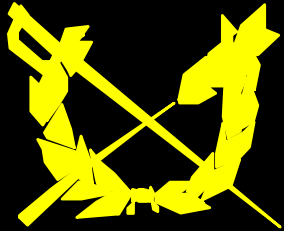


Uniformed Services Former Spouses' Protection Act (USFSPA)

Office of the Staff Judge Advocate
Legal Assistance Division

7th Infantry Division and Fort Carson

May 2003



Uniformed Services Former Spouses' Protection Act

What the USFSPA Does:

- allows states to divide retired pay**
- allows for direct payments from defense finance center (DFAS)**
- allows for continued military benefits**
- allows for designation of former spouses as SBP beneficiaries**

What the USFSPA Does NOT do:

- require courts to divide retired pay**
- establish a formula or award automatic share amount to former spouse**
- require overlap of service and marriage to divide retired pay**



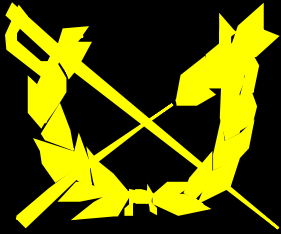
Uniformed Services Former Spouses' Protection Act

HISTORY



- *McCarty v. McCarty*, 453 U.S. 210 (1981) states are pre-empted from dividing military retired pay
- Congressional response Uniformed Services Former Spouses' Protection Act,

Pub L. 97-252, 96 Stat. 730 (1982), 10 USC §§ 1072, 1076, 1086, 1408, 1447, 1448, 1450, 1451



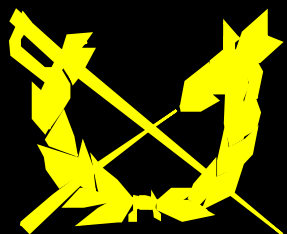
Uniformed Services Former Spouses' Protection Act

ONLY DISPOSABLE PAY IS DIVISIBLE

Gross Pay vs. Disposable Pay 10 U.S.C. § 1408

Mansell v. Mansell, 490 U.S. 581 (1989): The money waived to receive VA disability is excluded from “disposable retired pay.”

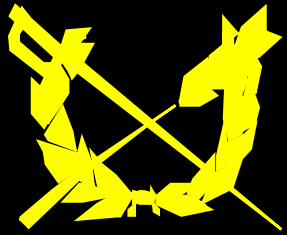




Uniformed Services Former Spouses' Protection Act

SAMPLE CALCULATION

	<u>RETIREE</u>	<u>SPOUSE</u>
Gross retired pay	\$2,000	
VA Disability pay	361	
Waived retired pay	(361)	
DISPOSABLE RETIRED PAY	1,638	
Division of D.R.P.	819	819
Tax (15%)	(123)	(123)
Net after taxes	1,057	696



Uniformed Services Former Spouses' Protection Act

JURISDICTION



DOMICILE

RESIDENCE *

CONSENT

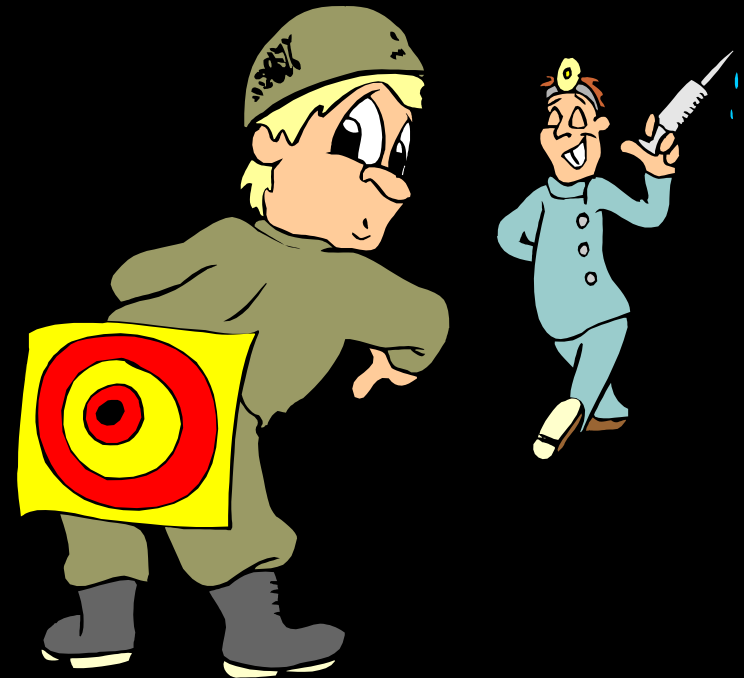


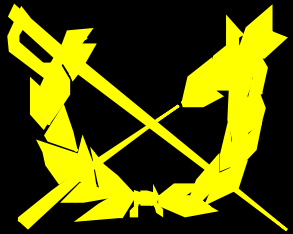
Uniformed Services Former Spouses' Protection Act

