

**User Name:** Carson Tucker

**Date and Time:** Nov 26, 2016 05:47

**Job Number:** 40127361

## Document (1)

1. [10 USCS § 1408](#)

**Client/Matter:** -None-

**10 usc 1408:**

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Statutes and Legislation

**Narrowed by**  
-None-

## [10 USCS § 1408](#)

Current through PL 114-244, approved 10/14/16

[United States Code Service - Titles 1 through 54](#) > [TITLE 10. ARMED FORCES](#) > [SUBTITLE A. GENERAL MILITARY LAW](#) > [PART II. PERSONNEL](#) > [CHAPTER 71. COMPUTATION OF RETIRED PAY](#)

### § 1408. Payment of retired or retainer pay in compliance with court orders

(a) Definitions. In this section:

(1) The term "court" means--

- (A) any court of competent jurisdiction of any State, 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;
- (B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;
- (C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and
- (D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act [[42 USCS §§ 651](#) et seq.]), and, for purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term "court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act ([42 U.S.C. 653\(p\)](#)), which--

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for--

- (i) payment of child support (as defined in section 459(i)(2) of the Social Security Act ([42 U.S.C. 659\(i\)\(2\)](#)));
- (ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act ([42 U.S.C. 659\(i\)\(3\)](#))); or
- (iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term "final decree" means a decree 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.

## 10 USCS § 1408

- (4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which--
- (A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;
  - (B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;
  - (C) in the case of a member entitled to retired pay under chapter 61 of this [title \[10 USCS §§ 1201 et seq.\]](#), are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or
  - (D) are deducted because of an election under chapter 73 of this [title \[10 USCS §§ 1431 et seq.\]](#) to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.
- (5) The term "member" includes a former member entitled to retired pay under section 12731 of this [title \[10 USCS § 12731\]](#).
- (6) The term "spouse or former spouse" means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.
- (7) The term "retired pay" includes retainer pay.
- (b) Effective service of process. For the purposes of this section--
- (1) service of a court order is effective if--
    - (A) an appropriate agent of the Secretary concerned designated for receipt of service court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;
    - (B) the court order is regular on its face;
    - (C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and
    - (D) the court order or other documents served with the court order certify that the rights of the member under the Servicemembers Civil Relief Act ([50 U.S.C. App. 501](#) et seq. [[50 USCS §§ 3901 et seq.](#)]) were observed; and
  - (2) a court order is regular on its face if the order--
    - (A) is issued by a court of competent jurisdiction;
    - (B) is legal in form; and
    - (C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.
- (c) Authority for court to treat retired pay as property of the member and spouse.
- (1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former

## 10 USCS § 1408

- spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.
- (2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.
  - (3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.
  - (4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.
- (d) Payments by Secretary concerned to (or for benefit of) spouse or former spouse.
- (1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act [[42 USCS § 654b](#)] or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act [[42 USCS §§ 651](#) et seq.], as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act ([42 U.S.C. 608\(a\)](#)[(3)](4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to retired pay.
  - (2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.
  - (3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.
  - (4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

## 10 USCS § 1408

- (5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.
- (6) In the case of a court order for which effective service is made on the Secretary concerned on or after August 22, 1996, and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.
- (7) (A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.
- (B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order--
- (i) modifies a previous court order under this section upon which payments under this subsection are based; and
  - (ii) is issued by a court of a State other than the State of the court that issued the previous court order.

**(e) Limitations.**

- (1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.
- (2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.
- (3) (A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall--
- (i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such courts orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);
  - (ii) retain an amount of disposable retired pay that is equal to the lesser of--
    - (I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and
    - (II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

## 10 USCS § 1408

- (iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act ([42 U.S.C. 659](#)) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus--
- (I) the amount of disposable retired pay paid under clause (i); and
  - (II) the amount of disposable retired pay retained under clause (ii).
- (B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.
- (4) (A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act ([42 U.S.C. 659](#)), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.
- (B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act ([42 U.S.C. 659](#)) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act ([42 U.S.C. 662](#)) to be remuneration for employment that is payable by the United States.
- (5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act ([42 U.S.C. 659](#)), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).
- (6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act ([42 U.S.C. 659](#)) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.
- (f) Immunity of officers and employees of United States.
- (1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

## 10 USCS § 1408

- (2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.
- (g) Notice to member of service of court order on Secretary concerned. A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.
- (h) Benefits for dependents who are victims of abuse by members losing right to retired pay.
- (1) (A) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.
- (B) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides for the payment as child support of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible dependent child of the member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such dependent child.
- (2) A spouse or former spouse, or a dependent child, of a member or former member of the armed forces is eligible to receive payment under this subsection if--
- (A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security);
- (B) in the case of eligibility of a spouse or former spouse under paragraph (1)(A), the spouse or former spouse--
- (i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or
- (ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse; and
- (C) in the case of eligibility of a dependent child under paragraph (1)(B), the other parent of the child died as a result of the misconduct that resulted in the termination of retired pay.
- (3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.
- (4) Upon the request of a court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification--
- (A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

## 10 USCS § 1408

- (B)** if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.
- (5)** A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this [title \[10 USCS § 1401a\]](#) (or any other provision of law), the amount payable under the court order to the spouse or former spouse, or the dependent child, of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.
- (6)** Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse, or to a dependent child, of the member or former member.
- (7)** (A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.
- (B)** A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.
- (8)** Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this [title \[10 USCS § 1461\]](#) or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.
- (9)** (A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.
- (B)** A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.
- (C)** If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.
- (10)** (A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this [title \[10 USCS § 860\(c\)\]](#) (article 60(c) of the Uniform Code of Military Justice).



## 10 USCS § 1408

- (B)** If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).
- (11)** In this subsection, the term "dependent child", with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who--
- (A)** is under 18 years of age;
- (B)** is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or
- (C)** if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.
- (i)** Certification date. It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.
- (j)** Regulations. The Secretaries concerned shall prescribe uniform regulations for the administration of this section.
- (k)** Relationship to other laws. In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act [[42 USCS § 659\(i\)\(2\)](#)]) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act [[42 USCS § 659](#)].

## History

---

(Added Sept. 8, 1982, [P.L. 97-252](#), Title X, § 1002(a), [96 Stat. 730](#); Oct. 19, 1984, [P.L. 98-525](#), Title VI, Part E, § 643(a)-(d), [98 Stat. 2547](#); Nov. 14, 1986, [P.L. 99-661](#), Div A, Title VI, Part D, § 644(a), [100 Stat. 3887](#); April 21, 1987, [P.L. 100-26](#), §§ 3(3) in part, 7(h)(1) in part, [101 Stat. 273](#), 282; Nov. 29, 1989, [P.L. 101-189](#), Div A, Title VI, Part F, § 653(a)(5), Title XVI, Part C, § 1622(e)(6), [103 Stat. 1462](#), 1605; Nov. 5, 1990, [P.L. 101-510](#), Div A, Title V, Part E, § 555(a)-(d), (f), (g), [104 Stat. 1569](#), 1570; Dec. 5, 1991, [P.L. 102-190](#), Div A, Title X, Part E, § 1061(a)(7), [105 Stat. 1472](#); Oct. 23, 1992, [P.L. 102-484](#), Div A, Title VI, Subtitle E, § 653(a), [106 Stat. 2426](#); Nov. 30, 1993, [P.L. 103-160](#), Div A, Title V, Subtitle E, § 555(a), (b), Title XI, Subtitle H, § 1182(a)(2), [107 Stat. 1666](#), 1771; Feb. 10, 1996, [P.L. 104-106](#), Div A, Title XV, § 1501(c)(16), [110 Stat. 499](#); Aug. 22, 1996, [P.L. 104-193](#), Title III, Subtitle G, §§ 362(c), 363(c)(1)-(3), [110 Stat. 2246](#), 2249; Sept. 23, 1996, [P.L. 104-201](#), Div A, Title VI, Subtitle D, § 636, [110 Stat. 2579](#); Nov. 18, 1997, [P.L. 105-85](#), Div A, Title X, Subtitle G, § 1073(a)(24), (25), [111 Stat. 1901](#); Dec. 28, 2001, [P.L. 107-107](#), Div A, Title X, Subtitle E, § 1048(c)(9), [115 Stat. 1226](#); Nov. 25, 2002, [P.L. 107-296](#), Title XVII, § 1704(b)(1), [116 Stat. 2314](#); Dec. 19, 2003, [P.L. 108-189](#), § 2(c), [117 Stat. 2866](#); Jan. 6, 2006, [P.L. 109-163](#), Div A, Title VI, Subtitle D, § 665(a), [119 Stat. 3317](#); Oct. 28, 2009, [P.L. 111-84](#), Div A, Title X, Subtitle F, § 1073(a)(15), [123 Stat. 2473](#).)

Annotations

## Notes

---

**Explanatory notes:**

In subsec. (b)(1)(D), "[50 USCS §§ 3901](#) et seq." has been inserted in brackets to reflect the reclassification of such sections by the compilers of the United States Code.

The bracketed paragraph designator "(3)" has been inserted in subsec. (d)(1) in the reference to [42 U.S.C. 608\(a\)\(4\)](#) to indicate the paragraph probably intended by Congress.

**Effective date of section:**

This section became effective on February 1, 1983, pursuant to § 1006 of Act Sept. 8, 1982, [P.L. 97-252](#), which appears as a note to this section.

**Amendments:**

**1984** . Act Oct. 19, 1984 (applicable as provided by § 643(e) of such Act, which appears as a note to this section), in subsec. (a)(2)(C), inserted "in the case of a division of property,"; in subsec. (b)(1)(C), inserted ", if possible,"; in subsec. (d), in para. (1), substituted "After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order." for "After effective service on the secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order.", in para. (5), substituted "child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part" for "disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part"; and in subsec. (e), in para. (2), substituted ", the disposable retired or retainer pay of the member" for "from the disposable retired or retainer pay of a member, such pay", in para. (3)(A), in the introductory matter, deleted "from the disposable retired or retainer pay" following "former spouse", in cl. (i), substituted "from the member's disposable retired or retainer pay the least amount" for "the least amount of disposable retired or retainer pay", in cl. (ii)(I), deleted "of retired or retainer pay" following "largest amount", in para. (4)(A), deleted "the retired or retainer pay of" following "month from", and substituted "satisfaction of such court orders and legal process from the retired or retainer pay of the member shall be" for "such court orders and legal process shall be satisfied", and in para. (5), deleted "of disposable retired or retainer pay" in two places following "payment of an amount", and substituted "disposable retired or retainer pay" for "such pay" following "which exceeds the amount of".

