

**FORMER SPOUSE BENEFITS UNDER THE FOREIGN SERVICE
RETIREMENT SYSTEMS**

The Office of Retirement (HR/RET) determines former spouse pension and survivor benefits under the Foreign Service Retirement System (FSRDS) and Foreign Service Pension System (FSPS). In addition, determinations are made on former spouse health benefits enrollment under the Federal Employees Health Benefits Program (FEHB).

HOW TO APPLY FOR FORMER SPOUSE BENEFITS:

The former spouse must submit to Department of State, HR/RET, Room H-620, SA-1, Washington, D.C. 20522-0108: 1) A recently certified copy of the court order; and (2) a statement that the court order has not been amended, superseded, or set aside; and (3) the full name, date of birth, and Social Security number, correspondence addresses for the employee/retiree and former spouse.

HR/RET also needs to be notified of any subsequent remarriage and/or change in correspondence address.

SINCE THERE ARE SPECIFIC TIME LIMITATIONS TO QUALIFY FOR CERTAIN FORMER SPOUSE BENEFITS, IT IS IMPORTANT TO SUBMIT THE DIVORCE NOTIFICATION PROMPTLY.

POTENTIAL FORMER SPOUSE BENEFITS:

A qualified former spouse must meet the following requirements: (1) Marriage to the participant for at least 10 years during the participant's creditable service; and (2) 5 of the 10 years of marriage must have been while the participant was a member of the Foreign Service; and (3) the former spouse must not have remarried prior to age 55.

A qualified former spouse is entitled to the following pro rata share pension and survivor benefits (Section 814 (a) of the F.S. Act of 1980, as amended) or the benefits may be court defined (Section 820 (b) (1) of the Act):

1. **Former spouse pension (share of retiree's annuity).** In the absence of a valid court order or notarized spousal agreement specifying otherwise, a qualified former spouse is entitled to a pension in the amount of the pro rata share of 50% of the retiree's annuity. The pro rata share is determined by the fraction--the numerator is the years and months of marriage during the creditable service and the denominator is the retiree's total creditable service

(sick leave is excluded from this calculation). The former spouse will not be considered married to a participant for any periods of creditable service which are extended, such as the special 40% disability or a death-in-service calculation. A former spouse receives extra credit if she/he resided with the participant during any certified extra service credit at an unhealthful post.

For example, if the marriage during the creditable service was 20 years and 6 months over the total service of 25 years and 6 months, the fraction is $20.5000/25.5000$ or a pro rata share of .8039. If the retiree's annuity is \$30,000.00, the former spouse pension would be \$12,058.50 gross per annum ($\$30,000 \times .50 \times .8039$).

The former spouse pension is payable the same date that the retiree's annuity begins* or if already retired, the first of the month in which the divorce occurs, provided that the former spouse has not remarried prior to age 55 and is not entitled to a simultaneous survivor annuity from any other retirement system for government employees based on a previous or subsequent marriage. If the court order indicates that the former spouse is to receive payment regardless of remarriage prior to age 55, the Retirement Division will honor this as a court-ordered apportionment rather than a pension benefit. Please refer to section 3 on Federal tax liability on court-ordered apportionment payments.

The same cost-of-living increases applicable to the retiree's annuity are applied to the former spouse's pension. The former spouse is liable for Federal tax on the pension benefit, subject to a small percentage tax exclusion on the basis of the former spouse's share of the retiree's total contributions in the Foreign Service Retirement Fund and IRS' actuarial rates. Our Retirement Accounts Division, Office of Finance, will provide the former spouse with the figure on the share of the total contributions for purposes of calculating the tax liability.

In lieu of a pro rata share calculation of the former spouse pension benefit, a valid court order or notarized spousal agreement will be honored providing a different calculation or express waiver of the benefit.

A court order may change the amount of the pension, if the order is issued within 24 months of the date of the divorce. A notarized spousal agreement may change the amount of the pension at any time.

2. Former spouse survivor benefit. In the absence of a valid court order or notarized spousal agreement specifying otherwise, a qualified former spouse is entitled to a survivor benefit in the amount of the pro rata share of the maximum spouse survivor benefit (55% under FSRDS and 50% under FSPS). A former spouse's survivor benefit becomes payable the day after the participant's death.

* Unless the employee retired on disability.

If the former spouse remarries prior to age 55 and prior to the commencement of the survivor benefit, the entitlement will be terminated and the participant may transfer the survivor annuity to a current spouse or, if retired, have the annuity recomputed to eliminate prospectively the reduction for the former spouse portion of the survivor benefit. There is no provision in the Foreign Service Act of 1980, as amended, that would allow one to retain the potential survivor entitlement in the event of the former spouse's remarriage prior to age 55. (If the former spouse remarries after the employee's death and later divorces, the survivor annuity can be reinstated.)

A court order can change the survivor annuity up to the date of the employee's or annuitant's death. A notarized spousal agreement can change the survivor annuity if filed within 24 months of the divorce or at the time of retirement, whichever is earlier.

3. Court-ordered former spouse apportionment payment (Section 820(b)(2) of the FS Act of 1980, as amended). The Department is required to comply with the express provisions pertaining to the apportionment of retirement benefits in a valid state court order, decree, or court-approved property settlement agreement, in connection with the divorce, annulment of marriage, or legal separation of a federal employee or annuitant. A valid court-ordered apportionment affects only the Foreign Service participant's annuity or refund of retirement contributions. It does not affect a survivor annuity or a lump-sum death benefit.

Unless the court orders otherwise, a former spouse apportionment payment will be adjusted by applicable cost-of-living increases.