STATE LAW controls “whether” and “how much”
of the following amounts are awarded:

- Child Support
- Alimony
- Division of Property

VESTING is required in some
states: (Arkansas,
Indiana & North Carolina)

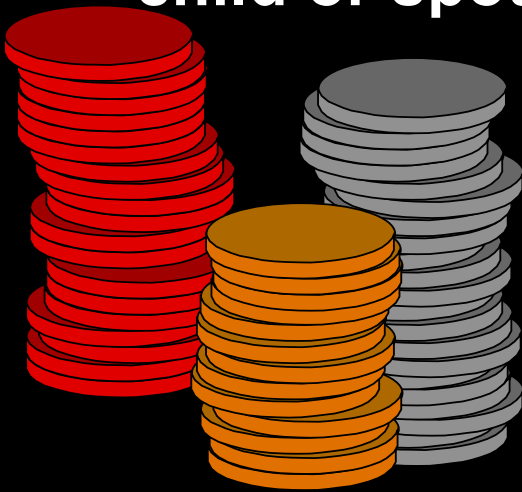


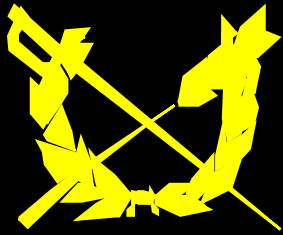


Uniformed Services Former Spouses' Protection Act

MAXIMUM PERCENTAGE ELIGIBLE FOR WITHHOLDING BY DFAS:

- **50%** “Disposable” retired pay
- **65%** if DFAS is served with withholding order for child or spousal support





Uniformed Services Former Spouses' Protection Act

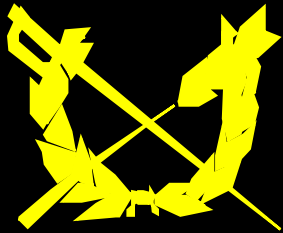
NO FEDERAL FORMULA!

One Common State Formula:

Length of overlap of

$$\frac{1}{2} \times \text{marriage and service} \times \text{Retirement} = \text{marital share}$$

Time in service



Uniformed Services Former Spouses' Protection Act

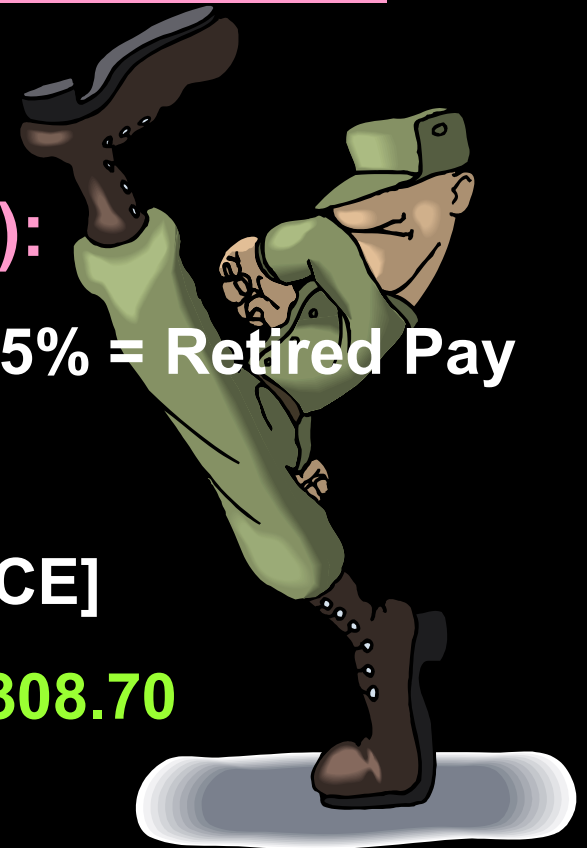
HOW MUCH WILL A RETIREMENT BE?

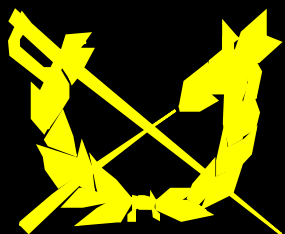
BASE PAY (RET'D):

BASE PAY X YEARS OF SERVICE X 2.5% = Retired Pay

EXAMPLE: [O-6, 20 YEARS OF SERVICE]

\$6617.40 X 20 X 2.5% = \$3308.70





Uniformed Services Former Spouses' Protection Act

EXAMPLE

$$\text{Base Pay (ret'd)} \times \frac{\text{20 years marriage}}{\text{20 years service}} \times \frac{1}{2} = \text{FS Share}$$

SAMPLE: O-6 with 20 years service/marriage ●

$$\$3308.70 \times \frac{20}{20} \times \frac{1}{2} = \$1654.35$$



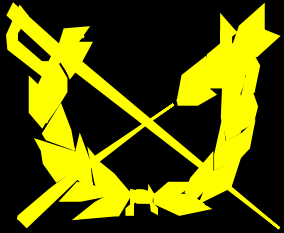


Uniformed Services Former Spouses' Protection Act

OTHER EXAMPLES

1. **Fixed Amount:** Soldier pays Former Spouse \$xxx per month.
2. **Percentage:** Soldier pays Former Spouse X % of disposable retired pay per month.





