

FOREIGN SERVICE

A Handbook for Attorneys on Court Orders and Spousal Agreements Pertaining to Retirement and Survivor Benefits, Health Benefits, and Life Insurance Under the

- **Foreign Service Retirement & Disability System**
 - **Foreign Service Pension System**
 - **Federal Employees Health Benefits Program**
 - **Federal Employees Group Life Insurance Program**
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INTRODUCTION

This handbook provides information regarding Federal statutes, regulations, and policies pertaining to court orders and spousal agreements affecting retirement and survivor benefits under the Foreign Service Retirement and Disability System (FSRDS) and the Foreign Service Pension System (FSPS). In general, FSRDS covers Foreign Service personnel first hired before 1984 and FSPS covers Foreign Service personnel first hired after 1983, plus Foreign Service personnel who elected to transfer from FSRDS to FSPS. The United States Department of State (DoS) administers both FSRDS and FSPS.

Participation in FSRDS and FSPS is applicable only to **Foreign Service** personnel of the following Federal agencies:

- U.S. Department of State;
- U.S. Agency for International Development (AID);
- U.S. Foreign Agricultural Service and the Animal, Plant and Health Inspection Service of the Department of Agriculture;
- U.S. Foreign Service of the Department of Commerce; and the
- U.S. Peace Corps.

This **handbook does not apply** to retirement and/or survivor benefits provided under the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS) or any other retirement system for Federal civilian or military personnel other than FSRDS and FSPS.

The handbook also includes information describing conditions under which a former spouse's Federal Employees Health Benefits (FEHB) coverage may be continued after a divorce, as well as the conditions under which an employee or former employee may make an irrevocable assignment of his or her Federal Employees' Group Life Insurance (FEGLI) coverage.

This handbook is published to assist attorneys and others who may be involved in the preparation of court orders, property settlement and/or spousal agreements for current or former Foreign Service personnel, their spouses, or former spouses relating to benefits under the FSRDS or FSPS and the Federal health and life insurance programs.

OVERVIEW

Retirement

General

DoS's role is ministerial, rather than that of a mediator in marital property disputes. This latter role belongs to the state courts. If a court order is so flawed that it is not sufficiently clear to satisfy DoS's requirements, the appropriate action is for the parties to return to the state court to correct the problem. Likewise, if a party contends that the court intended its order to have a different meaning than the clear meaning it has under these regulations, the proper forum for the individual's complaint is the state court. DoS will require employees and former spouses to settle disputes in the state courts where they belong, not in Federal proceedings. The courts issuing the orders are in the best position to determine the meaning of their own orders.

Please note that this handbook does not contain information on garnishment of pay or annuity of Foreign Service personnel or annuitants for alimony or child support. Regulations governing garnishments may be found in Part 581 of title 5 of the Code of Federal Regulations.

Preparing a Court Order

Exemption from ERISA

A substantial number of state court orders are drafted under the mistaken belief that the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 et seq.) applies to FSRDS or FSPS benefits. Sections 1003(b)(1) and 1051 of title 29, United States Code, exempt FSRDS and FSPS from ERISA, because FSRDS and FSPS are "governmental plans" as defined in section 1001(23) of title 29, United States Code.

ERISA created the term "qualified domestic relations order" (QDRO) to describe a court order that summarizes the division of retirement benefits under ERISA plans. QDRO's are not acceptable to affect FSRDS or FSPS benefits. DoS has seen from experience that attorneys prepare these orders on the assumption that they can provide any benefits available under ERISA to FSRDS and FSPS. (For example, the most important difference between ERISA plans and FSRDS and FSPS is that under ERISA the former spouse's share of the benefit can begin when the employee reaches the minimum retirement age, even when the employee is still working. However, this benefit is not available under FSRDS or FSPS. The availability of this early benefit, or lack of availability, can seriously alter negotiations over a settlement agreement.)

Since FSRDS and FSPS are exempt from ERISA, some provisions that ERISA plans must honor do not apply to FSRDS and FSPS. For DoS to be able to process court orders in the way intended by the parties, DoS and the court must be speaking the same language. To assure that the court has used DoS's terminology, rather than ERISA's terminology, **an order labeled as a QDRO is not acceptable.** However, this prohibition against labeling the order as a QDRO does not apply if court orders also **expressly state that they are written in conformity with DoS 's regulations.** This exception will guarantee that the purpose of the ban -- that the court understands that we are exempt from ERISA and that the court is using the terminology as provided in DoS regulations -- is satisfied by requiring that any "QDRO" mention DoS's regulations.

Benefits Payable

A court order may affect any of three types of FSRDS and FSPS benefit payments made by DoS. The regulations treat each of the three types --employee annuities, refunds of employee contributions, and survivor annuities--independently. In preparing a court order, attorneys should keep in mind that DoS considers each of the three types of awards as separate and independent of the other two, and should exercise great care regarding each type of benefit they intend to affect. DoS's requirement that the award of each type of benefit be independent does not mean that the court award of one type of benefit cannot affect another. For example, awarding a former spouse survivor annuity requires a reduction in the employee annuity and if the former spouse has also been awarded a portion of the participant's or former participant's "net annuity," the former spouse's portion of the employee annuity will be affected.

State court orders cannot affect several types of benefits payable under FSRSD and FSPS. DoS must pay any accrued annuity that is not paid before a retiree's death and any unexpended balance of an employee's retirement contributions that are paid as a death benefit in accordance with the order of precedence established by Federal law. Similarly, eligibility for children's survivor benefits is governed entirely by Federal law and cannot be affected by state court orders.

Information Available From the Federal Government

Information Available on Current Employees

The employing agency is the proper source for employment and pay information about a current employee's service with that agency. DoS does not receive records until after an employee leaves an agency's employment. With regard to requests for an individual's employment and pay records, agency personnel must comply with Privacy Act rules and applicable regulations before disclosing the information.

Commonly requested information, which agencies can provide in response to a subpoena signed by a judge or a release signed by the employee, includes a statement of retirement system coverage (FSRDS or FSPS), the amount of money withheld by that agency to the employee's credit in the retirement fund, and an annuity estimate using the employee's service history to date. The exact requirements for obtaining information vary among agencies. Information about the agency's procedures for obtaining such information should be obtained from the agency involved. **If an agency provides an annuity estimate--as agencies generally do for employees at or near retirement--that benefit calculation is only an estimate, and is not binding on the Government.** Agencies should not provide estimates that would require speculation about future promotions, program changes, or any other non-factual information and should avoid giving annuity estimates for employees who are not close to retirement. Official computations are made by DoS only at the time benefits become payable.