**1986** . Act Nov. 14, 1986, § 644(a) (applicable as provided by § 644(b) of such Act, which appears as a note to this section), as amended by Act April 21, 1987, § 3(3), (applicable as if included in Act Nov. 14, 1986 when enacted on 11/14/86, as provided by § 12(a) of Act April 21, 1987, which appears as [10 USCS § 776](#) note), in subsec. (a), in para. (4), in the introductory matter, deleted "(other than the retired pay of a member retired for disability under chapter 61 of this title)" following "member is entitled", and substituted subpara. (E) for one which read: "are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or".

**1987** . Act April 21, 1987, in subsec. (a)(4)(D), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

## 10 USCS § 1408

Such Act further made a technical correction to the directory language of § 644(a) of Act Nov. 14, 1986, *P.L. 99-661*, which did not affect the text of this section.

**1989** . Act Nov. 29, 1989, in subsec. (a), in para. (4)(D), deleted "[\(26 U.S.C. 3402\(j\)\)](#)" following "1986", and, in para. (5), inserted "entitled to retired pay under section 1331 of this title".

Such Act further, in subsec. (a), in the introductory matter of paras. (1)-(4), and in paras. (5) and (6), inserted "The term" and revised the first word in quotation marks in each para. so that the initial letter of such word is lower case.

**1990** . Act Nov. 5, 1990 deleted "or retainer" following "retired", wherever appearing, and added the subsection headings in subsecs. (a)-(h).

Such Act further (applicable as provided by § 555(e)(1) of such Act, which appears as a note to this section), in subsec. (c)(1), added the sentence beginning "A court may not treat retired pay as property . . .".

Such Act further (applicable as provided by § 555(e)(2) of such Act, which appears as a note to this section), in subsec. (a)(4), in subpara. (A), substituted "for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;" for the semicolon, substituted subpara. (B) for one which read: "(B) are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;", redesignated former subparas. (E) and (F) as subparas. (C) and (D), and deleted former subparas. (C) and (D), which read:

"(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;

"(D) are withheld under [section 3402\(j\) of the Internal Revenue Code of 1954 \(26 U.S.C. 3402\(j\)\)](#) if such member presents evidence of a tax obligation which supports such withholding;"

and added para. (7); in subsec. (c)(2), added the sentence beginning "Payments by the Secretary concerned under subsection (d) . . ."; and, in subsec. (e), in para. (1), substituted "payable under all court orders pursuant to subsection (c)" for "payable under subsection (d)", and, in para. (4)(B), substituted "the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act ([42 U.S.C. 662](#)) to be remuneration for employment that is payable by the United States" for "the disposable retired or retainer pay payable to such member".

**1991** . Act Dec. 5, 1991 substituted the section heading for one which read: "§ 1408. Payment of retired pay in compliance with court orders".

**1992** . Act Oct. 23, 1992 (applicable as provided by § 653(c) of such Act, which appears as a note to this section) redesignated subsec. (h) as subsec. (i); and added new subsec. (h).

**1993** . Act Nov. 30, 1993 (applicable as provided by § 1182(h) of such Act, which appears as [10 USCS § 101](#) note), in subsecs. (b), in para. (1)(A), and in subsec. (f), in paras. (1) and (2), substituted "subsection (i)" for "subsection (h)"; and, in subsec. (h)(4)(B), inserted "of" after "of that termination".

Such Act further (effective as of 10/23/92 and applicable as if the provisions of subsec. (h)(10) added by such Act were included in the amendment made by § 653(a)(2) of Act Oct. 23, 1992, *P.L. 102-484*, as provided by § 555(c) of the 1993 Act, which appears as a note to this section), in subsec. (h), in para. (2)(A), inserted "or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation", in para. (8), inserted "or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard", redesignated para. (10) as para. (11), and added a new para. (10).

**1996** . Act Feb. 10, 1996 (effective 12/1/94 and as if included as amendments made by Title XVI of Act Oct. 5, 1994 as originally enacted, as provided by § 1501(c) of such Act), in subsec. (a)(5), substituted "section 12731" for "section 1331".

Act Aug. 22, 1996 (effective 6 months after enactment, as provided by § 362(d) of such Act, which appears as [42 USCS § 659](#) note, but subject to § 395(b) and (c) of such Act, which appears as [42 USCS § 654](#) note), in subsec.

## 10 USCS § 1408

(a), in para. (1), in subpara. (B), deleted "and" after the concluding semicolon, in subpara. (C), substituted "; and" for the concluding period, and added subpara. (D), in para. (2), in the introductory matter, inserted "or a support order, as defined in section 453(p) of the Social Security Act ([42 U.S.C. 653\(p\)](#))", in subpara. (B), in cl. (i), substituted "(as defined in section 459(i)(2) of the Social Security Act ([42 U.S.C. 659\(i\)\(2\)](#)))" for "(as defined in section 462(b) of the Social Security Act ([42 U.S.C. 662\(b\)](#)))" and, in cl. (ii), substituted "(as defined in section 459(i)(3) of the Social Security Act ([42 U.S.C. 659\(i\)\(3\)](#)))" for "(as defined in section 462(c) of the Social Security Act ([42 U.S.C. 662\(c\)](#)))"; in subsec. (d), in the heading, inserted "(or for benefit of)" and, in para. (1), inserted "(or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)"; and added subsec. (j).

Such Act further (effective as provided by § 395(a)-(c) of such Act, which appears as [42 USCS § 654](#) note), in subsec. (d), in para. (1), inserted the sentence beginning "In the case of a spouse or former spouse . . .", and added para. (6); redesignated subsecs. (i) and (j) as subsecs. (j) and (k), and added subsec. (i).

Act Sept. 23, 1996, in subsec. (b)(1)(A), substituted "facsimile or electronic transmission or by mail" for "certified or registered mail, return receipt requested"; and, in subsec. (d), added para. [(7)] (6).

**1997** . Act Nov. 18, 1997 (applicable as provided by § 1073(i) of such Act, which appears as [10 USCS § 101](#) note), in subsec. (d), made technical corrections which required no change in text, redesignated para. [(7)] (6) as para. (7) and, in para. (7) as redesignated, in subpara. (A), substituted "out-of-State" for "out-of State"; and, in subsec. (g), made technical corrections which required no change in text.

**2001** . Act Dec. 28, 2001, in subsec. (d)(6), substituted "August 22, 1996," for "the date of the enactment of this paragraph,".

**2002** . Act Nov. 25, 2002 (effective on 3/1/2003 pursuant to § 1704(g) of such Act, which appears as [10 USCS § 101](#) note), in subsec. (h), in paras. (2) and (8), substituted "of Homeland Security" for "of Transportation".

**2003** . Act Dec. 19, 2003, in subsec. (b)(1)(D), substituted "Servicemembers Civil Relief Act" for "Soldiers' and Sailors' Civil Relief Act of 1940".

**2006** . Act Jan. 6, 2006 (applicable as provided by § 665(b) of such Act, which appears as a note to this section), in subsec. (h), in para. (1), designated the existing provisions as subpara. (A), and added subpara. (B), in para. (2), in the introductory matter, inserted ", or a dependent child," in subpara. (B), in the introductory matter, inserted "in the case of eligibility of a spouse or former spouse under paragraph (1)(A)," and, in cl. (ii), substituted "; and" for a concluding period, and added subpara. (C), in para. (4), in the introductory matter, inserted ", or an eligible dependent child," in para. (5), inserted ", or the dependent child," and, in para. (6), inserted ", or to a dependent child,".

**2009** . Act Oct. 28, 2009, in subsec. (h)(2)(A), deleted "and" following the concluding semicolon.

#### Other provisions:

**Repeal of provision for commissary and exchange privileges.** Act Sept. 8, 1982, [P.L. 97-252](#), Title X, § 1005, [96 Stat. 737](#), which formerly appeared as a note to this section, and which was effective on the first day of the first month which began more than 120 days after enactment on Sept. 8, 1982, as provided by § 1006(a) of such Act, which appears as [10 USCS § 1408](#) note, was repealed by Act July 19, 1988, [P.L. 100-370](#), § 1(c)(5), [102 Stat. 841](#). It provided for rules and regulations to be prescribed for commissary and post exchange privileges for surviving spouses of retired uniformed services members. For similar provisions see [10 USCS § 1062](#).

**Effective dates of Sept. 8, 1982 amendments; transitional provisions; applicability of subsec. (d).** Act Sept 8, 1982, [P.L. 97-252](#), Title X, § 1006, [96 Stat. 737](#); Sept. 24, 1983, [P.L. 98-94](#), Title IX, Part D, § 941(c)(4), [97 Stat. 654](#); Oct. 19, 1984, [P.L. 98-525](#), Title VI, Part E, § 645(b), [98 Stat. 2549](#), effective Jan. 1, 1985, as provided by § 645(d) in part of such Act, which appears as [10 USCS § 1072](#) note, provided:

## 10 USCS § 1408

"(a) The amendments made by this title [enacting this section, among other things; for full classification, consult USCS Tables volumes] shall take effect on the first day of the first month which begins more than one hundred and twenty days after the date of the enactment of this title.

"(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002(a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title, but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

"(c) The amendments made by section 1003 of this title [amending [10 USCS §§ 1447, 1448](#) and [1450](#)] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [[10 USCS §§ 1447](#) et seq.], before, on, or after the effective date of such amendments [subsec. (a) of this note].

"(d) The amendments made by section 1004 of this title [amending [10 USCS §§ 1072, 1076](#) and [1086](#)] and the provisions of section 1005 of this title [note to this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

"(e) For the purposes of this section--

"(1) the term 'court order' has the same meaning as provided in section 1408(a)(2) of title 10, United States Code (as added by section 1002 of this title);

"(2) the term 'former spouse' has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

"(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code."

**Applicability of Oct. 19, 1984 amendments.** Act Oct. 19, 1984, [P.L. 98-525](#), Title VI, Part E, § 643(e), [98 Stat. 2548](#), provides: "The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code [subsec. (b)(1) of this section], as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act."

**Applicability of 1986 amendments.** Act Nov. 14, 1986, [P.L. 99-661](#), Div A, Title VI, Part D, § 644(b), [100 Stat. 3887](#), provides: "The amendments made by subsection (a) shall apply with respect to court orders issued after the date of the enactment of this Act."

**Applicability of 1990 amendments.** Act Nov. 5, 1990, [P.L. 101-510](#), Div A, Title V, Part E, § 555(e), [104 Stat. 1570](#); Dec. 5, 1991, [P.L. 102-190](#), Div A, Title X, Part E, § 1062(a)(1), [105 Stat. 1475](#), provides:

"(1) The amendment made by subsection (a) [amending subsec. (c)(1) of this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

"(2) The amendments made by subsections (b), (c), and (d) [amending subsecs. (a), (c)(2) and (e) of this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act."

## 10 USCS § 1408

**Applicability of subsec. (h).** Act Oct. 23, 1992, *P.L. 102-484*, Div A, Title VI, Subtitle E, § 653(c), *106 Stat. 2429*, provides: "No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act."

