

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

SUMMARY OF MAJOR CHANGES

All changes are 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 **July 2013** is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted chapter to comply with current administrative instructions.	Revision
290101	Included a Purpose section.	Addition
290102	Included an Authoritative section.	Addition
290601.B	Clarified information on court order and military retired pay.	Addition
290601.C	Clarified information on retired pay award and fixed dollar amount.	Addition
290604.A.3	Clarified information on consent of jurisdiction of the court.	Addition
Bibliography	Deleted proposed rule that was never finalized.	Deletion

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CHAPTER 29

FORMER SPOUSE PAYMENTS FROM RETIRED PAY

2901 GENERAL

***290101. Purpose**

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

***290102. Authoritative Guidance**

The bibliography at the end of this chapter lists the authoritative references.

2902 DEFINITIONS

290201. Alimony

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.

290202. Child Support

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.

290203. Court

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 [Title 28, United States Code \(U.S.C.\), section 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.

290204. Court Order

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 qualified domestic relations order (QDRO) that divides military retired pay. (NOTE: A QDRO

is not required but will be accepted.) A court order also includes a support order as defined in section 453(p) of the Social Security Act ([Title 42 U.S.C section 653\(p\)](#)).

290205. Creditable Service

Creditable service means years and full months of military service creditable for the purpose of computing a member's retired pay entitlement. See [Title 10, U.S.C. section 1405](#), Chapter 1, subchapter 0103, and see Chapter 3, subparagraph 030201.B.1.

290206. Designated Agent

Designated agent is the agent authorized to review applications for direct payments made. See paragraph 290403 for specific designations.

290207. Disposable Retired Pay

Disposable retired pay is defined in paragraph 290701.

290208. Entitlement

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.

290209. Final Decree

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.

290210. Former Spouse

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

290211. Formula Award

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.

A. For members qualifying for an active duty (i.e., regular service) retirement, the numerator is typically 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 former spouse's award is usually calculated by multiplying the marital fraction by $\frac{1}{2}$ or 50 percent, or any other given percentage amount.

B. For members qualifying for a reserve (i.e., non-regular service) retirement, the numerator is typically the number of Reserve points earned during the parties' marriage, and the denominator is the member's total number of Reserve points. The former spouse's award is then usually calculated by multiplying the marital fraction by $\frac{1}{2}$ or 50 percent, or any other given percentage amount.

290212. Garnishment Order

A garnishment order is an order directing an employer 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.

290213. Hypothetical Retired Pay Award

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. 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 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.

290214. Member

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

290215. Renounced Pay

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

290216. Retired Pay

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."

290217. Retired Pay Award

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

290218. Standard Retired Pay Multiplier

The standard retired pay multiplier used to compute retired pay is the product of two and one-half percent and the member's years of creditable service. See Chapter 3, subparagraph 030201.B.1.

290219. Uniformed Services Former Spouses' Protection Act (USFSPA)

USFSPA is the Uniformed Services Former Spouses' Protection Act. Public Law 97-252, enacted on September 8, 1982, states that the section of Title 10 addressing former spouse protection, may be cited as the "Uniformed Services Former Spouses' Protection Act". Therefore, USFSPA is used throughout and refers to the provisions of [10 U.S.C. 1408](#).

2903 AWARDS THAT CAN BE COLLECTED UNDER THE USFSPA

290301. Child Support

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.

290302. Child Support Arrearages

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 Defense Finance and Accounting Service (DFAS) receives it.

290303. Alimony

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

290304. Retired Pay Award

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

290305. Property Other Than a Division of Retired Pay

A former spouse can collect a property division, other than a retired pay award, by garnishment if the order awards it to the former spouse and if the former spouse was also

awarded alimony, child support, or a division of retired pay. See subparagraph 290401.B for more information.

2904 APPLICATION BY FORMER SPOUSE

290401. Application Process

A. The former spouse must submit a completed Department of Defense, DD Form 2293, Request 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.

B. If the former spouse is applying for a property division other than a retired pay award, then the former spouse must submit a garnishment order in addition to the DD Form 2293 and the court order.

C. The former spouse may mail the application to the appropriate designated agent given in paragraph 290403, or may fax it to the number provided in [paragraph 290403](#). Please read the instructions and certification on the DD Form 2293 carefully.

290402. Additional Documentation

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.