Information on Retirees and Former Employees.

DoS is the proper source of information regarding FSRDS and FSPS retirees and former participants. DoS has information available on former FSRDS and FSPS participants and retirees similar to the information, described in the previous paragraph, available from agencies on current employees. In addition, FSRDS and FSPS has annuity rate information on FSRDS and FSPS retirees. DoS can release this information only in response to a subpoena signed by a judge or a release signed by the retiree or former employee. The subpoena or release should be sent to:

Department of State
Office of Retirement
2401 E Street, NW
Washington, DC 20522-0108
Phone: 202-261-8960

Please note that a different Federal agency, the Federal Retirement Thrift Investment Board (the Board) administers the Thrift Savings Plan for Federal employees. The Board's regulations governing court orders are in subparts G and I of part 1650 of Title 5, Code of Federal Regulations. Questions about an individual's thrift account or the Board's rules governing court orders should be directed to the:

Office of General Counsel
Federal Retirement Thrift Investment Board
805 15th Street, NW
Washington, DC 20005-2207

Information Not Available from the Government.

Federal agency personnel do **not** advise an employee, an employee's spouse, or an attorney about how to draft a court order to award FSRDS or FSPS benefits. This is the task of the attorneys involved. The requirements that must be satisfied for DoS to honor a court order are set out in the law and regulations provided in this handbook. **An agency's efforts to advise individuals in legal matters involving domestic disputes can, despite good intentions, harm more than help.**

It is **not** appropriate for agency personnel to attempt a "present value" computation of an employee's future benefits. Also, agencies should not attempt to determine the proper division of benefits between the employee and spouse. Present value computations should be prepared by a qualified private actuary. Such computations of the total actuarial value of retirement benefits require application of various economic and mortality assumptions, and are beyond the scope of an employing agency's or DoS 's responsibility.

Former Spouses' Statutory Entitlements

Statutory Provisions

FSRDS and FSPS statutory provisions are established in chapter 8, subchapters I and II, respectively, of the Foreign Service Act of 1980, as amended. FSRDS statutory provisions are codified under Title 22 USC 4041-4069c-1 and FSPS statutory provisions are codified under Title 22 USC 407-4071k.

Former Spouses' Statutory Entitlements

Unless otherwise expressly provided for by a court order or spousal agreement, a former spouse of a FSRDS or FSPS participant or former participant is entitled, under the qualifications listed below, to a pro rata share of 50 percent of such participant's retirement annuity and a pro rata share of the maximum survivor annuity payable based on marriage to such participant or former participant. (See 22 USC 4054-4055 and 22 USC 4071j.)

The qualifications are as follows:

1. The former spouse must have become divorced from such participant or former participant after February 15, 1981;
2. Before the commencement of any benefit entitlement payments, the former spouse must **not have remarried before age 55**; and

3. The former spouse must have been married to such participant or former participant for at least 10 years during service of the participant which is creditable for retirement, **with at least 5 years of such service occurring while the participant was a member of the Foreign Service.**

Remarriage Restrictions.

The statutory entitlements to both retirement and survivor benefits are **permanently** lost if a former spouse remarries before age 55 and before annuity payments begin. If a former spouse remarries before age 55, but after a survivor annuity has commenced, the survivor annuity is terminated. In the case of an FSPS annuity, there will be no termination if the former spouse was married to the annuitant for more than 30 years. However, the survivor annuity may be restored if the remarriage is dissolved by death or divorce. In the case of an FSPS annuity, restoration of the annuity is contingent upon the former spouses' election to receive the annuity in lieu of other Federal survivor benefits, and upon return of any lump sum paid upon termination of the annuity. With respect to retirement benefits, the remarriage restriction may be modified.

SECTION I

COURT ORDERS AND DIVORCE DECREES

Subsection I-1 Orders by a Court

- (a) A court may:
- (1) Fix the amount of a principal's pension to be paid to a former spouse or order that no amount be paid;
 - (2) Fix the amount of any regular survivor annuity to a former spouse under paragraphs or order that no amount be paid;
 - (3) Order provision of an additional survivor annuity for a former spouse;
 - (4) Fix the amount of any benefit based on recall service payable to a former spouse to whom the annuitant was married during any portion of the recall service, or order that no amount be paid;
 - (5) Fix the amount of any lump-sum credit payable to a former spouse or order that no amount be paid; and
 - (6) Order, to the extent consistent with any obligation (see Section III) between a participant and a former spouse, and pursuant to any court decree of divorce, legal separation or annulment or any court ordered or approved property settlement agreement incident to any court decree of divorce, legal separation, or annulment, that any payment from the Fund which would otherwise be made to a former participant based on his/her service will be paid (in whole or in part) by DoS to a previous spouse or child of such participant. No apportionment under this paragraph may be made of a payment authorized to be paid to a survivor of a participant or annuitant.
- (b) An order by a court that does not meet the definition of “court” (see Definitions) is not valid for purposes of this section even though a divorce decree issued by such court may be a basis for pro rata share payments to a former spouse as described in these regulations.

Subsection I-2 Qualifying Court Order

To be valid for processing purposes, a court order must be found to be "qualified" by HR/RET.

A qualifying court order must:

- (1) Be consistent with the terms of the Act and applicable regulations;
- (2) Not direct payment of an amount in excess of the maximum amount authorized to be paid by the relevant regulations;
- (3) Direct that payments be made to an eligible beneficiary from a principal's FSRDS or FSPS retirement or survivor benefits. If a court directs or implies that a principal, rather than DoS or the Government, make the payments, the order will not be considered qualified unless the principal does not object during the 30-day notice period (see Subsection I-6(a)(2)(iii) ;
- (4) **Clearly** define the amount to be paid to a beneficiary in a way so that it can be readily calculated from information in the normal files of the Department;
- (5) Not make payment contingent upon events other than those on which other payments from the Fund are based such as age, marital status and school attendance; and
- (6) Not be in conflict with any previously issued court order which remains valid.

Note: No apportionment of an annuity to a former spouse may exceed the net annuity of the principal.