**Study required.** Act Oct. 23, 1992, *P.L. 102-484*, Div A, Title VI, Subtitle E, § 653(e), *106 Stat. 2429*, provides:

"(1) The Secretary of Defense shall conduct a study in order to estimate--

"(A) the number of persons who will become eligible to receive payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), during each of fiscal years 1993 through 2000; and

"(B) for each of fiscal years 1993 through 2000, the number of members of the Armed Forces who, after having completed at least one, and less than 20, years of service in that fiscal year, will be approved in that fiscal year for separation from the Armed Forces as a result of having abused a spouse or dependent child.

"(2) The study shall include a thorough analysis of--

"(A) the effects, if any, of appeals and requests for clemency in the case of court-martial convictions on the entitlement to payments in accordance with subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a));

"(B) the socio-economic effects on the dependents of members of the Armed Forces described in subsection (h)(2) of such section that result from terminations of the eligibility of such members to receive retired or retainer pay; and

"(C) the effects of separations of such members from the Armed Forces on the mission readiness of the units of assignment of such members when separated and on the Armed Forces in general.

"(3) Not later than one year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study."

**Effective date of 1993 amendment.** Act Nov. 30, 1993, *P.L. 103-160*, Div A, Title V, Subtitle E, § 555(c), *107 Stat. 1666*, provides: "The amendments made by this section shall take effect as of October 23, 1992, and shall apply as the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102-484 (106 Stat. 2426)."

**Termination of Trust Territory of the Pacific Islands.** For termination of Trust Territory of the Pacific Islands, see note preceding [48 USCS §§ 1681](#).

**Payroll deductions.** Act Aug. 22, 1996, *P.L. 104-193*, Title III, Subtitle G, § 363(c)(4), *110 Stat. 2249*, provides: "The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period."

**Review of Federal former spouse protection laws.** Act Nov. 18, 1997, *P.L. 105-85*, Div A, Title VI, Subtitle D, § 643, *111 Stat. 1799*, provides:

"(a) Review required. The Secretary of Defense shall carry out a comprehensive review (including a comparison) of--

"(1) the protections, benefits, and treatment afforded under Federal law to members and former members of the uniformed services and former spouses of such persons; and

"(2) the protections, benefits, and treatment afforded under Federal law to employees and former employees of the Government and former spouses of such persons.

"(b) Military personnel matters to be reviewed. In the case of members and former members of the uniformed services and former spouses of such persons, the review under subsection (a) shall include the following:

## 10 USCS § 1408

"(1) All provisions of law (principally those originally enacted in the Uniformed Services Former Spouses' Protection Act (title X of [Public Law 97-252](#) [for full classification, consult USCS Tables volumes])) that--

"(A) establish, provide for the enforcement of, or otherwise protect interests of members and former members of the uniformed services and former spouses of such persons in retired or retainer pay of members and former members; or

"(B) provide other benefits for members and former members of the uniformed services and former spouses of such persons.

"(2) The experience of the uniformed services in administering those provisions of law, including the adequacy and effectiveness of the legal assistance provided by the Department of Defense in matters related to the Uniformed Services Former Spouses' Protection Act [for full classification, consult USCS Tables volumes].

"(3) The experience of members and former members of the uniformed services and former spouses of such persons in the administration of those provisions of law.

"(4) The experience of members and former members of the uniformed services and former spouses of such persons in the application of those provisions of law by State courts.

"(5) The history of State statutes and State court interpretations of the Uniformed Services Former Spouses' Protection Act [for full classification, consult USCS Tables volumes] and other provisions of Federal law described in paragraph (1)(A) and the extent to which those interpretations follow those laws.

"(c) Civilian personnel matters to be reviewed. In the case of former spouses of employees and former employees of the Government, the review under subsection (a) shall include the following:

"(1) All provisions of law that--

"(A) establish, provide for the enforcement of, or otherwise protect interests of employees and former employees of the Government and former spouses of such persons in annuities of employees and former employees under Federal employees' retirement systems; or

"(B) provide other benefits for employees and former employees of the Government and former spouses of such persons.

"(2) The experience of the Office of Personnel Management and other agencies of the Government in administering those provisions of law.

"(3) The experience of employees and former employees of the Government and former spouses of such persons in the administration of those provisions of law.

"(4) The experience of employees and former employees of the Government and former spouses of such persons in the application of those provisions of law by State courts.

"(d) Sampling authorized. The Secretary may use sampling in carrying out the review under this section.

"(e) Report. Not later than September 30, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the results of the review under subsection (a). The report shall include any recommendations for legislation that the Secretary considers appropriate."

**Applicability of Jan. 6, 2006 amendments.** Act Jan. 6, 2006, [P.L. 109-163](#), Div A, Title VI, Subtitle D, § 665(b), [119 Stat. 3318](#), provides: "A court order authorized by the amendments made by this section [amending subsec. (h) of this section] may not provide for a payment attributable to any period before the date of the enactment of this Act, or the date of the court order, whichever is later."

## Case Notes

---

### I. IN GENERAL

1. Generally
2. Purpose
3. Constitutional issues
4. Construction
5. Application
6. Relationship to state law
7. Personal Jurisdiction
8. Subject Matter Jurisdiction

### II. CONSTRUCTION

9. Spousal notification requirement
10. --Allocation of costs
11. --Amount of award
12. Pay subject to apportionment and direct payment
13. --Pay excluded
14. 10-year marriage requirement
15. Miscellaneous

### III. RETROACTIVITY

16. Generally
17. Relationship to state law
18. Validity of prior decisions/decrees
19. --Res judicata
20. Estoppel

### I. IN GENERAL

1. Generally

District court lacked jurisdiction, under Rooker-Feldman doctrine, over naval retiree's claim that Uniformed Services Former Spouses' Protection Act (10 USCS § 1408) amounted to unconstitutional taking of his property by state



## 10 USCS § 1408

court's award of plaintiff's retirement pay to his ex-spouse as alimony pursuant to Act; plaintiff's constitutional claim was inextricably intertwined with whether state court could award plaintiff's naval retirement pay to his ex-wife and federal district court holding in plaintiff's favor would effectively nullify state court's judgment. [Powell v Powell \(1996, CA11 Ga\) 80 F3d 464, 9 FLW Fed C 1015.](#)

[10 USCS § 1408](#) does not require division of military retired pay; it merely provides mechanism to enforce valid state court order directing such division for retired pay received after 6/25/81. DOHA Case No. 99122104 (3/16/00).

## 2. Purpose

Federal Uniform Services Former Spouses' Protection Act ([10 USCS § 1408](#)) was not intended to expand subject-matter jurisdiction of federal courts, but rather merely empowered court that otherwise had jurisdiction to divide marital property. [Steel v United States \(1987, CA9 Cal\) 813 F2d 1545.](#)

Uniformed Services Former Spouses' Protection Act was intended to obliterate adverse effect of U. S. Supreme Court decision which held that federal law precludes state court from dividing military non-disability retirement pay pursuant to state law. [Allen v Allen \(1986, La App 3d Cir\) 484 So 2d 269](#), cert den (1986, La) [488 So 2d 199](#) and cert den [\(1986\) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178.](#)

Effect of [10 USCS § 1408](#) is to allow state court to apply state community property law regarding divisibility of multipensions as it existed on June 26, 1981 to all cases pending in trial court and on appeal. [Steczo v Steczo \(1983, App\) 135 Ariz 199, 659 P2d 1344.](#)

Purpose of [10 USCS § 1408\(c\)\(1\)](#) was to overrule in its entirety United States Supreme Court decision in *McCarty v McCarty*, which held that under community property law military retirement pensions could not be divided between divorcing spouses. [In re Marriage of Buikema \(1983, 4th Dist\) 139 Cal App 3d 689, 188 Cal Rptr 856.](#)

Purpose of [10 USCS § 1408\(c\)\(1\)](#) is to reverse effect of [McCarty v McCarty \(1981\) 453 US 210, 69 L Ed 2d 589, 101 S Ct 2728, 2 EBC 1502](#), which holds that nondisability military retirement benefits are not divisible as community property by state courts; apparent purpose of § 1408(c)(1) reference to June 25, 1981, is to place courts in same position they were in on June 26, 1981, date of *McCarty* decision. [Neese v Neese \(1984, Tex App Eastland\) 669 SW2d 388.](#)

[10 USCS § 1408](#) effectively nullified Supreme Court's holding in *McCarty* Decision. [In re Marriage of Smith \(1983\) 100 Wash 2d 319, 669 P2d 448.](#)

## 3. Constitutional issues

In action in which armed forces members alleged that Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), did not provide procedural due process because due process required Secretary of Defense to review whether state court complied with terms of Servicemembers Civil Relief Act, [50 USCS app. §§ 501](#) et seq., due process claim failed because requiring Defense Finance and Accounting Service (DFAS) to conduct additional review before complying with state court orders would have harmed government's interest in minimizing administrative expenses without demonstrably reducing error rate of existing enforcement system; due process did not require more than DFAS already provided pursuant to Act. [Adkins v Rumsfeld \(2006, CA4 Va\) 464 F3d 456](#), cert den [\(2007\) 551 US 1130, 127 S Ct 2972, 168 L Ed 2d 702.](#)

That Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), did not exempt service members who joined armed forces prior to its enactment from state court divorce decrees dividing their military retirement pay did not violate members' rights to substantive due process because members did not have legitimate expectation that their retirement pay would be shielded upon divorce from division and garnishment. [Adkins v Rumsfeld \(2006, CA4 Va\) 464 F3d 456](#), cert den [\(2007\) 551 US 1130, 127 S Ct 2972, 168 L Ed 2d 702.](#)

## 10 USCS § 1408

Claim that Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), allowed variation among states that was impermissible under Armed Forces Clauses, [U.S. Const. art. I, § 8, cls. 12-14](#), and Full Faith and Credit Clause, [U.S. Const. art. IV, § 1](#), was rejected because Full Faith and Credit Clause did not impose requirement of substantive uniformity in any area of law and Congress's decision to allow military retiree pay no special exemption from ordinary state divorce law principles was entitled to judicial deference. [Adkins v Rumsfeld \(2006, CA4 Va\) 464 F3d 456](#), cert den [\(2007\) 551 US 1130, 127 S Ct 2972, 168 L Ed 2d 702](#).

Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), did not violate equal protection rights of armed forces members who were subject to state court orders granting former spouses portion of their military retirement pay, because (1) Act was gender-neutral and was rationally related to legitimate purpose of protecting former spouses, who made unique sacrifices during marriage, and (2) Congress was not required to include remarriage cutoff provision even though such cutoffs applied to former spouses of other government employees. [Adkins v Rumsfeld \(2006, CA4 Va\) 464 F3d 456](#), cert den [\(2007\) 551 US 1130, 127 S Ct 2972, 168 L Ed 2d 702](#).