290403. Where to Send an Application for USFSPA Payments

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

- A. Army, Navy, Air Force, Marine Corps.
DFAS-Cleveland Site
DFAS-HGA/CL
P.O. Box 998002
Cleveland, OH 44199-8002

Fax: 877-622-5930
- B. United States Coast Guard
Commanding Officer (LGL)
Pay and Personnel Center
444 S.E. Quincy Street
Topeka, KS 66683-3591

Fax: 785-339-3788

- C. [Public Health Services](#)
[Submit to Coast Guard address](#)
- D. National Oceanic and Atmospheric Administration
Submit to Coast Guard address

290404. When to Apply for USFSPA Payments

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

290405. Conditional Preapproval

A. 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).

B. 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 duty 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 or notarized agreement providing the necessary information. (Note: see paragraph 290607 concerning formula awards, and paragraph 290608 concerning hypothetical retired pay awards.)

2905 NOTICE

290501. Notification to Former Spouse of Approval or Disapproval

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, then the designated agent will state the month the former spouse's payments will tentatively begin. If the designated agent cannot approve the application, then the notice will include an explanation regarding the reason(s) why.

290502. Notification to the Member of Approval of an Application

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.

290503. Second Notice

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.

290504. Contents of Notice to Member

A. 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 [Title 42 U.S.C. 659](#)), and will contain the month that the payments will tentatively begin.

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

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

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

E. 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 retired pay as set out in the notice to the member.

290505. How to Prevent USFSPA Payments from Starting

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, then 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.

2906 COURT ORDERS

*290601. Contents of Court Order

A. 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.

B. The court order must award former spouse alimony, child support, or a retired pay award. [There is not a requirement in Federal law that specifies how military retired pay is to be divided.](#)

C. If the order contains a retired pay award, then that award must be expressed as a fixed dollar amount or as a percentage of disposable retired pay. A retired pay award expressed as percentage will automatically receive a proportionate share of the member's cost-of-living adjustments, 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 cost-of-living allowances. Retired pay awards phased in that manner will be construed as a fixed dollar amount.](#)

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

E. If the former spouse and the member were divorced before the member became entitled to receive military retired pay, then the retired pay award may be expressed as a formula or hypothetical retired pay award in accordance with paragraphs 290607 and 290608. 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 cost-of-living adjustments.

290602. Divorces Finalized While the Member is Still on Active Duty

A. 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.

B. 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. Appendix § 501 et. seq.) were complied with.

290603. Qualified Domestic Relations Orders

There is no requirement in USFSPA that a former spouse submits a qualified domestic relations order, but the designated agent will accept one if it is submitted and if it meets the requirements of the USFSPA.

*290604. Requirements Specific to a Retired Pay Award

A. In the case of a retired pay award, the designated agent must be able to determine from the application that the court dividing military retired pay had jurisdiction over the member by reason of one of the following:

1. The member resided in the territorial jurisdiction of the court at the time of the legal proceeding due to other than military assignment;
2. The court finds that member's domicile was in the territorial jurisdiction of the court at the time of the legal proceeding; or

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, DFAS-Garnishment Operations 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 and making a retired pay award.

B. 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). There is no “10/10” requirement for payment of alimony or child support awards under USFSPA.

290605. State Law Jurisdiction

The satisfaction of state law jurisdictional requirements is not sufficient alone to satisfy the additional jurisdictional requirement stated in paragraph 290604. If the court states that it has USFSPA jurisdiction, then it must state the basis for the finding, i.e., member’s residence, member’s domicile or member’s consent.

290606. Member’s Consent to a Separation Agreement

If the member signed a separation agreement, then 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.

290607. Acceptable Formula Awards

A. If the former spouse’s award is expressed in terms of a formula, then the method of calculating the formula must be set forth in the court order. 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 DFAS-Garnishment Operations will provide in accordance with 290607. B and C. If the order provides all the variables needed to do the calculation, including total months of military service or total reserve retirement points, then DFAS-Garnishment Operations will calculate the formula using the variables provided, even if the figure is different from the member’s actual total. 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, then either the court will have to clarify the award or the parties will have to provide the missing variable to the designated agent in a notarized statement signed by both parties. All percentages derived from formulas will be carried out to four decimal places.

