden of providing sufficient documentation to justify continuing payments after a child's age of majority.

12.4 Termination of Alimony Payments under USFSPA (291204)

Alimony payments will stop in accordance with the provisions of the court order. If the court order is silent as to when the payments should stop, payments will stop in accordance with the law of the state that issued the court order, or upon receiving a court order terminating the alimony payments. (NOTE: The law of some states does not provide that an alimony obligation automatically terminates upon a former spouse's remarriage. For such states, a court order terminating the alimony will need to be provided.) If the designated agent does not already have sufficient documentation to stop payments, additional evidence such as a marriage certificate will be required.

12.5 Payments and Bankruptcy (291205)

Absent a court order, there is no authority to stop a former spouse's retired pay award, current and arrearage child support payments, and current spousal support payments, if a member files bankruptcy.

12.6 Certification of Eligibility (291206)

The designated agent may request that a former spouse submit a signed certification of continued eligibility to receive payments under USFSPA. The certificate of eligibility should include notice of a change in status or circumstance that affects eligibility, if any such change exists. If the former spouse fails or refuses to comply with the certification requirement, the designated agent may stop the payments after notice to the former spouse.

13.0 RETIRED PAY ARREARS OWED A DECEASED FORMER SPOUSE (2913)

13.1 Applicability (291301)

This section applies to the settlement of arrears of a retired pay award that may be due a deceased former spouse pursuant to a previous application for direct payment completed under section 4.0. Arrears of a retired pay award may result from prorating a member's disposable retired pay for the month of the former spouse's death, from checks not negotiated before the former spouse's death, or the designated agent's failure to establish and/or make payments to the former spouse in the correct amount prior to the former spouse's death for a period that the former spouse was entitled to a property division.

13.2 Documentation (291302)

To settle the arrears of retired pay owed a deceased former spouse, the following documentation must be on file:

13.2.1. Copy of Death Certificate. A notification of death from any source (next of kin, post office, or neighbor) is sufficient to suspend future payment of the retired pay award. However, an official copy of a certificate of death for the former spouse is required before the arrears of a retired pay award are paid under this section.

13.2.2. Written Claim. A written claim must contain the claimant's signature and address, or that of the claimant's authorized agent or attorney. A Standard Form 1174, Claim For Unpaid Compensation of Deceased Member of the Uniformed Service, is not required, but may be used for this purpose, as long as the claim specifies the claimant's relationship to the deceased former spouse and documents other living relatives of the deceased former spouse.

13.2.3. Additional Documentation as Required. A claimant may be required to submit any additional documentation the designated agent deems necessary to establish the claimant's status and entitlement to the retired pay award arrears including, but not limited to, marriage certificates, birth certificates, divorce decrees, or other documentation that validates the living beneficiaries of a former spouse in any class of persons entitled to the arrears pursuant to paragraph 13.4.

13.3 Recoupment of Outstanding Payments (291303)

All outstanding checks or direct deposits (not negotiated before the former spouse's death or made after the former spouse's death) or the proceeds thereof must be returned to the designated agent before a settlement of arrears may be made.

13.4 Payment of the Arrears (291304)

Former spouse payments from retired pay are prorated for the month of the former spouse's death. When all documentation has been received and all outstanding payments have been recouped, payment of the arrears is made to the person living on the date of the former spouse's death who is highest on the order of precedence set forth in Chapter 30. For the purpose of payment of arrears under this paragraph, the provisions of Chapter 30, subparagraphs 300204.C, D, and E apply, and all references to a "retiree" in subparagraphs 300204.A.2 through A.6, C, D, and E should be considered as referring to a deceased former spouse rather than a retiree.

13.5 Indebtedness Resulting From Overpayment to a Former Spouse (291305)

Any indebtedness resulting from overpayment to a deceased former spouse must be liquidated before retired pay award arrears can be settled.

13.6 Claim for Arrears (291306)

A claim for arrears must be filed within the 6-year statute-of-limitation restriction. See [31 U.S.C. § 3702\(b\)\(1\)](#). Any claim received 6 years after the date of the former spouse's death is barred.