Passage of Uniform Services Former Spouse's Protection Act ([10 USCS § 1408\(c\)\(1\)](#)) (USFSPA) did not result in taking of former military personnel's property (portion of their military retired pay) in violation of Fifth Amendment to Constitution as Act merely removed federal pre-emption which precluded state courts from considering military retirement pay as marital property subject to division as part of divorce decree and there was no intent on government's part to take claimants' property; even assuming arguendo that property was taken from claimants, it was taken not for public use but for private use of claimants' ex-spouses. [Fern v United States \(1988\) 15 Cl Ct 580](#), affd (1990, CA) [908 F2d 955, 12 EBC 1936](#).

Uniform Services Former Spouses Protection Act, which authorizes state courts to treat disposable retire pay as property solely of retiree or as property of retiree and spouse, does not effect taking of property requiring service member whose pay has been apportioned in community property states pursuant to divorce decree to be reimbursed by U.S. Government. [Fern v United States \(1990, CA\) 908 F2d 955, 12 EBC 1936](#).

#### 4. Construction

Statute does not grant state courts power to treat as property divisible upon divorce military retirement pay that retiree had waived pursuant to [38 USCS § 3105](#) in order to receive veterans' disability benefits; it cannot be read merely as garnishment statute designed not to pre-empt authority of state courts but solely to set out circumstances under which federal government will make direct payments of retirement pay to retiree's former spouse pursuant to court order because statute provides that court may treat disposable retired or retainer pay but not total retired pay as property of retiree and spouse, and term "disposable retired or retainer pay" is defined to exclude military retirement pay waived in order to receive veterans' disability benefits, and other subsections of statute impose substantive limits on state courts' power to divide military retirement pay. [Mansell v Mansell \(1989\) 490 US 581, 104 L Ed 2d 675, 109 S Ct 2023, 10 EBC 2521](#).

Direct payment provision does not apply to amendment or modification of divorce decree that does not divide or address military retired pay and that became final before June 26, 1981. [Carmody v Secretary of Navy \(1989, CA4 Va\) 886 F2d 678](#).

Action by former spouse of retired military officer for partition of officer's retirement pay is dismissed, where parties' marriage was dissolved by German court, because Uniformed Services Former Spouses Protection Act only allows courts to apply state divorce laws to military pensions, but does not expressly or impliedly grant court power to adjudicate any cause nor does it provide substantive rules for treatment of military pensions in divorce or domestic relations contexts, so court lacks jurisdiction to adjudicate plaintiff's request to partition military retirement pay. [Brown v Harms \(1994, ED Va\) 863 F Supp 278](#).

Uniform Services Former Spouse's Protection Act, [10 USCS § 1408](#), authorizes court with jurisdiction over matters ancillary to divorce to order payment of portion of military pension directly to estranged spouse of military member upon their divorce. [Nichols v Nichols \(In re Nichols\) \(2004, BC MD Pa\) 305 BR 418](#).

## 10 USCS § 1408

Under California law, Uniform Services Former Spouse's Protection Act grants authority for state court to determine wife's community property interest in former husband's military retirement pension in action subsequent to divorce decree, since there was no final adjudication of that interest at time divorce decree became final in 1970. [\*Bryant v Sullivan\* \(1985, App\) 148 Ariz 426, 715 P2d 282.](#)

Former serviceman's wife seeking division of military retirement pay of husband in accord with § 1408 has community interest in such pay where military retirement pay was classified as community property under state law at time of divorce and after effective date of § 1408 which permits but does not require states to classify military retirement pay as marital property. [\*Savoie v Savoie\* \(1986, La App 5th Cir\) 482 So 2d 23.](#)

Rights to military retirement benefits accrue continuously throughout husband's period of service, and wife's entitlement to those benefits should be determined under law of state in which parties were domiciled for respective periods during which military retirement benefits accrued. [\*Allen v Allen\* \(1986, La App 3d Cir\) 484 So 2d 269](#), cert den (1986, La) [\*488 So 2d 199\*](#) and cert den (1986) [\*479 US 850, 93 L Ed 2d 114, 107 S Ct 178.\*](#)

Order modifying decree of dissolution which required retired serviceman and former wife to certify to Secretary of Air Force as to validity of modification decree of dissolution should be eliminated since there are no conflicting court orders in case and § 1408 requiring certification is applicable only when Secretary of Air Force is served with conflicting court orders. [\*In re Marriage of Hadley\* \(1986\) 77 Or App 295, 713 P2d 39.](#)

Section 1048(c)(1) does not mandate that military retirement pension be shared by recipient and recipient's former spouse; it only authorizes division, and leaves to state courts decision regarding whether any allocation is to be made. [\*In re Marriage of Habermehl\* \(1985, 5th Dist\) 135 Ill App 3d 105, 89 Ill Dec 939, 481 NE2d 782.](#)

Section 1408 does not require reinstatement of earlier judgments or division of military pay but only permits reopening of final judgments for reconsideration in light of its provisions. [\*In re Marriage of Giroux\* \(1985\) 41 Wash App 315, 704 P2d 160.](#)

[\*10 USCS § 1408\*](#) does not signify congressional intent to pre-empt state law and disallow disposition of military disability retirement paid by state courts in accordance with state law, in situation where (1) retirement occurred before dissolution of marriage and at time when military spouse was eligible for both longevity and disability retirement and could have elected to receive longevity retirement benefits under both federal and state law, and (2) nonmilitary spouse would have been entitled to community property share of longevity retirement pension for which husband was eligible had he elected to receive longevity retirement benefits; in such situation, military spouse cannot destroy other spouse's federal statutory right and concomitant state law right by simply accepting disability retirement and opting not to elect longevity retirement. [\*In re Marriage of Mastropaolo\* \(1985, 4th Dist\) 166 Cal App 3d 953, 213 Cal Rptr 26](#), cert den (1986) [\*475 US 1011, 89 L Ed 2d 301, 106 S Ct 1185\*](#) and (criticized on other grounds in [\*In re Marriage of Krempin\* \(1999, 1st Dist\) 70 Cal App 4th 1008, 83 Cal Rptr 2d 134.](#)

Language contained in Uniformed Services Former Spouses' Protection Act does not create distinction between active duty and reserve duty service for purposes of service creditable in determining member's eligibility for retired pay; thus, there is nothing in statute to indicate that reserve duty service is exempt from being considered as service creditable if member subsequently retires from active duty. DOHA Case No. 08020701 (2/28/08).

## 5. Application

Where debtor agreed to pay creditor his future monthly retirement and veterans disability payments in exchange for lump sum payment, agreement did not create express trust and agreement was subject to discharge because: (1) creditor's argument that agreement created purported trust failed because there was no trust res as rights to military retired pay and veterans' disability benefits were neither entitlements nor vested rights, (2) [\*37 USCS § 701\(c\)\*](#) and [\*38 USCS § 5301\(a\)\(1\)\*](#) restricted debtor's right to transfer benefits, and (3) creditor's reliance on Uniformed Services Former Spouses' Protection Act was misplaced because nothing in that statute suggested that Congress intended it to apply outside domestic relations context. [\*Bowden v Structured Invs. Co., LLC \(In re Bowden\)\* \(2004, BC WD Wash\) 315 BR 903.](#)

## 10 USCS § 1408

State court did not violate bankruptcy court's order under [11 USCS § 362](#) extending automatic stay when it terminated Chapter 13 debtor's right to receive portion of her ex-husband's military retirement and portion of payments her ex-husband was entitled to receive under ERISA-qualified pension plan, because debtor's interest in her ex-husband's military retirement and private pension plan were not property of her bankruptcy estate under [11 USCS § 541](#); both anti-alienation provision of ERISA, [29 USCS § 1056\(d\)](#), and anti-alienation provision of Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408\(c\)\(2\)](#), imposed transfer restrictions that were enforceable under nonbankruptcy law and removed debtor's interest under both plans from her bankruptcy estate. [Dyckman v Dyckman \(In re Dyckman\) \(2012, BC MD Pa\) 67 CBC2d 744.](#)

Chapter 7 debtor's ex-wife met her burden of showing that debts debtor owed her under divorce decree that was issued by Georgia court were nondischargeable under [11 USCS § 523](#) because they were "domestic support obligations," as that term was defined in [11 USCS § 101](#), or were debts debtor incurred in connection with his divorce; because state court awarded debtor's ex-wife 60% of debtor's military retirement pay but U.S. Government was allowed under Uniformed Former Spouses' Protection Act, [10 USCS § 1408](#), to pay debtor's ex-wife only 50% of debtor's retirement pay, debtor held 10% that his ex-wife was still owed in constructive trust, and that debt was nondischargeable under § 523. [Walls v Hicks \(In re Hicks\) \(2015, BC MD Fla\) 530 BR 914](#), judgment entered (2015, BC MD Fla) [530 BR 921](#).

Portion of taxpayer's retirement payments ordered paid to his former spouse pursuant to Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), were not property settlement but alimony and, therefore, deductible pursuant to [26 USCS § 215](#), where retirement payments would terminate, by operation of law, on earlier of date that either taxpayer or his former spouse died; thus, retirement payments met requirements of [26 USCS § 71\(b\)\(1\)\(D\)](#). [Proctor v Comm'r \(2007\) 129 TC 92](#).

Division of value by state Family Court of right of United States Public Health veterinarian to retire and receive benefits does not violate [10 USCS § 1408](#). [Wallace v Wallace \(1984, App\) 5 Hawaii App 55, 677 P2d 966](#).

Trial court did not err in awarding portion of husband's military pension to wife in legal separation proceeding in view of enactment of [10 USCS § 1408](#). [Coates v Coates \(1983, Mo App\) 650 SW2d 307](#).

Husband's military nondisability retirement benefits could be divided in divorce action where trial court still had control over divorce judgment. [Voronin v Voronin \(1983, Tex App Austin\) 662 SW2d 102](#).

Trial court erred in not considering husband's military retirement benefits at time of division of community estate between divorcing husband and wife, notwithstanding at time of divorce decree, Congress had not enacted [10 USCS § 1408](#). [Gordon v Gordon \(1983, Tex App Corpus Christi\) 659 SW2d 475](#) (superseded by statute on other grounds as stated in [Southern v Glenn \(1984, Tex App San Antonio\) 677 SW2d 576](#)).

In dividing military pension in marital dissolution, trial court erred by using denominator of 25 years in its formula, which it had drawn from husband's basic pay line of his retirement orders, when court should have instead used husband's actual 20 years of active and creditable service. [Kelly v Kelly \(2003\) 2003 WY 133, 78 P3d 220](#).