B. If the court order requires DFAS-Garnishment Operations to supply the denominator of a marital or coverture fraction, and the member qualifies for an active duty (i.e., regular service) retirement, then the formula award must be expressed in terms of whole months. Typically, the numerator of the formula fraction is the number of months of marriage during

military service. This number must specifically be provided or adequately described in the court order. The denominator of the formula is typically the member's total number of months of creditable military service. DFAS-Garnishment Operations will provide the denominator if needed to compute the formula. Any days or partial months of service will be dropped. If the award is expressed in terms of years instead of months, DFAS-Garnishment Operations will convert years into whole months by rounding down to the nearest month.

C. If the court order requires DFAS-Garnishment Operations to supply the denominator of a marital or coverture fraction, and the member qualifies for a reserve (i.e., non-regular service) retirement, then the formula award must be expressed in terms of reserve retirement points. In the case of a reserve retirement, the numerator of the formula typically is the number of reserve retirement points earned during the marriage. This number must be provided in the court order. The denominator of the formula is typically the member's total number of reserve retirement points. The designated agent will provide the denominator if needed.

D. The sample Military Retired Pay Division Order (Figure 1) provides 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 an active duty formula: The court order awarded the former spouse a percentage of the member's disposable retired pay calculated by multiplying $\frac{1}{2}$ 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 is 30.0000 percent of the member's disposable retired pay ($\frac{1}{2} \times \frac{144 \text{ months}}{240 \text{ months}}$).

290608. Acceptable Hypothetical Retired Pay Awards

A. A hypothetical retired pay award is a percentage of a retired pay amount calculated using the standard method to compute retired pay, but using variables different from those used to calculate the member's actual retired pay. It is usually calculated as if the member had become entitled to receive retired pay at the time the court divided the member's retired pay.

B. To calculate a hypothetical retired pay award, the designated agent must first calculate the hypothetical retired pay amount. The hypothetical retired pay amount is calculated by multiplying the hypothetical retired pay multiplier times the hypothetical retired pay base. See Chapter 3, paragraph 030201. 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, subparagraph 030209.A.

C. Hypothetical retired pay multiplier

1. The standard retired pay multiplier is 2.5 percent times 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 (.025 x 20 years = 50%). See Chapter 3, subparagraph 030201.B.1. 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, subparagraph 030208.D.

2. 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, subparagraph 030205.B. This resultant figure is used to compute the hypothetical retired pay multiplier. For example, 5,258 retirement points would convert to 14.61 years of service for multiplier purposes ($5,258 \text{ points} / 360 = 14.61 \text{ years}$).

D. Retired Pay Base

1. For members entering military service before September 8, 1980, the retired pay base is the member's basic pay at retirement. See Chapter 3, subparagraph 030201.A.1. For these members, their hypothetical retired pay base would usually be their basic pay as of the hypothetical retirement date.

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, subparagraph 030201.A.2. 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.

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

1. The percentage the former spouse was awarded;

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;

3. The hypothetical retired pay base. 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

4. The hypothetical retirement date.

F. 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, then 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:

1. The percentage the former spouse is awarded;
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;
3. The member's hypothetical rank; and
4. An unequivocal statement that the calculation is to be made as of the member's actual retirement date.

G. If the award language is missing any necessary variables, then either the court will have to clarify the award or the parties will have to agree on any missing variables and provide them to the designated agent in a notarized statement signed by both parties. See the sample Military Retired Pay Division Order (Figure 29-1) for examples of acceptable hypothetical retired pay award language.

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

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 ($.025 \times 20 \text{ years} = .50$; $.50 \times \$2,400.00 = \$1,200.00$).

1. First, the designated agent will calculate the member's hypothetical retired pay multiplier, which in this example is $.425$ ($.025 \times 17 \text{ years}$).

2. Next, the designated agent will calculate the hypothetical retired pay amount, which in this example is \$935.00 per month ($.425 \times \$2,200.00$).

3. Then, the designated agent will apply retired pay cost-of-living adjustments (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.

- a. 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, his hypothetical retirement date, then his hypothetical retired pay would have been \$1,008 per month on June 1, 2002, his actual retirement date.

b. In this example, the COLAs would be as follows:

12/1/1999 1.7% (partial annual COLA) $\$935.00 \times 1.017 = \$ 950.00$
(cents are dropped) (see [Volume 7B](#), Chapter 8, subparagraph 080372.A.)

12/1/2000 3.5% $\$950.00 \times 1.035 = \$ 983.00$

12/1/2001 2.6% $\$983.00 \times 1.026 = \$1,008.00$

4. 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:

$$50\% \times \$1,008.00 / \$1,200.00 = 42\%$$

This is the percentage the designated agent will establish in the retired pay system.