Subsection I-3 Application for Payment

To receive payment from the Fund pursuant to a court award, the beneficiary must submit an application in writing to the Department of State, (HR/RET), Room H-620, SA-1, Washington, DC 20522-0108. The application must be typed or printed, signed by the beneficiary, and include:

- (1) The full name, date of birth, current address and current marital status of the beneficiary;
- (2) Full name and date of birth of the participant or former participant and his/her date of birth or other identifying information;
- (3) Relationship to the beneficiary, and if a spouse or former spouse, date of marriage to and/or divorce from the participant; and
- (4) A statement that the court order has not been amended, superseded, or set aside. **Note:** The original of the court order or a recently certified copy must be enclosed with the application, or a statement appended that such a copy has been sent to the Department by other means.

When payments are subject to termination upon the occurrence of a condition subsequent, such as marriage, remarriage or death of the principal, no payment will be made until the beneficiary submits a statement to HR/RET that:

- (1) The condition has not occurred;
- (2) He/she will notify the Department (HR/RET) within 15 calendar days of the occurrence of the condition subsequent; and
- (3) He/she will be personally liable for any overpayment to him/her resulting from the occurrence of the condition subsequent. HR/RET may require periodic certification of these statements.

Subsection I-4 Date of Court Orders

- (a) A court order directing or barring payment of a pension to a former spouse may not be given effect by the Department if it is issued more than 24 months after the divorce becomes final. A court order adjusting the amount of a regular or additional survivor annuity to a former spouse may not be given effect by the Department if it is issued after the death of the principal.
- (b) A court order issued within 12 months after a divorce becomes final, directing payment of a pension to a former spouse, may be made retroactively effective to the first of the month in which the divorce becomes final if so specified by the court. In such event, the Department will adjust

any future payments that may become due to an annuitant and a former spouse by increasing one and correspondingly reducing the other in order to give effect to the order of the court. However, if future payments to one party are not due, as for example if a court orders that no payments be made to a former spouse, or that 100 percent of an annuity be paid as pension to a former spouse, the Department will not give retroactive effect to a court order by collecting overpayments from one party in order to pay them to the other party and will not make overpayments from the Fund.

- (c) A court order involving any payment other than a pension to a former spouse may not be given retroactive effect and will not be effective until it is determined to be a "qualifying" order.

Subsection I-5 Preliminary Review

- (a) Upon receipt of an application from a beneficiary for payment based on an award by a court order, HR/RET will determine whether:
 - (1) The application is complete;
 - (2) The applicant is an eligible beneficiary; and
 - (3) The court order is a "qualifying" order. If the application is complete, the beneficiary is eligible and the court order appears on its face to be a "qualifying" order, HR/RET will provide required notifications (see Subsection I-6), otherwise, it will notify the applicant of any deficiency or requirement for additional information, and if the order is determined to be non-qualifying, the basis for such determination.
- (b) Upon receipt of a certified copy of a final decree of divorce, HR/RET will determine whether:
 - (1) It is a valid decree. Any decree recognized as valid by the parties will be considered valid for this purpose. In addition, any non-recognized decree will be considered valid for this purpose unless:
 - (i) (A) Neither party was domiciled within the court's jurisdiction, and
(B) the party denying recognition did not participate in the proceedings, or

- (ii) The party denying recognition was not afforded notice of the proceedings (actual or constructive);
- (2) A related court order has been submitted by either party; and
- (3) A pro rata share payment is or may become due the former spouse. If a divorce decree is deemed valid under this paragraph, a pro rata share payment is due a former spouse unless HR/RET is in receipt of a court order which it has deemed qualified under paragraph (a) of this subsection, or a valid spousal agreement providing otherwise. If it determines that a pro rata share payment is due, it will provide the notification required (see Section I-6) otherwise, unless action is being taken pursuant to a related court order, it will notify both parties to the divorce the reason a pro rata share payment is not payable.

Subsection I-6 Notification

- (a) Notification to a Principal. Whenever HR/RET receives from a former spouse or other eligible beneficiary:
 - (1) a court order which it deems qualified that requires payment to the beneficiary; or
 - (2) a final decree of divorce which it deems valid together with a request for a pro rata share payment --

HR/RET will send a copy of the document to the principal and a notice stating:

- (i) That HR/RET deems the order qualified or the divorce decree valid,
- (ii) that payments will be made from the principal's account to the beneficiary and the effective date of such payments, and
- (iii) the effect of such payments on the principal's retirement benefit. In the case of any court order with retroactive or immediate effect, and in the case of pro rata share payments, the amounts will be withheld from future payments to the

principal but will not be paid to the beneficiary for 30 days from the notice date in order to give the principal an opportunity to contest the court order or the validity of the divorce.

HR/RET will also provide the former spouse or other beneficiary the same information, stating the exact amount that will be payable to the beneficiary and explaining how that amount was calculated.

- (b) Notification to a Former Spouse. When HR/RET receives from a principal:
- (1) a court order which it deems qualified that requires or forbids payment to a former spouse; or
 - (2) a final decree of divorce which it deems valid without an accompanying court order --

HR/RET will send a copy of the document to the former spouse and a notice stating:

- (i) That HR/RET deems the court order qualified or the divorce decree valid,
- (ii) that HR/RET intends to honor the court decree or to make pro rata share payments because of the divorce, and
- (iii) the effective date, exact amount, and method of calculation of any payments to the former spouse.

HR/RET will also provide the same information to the principal and will explain the effect any payment to a former spouse will have on the principal's retirement benefit.

Subsection I-7 Decision

- (a) When a response has not been received by HR/RET from a principal within the 30-day period described in Subsection I-6(a), payment will be made in accordance with the notification. When a response is received, the Chief, HR/RET will consider the response. If it is shown that a court order is not qualifying or that a divorce is not valid under terms of the Act and governing regulations, payment proposed in the notification will not be made. In such a

case, HR/RET will advise both parties of the basis for its decision and the alternative action, if any, that it proposes to take.

- (b) If a principal responding to a notification described in Subsection I-6(a) objects to the payment or other action proposed by the Department in the notification based on the validity of the court order or divorce decree, and the record contains support for the objection, HR/RET will grant the principal 30 days to initiate formal legal action to determine the validity of the objection, will continue to delay payment to the former spouse or other beneficiary during this period, and will notify the beneficiary of this action. If evidence is submitted that formal legal action has been started within the 30-day period, the amount of any proposed payment to a former spouse or other beneficiary will continue to be withheld from any payments due the principal, but no payment will be made to the former spouse or other beneficiary until a judicial decision is rendered or agreement reached between the parties.