13.7 Taxability (291307)

In the case of deceased former spouses, one or more [Treasury Department \(TD\) Forms 1099-R](#), Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., may be used. If no former spouse arrears are paid, one TD 1099-R will be issued in the former spouse's name to cover any entitlement through date of death. If arrears are paid, an additional TD 1099-R is issued to each claimant to whom the arrears were paid.

14.0 ADMINISTRATIVE APPEAL PROCESS (2914)

14.1 Either Party Disagrees (291401)

If either party disagrees with the designated agent's determination concerning a former spouse's entitlement to payments under the USFSPA, that party may request reconsideration by writing to the designated agent. If the party requesting reconsideration asserts that the designated agent has erroneously overpaid the other party, the request for reconsideration will be considered a claim against the designated agent. An attorney will review the request and issue a decision in writing.

14.2 Party Requesting Reconsideration Disagrees (291402)

If the party requesting reconsideration disagrees with the attorney's determination, that party may submit an appeal to the designated agent, which must be received within 30 days of the date of the initial determination. The designated agent will forward the appeal to the Defense Office of Hearings and Appeals for their decision.

14.3 Additional Information (291403)

Parties are referred to Department of [*Defense Instruction \(DoDI\) 1340.21*](#) for additional information concerning the submission of claims and appeals.

15.0 LIABILITY (2915)

15.1 Payments Made In Accordance With the USFSPA (291501)

Neither the United States nor any employee of the United States shall be liable regarding any payment made from retired pay to a retiree or former spouse pursuant to a court order that is regular on its face, if such payment is made in accordance with the USFSPA.

15.2 Designated Agent Liability (291502)

If the designated agent processes a former spouse's USFSPA application and administers the former spouse's payments in accordance with the USFSPA and in accordance with all documentation in its files, the designated agent is not liable for any former spouse payments issued after a former spouse's eligibility to receive payments has ended. Nor is the designated agent liable for any payments that the former spouse may have been entitled to prior to the designated agent's beginning direct payments pursuant to the former spouse's USFSPA application.

Figure 29-1. Military Retired Pay Division Order (divorces, dissolutions, annulments, or legal separations that occur on or before December 23, 2016)

STATE OF _____ COURT OF _____
COUNTY OF _____ Case No. _____

Petitioner

Respondent

MILITARY RETIRED PAY DIVISION ORDER

(For Decree of Divorce, Dissolution, Annulment, or Legal Separation that occurs on or before December 23, 2016)

This cause came before the undersigned judge upon the petitioner/respondent's claim for a distribution of the respondent/petitioner's military retired pay benefits. The court makes the following:

FINDINGS OF FACT:

The Petitioner's Social Security Number is _____ and current address is _____.

The Respondent's Social Security Number is _____ and current address is _____.

The Parties were married on _____. Their marital status was terminated on _____ pursuant to a(n) _____ entered in _____ County, State of _____. This current order is entered incident to the aforementioned order.

The parties were married for a period of ten or more years during which time the Petitioner/Respondent performed at least ten years of service creditable for retirement eligibility purposes.

If the military member was on active duty at the time of this order, Respondent/Petitioner's rights under the Service Members' Civil Relief Act, 50 U.S.C. App. 501-548 and 560-591, have been observed and honored.

This court has jurisdiction over the Respondent/Petitioner by reason of [choose those that apply] (A) his or her residence, other than because of military assignment, in the territorial jurisdiction of the court, during the [divorce, dissolution, annulment, or legal separation] proceeding, (B) his or her domicile in the territorial jurisdiction of the court during the [divorce, dissolution, annulment, or legal separation] proceeding, or (C) his or her consent to the jurisdiction of the court.

CONCLUSIONS OF LAW:

1. This court has jurisdiction over the subject matter of this action and the parties hereto.
2. Petitioner/Respondent is entitled to a portion of Respondent/Petitioner's U.S. military retired pay as set forth herein.

[Please note that all awards expressed as a percentage of disposable retired pay, including hypothetical awards, will automatically include a proportionate share of the member's COLA unless this order states otherwise. Also, hypothetical retired pay amounts will be adjusted for all retired pay COLA from the hypothetical retirement date to the member's actual retirement date, unless this order states otherwise.]