I. The actual 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, Subparagraph 030201.B.2. However, the CSB member's hypothetical retired pay will be calculated using the standard multiplier. The CSB member's retired pay 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 290608.H.4. 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.

290609. Orders Issued Before June 26, 1981 that Did Not Divide Retired Pay

Any court order that contains a retired pay award, which was issued before June 26, 1981 will be honored if it otherwise satisfies the requirements and conditions shown in this chapter. If the 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, then DFAS-Garnishment Operations cannot honor an application for payment based on an order issued on or after June 26, 1981, dividing retired pay as property.

290610. Survivor Benefit Plan (SBP) Premium

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 DFAS, Garnishment Operations. The former spouse and the member may make alternate payment arrangements outside of the [stated](#) procedures.

290611. Conflicting Retired Pay Awards

A. 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 required to be paid. The designated agent will retain the difference 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.

B. If the designated agent is served with a court order containing conflicting retired pay award language within the same court order, then the designated agent will pay the former spouse the lower award amount. 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.

290612. Court Orders Modifying Retired Pay Awards

A. If the designated agent is served with a court order modifying or clarifying a retired pay award, the designated agent will implement the order issued most recently. The order issued most recently supersedes all prior orders.

B. If the designated agent is served with a court order modifying or clarifying 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 only if the court issuing this order had jurisdiction over both the member and former spouse in the manner specified in subparagraph 290604.A.

290613. Conditional Awards

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.

290614. Awards Based on Retired Pay Accrued During Marriage

The designated agent cannot honor awards based on the value of what has accrued 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.

290615. Awards of a Percentage of the Marital Portion

The designated agent cannot honor an award of a percentage of the marital portion of a member's retired pay unless the court order also provides instructions on how to calculate the marital portion, and all variables necessary for the calculation.

290616. Factual Errors in Court Orders

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. The party asserting the error must move the court to correct the order. The designated agent does not have the authority to correct errors in court orders.

2907 DISPOSABLE RETIRED PAY DEDUCTIONS

290701. Disposable Retired Pay

Disposable retired pay is defined by the USFSPA as a member's total monthly retired pay entitlement minus authorized deductions.

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

1. Amounts owed to the United States.
2. Amounts withheld as Federal and State income tax withholding, consistent with the member's current actual tax liability.
3. Fines and forfeitures ordered by a court-martial.
4. Amounts waived in order to receive compensation under Titles 5 or 38 of the U.S.C.
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.
6. The amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability.

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

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.
2. Fines and forfeitures ordered by a court-martial.

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

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.

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

290702. Other Deductions Included in Court Order

If a court order directs the use of deductions other than those authorized in [paragraph 290701](#) to compute the former spouse's award, then that provision of the court order is unenforceable. The designated agent will use only the deductions authorized above for the computation of disposable retired pay.

2908 STARTING PAYMENTS

290801. Starting Payments

If the former spouse's application is approved, then 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.

290802. Timing of Payments

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.

2909 PAYMENT AMOUNT

290901. Limitations

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

B. If the former spouse applies for payments under the USFSPA and there is also a garnishment order for support, then 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.

C. 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](#).

290902. Cost-of-Living Adjustments (COLA)

If a retired pay award is expressed as a percentage of disposable retired pay, then the former spouse will automatically receive a proportionate share of the member's (COLAs) unless the court order states otherwise. 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 the retired pay award is a fixed amount, then COLAs cannot be added, even if awarded in the court order, and the former spouse's payments will remain fixed.

290903. Offset of Former Spouse's Payment for Garnishment or Other Obligation

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

2910 PRIORITY OF PAYMENTS

291001. Multiple Awards

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

291002. Multiple Former Spouses

If the designated agent is served with applications from more than one former spouse, then 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 court orders which have been previously served, subject to the limitations of paragraph 290901.

291003. Garnishment Orders for Support and Applications Under USFSPA

If the designated agent is served with both a garnishment for support and an application under USFSPA, then the designated agent will pay whichever is served first. If the garnishment is served first and is payable directly to the former spouse, then 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.

2911 STOPPING PAYMENTS

291101. Erroneous Payment Information From Former Spouse

The former spouse has a continuing duty to provide the designated agent with correct payment instructions. 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), then 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, then the designated agent will restart the payments on a current basis, and will not make up any missed payments.

291102. Termination and Suspension of Retired Pay Award Payments

A. 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.

B. 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.

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

D. 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, then payments will stop. The designated agent will not recoup any payments already issued.