Subsection I-8 Allotment to Beneficiary

If a court order is not a "qualifying" court order because it directs or implies that payment to the beneficiary is to be made by the principal rather than DoS, the principal may make an allotment to the beneficiary from his/her annuity. An annuitant may also make an allotment from his/her annuity to a previous spouse in the absence of a court order.

Subsection I-9 Limitations

- (a) Retirement benefits are subject to apportionment by court order (see Subsection I-6 (6)) only while the principal is living. Payment of apportioned amounts will be made only to a previous spouse and/or the children of the principal. Such payments will not be made to any of the following:
- (1) Heirs or legatees of the previous spouse;
 - (2) Creditors of either the principal or the previous spouse; or
 - (3) Assignees of either the principal or the previous spouse.

- (b) The amount of any court ordered payment may not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars.
- (c) In honoring and complying with a court order, the Department will not be required to disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payments, despite the existence of any special schedule relating to a previous spouse or other beneficiary.
- (d) In cases where the court order apportions a percentage of the retirement benefits, HR/RET will initially determine the amount of proper payment. That amount will only be increased by future COLA increases unless the court directs otherwise.

Subsection I-10 Liability

The Department will not be liable for any payment made from retirement benefits pursuant to a court order if such payment is made in accordance with the provisions of the Act and governing regulations.

In the event that the Department is served with more than one court order with respect to the same retirement benefits, the benefits will be available to satisfy the court orders on a first-come, first-served basis.

A previous spouse or other beneficiary may request that an amount be withheld from the retirement benefits of a principal or survivor of a principal which is less than the amount stipulated in a court order, or otherwise scheduled to be paid to the beneficiary. This lower amount will be deemed a complete fulfillment of the obligation of the Department for the period in which the request is in effect. (See Section III.)

SECTION II

SPOUSAL AGREEMENTS

Subsection II-1 Purpose

A spousal agreement may be used by both parties to establish an agreed-upon level of benefits to a spouse or a former spouse and to relieve the principal of responsibility for providing a higher level of benefits.

Subsection II-2 Agreement with Spouse

- (a) A spousal agreement between a principal and a spouse may waive or fix the level of a regular survivor annuity (see Subsection VI-3). If an agreement is filed, it will assure the spouse that the agreed-upon level of survivor annuity will be paid, irrespective of a future divorce provided the survivor meets the definition of "former spouse." If an agreement is not filed, the principal's annuity will be reduced (see Subsection V-2) to provide the maximum regular survivor annuity for the spouse, but in the event of a future divorce if the spouse meets the definition of "former spouse," that person will be entitled only to a pro rata share of the survivor annuity. An agreement under this paragraph may be filed with HR/RET at any time prior to retirement (i.e., commencement of the principal's annuity).
- (b) A spousal agreement between an annuitant and a spouse filed with HR/RET before commencement of a supplemental annuity for recall service may waive a supplemental survivor annuity that would otherwise be provided for a spouse (see Subsection V-6).
- (c) A spousal agreement between a participant or former participant and a spouse may be filed with HR/RET at any time and provide for an additional survivor annuity for the spouse. (See Subsection V-5.)
- (d) A spousal agreement filed under paragraph (a), (b), or (c) remains valid and binding in the event of divorce if the spouse qualifies as a former spouse.

Subsection II-3 Agreement with Former Spouse

- (a) A spousal agreement between a participant or former participant and a former spouse may waive, reduce or increase the following benefits for a former spouse:
 - (1) A pension under Section IV;
 - (2) A regular survivor annuity under Section VI;
 - (3) A supplemental survivor annuity under Section V; and
 - (4) A lump-sum payment for regular or recall service under Section VIII.

A spousal agreement may also be used by a participant or former participant who has a former spouse on February 15, 1981, to elect a regular survivor annuity for such former spouse (see Subsection VI-2(e)). An agreement to establish or increase any benefit for a former spouse entered into while the principal is married to someone else, must be signed and agreed to by both the spouse and the former spouse. An agreement affecting pension benefits may be filed at any time and will govern payments made after its acceptance by HR/RET. An agreement affecting a regular survivor annuity must be filed before the end of the 24 month period after the divorce involving that former spouse or at the time of retirement, whichever occurs first, except as provided in Subsection VI-2(b) for persons retired on February 15, 1981. This filing requirement makes it impossible to adjust, other than by court order, a regular survivor annuity for a former spouse when the divorce occurs after a retirement which occurs on or after February 15, 1981. The survivor annuity for the former spouse in such case is fixed by any spousal agreement entered into prior to the divorce, or by court order, or as provided under Subsection VI-2. An agreement affecting supplemental survivor benefits or lump-sum payments must be filed before the supplemental annuity of the principal begins or lump-sum payment is made.

- (b) A spousal agreement between a participant or former participant and a former spouse may be filed with HR/RET at any time to provide an **additional** survivor annuity for the former spouse. (See Subsection V-5.)

Subsection II-4 Form of Agreement

- (a) A spousal agreement is any legal agreement between the parties accepted by HR/RET as meeting the requirements of this subsection. If in accordance with the regulations, HR/RET will accept as a valid spousal agreement a property settlement agreed to by the parties and approved by a court regardless of the date of the agreement.
- (b) A spousal agreement must either be authenticated by a court or notarized.

Subsection II-5 Limitations

- (a) A spousal agreement may not provide for any payment from the Fund in excess of the amount otherwise authorized to be paid, or at a time not authorized by these regulations, or to a person other than a spouse or former spouse.
- (b) A spousal agreement must be filed with and accepted by HR/RET and determined to be in conformance with the Act and regulations prior to the times specified (see Subsections II-2 and II-3). HR/RET will provide advice to the parties on the validity of any proposed agreement and on proper format.
- (c) A spousal agreement may apply only to payments from the Fund for periods after receipt of a valid agreement by HR/RET.
- (d) Paragraphs (b), (c) and (d) of Subsections I-9 and I-10 apply to spousal agreements and payments made pursuant to spousal agreements to the same extent that they apply to court orders and court ordered payments.

Subsection II-6 Duration and Precedence of Spousal Agreements.

- (a) A spousal agreement may be revised or voided by agreement of the parties (by filing a new agreement under this subsection) at any time prior last day for filing an agreement (see Subsections II-2(a) II-3(a)), except spousal agreements for additional survivor annuities are irrevocable. After the last day for filing a particular agreement, such agreement is irrevocable.