District court did not err by entering second amended qualified domestic relations order because divorce decree was ambiguous and needed clarification to meet statutory requirements of Uniformed Services Former Spouses Protection Act, [10 USCS § 1408](#), and such clarification related to "clerical mistake" for purposes of Wyo. R. Civ. P. 60(a). [Wyland v Wyland \(2006\) 2006 WY 93, 138 P3d 1165](#).

Language contained in Uniformed Services Former Spouses' Protection Act does not create distinction between active duty and reserve duty service for purposes of service creditable in determining member's eligibility for retired pay; thus, there is nothing in statute to indicate that reserve duty service is exempt from being considered as service creditable if member subsequently retires from active duty. DOHA Case No. 08020701 (2/28/08).

[10 USCS § 1408](#) made the remarriage of former spouse irrelevant for purposes of continued right to receive portion of military retirement benefits accrued during marriage; if the military ever reduced or eliminated husband's

## 10 USCS § 1408

retirement benefits, any dispute that arose between husband and wife about whether and how much the husband was required to continue to pay wife had to be brought to the superior court for resolution. [Johnson v Johnson \(2009, Alaska\) 214 P3d 369.](#)

## 6. Relationship to state law

Section 1408 does not pre-empt New Mexico community property law which treats military disability retirement benefits as community property. [Austin v Austin \(1985\) 103 NM 457, 709 P2d 179.](#)

Trial court erred in declaring military pension to be husband's separate property, notwithstanding that Uniformed Services Former Spouse's Protection Act ([10 USCS § 1408](#)) gives each state power to deal with military pensions as it sees fit. [In re Marriage of Sarles \(1983, 4th Dist\) 143 Cal App 3d 24, 191 Cal Rptr 514.](#)

Former Spouses' Protection Act ([10 USCS § 1408](#)) allowing courts to consider retirement pay in fashioning divorce settlements permits but does not command state courts to consider military retirement benefit as marital property; Act provides power to each state to deal with military pensions in manner in which it had previously treated them or chooses to treat them in future. [Koenes v Koenes \(1985, Ind App\) 478 NE2d 1241](#) (superseded by statute on other grounds as stated in [In re Marriage of Bickel \(1989, Ind App\) 533 NE2d 593](#)).

Section 1408, which is permissive, cannot create procedural mechanism to reopen final state court judgments; divorce decree entered prior to enactment of § 1408 awarding all military retirement benefits to husband was final judgment which, not being void, could not be collaterally attacked in partition suit filed subsequent to enactment of § 1408. [Allison v Allison \(1985, Tex App Fort Worth\) 690 SW2d 340.](#)

Uniformed Services Former Spouses' Protection Act ([10 USCS § 1408](#)) does not preclude state courts from considering former spouse's military disability benefits received in lieu of waived retirement pay when making equitable division of marital assets. [Clayson v Clayson \(1992, Alaska\) 831 P2d 1257, 15 EBC 1913.](#)

In light of enactment of § 1408, marital property interest may be recognized in retirement benefits from military pension in accordance with Illinois case law prior to United States Supreme Court's decision in [McCarty v McCarty \(1981\) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589. In re Marriage of Dooley \(1985, 2d Dist\) 137 Ill App 3d 401, 92 Ill Dec 163, 484 NE2d 894.](#)

Although failure to include within [10 USCS § 1408\(c\)\(1\)](#) disability payments received in accordance with waiver executed pursuant to [28 USCS § 3105](#) arguably leads to conclusion that Congress' intent was to preclude states from recognizing community interest in such payments, neither [38 USCS § 3101\(a\)](#) prohibition against assignments of Veterans' benefits nor any other federal law directly or positively precludes application of Louisiana's community property law to disability payments received pursuant to [38 USCS § 3105](#) election. [Campbell v Campbell \(1985, La App 2d Cir\) 474 So 2d 1339, cert den \(1985, La\) 478 So 2d 148.](#)

Although states are precluded by federal law from treating disability benefits as community property, states are not precluded from applying state contract law, even when disability benefits are involved; former husband thus could not escape obligation under property settlement agreement by voluntarily choosing to forfeit military retirement pay. [Shelton v Shelton \(2003\) 119 Nev 492, 78 P3d 507, 119 Nev Adv Rep 55, cert den \(2004\) 541 US 960, 124 S Ct 1716, 158 L Ed 2d 401.](#)

Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408\(a\)\(4\)\(B\)](#), (c)(1), did not prevent trial court from granting postjudgment relief when ex-husband's military retirement pay, previously divided by divorce judgment, was converted to disability pay, so long as relief awarded did not itself attempt to divide disability pay as marital property. [Black v Black \(2004\) 2004 ME 21, 842 A2d 1280.](#)

Appellate court correctly concluded that family court erred in finding it lacked subject matter jurisdiction to order that wife receive more than 50 percent of husband's disposable retired pay; family court's conclusion about subject matter jurisdiction was erroneous because federal law involved, Uniformed Services Former Spouses' Protection

## 10 USCS § 1408

Act, [10 USCS § 1408](#), did not preempt state law on apportionment of husband's pay and, thus, family court had subject matter jurisdiction over that issue, which also meant it could distribute disposable retired pay in accordance with state law. [Coon v Coon \(2005\) 364 SC 563, 614 SE2d 616](#), reh den (2005, SC) [2005 SC LEXIS 206](#) and cert den [\(2006\) 546 US 1090, 126 S Ct 1025, 163 L Ed 2d 854](#).

Trial court's divorce decree was clear and unambiguous; decree divided husband's military retirement pay, but husband's Veteran's Administration disability benefits were not divided. [Hagen v Hagen \(2009, Tex\) 282 SW3d 899](#).

Supreme Court of Appeals of West Virginia holds that, in determining amount of spousal support to be awarded pursuant to factors enumerated in [W. Va. Code § 48-6-301\(b\)\(1\)-\(20\)](#), federal, service-connected veterans disability benefits received by payor spouse may be considered by family court as resource, along with payor's other income, in assessing ability of payor to pay spousal support; such consideration by family court is not precluded by [10 USCS § 1408](#) or [38 USCS § 5301](#) concerning nonassignability of veterans benefits. [In re Zickefoose \(2012, W Va\) 724 SE2d 312](#).

## 7. Personal Jurisdiction

Rooker-Feldman doctrine barred review of former husband's claims that state court divorce decree and state court's subsequent contempt orders violated Uniformed Services Former Spouses' Protection Act (FSPA), [10 USCS § 1408](#), in requiring husband to pay half of his monthly military retirement pay to his former wife because FSPA claims were inextricably intertwined with state court divorce decree, which was final state court judgment that could not be reviewed by lower federal court, and further, decree did not appear to violate FSPA because it did not require husband to stay retired from military. [Casale v Tillman \(2009, CA11 Ala\) 558 F3d 1258, 21 FLW Fed C 1539](#).

Nevada District Court has jurisdiction over former military wife's suit for partition of ex-husband's military retirement benefits, even though ex-husband, at time of suit, did not reside in, was not domiciled in, and had not consented to jurisdiction in Nevada, because [10 USCS § 1408\(c\)](#) is limitation on subject matter rather than personal jurisdiction, and court has personal jurisdiction under Nevada law based on ex-husband's consent to jurisdiction for purposes of 1974 divorce decree. [Lewis v Lewis \(1988, DC Nev\) 695 F Supp 1089](#).

Exception to personal jurisdiction in post-divorce action for partition of community property including former husband's military retirement pay overruled since husband who domiciled in Mississippi and formerly resided in Louisiana with wife submitted to jurisdiction over his person in Louisiana by answering divorce petition filed in Louisiana such that it was within state power to bind him by every subsequent order in cause. [Allen v Allen \(1986, La App 3d Cir\) 484 So 2d 269](#), cert den (1986, La) [488 So 2d 199](#) and cert den [\(1986\) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178](#).

Under Uniform Services Former Spouses' Protection Act, Texas court did not have personal jurisdiction over former husband in action to partition of husband's military retirement pay where husband never resided or was domiciled in Texas, and where husband never consented to personal jurisdiction in Texas for partition of military retirement pay notwithstanding that husband was petitioner in Texas divorce suit. [Kovacich v Kovacich \(1986, Tex App San Antonio\) 705 SW2d 281](#).

Where at time of Texas divorce action husband was serviceman stationed in Germany, and where husband initially filed special appearance contesting jurisdiction but subsequently entered general appearance by allowing case to be tried, husband consented to jurisdiction and satisfied requirements of § 1408(c)(4). [Seeley v Seeley \(1985, Tex App Austin\) 690 SW2d 626](#).

United States' U.S. Ct. Fed. Cl. R. 12(b)(1) motion to dismiss retired service member's claims, which sought to recover judgment for amount of retired military pay withheld from him and paid to his ex-wife under Uniformed Services Former Spouses' Protection Act (USFSPA), [10 USCS § 1408](#), was granted where service member failed to meet his burden of proving that U.S. had waived its sovereign immunity with regard to making direct payments to former spouse under USFSPA; under [10 USCS § 1408\(f\)\(1\)](#), U.S. had not consented to be sued for making

## 10 USCS § 1408

payments to former spouse under USFSPA unless court order was irregular on its face or if officials failed to follow procedures established by [USFSPA. \*Mora v United States\* \(2003\) 59 Fed Cl 234.](#)

## 8. Subject Matter Jurisdiction

Court otherwise having jurisdiction of parties is not allowed to invoke powers of Federal Uniform Services Former Spouses' Protection Act ([10 USCS § 1408](#)) unless personal jurisdiction has been acquired by domicile or consent or residence other than by military assignment; careful reading of [10 USCS § 1408\(c\)\(1\)](#) reveals that provision is limitation on subject-matter, rather than personal jurisdiction. [Steel v United States \(1987, CA9 Cal\) 813 F2d 1545.](#)

In action that armed forces members brought to challenge constitutionality of Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), Rooker-Feldman doctrine did not deprive district court of subject matter jurisdiction because invalidating payment mechanism that allowed former spouses to receive retirement pay directly from military pursuant to state court orders in divorce proceedings did not require scrutinizing or invalidating any state court judgment. [Adkins v Rumsfeld \(2006, CA4 Va\) 464 F3d 456](#), cert den [\(2007\) 551 US 1130, 127 S Ct 2972, 168 L Ed 2d 702.](#)

Plaintiffs' constitutional challenge to Uniformed Services Former Spouses' Protection Act was dismissed for lack of subject matter jurisdiction because they learned of state court judgments adverse to them when judgments were entered and well within time to file appeal; accordingly, they had reasonable opportunity to raise their federal claims in state court. [Adkins v Rumsfeld \(2004, ED Va\) 370 F Supp 2d 426](#), affd (2006, CA4 Va) [464 F3d 456](#), cert den [\(2007\) 551 US 1130, 127 S Ct 2972, 168 L Ed 2d 702.](#)