The Federal tax liability on an apportionment payment is on the participant/retiree. Please consult with your tax accountant or financial adviser with respect to any Federal tax exclusion that may apply to a former spouse's apportionment payment (in lieu of an alimony payment).

4. Court-ordered potential survivor benefit. The Department will comply with a valid court order providing a former spouse with a potential survivor benefit to the extent that such a benefit may be provided from the participant's potential survivor annuity base, or if retired, the elected survivor annuity base.

5. Pro rata Lump-Sum Payment. In the event that a participant separates from the Service before becoming eligible for an immediate annuity and has a qualified former spouse, the following options would be available in the absence of a valid court order or notarized spousal agreement specifying differently:

(a) elect a refund of retirement contributions, in which case the former spouse would be entitled to the pro rata share of one-half of the retirement contributions; or (b) leave the contributions in the Fund for a deferred annuity with the former spouse retaining potential pro rata share pension/survivor benefits.

6. Former Spouse Federal Employees Health Benefits Enrollment (FEHB).

A former spouse's health benefits coverage as a family member to the employee/retiree terminates on the date of divorce, subject to a temporary 31-day* extension of coverage and conversion privilege to convert to a non-group contract with the same health carrier. In lieu of the non-group contract conversion, the former spouse may qualify to enroll in one of the following FEHB programs:

(a) Civil Service Spouse Equity Act of 1984, as amended. Former spouses may apply for this health plan enrollment within 60* days of the date of divorce or 60 days of the HR/RET notification letter of eligibility, provided that: (1) The former spouse was covered as a family member in the employee's/retiree's FEHB plan at any time during the 18 months prior to the divorce, and (2) the former spouse has current or f

uture entitlement to receive a pension, survivor benefit, or apportionment payable under FSRDS or FSPS, and (3) the former spouse has not remarried prior to age 55, and (4) divorce occurs on or after 5/7/85.

A former spouse found qualified for health benefits enrollment under the CS Spouse Equity Act pays the full employee and government share of the monthly health premium.

*** In order to maintain continuity of FEHB coverage, the former spouse must submit FEHB application or a letter within 31 days of the date of divorce.**

(b) Temporary Continuation of Coverage (TCC),
P.L. 100-654.

A former spouse who loses FEHB coverage as a family member due to the dissolution of marriage on and after January 1, 1990 may be eligible to elect the FEHB coverage temporarily (36 months).

A former spouse is eligible if he/she meets the requirement of having been enrolled in a regular FEHB plan as a family member at the time of the divorce on and after 1/1/90, but does not meet one or both of the other two requirements for title to the FEHB

coverage under the CSRS Spouse Equity Act. In other words, the former spouse: (1) has remarried before reaching age 55 on or after 1/1/90; or (2) is not entitled to a portion of the employee's or retiree's annuity benefit or survivor benefit based on the employee's or retiree's service on or after 1/1/90.

In order to qualify for enrollment in this program, the former spouse must (a) lose eligibility for the regular FEHB program on or after 1/1/90, (b) agree to pay the monthly employee share and government contribution plus a 2 percent administrative fee, and (c) apply for enrollment within 60 days of the date of the divorce or 60 days of the date of the HR/RET notification letter of eligibility, whichever is later.

WHAT IS A QUALIFYING COURT ORDER?

- One issued from any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands.

- It must expressly provide that the former spouse is entitled to a portion of the retiree's annuity and that the Foreign Service Retirement System is to pay that amount directly, rather than the retiree making that direct payment.

- The amount of the court ordered payment must be stated clearly so that it is readily calculated from HR/RET's annuitant records and the gross annuity. The retiree's net annuity will not be used to calculate the benefit.

- It must not be in conflict with any previously issued court order which remains valid.

WHAT IS A VALID NOTARIZED SPOUSAL AGREEMENT?

A notarized agreement between the employee/retiree and former spouse with respect to the former spouse pension and/or survivor benefit. A notarized spousal agreement pertaining to the former spouse pension benefit may be filed at any time. However, one pertaining to the former spouse survivor benefit may be filed only within 24 months after the date of divorce or at retirement, whichever is earlier.

HR/RET'S DETERMINATION:

- If HR/RET determines that a court order is valid and qualifying, the former spouse and participant/retiree are notified. Any applicable payment will be deferred for 30 days from the date of the determination letter, to avoid adjustments in the event that the court order is contested by the retiree or legal action is initiated.

- A court-ordered apportionment payment will be discontinued if the retiree's payments are suspended or terminated (such as during a full-time career Federal reemployment). However, a former spouse pension continues to be paid and the re-employed annuitant's salary is reduced by the amount of the pension.

- In the event that more than one court order is served on an employee's/retiree's benefits, the court orders will be processed on a first-come, first-served basis.

- Since the former spouse is entitled to an apportionment or pension payment only while the retiree is living, the former spouse will be personally liable for any overpayment received after the death of the retiree.

- The former spouse may waive all or any portion of a pension benefit; however, the waiver cannot be revoked retroactively.

PROVISION GOVERNING REEMPLOYED FOREIGN SERVICE ANNUITANTS

For purposes of the salary/annuity limitation provisions of Section 824 of the Foreign Service Act of 1980, as amended, any payment to a former spouse that reduces the amount of annuity payable to the retired annuitant, or any deduction from the gross amount of annuity (for alimony, child support, etc.) is considered income of the annuitant.

SHOULD YOU OR YOUR ATTORNEY NEED ADDITIONAL INFORMATION OR CLARIFICATION ON THE LAW OR REGULATIONS. PLEASE CONTACT:

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