- (b) A valid spousal agreement entered into subsequent to the issuance of a court order affecting the same parties will override the court order, and will govern payments from the Fund.
- (c) A spousal agreement may not override a previous spousal agreement involving the same principal but a different spouse or former spouse without agreement of such spouse or former spouse.

SECTION III

OBLIGATIONS OF MEMBERS

Obligations of Members

Participants and former participants are obligated by the Act and regulations to provide the following benefits to others and must accept the necessary reductions in their own retirement benefits to meet these obligations:

- (a) A pension to a former spouse (see Subsection IV-9);
- (b) A court ordered apportionment of annuity to a previous spouse or child (see Subsection I-1(a)(6) (the benefit to a child referred to here is paid during the annuitant's lifetime as distinguished from the automatic survivorship annuity to a child described in Subsection VI-7);
- (c) A regular survivor annuity to a former spouse who has not remarried prior to age 55, and to a spouse to whom married when annuity commences (see Subsections VI-2 and VI-3);
- (d) An additional survivor annuity for a spouse or former spouse (see Subsection V-5) when elected by the participant or ordered by a court;
- (e) Lump-sum payments to a former spouse (see Section VIII); and
- (f) Benefits ordered by a court (see Section I) or specified in a spousal agreement (see Section II).

SECTION IV

PENSION BENEFITS FOR FORMER SPOUSES

Subsection IV-1 Entitlement

- (a) Unless otherwise "expressly provided" by a spousal agreement (see Section II) or a court order (see Section I), a person who, after February 15, 1981, becomes a former spouse of a participant (or former participant who separated from the service after February 15, 1981) and who has not remarried prior to becoming 55 years of age, becomes entitled to a monthly pension benefit effective on a date as determined under Subsection IV-2 in an amount as determined under Subsection IV-3.
- (b) A former spouse will not be qualified for a pension under this subsection if, before the commencement of that pension, the former spouse remarries before becoming 55 years of age.
- (c) A pension benefit under this subsection is treated the same as a survivor annuity for purposes of Subsection VI-5(b): a former spouse who elects to receive a pension under this subsection must waive simultaneous receipt of any survivor annuity.

Subsection IV-2 Commencement and Termination

- (a) The pension of a former spouse under this subsection commences on the latter of the day the principal becomes entitled to a Foreign Service annuity or on the first day of the month in which the divorce becomes final. (Suspension or reduction of a Foreign Service annuity because or reemployment does not affect the commencement of a pension to a former spouse.) In the case of any former spouse of a disability annuitant, the pension of such former spouse will commence on the latter of:
 - (1) The date the principal would qualify for an annuity (other than a disability annuity) on the basis of his/her creditable service;
 - (2) The date the disability annuity begins; or
 - (3) The first of the month in which the divorce becomes final.

- (b) The pension of a former spouse and the right thereto terminate on:
 - (1) The last day of the month before the former spouse dies or remarries before 55 years of age; or
 - (2) The date the annuity of the former participant terminates unless the termination results from recall, reappointment or reinstatement in the Foreign Service or reemployment in Government service.

Subsection IV-3 Computation and Payment of Pension

- (a) A pension to a former spouse is paid monthly on the same date that annuity is paid to the principal.
- (b) No spousal agreement or court order may provide for a pension or any combination of pensions to former spouses of any one principal which exceeds the "net annuity" of the principal.
- (c) A pension to a former spouse not fixed by a spousal agreement or court order will equal the former spouse's pro rata share of 50 percent of the annuity to which the principal is entitled on the date the divorce becomes final, or, if not then entitled to an annuity, 50 percent of the annuity to which the principal first becomes entitled following that date. A pension to a former spouse of a disability annuitant will be calculated on the basis of an annuity for which the participant would qualify if not disabled. A pension to a former spouse will be increased by the same percentage of each cost-of-living adjustment received by the principal.
- (d) The Department will initiate payment of a pension to a former spouse after complying with the notification and other procedures described in Section I.
- (e) If a pension cannot be paid because a former spouse is missing, the principal may file an affidavit with HR/RET that he/she does not know the whereabouts of the former spouse. In such an event, the principal and the Department will follow the procedures outlined in Subsection VI-4 in an effort to locate the former spouse. The annuity of the principal will be reduced by the amount of the pension to the former spouse even though the latter is not being paid. If the former spouse has not been located during the 12-month period following the date the principal files an affidavit under this

subsection, the annuity of the principal will be recomputed effective from its commencing date (or on the date following the last month a pension payment was made to the former spouse) and paid without reduction of the amount of pension to the former spouse. If the former spouse subsequently is located, pension payments to him/her will be initiated at that time at the rate that would have been payable had they been paid continuously from the original effective date. The Department will not be liable to make any pension payments to the former spouse for the missing period if the procedures under this subsection were faithfully complied with nor will the Department be responsible for recovering any payments made to the principal for the benefit of the former spouse.

Subsection IV-4 Effect on Annuitant

Any pension payable to a former spouse under this subsection or pursuant to any spousal agreement or court order will be deducted from the annuity of the principal. (See Subsection I-4 concerning retroactive adjustments.) If the annuity of such a principal in any month is discontinued or reduced so that the net amount payable is less than the pension to the former spouse or spouses of the principal because of recall, reappointment or reinstatement in the Foreign Service or reemployment in the Government service, the principal's salary, rather than annuity, will be reduced by the amount of the pension payment(s). Such salary reductions will be deposited in the Treasury to the credit of the Fund. If a pension to a former spouse is discontinued for any reason except a suspension pending a determination of entitlement, the annuity of the principal will be recomputed effective as of the date of discontinuance of the pension, and paid as if the pension to the former spouse had never been deducted.

SECTION V

TYPES OF ANNUITIES

Subsection V-1 Full Annuity

If a participant retires and does not provide a survivor annuity to a spouse, former spouse or designated beneficiary, the participant receives a "full" annuity. A full annuity means an annuity computed without any survivorship cost reduction.