Figure 29-1. Military Retired Pay Division Order (divorces, dissolutions, annulments, or legal separations that occur on or before December 23, 2016) (Continued)

All of the blanks in the samples below represent variables that **MUST** be provided in the court order. Choose and complete ONE of the following:

IT IS THEREFORE ORDERED THAT:

Retired member: “The former spouse is awarded ___ percent (or dollar amount) of the member’s disposable military retired pay.”

Active duty formula: “The former spouse is awarded a percentage of the member’s disposable military retired pay, to be computed by multiplying ___ percent times a fraction, the numerator of which is _____ months of marriage during the member’s creditable military service, divided by the member’s total number of months of creditable military service.”

Reservist formula: “The former spouse is awarded a percentage of the member’s disposable military retired pay, to be computed by multiplying ___ percent times a fraction, the numerator of which is _____ Reserve retirement points earned during the period of the marriage, divided by the member’s total number of Reserve retirement points earned.”

Active duty hypothetical calculated as of time of division, for all members regardless of service entry date: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with a retired pay base (high-3) of _____ and with _____ years of creditable service on _____.”

Active duty hypothetical calculated as of time of division; may only be used for members entering service before September 8, 1980: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with the rank of _____ and with _____ years of creditable service on _____.”

Active duty hypothetical calculated as of member’s actual retirement date: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired on his actual retirement date with the rank of _____ and with _____ years of creditable service.”

Reservist hypothetical calculated as of time of division, for all members regardless of service entry date: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member become eligible to receive military retired pay with a retired pay base (high-3) of _____ and with _____ Reserve retirement points on _____.”

Reservist hypothetical calculated as of time of division; may be used for members entering service before September 8, 1980: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on _____, with the rank of _____, with _____ Reserve retirement points, and with _____ years of service for basic pay purposes.”

Reservist hypothetical calculated as of the date the member becomes eligible to receive retired pay: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on the date he or she attained age 60, with the rank of _____, with _____ Reserve retirement points, and with _____ years of service for basic pay purposes.”

This _____ day of _____, 20__.

JUDGE

Figure 29-2. Military Retired Pay Division Order (divorces, dissolutions, annulments, or legal separations that occur after December 23, 2016)

STATE OF _____ COURT OF _____
COUNTY OF _____ Case No. _____

Petitioner

Respondent

MILITARY RETIRED PAY DIVISION ORDER

(For Decree of Divorce, Dissolution, Annulment, or Legal Separation that occurs after December 23, 2016)

This cause came before the undersigned judge upon the petitioner/respondent’s claim for a distribution of the respondent/petitioner’s military retired pay benefits. The court makes the following:

FINDINGS OF FACT:

The Petitioner’s Social Security Number is _____ and current address is _____.

The Respondent’s Social Security Number is _____ and current address is _____.

The Parties were married on _____. Their marital status was terminated on _____ pursuant to a(n) _____ entered in _____ County, State of _____. This current order is entered incident to the aforementioned order.

The Parties were married for a period of ten or more years during which time the Petitioner/Respondent performed at least ten years of service creditable for retirement eligibility purposes.

If the military member was on active duty at the time of this order, Respondent/Petitioner’s rights under the Service Members’ Civil Relief Act, 50 U.S.C. App. 501-548 and 560-591, have been observed and honored.

This court has jurisdiction over the Respondent/Petitioner by reason of [choose those that apply] (A) his or her residence, other than because of military assignment, in the territorial jurisdiction of the court, during the [divorce, dissolution, annulment, or legal separation] proceeding, (B) his or her domicile in the territorial jurisdiction of the court during the [divorce, dissolution, annulment, or legal separation] proceeding, or (C) his or her consent to the jurisdiction of the court.

CONCLUSIONS OF LAW:

This court has jurisdiction over the subject matter of this action and the parties hereto.

Petitioner/Respondent is entitled to a portion of Respondent/Petitioner’s U.S. military retired pay as set forth herein.

[Please note that all awards expressed as a percentage of disposable retired pay, will automatically include a proportionate share of the member's COLA after the date the member retires, unless the court order states otherwise.]