Uniformed Services Former Spouses' Protection Act

RESERVE AND NATIONAL GUARD

- o POINTS
- o No Retirement Pay until Age 60





Uniformed Services Former Spouses' Protection Act RESERVE AND NATIONAL GUARD

Major Smith: Commissioned 1 Feb 1980
(serves on active duty until 31 Jan 1985).

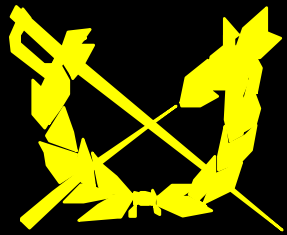
Feb 1985 marries and enters USAR.

Feb 2000 divorces and retires.

POINTS: Active Duty [5 X 360] 1800
Reserve [15 X 60] 900 = 2700 TOTAL



15 (years of marriage overlap) or 900 (points)
20 (total years of service) 2700

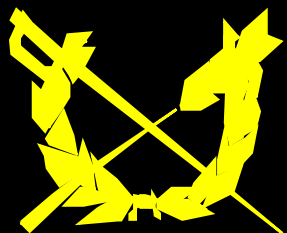


Uniformed Services Former Spouses' Protection Act

Defeating the Benefits of the Act

1. Disability Retired Pay/VA Disability Retired Pay
2. Re-marriage/cohabitation
(does not affect retirement award)
3. Death of Former Spouse
4. Death of Retiree





Uniformed Services Former Spouses' Protection Act

Direct Payments

- **Final Decree or Court Order**
- **Compliance with SSCRA statement**
- **“10 year” test for division as marital property**
- **DD Form 2293**



Uniformed Services Former Spouses' Protection Act

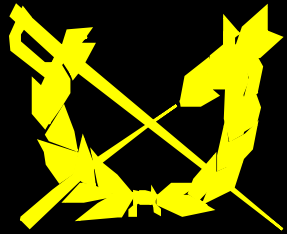
Medical Care, PX, and Commissary Benefits

- “20/20/20” test – Forever
- “20/20/15” test – One year (transitional)
- “Unremarried” – (Revived by termination of subsequent marriage)



Medical Care

- Termination of subsequent marriage DOES NOT revive health care benefits (annulment does).
- Spouse may not be enrolled in an employer sponsored health plan.



Uniformed Services Former Spouses' Protection Act

Survivor's Benefit Plan

Two methods of coverage:

- 1. Service Member Voluntarily designates beneficiary**
- 2. “Deemed Election” of beneficiary**

**Request from former spouse to DFAS within 1
year of court order**

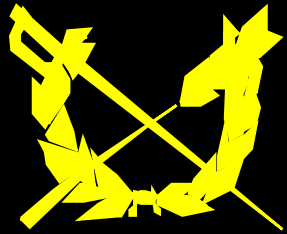
DFAS “flags” members records



Uniformed Services Former Spouses' Protection Act

Effect of VA Disability

- NOT “disposable retired pay” so NOT part of USFSPA
- Trend is to divide as “functional equivalent” or “in lieu of” retired pay
- VSI/SSB created by statute but no federal preemption
- Divorce before disability claim will drastically reduce a spouse's share
 - Courts may use equitable powers to address the issue
- Divorce after the disability claim
 - Request more Spousal support or higher share of other assets

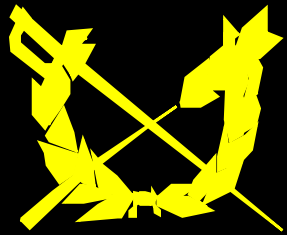


Uniformed Services Former Spouses' Protection Act

Domestic Abuse Cases

Full Health, Dental, and Commissary/PX Benefits may be retained where the Service Member loses his retirement due to misconduct and if:

- **There is division as property settlement**
- **Service member is eligible by years for retirement**
- **Spouse or children are victims of service member's domestic violence**
- **Remarriage terminates payments**



Uniformed Services Former Spouses' Protection Act

DOD Continued Health Care Benefit Program

- Eligibility: anyone who loses entitlement to military health care
- Concept: premium based temporary health care coverage program designed to mirror the benefits offered under the basic TRICARE program (it is not, however, part of TRICARE).



Uniformed Services Former Spouses' Protection Act

CONCLUSION

Great Resource for Fact Sheets:

www.dfas.mil

ANY QUESTIONS?

Thank you!