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

291103. Termination of Child Support Payments Under USFSPA

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, then 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.

291104. Termination of Alimony Payments Under USFSPA

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, then 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, then additional evidence such as a marriage certificate will be required.

291105. Payments and Bankruptcy

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.

291106. Certification of Eligibility

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, then the designated agent may stop the payments after notice to the former spouse.

2912 RETIRED PAY ARREARS OWED A DECEASED FORMER SPOUSE

291201. Applicability

This section applies to the settlement of arrears of a property division of retired pay that may be due a deceased former spouse pursuant to a previous application for direct payment completed under section 2904 of this chapter. Arrears of a retired pay property division 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.

291202. Documentation

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

A. 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 property division. However, an official copy of a certificate of death for the former spouse is required before the arrears of a property division of retired pay are paid under this section.

B. Written Claim. A written claim containing the claimant's signature and address, or that of the claimant's authorized agent or attorney. [Standard Form \(SF\) 1174](#) is not required, but may be used for this purpose, so long as the claim specifies the claimant's

relationship to the deceased former spouse and documents other living relatives of the deceased former spouse.

C. Other Documentation as Required. A claimant may be required to submit any other documentation DFAS deems necessary to establish the claimant's status and entitlement to the property division 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 291204.

291203. Recoupment of Outstanding Payments

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 DFAS-Cleveland Site before a settlement of arrears may be made.

291204. Payment of the Arrears

Former spouse payments from retired pay are prorated in 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, subparagraphs 300204.A.2 through A.6. For the purpose of payment of arrears under this paragraph, the provisions of 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.

291205. Indebtedness Resulting From Overpayment to a Former Spouse

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

291206. Claim for Arrears

A claim for arrears must be filed within the 6-year statute-of-limitation restriction. Any claim received 6 years after the date of the former spouse's death is barred.

291207. Taxability

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 and Insurance Contracts, may be used. If no former spouse arrears are paid, then one TD Form 1099-R will be issued in the former spouse's name to cover any entitlement through date of death. If arrears are paid, then an additional TD Form 1099-R is issued to each claimant to whom the arrears were paid.

2913 ADMINISTRATIVE APPEAL PROCESS

291301. Either Party Disagrees

If either party disagrees with the designated agent's determination concerning a former spouse's entitlement to payments under the USFSPA, then 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, then 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.

291302. Party Requesting Reconsideration Disagrees

If the party requesting reconsideration disagrees with the attorney's determination, then 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.

291303. Additional Information

Parties are referred to Department of Defense Instruction Number 1340.21 (available at <http://www.dtic.mil/whs/directives/corres/ins1.html>) for additional information concerning the submission of claims and appeals.

2914 LIABILITY

291401. Payments Made In Accordance With The USFSPA

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.

291402. Designated Agent Liability

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, then 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.

291403. Court Order

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, then the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the member.

Figure 29-1. Appendix A Military Retired Pay Division Order

STATE OF _____	COURT OF _____
COUNTY OF _____	Case No. _____
_____ Petitioner	
MILITARY RETIRED PAY DIVISION ORDER	
_____ Respondent	
<p>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:</p>	
FINDINGS OF FACT:	
The Petitioner's Social Security Number is _____ and current address is _____.	
2. 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 Servicemembers' 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 United States military retired pay as set forth herein.	
IT IS THEREFORE ORDERED THAT:	
[Choose and complete one of the following. 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 cost-of-living adjustments (COLAs) unless this order states otherwise. Also, hypothetical retired pay amounts will be adjusted for all retired pay COLAS from the hypothetical retirement date to the member's actual retirement date, unless this order states otherwise.]	

Figure 29-1. Appendix A Military Retired Pay Division Order (Continued)

[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 ___% 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 ___% 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 _____% of the disposable military retired pay the member would have received had the member retired with a retired pay base 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 9/1/80] **“The former spouse is awarded _____% 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 _____% 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 _____% 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 of _____ and with _____ Reserve retirement points on _____.”**

[Reservist hypothetical calculated as of time of division; may be used for members entering service before 9/1/80] **“The former spouse is awarded _____% 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 _____% 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

*BIBLIOGRAPHY

CHAPTER 29 – FORMER SPOUSE PAYMENTS FROM RETIRED PAY

All

Uniformed Services Former Spouses' Protection Act,
Title 10, United States Code, Section 1408