Subsection V-2 Reduced Annuity with Regular Survivor Annuity

- (a) At commencement of annuity, a participant or former participant may provide a regular survivor annuity for any eligible former spouse and, within the limits of paragraph (b) of this subsection, a regular survivor annuity to any spouse to whom he/she is then married as described in Subsections VI-2 and VI-3, respectively. A regular survivor annuity for a spouse or former spouse equals 55 percent of the portion of the retiree's annuity (up to the full amount) designated as the base for the survivor annuity. To provide the survivor annuity, the participant must accept a reduction in his/her full annuity.
- (b) The maximum regular survivor annuity or combination of regular survivor annuities that may be provided under this subsection is limited to 55 percent under FSRDS and 50 percent under FSPS of the principal's full annuity computed at retirement. If an annuitant is recalled to active duty in the Foreign Service, he/she may provide additional regular survivor annuities. (See Subsection V-6.) The maximum regular survivor annuity or combination of regular survivor annuities that an annuitant who was married at retirement may elect or provide, pursuant to a court order or otherwise, after retirement in the event of his/her divorce or remarriage, is limited to the amount provided at the time of initial retirement or reversion to retired status following recall service.

Subsection V-3 Marriage After Retirement

If an annuitant who was unmarried at the time of retirement, marries, he/she may within one year after such marriage irrevocably elect to receive a reduced annuity and to provide, subject to any obligation to provide a survivor annuity for a former spouse, a survivor annuity for the new spouse. If such an election is made, the principal's annuity will be reduced in accordance with Subsection V-2 effective on the first day of the first month which begins at least one year after the date of the marriage. The reduction is computed on the commencing rate of the principal's annuity.

Subsection V-4 Death or Divorce of a Spouse and Remarriage After Retirement

- (a) If the marriage of an annuitant who received a reduced annuity at retirement under Subsection V-2 to provide a survivor annuity for a spouse is dissolved by divorce or by death of the spouse, the retiree's annuity will be recomputed, if necessary, as of the first of the month following the death or divorce. If the marriage was dissolved by death, the annuity will be recomputed and paid at its full amount. If the marriage is dissolved by divorce, procedures in Subsection V-2(b) will be followed.
- (b) In the event an annuitant affected by this paragraph remarries, the annuitant may elect within one year of remarriage to provide a survivor annuity for the new spouse equal in amount to the survivor benefit formerly in effect for the previous spouse less any amount committed for a former spouse. The annuity of a retiree making such an election will be reduced effective on the first day of the first month which begins at least one year after the remarriage to the amount that would have been payable had there been no recomputation under paragraph (a) of this subsection.

Subsection V-5 Reduced Annuity with Additional Survivor Annuity

- (a) General. This subsection provides an opportunity for a participant or former participant who has provided a regular survivor annuity to a former spouse to provide a survivor annuity to a second spouse or to another former spouse. The additional survivor annuity provided under this subsection generally is more costly than the regular survivor annuity because the participant is required to pay its full cost by deduction from salary or

annuity, or otherwise, as specified in paragraph (e) of this subsection. The participant must also be in normal health for his/her age and pass a physical examination prescribed by DoS to be eligible to provide an additional survivor annuity under this subsection.

- (b) **Limitation on amount.** Neither the total amount of additional survivor annuity or annuities under this subsection provided by any participant or former participant nor any combination of regular or additional survivor annuities for any one surviving spouse or former spouse of a principal may exceed 55 percent of the principal's full annuity counting any supplemental annuity or recomputation of annuity because of recall service. An additional survivor annuity provided by any principal will be further limited to the amount that can be provided by a monthly payment which is not greater than the principal's "net annuity." The amount of any additional survivor annuity provided by a spousal agreement effective prior to the principal's retirement, will be reduced as necessary by HR/RET after the principal's retirement to comply with this limitation. Any amount paid by a participant for the portion of additional survivor annuity cancelled pursuant to this paragraph will be treated as an additional lump-sum payment under paragraph (e) of this subsection and used to increase the amount of the additional annuity.
- (c) **Procedures to grant additional survivor annuity.** A participant or former participant who has provided a regular survivor annuity to a former spouse who wishes to provide, or who is ordered by a court to provide an additional survivor annuity under this subsection to a spouse or another former spouse, will do so by filing a spousal agreement with HR/RET on a form acceptable to HR/RET. Such an agreement will be irrevocable when accepted by HR/RET unless the beneficiary of the additional survivor annuity is subsequently made a beneficiary of a regular survivor annuity in equal amount. Within the limitations specified in paragraph (b) of this subsection, an individual may be made the beneficiary of both a regular and an additional survivor annuity. A spousal agreement granting an additional survivor annuity to a spouse will remain valid in the event the marriage is dissolved and the spouse qualifies as a "former spouse."
- (d) **Eligibility for additional survivor annuity.** A surviving spouse or former spouse must meet the same criteria (see Definitions) to be eligible for an additional survivor annuity as a spouse or former spouse must meet to be eligible for a regular survivor annuity. Payment of a special survivor annuity will commence on the day after the participant dies and will terminate on the

last day of the month before death or remarriage before attaining age 55. If it is discontinued because of remarriage, it will not be resumed.

- (e) Payment for additional survivor annuity.
 - (1) Payment for an additional survivor annuity will commence on the first of the month following the effective date of a spousal agreement providing the additional survivor annuity.
 - (2) Monthly payments may be reduced or eliminated by direct payment to DoS by any participant or former participant under terms mutually agreed upon by the participant and HR/RET. Minimum monthly payments will be based upon actuarial tables prescribed from time to time by the DoS, with the advice of the Secretary of Treasury. Such tables will be calculated so that the present value of all payments equal the present value of the survivor annuity. If new tables are prescribed, they would be applicable to additional survivor annuities provided by spousal agreements that become effective on or after the effective date of the new tables. Additional survivor annuities will be increased by regular cost-of-living adjustments from their commencing dates only when so specified at the option of the participant or former participant in a spousal agreement.
 - (3) In the event of the disqualification of a beneficiary for an additional survivor annuity because of death, remarriage prior to age 55 or divorce from the principal and failure to meet the definition of "former spouse," or in the event of an authorized reduction or cancellation of an election for an additional survivor annuity, the monthly payment for such discontinued or reduced additional survivor annuity will be discontinued or reduced, as appropriate.
 - (4) Reduction from annuity to a principal to pay for an additional survivor annuity will be in the nature of an allotment and will not affect computations of cost-of-living adjustments to the principal.

