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**Subject:** Divorce and Foreign Service Retirement Benefits

1. Divorce can impact the division of Foreign Service retirement benefits. This message from the Bureau of Human Resources Office of Retirement outlines the key rules that apply under the Foreign Service Retirement and Disability System (FSRDS) and the Foreign Service Pension System (FSPS).

2. Please note that the guidance outlined in this message does not apply to Civil Service employees. The Office of Personnel Management (OPM) reviews and administers civil service court-ordered benefits. For more information, Civil Service employees should download Pamphlet RI 84-1 titled "Court Ordered Benefits for Former Spouses" from OPM's website (<https://www.opm.gov/retirement-services/publications-forms/pamphlets/ri84-1.pdf>) or view OPM's presentation on Court Ordered Benefits (<https://www.youtube.com/watch?v=hZlaRfUtQB4>).

### **Default Statutory Entitlement**

3. The Foreign Service Act provides a statutory entitlement, also referred to as a default entitlement, when a former spouse is a qualified former spouse. A former spouse is a qualified former spouse if the following criteria are met: 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 the commencement of any benefits and while under the age of 55 (age 60 for remarriages prior to November 8, 1984, for benefits under FSRDS). If the above criteria are met, and the former spouse is qualified, the statutory default entitlement applies regardless of the employee's wishes, unless a spousal agreement or court order otherwise governs the disposition of benefits.

4. 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. The pro rata share is a fraction: the numerator is the total length of time 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 Entitlement**

5. The Foreign Service default statutory entitlement may be altered through a valid court order or notarized spousal agreement. For example, a valid court order or spousal agreement can provide an express waiver of the former spouse's statutory entitlement or provide that the former spouse's entitlement be based on a different calculation method than the default calculation provided for by statute. Additionally, 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 even if the marriage lasted fewer than 10 years. For a court order to be given effect for a former spouse, the order must be issued within two years of any divorce or annulment becoming final.

6. Any spousal agreement or court order that claims to alter or waive retirement benefits that are due under the Foreign Service Act to a former spouse must do so expressly in order for the alteration or waiver to be effective. 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. Merely mentioning generic retirement benefits or erroneously referring to retirement benefits under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) is insufficient to constitute a valid waiver or alteration of benefits. For example, to constitute an express waiver or alteration, 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.

7. 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 Documents For Review**

8. Foreign Service members must submit all relevant divorce documentation to the Bureau of Human Resources Office of Retirement (HR/RET) prior to retirement. HR/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 may fail to meet federal standards or one party contends that the order has a different meaning than the Department's interpretation. Thus, the parties sometimes must return to court to correct the problem. That

process can take time.

9. To check in advance for such problems, Foreign Service employees should e-mail a certified copy of the entire court order and all attachments to the HR Service Center at [HRSC@state.gov](mailto:HRSC@state.gov) or e-mail 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 addressing what, if any, retirement benefits a former spouse is entitled to.

### **Changes In Marital Status After Retirement**

10. 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.

11. Delays by annuitants in reporting a marriage/remarriage occurring after the participant's retirement can permanently prevent a survivor election. A retiree who remarries after retirement has a limited period of time within which they may be eligible to make a survivor election for the new spouse. Under FSRDS, a retiree has only one year from the date of marriage/remarriage to elect a survivor annuity for a spouse acquired after retirement. For a FSPS retiree, there is a two-year deadline. When deciding whether to make a survivor election for a spouse acquired after retirement, it is important to consider that in order to remain eligible for FEHB benefits, a retiree's surviving spouse must be eligible to receive a survivor annuity (whether or not the annuity would be payable in whole or in part to a former spouse).

### **For More Information**

12. We understand this short message cannot address every conceivable situation. Therefore, additional questions may be sent to [HRSC@state.gov](mailto:HRSC@state.gov).

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