Exception to court's subject matter jurisdiction overruled in former wife's post divorce petition to partition husband's military retirement pay, where military spouse gave implied consent to state court's jurisdiction by making general appearance waiving all jurisdictional objections under state law when spouse answered divorce petition, this waiver gave state jurisdiction over all matters incidental to dissolution of marriage; § 1408 does not require express consent to court's jurisdiction. [Allen v Allen \(1986, La App 3d Cir\) 484 So 2d 269](#), cert den (1986, La) [488 So 2d 199](#) and cert den [\(1986\) 479 US 850, 93 L Ed 2d 114, 107 S Ct 178.](#)

Section 1408(c)(4) setting forth jurisdictional criteria applicable to courts' treatment of disposable retired or retainer pay in manner provided by § 1408(c)(1) is limitation upon court's exercise of jurisdiction to dispose of military retirement pay; Court of Appeals must apply such jurisdictional provisions rather than more expansive state law provisions applied by trial court. [Seeley v Seeley \(1985, Tex App Austin\) 690 SW2d 626.](#)

Court of Federal Claims did not have jurisdiction under Tucker Act, [28 USCS § 1491](#), to review merits of retired serviceman's claim that retirement payments were improperly deducted and paid to his ex-wife because divorce decree setting out such distribution was regular on its face and Government followed procedures in Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), in implementing deductions. [Baka v United States \(2006\) 74 Fed Cl 692.](#)

## II. CONSTRUCTION

### 9. Spousal notification requirement

Requirement in predecessor to [10 USCS § 1448\(a\)](#) that spouse be notified if person eligible to participate in plan elects not to participate applies only to service member who is automatically enrolled in Survivor Benefit Plan because he retires on or after effective date of § 1448; requirement does not apply with respect to service member who was already entitled to retired or retainer pay and who was permitted by Congress but declined to elect to participate in Plan. [Passaro v United States \(1985, CA\) 774 F2d 456](#), cert den [\(1986\) 476 US 1114, 90 L Ed 2d 653, 106 S Ct 1969.](#)

### 10. --Allocation of costs

## 10 USCS § 1408

Federal law automatically allocated cost of purchasing survivor benefits between spouses--because husband received 74.66% of retired pay, federal law allocated to him 74.66% of cost of purchasing survivor benefits; trial court did not abuse its discretion by ordering continuing survivor benefits with natural allocation of cost under federal law. [Young v Lowery \(2009, Alaska\) 221 P3d 1006.](#)

**11. --Amount of award**

Modification of decree of dissolution ordering Secretary of Air Force to directly pay retired serviceman's former wife 50 percent of military retirement pay is appropriate equitable response to circumstances and is permitted under § 1408 where serviceman failed to pay wife any support after dissolution. [In re Marriage of Hadley \(1986\) 77 Or App 295, 713 P2d 39.](#)

Amendment of husband's and wife's original decree of divorce was inappropriate because amended decree was at odds with Uniformed Services Former Spouse Protection Act, [10 USCS § 1408](#), which required that award be expressed as either percentage or fixed dollar amount. [Crayk v Glover \(2008\) 2008 WY 14, 176 P3d 645.](#)

Failing to limit property division to husband's actual disposable retired pay violated Uniformed Services Former Spouses' Protection Act, and it was therefore error to set monthly minimum payment at \$ 614.36 per month; trial court, on remand, had to recalculate correct amount to be paid to wife. [Young v Lowery \(2009, Alaska\) 221 P3d 1006.](#)

**12. Pay subject to apportionment and direct payment**

Secretary of Army is directed to distribute portion of ex-husband's military retirement pay to divorced wife, where discrepancy over validity of divorce decree granting wife one-third of benefits was resolved when state appellate court denied husband's post-trial motion for relief, because wife has complied with requirements and Secretary has duty to make payments under [10 USCS § 1408\(d\)\(1\)](#). [Andrean v Secretary of the United States Army \(1993, DC Kan\) 840 F Supp 1414.](#)

Former spouse's partition action is forbidden by [10 USCS § 1408\(c\)\(1\)](#), where pre-1981 final divorce decree neither treated nor reserved jurisdiction to treat any amount of military retired pay as community property, even though decree did not include court-ordered, court-ratified, or court-approved property settlement, because parenthetical clause in § 1408(c)(1) expands or illustrates preceding list to include property settlements incident to such decrees but does not limit preceding words. [Delrie v Harris \(1997, WD La\) 962 F Supp 931.](#)

If retired military personnel requests additional income tax withholdings beyond regularly required withholdings in computation of net or "disposable" military retired pay subject to apportionment, applicant is required to present factual evidence demonstrating existence of tax burden justifying additional withholding; no additional tax withholding may be allowed in computation of disposable retired pay in case of retired officer who gives only rough estimate or opinion of projected tax obligations and presents no financial record as evidence in support of estimate; although Comptroller General has jurisdiction to resolve questions relating to computation of net military "disposable retired or retainer pay" under Uniform Services Former Spouses' Protection Act ([10 USCS § 1408](#)), revenue rulings concerning withholding of federal taxes from income are reserved by statute for determination primarily by Internal Revenue Service. (1984) 63 Op Comp Gen 323.

No error in award to wife of percentage of former husband's military retirement benefits notwithstanding allegation that said retirement benefits accrued in Maryland which was not then community property state, since husband failed to offer convincing proof of substantive law of Maryland on issue of distribution of military pay and where it was not clear that said benefits accrued in Maryland, such that court presumed Maryland and Louisiana law were similar thus permitting distribution to former spouse of military retirement pay. [Allen v Allen \(1986, La App 3d Cir\) 484 So 2d 269](#), cert den (1986, La) [488 So 2d 199](#) and cert den (1986) [479 US 850](#), [93 L Ed 2d 114](#), [107 S Ct 178](#).

Trial court did not abuse discretion in determining that husband's military retirement pay was available for division in divorce proceeding. [Chase v Chase \(1983, Alaska\) 662 P2d 944.](#)



## 10 USCS § 1408

Section 1408(a)(4)(C)(1) does not preclude California court from awarding ex-spouse more than community property interest in retiree's "disposable" retirement pay. [Casas v Thompson \(1986\) 42 Cal 3d 131, 228 Cal Rptr 33, 720 P2d 921](#), cert den (1986) 479 US 1012, 93 L Ed 2d 713, 107 S Ct 659 and (ovrld on other grounds as stated in [In re Marriage of Krempin \(1999, 1st Dist\) 70 Cal App 4th 1008, 83 Cal Rptr 2d 134](#)).

Military retirement is classified in accordance with law of jurisdiction for purposes of division following dissolution of marriage; military retirement pay is classified as community or separate property according to whether act of service upon which benefits were based took place prior to marriage or after marriage. [Lang v Lang \(1985, App\) 109 Idaho 802, 711 P2d 1322](#).

Fact that § 1408(c)(1) was made retroactive to June 25, 1981, does not warrant modification of judgment for maintenance and division of marital and nonmarital property rendered in February, 1982, notwithstanding that judgment did not divide husband's retirement pension, where parties and trial court gave full recognition to payments generated by pension in making division of marital property and where parties agreed to non-modification provision pursuant to Illinois law. [In re Marriage of Habermehl \(1985, 5th Dist\) 135 Ill App 3d 105, 89 Ill Dec 939, 481 NE2d 782](#).

Uniformed Services Former Spouses' Protection Act ([10 USCS § 1408](#)) grants states authority to treat all disposable retired pay as marital property, but limits direct government payment to former spouses to 50 percent of disposable retired pay; where trial court intends to give half of gross pension to spouse, court must, in addition to ordering direct government payments, order retired servicemen to make monthly supplemental payments. [Deliduka v Deliduka \(1984, Minn App\) 347 NW2d 52](#) (criticized in [Madsen v Madsen \(In re Madsen\) \(2002, BC SD Iowa\) 2002 Bankr LEXIS 2037](#)).

Under [10 USCS § 1408\(d\)\(2\)](#), wife is entitled to portion of husband's nondisability military retirement pay from June 25, 1981. [Cameron v Cameron \(1982, Tex\) 641 SW2d 210](#) (superseded by statute on other grounds as stated in [Southern v Glenn \(1984, Tex App San Antonio\) 677 SW2d 576](#)) and (superseded by statute on other grounds as stated in [Harrell v Harrell \(1984, Tex App Corpus Christi\) 684 SW2d 118](#)).

Decree of dissolution awarding wife less than one-half of husband's military retirement pay is effective for pay periods beginning after effective date of [10 USCS § 1408](#), regardless of date of previous dissolution order. [In re Marriage of Wood \(1983\) 34 Wash App 892, 664 P2d 1297](#).

### 13. --Pay excluded

Retirement pay owed to United States is excluded from definition of disposable retired or retainer pay and thus is not subject to state's marital property law so that withheld portion of husband's retirement pay in satisfaction of unpaid tax assessments was not subject to wife's community property interests. [Arford v United States \(1991, CA9 Idaho\) 934 F2d 229, 91 CDOS 4026, 91 Daily Journal DAR 6329, 92-1 USTC P 50229, 67 AFTR 2d 1135](#), magistrate's recommendation (1992, DC Idaho) [71 AFTR 2d 718](#) and (criticized in [Lyle v Commodity Credit Corp. \(1996, CA10 Kan\) 97-1 USTC P 50119, 78 AFTR 2d 7623](#)).

Military separation pay received under § 1174, one-time payment received upon involuntary discharge from service to financially assist transition to private employment, is not embraced within meaning of disposable retirement or retainer pay under § 1408, which permits states to treat as separate property or property of serviceman and his spouse, where separation pay is one-time payment as opposed to compensation for past services and where § 1408 does not mention separation pay in its definition of retired or retainer pay, accordingly if service member is not married at time of involuntary discharge, separation pay is separate property unless service member re-enlists and becomes eligible for military longevity retirement benefits. [In re Marriage of Kuzmiak \(1986, 2nd Dist\) 176 Cal App 3d 1152, 222 Cal Rptr 644](#), cert den (1986) 479 US 885, 93 L Ed 2d 252, 107 S Ct 276 and (criticized in [In re Marriage of Babauta \(1998, 4th Dist\) 66 Cal App 4th 784, 78 Cal Rptr 2d 281, 98 CDOS 7137, 98 Daily Journal DAR 9831](#)).

## 10 USCS § 1408

Even though [10 USCS § 1408](#) specifically excluded orders dividing active duty injury disability awards to veterans from general rule permitting division of military retirement benefits, trial court did not err in denying retired military spouse's motion to dismiss declaratory judgment action and in awarding former spouse amount of money originally promised under separation agreement, after military spouse waived most rights to pension funds upon being awarded disability benefits; there was no direct payment order, and amount was simply in fulfillment of contract obligation avoidance of which would have violated military spouse's covenant of good faith and fair dealing. [Krapf v Krapf \(2003\) 439 Mass 97, 786 NE2d 318](#).