Subsection V-6 Benefits for Recall Service

- (a) Annuity of recalled participant. Any participant who is recalled to the Service under the Act, will, while serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service, the recalled

annuitant will make contributions to the Fund, as provided by the Act. If a share of the annuity is being paid as a pension to a former spouse (see Section IV), that share will be deducted from the salary of the recalled annuitant during the period of the recall service. Upon returning of the annuitant to retired status, any pension payable to a former spouse that was being deducted from the salary of the principal will again be deducted from the annuity of the principal which will be determined as follows:

- (1) If the recall service lasts less than one year, a refund of retirement contributions made during the recall period will be refunded (see Section VIII) and the former annuity will be resumed at the previous rate adjusted by any cost-of-living increases that became effective during recall service.
- (2) If the recall service lasts between one and five years, the annuitant will be entitled to elect benefits under paragraph (a)(1) of this subsection or receive both the former annuity adjusted by cost-of-living increases and a supplemental annuity computed (see Section VIII) on the basis of service credit and average salary earned during the recall period, irrespective of the number of years of service credit previously earned.
- (3) If the recall service lasts five years or more, the annuitant will be entitled to recomputation of the annuity as if there had been no previous retirement, or elect benefits under paragraph (a) (1) or (2) of this subsection.
- (4) An annuitant may receive credit in any computation under paragraph (a) (2) or (3) of this subsection for any Federal service performed subsequent to the separation upon which the original annuity was computed provided a special contribution is made for such service under the Act.
- (5) An annuitant entitled to a supplemental annuity under paragraph (a)(3) of this subsection or a recomputed annuity under paragraph (a)(4) of this subsection is obligated, in the absence of a court order or spousal agreement to the contrary, to have those annuities reduced to provide the benefits described in Section III to any spouse or former spouse to whom married during any portion of the recall service. An annuitant must accept a reduction of 10 percent of his/her supplemental annuity in order to provide a supplemental survivor

annuity to a spouse or former spouse. The maximum supplemental survivor annuity equals 55 percent of the supplemental annuity. If, upon reversion to retired status, an annuitant has a former spouse entitled to a pro rata share or some other share of the supplemental survivor annuity, but no spouse, the appropriate share of the supplemental annuity will be reduced by 10 percent to provide such former spouse a share of the maximum supplemental survivor annuity.

(b) Survivor benefit for death during recall service.

- (1) If an annuitant entitled to a reduced annuity under (see Subsection V-2) dies in service after being recalled and is survived by a spouse or former spouse entitled to a survivor annuity based on the service of such annuitant, such survivor annuity will be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with paragraph (a) of this subsection. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant at any time during a period of recall service will be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid (see Subsection V-6(a)(5)) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his/her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit (see Section VI) to have the rights of the annuitant re-determined and to receive a survivor annuity computed (see Subsections VI-2 and VI-3) on the basis of the total service of the annuitant. In the event such an annuitant is survived both by a spouse and such a former spouse, the former spouse will be entitled to a pro rata share of any refund or supplemental survivor benefit under this subsection computed on the basis of total service during the recall period and months of marriage during such period. If the surviving spouse and surviving former spouse elect different benefits under this paragraph, the former spouse will receive the pro rata share of the benefit he/she elects and the spouse will receive the reciprocal share of the benefit he/she elects.

- (2) In the event an annuitant dies during recall service and is survived by a former spouse to whom not married during any period of the recall service, such former spouse will not be entitled to any benefits based on the recall service.

SECTION VI

SURVIVOR BENEFITS

Subsection VI-1 Kinds of Survivor Benefits

If a participant or former participant dies in active service or after retirement, regular survivor annuities are payable under terms of this subsection to an eligible surviving spouse, former spouse or child. Also, if all rights to annuity and survivor annuity terminate prior to exhaustion of the participant's lump-sum credit, a lump-sum payment is made (see Section VIII). In addition to the above, an additional survivor annuity, and a supplemental survivor annuity may be payable to an eligible survivor (see Subsections V-5 and V-6, respectively). If any participant or former participant makes an election, files a spousal agreement or becomes subject to a court order to provide a regular survivor annuity for a spouse or former spouse and does not subsequently become entitled to leave a survivor annuity under these regulations (because of separation from the Service and withdrawal of contributions, death after separation but before commencement of a deferred annuity, or for any other reason), none will be paid and such election, spousal agreement or court order to provide such survivor annuity will have no force or effect.

Subsection VI-2 Regular Survivor Annuity for a Former Spouse

- (a) Divorce prior to retirement. If a participant or former participant is divorced prior to commencement of annuity, any former spouse will be entitled to a pro rata share of such a principal's maximum regular survivor annuity (based on service performed prior to the first date the principal becomes eligible for an annuity following the divorce) unless a different amount is elected in a spousal agreement filed with HR/RET within 12 months after the divorce becomes final or at the time of the retirement, whichever occurs first, or unless a different amount is specified by a court prior to the death of the principal. The principal's annuity will be reduced at the commencing date (see Subsection V-2) in order to provide the survivor annuity committed to the former spouse.

- (b) Divorce after retirement. In the event an annuitant is divorced after retirement (commencement of annuity), the maximum survivor annuity that

may be provided for that former spouse is limited to the amount provided for that person at the time of retirement. Within that limit, the former spouse is entitled to a pro rata share of the participant's maximum survivor benefit (based on service performed prior to the divorce) unless a different amount was elected in a spousal agreement filed with HR/RET at the time of retirement, or in the case of retirement before February 15, 1981, filed with HR/RET within 12 months after the divorce becomes final, or unless a different amount is specified by a court prior to the death of the principal. For this purpose, a joint election filed with HR/RET at the time of retirement is considered a spousal agreement. If the survivor annuity for the former spouse is reduced at the time of the divorce (because the pro rata share or the amount specified in a spousal agreement or court order is less than the amount elected at retirement), the principal's annuity will be recomputed and paid, effective on the date the survivor benefit is reduced, as if the lower amount had been elected at the outset of retirement.