Figure 29-2. Military Retired Pay Division Order (divorces, dissolutions, annulments, or legal separations that occur after December 23, 2016) (Continued)

All of the blanks in the sample below represent variables that MUST be provided in the court order. Choose and complete ONE of the following:

IT IS THEREFORE ORDERED THAT:

Award When the Member Has Already Retired from Active or Reserve Duty and is eligible to receive retired pay

“The former spouse is awarded _____ percent (or) \$ _____ (dollar amount) of the member’s disposable military retired pay.”

Active Duty Awards

Complete only one of the following:

1. Fixed Award: “The former spouse is awarded \$ _____ (dollar amount) of the member’s disposable military retirement pay.”

2. Percentage Award: “The former spouse is awarded _____ percentage of the member’s disposable military retirement pay.”

3. Formula Award: “The former spouse is awarded a percentage of the member’s disposable military retired pay, to be computed by multiplying _____ percent times a fraction, the numerator of which is _____ months of marriage during the member’s creditable military service, divided by the member’s total number of months of creditable military service.”

4. Hypothetical Retired Pay Award for members entering military service:

A. BEFORE September 8, 1980: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with the rank of _____ and with _____ years of creditable service on _____.”

B. ON OR AFTER September 8, 1980: “The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with a retired base (high-3) of _____ and with _____ years of creditable service on _____.”

AND (ONE OF THE BELOW SECTIONS MUST ALSO BE COMPLETED)

1. If the member entered the service BEFORE September 8, 1980

On the date of the decree of divorce, dissolution, annulment, or legal separation _____ (list the date), the member’s military pay grade (rank) was _____, and the member had _____ years of creditable service (list amount of years and months).

2. If the member entered the service ON OR AFTER September 8, 1980:

On the date of the decree of divorce, dissolution, annulment, or legal separation _____ (list the date), the member’s military retired pay base (high-3) was \$ _____ (must provide a dollar amount) and the member had _____ years of creditable service (list amount of years and months).

Figure 29-2. Military Retired Pay Division Order (divorces, dissolutions, annulments, or legal separations that occur after December 23, 2016) (Continued)

Reserve Awards

- 1. Fixed award: "The former spouse is awarded \$ _____ (dollar amount) of the member's disposable military retirement pay."
- 2. Percentage award: "The former spouse is awarded _____ percentage of the member's disposable military retirement pay."
- 3. Formula award: "The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying _____ percent times a fraction, the numerator of which is _____ Reserve retirement points earned during the period of the marriage, divided by the member's total number of Reserve retirement points earned."
- 4. Reservist hypothetical retired pay award as of time of division;
 - A. May be used for members entering service BEFORE September 8, 1980: "The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on _____, with the rank of _____, with _____ Reserve retirement points, and with _____ years of service for basic pay purposes."
 - B. May be used for members entering service ON OR AFTER September 8, 1980: "The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member become eligible to receive military retired pay with a retired pay base (high-3) of _____ and with _____ Reserve retirement points on _____."

AND (ONE OF THE BELOW SECTIONS MUST ALSO BE COMPLETED)

- 1. If the member entered the service BEFORE September 8, 1980:
On the date of decree of divorce, dissolution, annulment, or legal separation _____ (list the date), the member's pay grade (rank) was _____ and the member had Reserve retirement points _____ (enter amounts), and the member had _____ years of service for basic pay purposes _____ (list amount of years and months).
- 2. If the member entered the service ON OR AFTER September 8, 1980:
On the date of the decree of divorce, dissolution, annulment, or legal separation _____ (list the date), the member's military retired pay base (high-3) was \$ _____, (must provide a dollar amount) and the member had _____ Reserve retirement points (enter amount).

This _____ day of _____, 20 ____.

JUDGE

REFERENCES*CHAPTER 29 – FORMER SPOUSE PAYMENTS FROM RETIRED PAY****1.0 – GENERAL (2901)**

USFSPA

10 U.S.C. § 1408

NDAA FY 2017, section 641

10 U.S.C. § 1415

31 U.S.C. § 3702

DoDI 1340.21

50 U.S.C. § 3901 et. seq.

2.0 - DEFINITIONS (2902)

2.12

PL 115-91, section 534

3.0 - AWARDS THAT CAN BE COLLECTED UNDER THE USFSPA (2903)

3.6

10 U.S.C. § 1408

PL 115-91, section 534

3.7

10 U.S.C. § 1415