Ten years after decree was entered under Alaska R. Civ. P. 60(b)(4), former husband was entitled to amendment of decree, which ordered him to pay more than 50 percent of his military retirement benefits to his wife because such contravened Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408\(c\)](#) and (e) and was, therefore, void. [Cline v Cline \(2004, Alaska\) 90 P3d 147](#) (criticized in [Coon v Coon \(2005\) 364 SC 563, 614 SE2d 616](#)).

Former husband was entitled to relief under Alaska R. Civ. P. 77(k), in form of amendment of divorce decree that had ordered him to pay more than 50 percent of his military retirement benefits to his wife because, after decree was entered, part of husband's retirement benefits were reduced to extent of payment of military disability benefits and, under Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), court did not have jurisdiction to award any disability benefits. [Cline v Cline \(2004, Alaska\) 90 P3d 147](#) (criticized in [Coon v Coon \(2005\) 364 SC 563, 614 SE2d 616](#)).

Former wife was not entitled to part of former husband's military retirement benefits because benefits consisted of Chapter 61 retirement and VA disability. [Guerrero v Guerrero \(2015, Alaska\) 362 P3d 432](#).

#### 14. 10-year marriage requirement

Federal Uniformed Services Former Spouse's Protection Act ([10 USCS § 1408](#)) is not limited in its application to spouses married to military retiree for 10 years or more during which time retiree served at least 10 years of service; § 1408(d)(2) bar to payments if spouse or former spouse was not married to member for period of 10 years or more during which member performed at least 10 years of service applies only where direct payments are made by Secretary to Former Spouse pursuant to § 1408(c)(1) in response to court order. [Le Vine v Spickelmier \(1985\) 109 Idaho 341, 707 P2d 452](#).

[10 USCS § 1408](#) does not require that 10-year threshold be met by consecutive years of marriage, but may be obtained by tacking on credit from 2 marriages to same spouse. [Anderson v Anderson \(1984, Greene Co\) 13 Ohio App 3d 194, 13 Ohio BR 242, 468 NE2d 784](#).

[10 USCS § 1408\(d\)](#) does not impose 10-year marriage requirement as prerequisite to division of military retirement benefits and receipt thereof by former spouse but merely provides such requirement as prerequisite to direct payments to former spouse by Secretary. [Oxelgren v Oxelgren \(1984, Tex App Fort Worth\) 670 SW2d 411](#).

Trial court erred in finding that 10-year requirement set forth in [10 U.S.C.A. § 1408\(d\)\(2\)](#) prevented it from awarding portion of husband's military retirement benefit to wife; 10-year requirement was simply limitation on direct payment mechanism for such benefits and did not affect trial court's authority to treat military retirement benefits as marital property subject to equitable division, even when marriage lasted less than ten years. [Michel v Michel \(2010\) 286 Ga 892, 692 SE2d 381, 2010 Fulton County D R 1012](#).

#### Unpublished Opinions

Unpublished: Where marital dissolution agreement provided that wife would receive 100% of husband's military pension payments, Supreme Court of Montana held that wife had property interest in portion of pension earned while parties were married; in accordance with [10 USCS § 1408\(d\)\(2\)](#), government could not directly pay wife any part of portion that was characterized as property because marriage did not last ten years. [Wirtz v Wirtz \(2010, Alaska\) 2010 Alas LEXIS 32](#).

## 15. Miscellaneous

Authority to issue authoritative revenue rulings on federal income tax withholding rests with IRS; however, Comptroller General may render decision regarding individual's tax withholdings to extent that amounts withheld affect calculation of individual's disposable retired pay as that term is defined in [10 USCS § 1408](#). Colonel Robert M. Krone, USAF (Retired)--Federal Income Tax Withholding from [Military Retired Pay for Former Spouse Protection Act Purposes \(8/6/96\) Comp. Gen. Dec. No. B-271052, 1996 US Comp Gen LEXIS 457](#).

Where taxpayer received portion of her ex-husband's disposable military retirement pay pursuant to agreement and divorce decree, taxpayer owned payment and was liable to pay assessed income tax deficiency. [Pfister v Comm'r \(2004, CA4\) 359 F3d 352, 2004-1 USTC P 50176, 93 AFTR 2d 1113](#).

In view of explicit provision in subsection (f)(1) it is patently clear that U.S. has not waived its immunity to permit claim challenging USFSPA. [Goard v United States \(1991\) 24 Cl Ct 777](#), affd (1992, CA) [976 F2d 747](#), reh, en banc, den (1992, CA FC) [1992 US App LEXIS 25569](#) and cert den (1992) [506 US 1034, 121 L Ed 2d 687, 113 S Ct 814](#).

In federal tax refund case in which United Services Former Spouse Protection Act applied to taxpayer's share of her ex-husband's military pension, summary judgment was granted in favor of IRS; state district court adopted divorce decree expressly awarding taxpayer 40.5 percent share in her ex-husband's military pension; therefore, she was legal owner of 40.5 percent of her former husband's military pension, and in accordance with federal tax law, she was responsible for including any payments received from pension on her income tax statements. [Chiarello v IRS \(2006, ND Tex\) 2007-1 USTC P 50358, 98 AFTR 2d 8325](#).

Since Uniform Services Former Spouse's Protection Act ([10 USCS § 1408](#)) provides that spouses and former spouses have proprietary, inalienable interest in member's military pension benefits, if so awarded by court with subject matter jurisdiction over parties, when spouse or former spouse files bankruptcy petition, that interest is excluded from bankruptcy estate. [In re Satterwhite \(2002, BC WD Mo\) 271 BR 378](#).

Because divorced taxpayer was legal owner of fifty percent interest in her ex-spouse's "disposable military retired pay" as defined in [10 USCS § 1408](#) that had been awarded to her in couple's divorce, that amount was found to constitute gross income and to be taxable to divorced taxpayer per [26 USCS § 61](#). [Seaman v Comm'r \(2007\) TC Memo 2007-189, 94 CCH TCM 58](#).

Commissioner of Internal Revenue did not err when he disallowed taxpayer's claim that his military retirement benefits were nontaxable, when he disallowed taxpayer's claim that amounts Defense Finance and Accounting Service ("DFAS") paid taxpayer's ex-wife under Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), were deductible as alimony payments, or when he imposed penalty on taxpayer under [I.R.C. § 6662](#) for tax year 2008 because he understated amount of tax he owed. Military retirement pay was "pension" that was part of taxpayer's gross income under [I.R.C. § 61\(a\)](#), and taxpayer was not permitted to take deduction for alimony payments that was allowed by [I.R.C. § 215](#) because payments DFAS made to his ex-wife were not owed to taxpayer or includible in his income. [Schuller v Comm'r \(2012\) TC Memo 2012-347, 104 CCH TCM 781](#).

Provision prohibiting payments pursuant to court order that became final before June 26, 1981, did not apply to 1985 bankruptcy court order authorizing U.S. Army Finance and Accounting Center to begin making direct payments of portion of plaintiff's retirement pay to plaintiff's ex-wife. [Chandler v United States \(1994\) 31 Fed Cl 106](#), affd without op (1994, CA FC) [39 F3d 1196](#), reported in full (1994, CA FC) [1994 US App LEXIS 28130](#).

[10 USCS § 1408](#) does not impose duty on federal agencies to continually "police" former spouse's entitlement to service member's retired pay. DOHA Case No. 99122104 (3/16/00).

[10 USCS § 1408\(f\)\(1\)](#) means that United States has not waived its immunity from suit, and that United States and its officers and employees are not liable when they comply with statute. DOHA Case No. 99122104 (3/16/00).

## 10 USCS § 1408

Superior court did not err by allowing service member's spouse to receive compensation for service member's future promotions and pay-grade increases, did not incorrectly allocate more than 50 percent of service member's disposable retired pay to spouse, did not erroneously award service member's disability benefits to spouse, and did not erroneously disregard stipulated property settlement agreement when it accepted spouse's proposed military pension division that included survivor benefits. [Glover v Ranney \(2013, Alaska\) 314 P3d 535.](#)

Reversal and remand was necessary in part because superior court erred by changing agreed-upon length of parties' marriage without explanation and requiring service member to pay for excess survivor benefits coverage. [Glover v Ranney \(2013, Alaska\) 314 P3d 535.](#)

### III. RETROACTIVITY

#### 16. Generally

Because there is no property or contractual interest in any anticipated level of military retired pay, and right to retired pay is within exclusive control of Congress and is always subject to change, retroactive application of Uniform Services Former Spouse's Protection Act ([10 USCS § 1408\(c\)\(1\)](#)) did not constitute unjustified impairment of implied contractual arrangement between retired members of Armed Forces and government. [Fern v United States \(1988\) 15 Cl Ct 580](#), affd (1990, CA) [908 F2d 955](#), [12 EBC 1936](#).

State judgments rendered before McCarty decision are not void ab initio and Texas divorce decree awarding wife percentage of husband's Army pension benefits upon his retirement may not be collaterally attacked; nor is res judicata effect of unappealed divorce decree overcome by retroactive application of McCarty decision. [Brown v Robertson \(1985, WD Tex\) 606 F Supp 494.](#)

Decision in [McCarty v McCarty \(1981\) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589](#), that wife has no property interest in her husband's military retirement pay is not to be applied retroactively to any community property settlement agreement, be it incorporated into judgment or not; to apply McCarty retroactively would violate clear intent of Congress, in passing § 1408, to completely obliterate effect of McCarty decision. [Stevens v Stevens \(1985, La App 2d Cir\) 476 So 2d 883](#), cert den (1985, La) [478 So 2d 908](#).

Former serviceman's wife was entitled to community share of military retirement pay as of retroactive date specified in § 1408, and not retirement date of 8/1/80 since there was no prior adjudication of retirement pay prior to retroactive date. [Savoie v Savoie \(1986, La App 5th Cir\) 482 So 2d 23.](#)

Wife not entitled to equitable distribution of former husband's military pension where wife entered into valid separation agreement which contained no reference to pension but contained general release or waiver provision of all rights of claims to property, notwithstanding that at time of agreement state law precluded consideration of military pensions as marital property and that subsequent to date of agreement § 1408 was enacted with limited retroactive application permitting but not requiring state to consider pensions as marital property and that state law was subsequently amended to include military pensions as marital property since state law as amended was effective prospectively. [Morris v Morris \(1986\) 79 NC App 386, 339 SE2d 424.](#)

Use of date on which United States Supreme Court decided McCarty Case as reference in [10 USCS § 1408\(c\)\(1\)](#) evidences legislative intent that law relative to community property treatment of military retirement pensions be as though McCarty did not exist, rendering moot any argument as to retroactive application of McCarty rule. [In re Marriage of Frederick \(1983, 5th Dist\) 141 Cal App 3d 876, 190 Cal Rptr 588.](#)

[10 USCS § 1408](#) is retroactive to date of United States Supreme Court McCarty decision and applicable to all cases not final as of its effective date. [In re Marriage of Hopkins \(1983, 2nd Dist\) 142 Cal App 3d 350, 191 Cal Rptr 70.](#)

Decision in [McCarty v McCarty \(1981\) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589](#), that wife has no property interest in her husband's military retirement pay is not to be applied retroactively to any community property settlement agreement, be it incorporated into judgment or not; to apply McCarty retroactively would violate clear

## 10 USCS § 1408

intent of Congress, in passing § 1408, to completely obliterate effect of McCarty decision. [Stevens v Stevens \(1985, La App 2d Cir\) 476 So 2d 883](#), cert den (1985, La) [478 So 2d 908](#).

