

## ***Divorce and Foreign Service Retirement Benefits***

Divorce can impact the division of retirement benefits. Foreign Service spouses enjoy a default statutory entitlement to benefits under the Foreign Service Act if they meet certain requirements. The default entitlements can be altered through a court order or spousal agreement. This message outlines the key rules that apply and explains where Foreign Service members, spouses, and divorce attorneys can obtain more detailed guidance. Different rules apply to Civil Service employees who may consult the Office of Personnel Management website for guidance. End of Summary

### **Default Statutory Entitlements**

The Foreign Service default statutory entitlement can provide retirement benefits to a qualified former spouse regardless of the employee's/annuitant's wishes. The statutory entitlement applies if the former spouse meets three requirements: a) was married to a Foreign Service retirement plan participant for at least 10 years of his/her creditable federal service, b) at least 5 of those 10 years occurred while the participant was a member of the Foreign Service, and c) the former spouse must not have remarried prior to age 55 (age 60 for remarriages prior to November 8, 1984 and affecting benefits under the Foreign Service Retirement and Disability System).

Under the default statutory entitlement, a qualified former spouse is entitled to a pro rata (marital) share of 50 percent of the employee's annuity and a pro rata share of the maximum survivor benefit. Alternatively, if the former employee takes a lump sum refund of his/her retirement contributions, then the former spouse is entitled to a pro rata share of that.

The pro rata share is a fraction: the numerator is the years and months of marriage during which the annuity was earned and the denominator is the retiree's total creditable service. For example, if a couple was married for 14 years during the participant's creditable service and the participant retired with 20 years of creditable service, then the pro rata share would be 14/20, or 70 percent. The former spouse would therefore receive 35 percent of the participant's retired pay (which is half of the 70 percent pro rata share) while the participant would receive the remaining 65 percent.

### **Deviating from Statutory Entitlements**

The Foreign Service default statutory entitlements may be altered through a valid court order or notarized spousal agreement that provides an express waiver of the former spouse benefit or a different calculation of the benefit. Also, a valid court order or spousal agreement can award benefits even if the former spouse was not married to the retiree during his/her creditable Foreign Service or the marriage lasted fewer than 10 years.

Any spousal agreement or court order that alters or waives retirement benefits that are due under the Foreign Service Act to a former spouse must do so expressly. To expressly waive or alter benefits under the Foreign Service Act, any spousal agreement or court order must specifically refer to Foreign Service retirement benefits and cannot merely mention generic retirement benefits and certainly cannot refer erroneously to Civil Service retirement benefits. For example,

the parties may specify that the relevant language in the agreement or order pertains to survivor annuities or pensions under the Foreign Service Act, under the Foreign Service Retirement and Disability System if the annuitant is a FSRDS participant, or under the Foreign Service Pension System if the annuitant is a FSPS participant.

In cases where the Department determines that a spousal agreement or court order language is insufficient, the parties may negotiate a new agreement or, in certain circumstances, return to court to correct the problem. A notarized spousal agreement may change the amount of the pension paid to the former spouse at any time. A court order can adjust the amount of a survivor annuity to a former spouse provided it is issued before the death of an employee/annuitant.

### **Submit your Divorce Documentation for Review**

Foreign Service members must submit all relevant divorce documentation to the Office of Retirement (HR/RET) prior to retirement. RET strongly encourages employees to do so prior to, or at the time of, divorce or no later than one year before retirement. In cases where years have passed since the divorce, it sometimes takes time to locate the former spouse. In other cases, state court orders sometimes fail to meet federal standards or one party contends that the order has a different meaning than its plain meaning. Thus, the parties sometimes must return to court to correct the problem. That process can take time.

To check in advance for such problems, Foreign Service employees should either scan and e-mail a copy of any divorce decrees and property settlement agreements to the HR Service Center at [HRSC@state.gov](mailto:HRSC@state.gov) or email that address asking for mailing instructions. HR/RET will review the documentation and provide the employee and their former spouse with a divorce determination letter stating the division of retirement benefits.

### **Post-Retirement Changes in Marital Status**

Foreign Service annuitants (retirees, their survivors, and former spouses) must report all changes in marital status (divorce, marriage/remarriage, or death of spouse) by notifying the HR Service Center and providing the relevant documentation. Delays by annuitants in reporting changes in marital status can delay or, in some cases, permanently prevent the benefits adjustment. For example, a FSRDS annuitant has just one year to elect a survivor annuity for a spouse acquired after retirement while a FSPS annuitant faces a two year deadline.

### **For More Information**

This information sheet cannot address every conceivable situation. For a more detailed discussion, please see HR/RET's "Foreign Service Divorce Attorney's Handbook" which is posted on [www.rnet.state.gov](http://www.rnet.state.gov) under "Divorce/Former Spouse Benefits". Additional questions may be sent to [HRSC@state.gov](mailto:HRSC@state.gov).