Uniformed Services Former Spouse Protection Act ([10 USCS § 1408](#)) does not compel opening of final decree disposing of marital property. [Bishir v Bishir \(1985, Ky\) 698 SW2d 823](#).

[McCarty v McCarty \(1981\) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589](#), prohibiting division of military retirement benefits upon divorce, and [10 USCS § 1408](#), which in effect overruled McCarty but expressly exempted from division disability retirement benefits under [10 USCS § 1201](#), do not apply retroactively to divorce decrees which became final prior to McCarty decision. [Patrick v Patrick \(1985, Tex App Fort Worth\) 693 SW2d 52](#).

[10 USCS § 1408](#) may be applied retroactively since it permits state courts to remedy harsh result to former spouses and, as remedial statute, may be retroactively applied since it cures defects or furthers remedy. [Thorpe v Thorpe \(1985, App\) 123 Wis 2d 424, 367 NW2d 233](#).

### 17. Relationship to state law

Whatever limitations [10 USCS § 1408](#) may have concerning dissolution of military pay, § 1408 has no bearing on determining arrears for community property obligations decreed in judgments long final before effective date of Federal Uniform Services Former Spouses' Protection Act. [In re Marriage of Stier \(1986, 4th Dist\) 178 Cal App 3d 42, 223 Cal Rptr 599](#).

Retroactive provisions of Federal Uniformed Services Former Spouses' Protection Act does not pre-empt act of state legislature which provides procedure for reopening community property settlements, judgments or decrees that become final prior to effective date of FUSFSPA and permit modification of community property division to include division of military retirement benefits where act of state legislature does not attempt to override limited retroactivity of FUSFSPA or to expand upon it; Federal Uniform Services Former Spouse' Protection Act, standing alone, does not have retroactive application sufficient to allow reopening of final divorce judgments which became effective before effective date of FUSFSPA. [In re Marriage of Potter \(1986, 5th Dist\) 179 Cal App 3d 73, 224 Cal Rptr 312](#), cert den and app dismd (1987) [479 US 1072, 94 L Ed 2d 124, 107 S Ct 1262](#).

### 18. Validity of prior decisions/decrees

Former wife's action against Defense Finance and Accounting Service, seeking direct payment of her share of her former husband's military retirement pay as provided in state-court judgments, is dismissed, because final decree of divorce was issued prior to June 25, 1981, and because subsequent state-court judgments awarding wife portion of military retirement benefits were not in accord with mandate of [10 USCS § 1408\(c\)\(1\)](#) and of state law. [Kemp v United States Dep't of Defense \(1994, WD La\) 857 F Supp 32](#).

Passage of Uniform Services Former Spouses' Protection Act which permits but does not require state to consider retirement benefits as marital property and provides new remedies for collection of support does not constitute sufficient change in circumstances with respect to method and mode of support payment to warrant modification of decree of dissolution where retired serviceman's and former wife had stipulated amount and duration of spousal support before effective date of § 1408 and where serviceman's ability to pay was unaffected by § 1408 since his pension was considered in computation of support payments. [In re Marriage of Hadley \(1986\) 77 Or App 295, 713 P2d 39](#).

Fact that [10 USCS § 1408](#) is effective February 1, 1983 does not bar action by former wife, divorced from serviceman in 1966, for community interest in serviceman's military retirement pension, where former wife does not seek to modify or reopen 1966 judgment, and where her action is independent one to divide asset which was not before divorce court in 1966 and was not altered by divorce decree. [Casas v Thompson \(1986\) 42 Cal 3d 131, 228 Cal Rptr 33, 720 P2d 921](#), cert den (1986) [479 US 1012, 93 L Ed 2d 713, 107 S Ct 659](#) and (ovrld on other grounds as stated in [In re Marriage of Krempin \(1999, 1st Dist\) 70 Cal App 4th 1008, 83 Cal Rptr 2d 134](#)).

## 10 USCS § 1408

Family court decision rendered on basis of Supreme Court's McCarty decision was properly reopened to apply state laws as they existed prior to McCarty. [Smith v Smith \(1983, Del Fam Ct\) 458 A2d 711, 1983 Del Fam Ct LEXIS 41.](#)

Congress intended [10 USCS § 1408\(c\)\(1\)](#) to be applied retroactively to divorces which occurred between US Supreme Court's decision in [McCarty v McCarty \(1981\) 69 L Ed 2d 589](#), holding that military pension could not be divided between spouses by state court, and effective date of § 1408(c)(1), although Missouri law would not allow final divorce decree to be reopened to address military pension question. [In re Marriage of Quintard \(1985, Mo App\) 691 SW2d 950.](#)

Divorced wife of military service member is entitled to benefits of [10 USCS § 1408](#), notwithstanding it became effective one month after date of final divorce. [Walentowski v Walentowski \(1983\) 100 NM 484, 672 P2d 657.](#)

Retroactive application of [10 USCS § 1408](#) so as to give former spouse relief from amended decree, entered in response to [McCarty v McCarty \(1981\) 453 US 210, 101 S Ct 2728, 69 L Ed 2d 589](#), taking from former wife previously-awarded one-half community interest in former husband's military retirement pay does not deprive husband of vested right without due process of law. [In re Marriage of Giroux \(1985\) 41 Wash App 315, 704 P2d 160.](#)

U.S. was entitled to dismissal of retired service member's claim, which sought to recover retired military pay withheld from him and paid to his ex-wife pursuant to Uniformed Services Former Spouses' Protection Act, [10 USCS § 1408](#), where divorce decree had been issued by state court, contained appropriate signatures, and was stamped as true and correct copy of original and where, as result, member had not demonstrated that it was irregular on its face under [28 USCS § 1408\(b\)\(2\)](#). [Mora v United States \(2003\) 59 Fed Cl 234.](#)

### 19. --Res judicata

Res judicata did not bar wife seeking recovery of percentage of former husband's disposable military retirement pay because of previous action denying entitlement to retirement pay based in part on Supreme Court decision holding military benefits as personal not marital property, since subsequent enactment of § 1408 created new fact, change in law, and new cause of action. [Powell v Powell \(1985, Tex App Waco\) 703 SW2d 434](#), app dismd [\(1986\) 476 US 1180, 91 L Ed 2d 541, 106 S Ct 2911](#), reh den [\(1986\) 478 US 1031, 92 L Ed 2d 767, 107 S Ct 11](#) and (criticized in [Trahan v Trahan \(1995, Tex App Austin\) 894 SW2d 113](#)).

### 20. Estoppel

Although doctrines of res judicata and collateral estoppel do not bar spouse from recovering his or her community interest invested in matured military pension benefits omitted from petition and later judgment of dissolution of marriage, retroactive enforcement of such rights is subject to military retiree's rights to raise defenses of equitable estoppel and laches; in such cases, trial court must apply equitable principles to prevent unfairness to spouse who may have placed substantial reliance on judgment. [In re Marriage of Chambers \(1985, 4th Dist\) 174 Cal App 3d 1079, 220 Cal Rptr 504.](#)

## Research References & Practice Aids

---

### Related Statutes & Rules:

This section is referred to in [10 USCS §§ 704, 1059, 1078a, 1447, 1461, 1463; 5 USCS §§ 8332, 8411.](#)

### Am Jur:

[9D Am Jur 2d, Bankruptcy § 3641.](#)

[15B Am Jur 2d, Computers and the Internet § 52.](#)

[24 Am Jur 2d, Divorce and Separation §§ 190, 508.](#)

[24A Am Jur 2d, Divorce and Separation § 687.](#)

#### **Intellectual Property:**

1 Nimmer on Copyright (Matthew Bender), ch 6A, Community Property § 6A.03.

#### **Commercial Law:**

6 Debtor-Creditor Law (Matthew Bender), ch 53, Community Property § 53.07.

#### **Annotations:**

Construction and Application of Federal Uniformed Services Former Spouse Protection Act in State Court Divorce Proceedings. [59 ALR6th 433.](#)

Divorce: excessiveness or adequacy of combined property division and spousal support awards. [55 ALR4th 14.](#)

Divorce: excessiveness or adequacy of trial court's property award. [56 ALR4th 12.](#)

#### **Law Review Articles:**

Bond; Landever. The Uniformed Services Former Spouses' Protection Act: a practitioner's guide, 10 Am J Fam L 145, Fall 1996.

Polchek. Recent property settlement issues for legal assistance attorneys. [1992 Army Law 4](#), December 1992.

Kuenzli. Uniformed Services Former Spouses' Protection Act: Is There Too Much Protection for the Former Spouse? [47 AF L Rev 1, 1999.](#)

Flannery. Military Disability Election and the Distribution of Marital Property Upon Divorce. [56 Cath UL Rev 297](#), Winter 2007.

Cardos; Perry; Sinnott. The Uniformed Services Former Spouses Protection Act. 33 Fed B News & J 33, January 1986.

Cushing. Family Law: Navigating the Former Spouse Protection Act. [71 Fla Bar J 61](#), December 1997.

Reppy. The 1990 U.S.F.S.P.A. amendment: no bar to recognition of tenancy in common interests created by pre-McCarty [\[McCarty v. McCarty, 101 S. Ct. 2728 \(1981\)\]](#) divorces that fail to divide military retirement benefits. 29 Idaho L Rev 941, 1992/1993.

Guilford. Exploring the labyrinth: current issues under the Uniformed Services Former Spouses' Protection Act. [132 Mil L Rev 43](#), Spring 1991.

Bell. Equitable Distribution: Implementing the Marital Partnership Theory through the Dual Classification System. [67 Miss LJ 115](#), Fall 1997.

Gilbert. A family law practitioner's road map to the Uniformed Services Former Spouses Protection Act. 32 Santa Clara L Rev 61, 1992.

Manashil. The Uniformed Services Former Spouses' Protection Act of 1982: Problems Resulting From its Application. 20 USF L Rev 83, Fall 1985.

10 USCS § 1408

Copyright © 2016 Matthew Bender & Company, Inc. a member of the LexisNexis Group™ All rights reserved.

---

End of Document