- (c) Death or remarriage of former spouse and transfer of survivor benefit to a spouse. Remarriage before age 55 or death of a former spouse while a principal is alive will disqualify the former spouse for benefits under this subsection. In the event of such a remarriage or death of a former spouse, the portion of a principal's survivor annuity committed to that person will become available for transfer to any spouse. If such a remarriage or death of the former spouse occurs after the principal's annuity commences, any reduction in the principal's annuity for that former spouse will be discontinued effective at the beginning of the first month following the remarriage or death unless the annuitant elects to provide or to increase a survivor benefit for a spouse. Such an election may be made within one year after the annuitant receives notice of the remarriage or death of his/her former spouse. The Department (HR/RET) and the annuitant will each notify the other promptly whenever either receives independent notice of such a remarriage or death. If an election to transfer survivor benefits to a spouse is not made by the annuitant, his/her annuity will be recomputed and paid as if there had been no reduction for the discontinued survivor benefit. If an annuity is so recomputed and an election is subsequently made to designate as beneficiary a spouse to whom married for at least one year at the time the election is made, the principal's annuity will be restored retroactively to its former, lower rate and then adjusted by cost-of-living increases that have occurred since the date of the first recomputation. If an election is made for a spouse when the marriage has not yet lasted a year, the procedures in Subsection V-4 will be followed.

- (d) Amount of survivor annuity. The amount of a regular survivor annuity is determined under Subsection VI-3(c).
- (e) Special rules for election of survivor annuity for a person who is a former spouse on February 15, 1981.
 - (1) Any participant, or former participant eligible for a deferred annuity which has not yet commenced, who, on February 15, 1981 has a former spouse, may at any time prior to commencement of annuity, elect, with the consent of any spouse to whom married at the time of the election, to receive a reduced annuity and provide a regular survivor annuity for such former spouse. Such survivor annuity is limited (see Subsection V-2(b)). An election under this paragraph for a former spouse will reduce the amount of any regular survivor annuity that may subsequently be provided for any spouse or other former spouse.
 - (2) Any former participant in receipt of an annuity who has a former spouse on February 15, 1981 and who has not committed his/her entire annuity as a base for a regular survivor annuity for a spouse or any other former spouse, may, prior to December 31, 1982, designate any portion of the uncommitted base as the base for a regular survivor annuity for such former spouse.
 - (3) The annuity of a former participant making an election under this paragraph will be reduced (see Subsection V-2(a)) effective February 15, 1981, or from its commencing date if later.
 - (4) An election under this paragraph will be made by filing a spousal agreement with HR/RET (see Section II). A spousal agreement to provide a regular survivor annuity under this paragraph for a former spouse may be revoked or amended after its acceptance by HR/RET as in accordance with the Act and these regulations, only by agreement of the parties up to the last day allowed by this paragraph for filing such an agreement. Thereafter, it is irrevocable. If a participant dies in service after having filed a valid election under this subsection, a survivor annuity will be paid to an eligible former surviving spouse in accordance with the terms of the election.

Subsection VI-3 Regular Survivor Annuity for a Spouse

- (a) In the absence of a joint election or a spousal agreement to the contrary, a participant or former participant who is separated from active service on or after February 15, 1981 who is married at the commencement of his/her annuity will provide a regular survivor annuity for a spouse (see Section V-2) equal to the maximum amount that remains available under limitations stated in paragraph (b) of that subsection after allowing for any commitment of a regular survivor annuity for a former spouse who has not remarried prior to age 55 and who is alive on the date the former participant becomes eligible for an annuity.
- (b) A regular survivor annuity is also payable to a surviving spouse for whom a principal elected an annuity (see Subsections V-3, V-4, and Subsection V-2(c)) following a marriage after commencement of his/her annuity.
- (c) The amount of a regular survivor annuity equals 55 percent of the base designated for the benefit at the time the principal's annuity commenced, adjusted by the total percentage of cost-of-living increases the principal was receiving at death.
- (d) A survivor annuity is payable to a surviving spouse only if that person was married to the principal at the time of his/her death or if the spouse became a "former spouse".

Subsection VI-4 Procedure in the Event a Spouse or Former Spouse is Missing

If a participant or former participant has a spouse or former spouse whose whereabouts are unknown, such participant may elect to reduce or eliminate the share of a regular survivor annuity provided for that person (under Subsection VI-2 or Subsection VI-3) by filing an affidavit with HR/RET stating that his/her spouse or former spouse is missing and giving full name, last known address, date last heard from, circumstances of the disappearance and a description of the effort that has been made to locate the individual. Thereafter, the participant will take such additional steps to locate the missing person as may be directed by HR/RET. That Office will also attempt to locate the missing person by sending a letter to the individual's last known address given in the Department's files, to the address given on the affidavit, and, if a Social Security number is known, to the Social Security Administration for forwarding. The election and affidavit may be filed at

any time before commencement of annuity. It must remain on file with HR/RET for at least one year before being given irrevocable effect by the Department. If the annuity to the former participant becomes effective prior to the expiration of this one year period, the annuity will be computed and paid without reference to the election filed under this subsection. Following this one-year period, or at the commencement of annuity, if later, if the missing person has not been located, the affidavit may be reaffirmed by the participant, after which an election by the participant to reduce or eliminate the share of regular survivor annuity for the missing person will be given irrevocable effect by the Department. If the annuity to the former participant has commenced, it will be recomputed and paid retroactively to give effect to any election made under this subsection.

Subsection VI-5 Commencement, Termination and Adjustment of Annuities

- (a) An annuity payable from the Fund to a surviving spouse or former spouse begins on the day after the participant or annuitant dies and stops on the last day of the month before the survivor's (1) marriage before age 55, or (2) death. If a survivor annuity is terminated because of remarriage, the annuity is restored at the same rate effective on the date such remarriage is terminated, provided any lump-sum paid upon termination of the annuity is returned to the Fund. The termination of a surviving spouse annuity due to remarriage does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless elected following a marriage after retirement under circumstances described in Subsection V-3 or Subsection V-4.
- (b) A surviving spouse or former spouse will not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which entitled under this or any other retirement system for Government employees. (For this purpose, neither the Social Security system nor the military retirement system is considered a retirement system for Government employees.) This restriction does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless the survivor annuity was elected under circumstances described in Subsection V-3 or Subsection V-4.
- (c) A child's annuity begins on the day after the participant dies, or if a child is not then qualified, on the first day of the month in which the child becomes

eligible. A child's annuity will terminate on the last day of the month which precedes the month in which eligibility ceases.

- (d) Regular and supplemental survivor annuities to a spouse or former spouse of an annuitant described in Subsections VI-2, VI-3 and Subsection V-6(b) are increased from their effective date by the cumulative percentage of cost-of-living increases the annuitant was receiving under the Act at death. All annuities payable to survivors on the date a cost-of-living adjustment becomes effective are increased by that percentage except (1) the first increase to a surviving spouse of a participant who dies in service will be prorated and (2) additional survivor annuities (see Subsection V-5) when the spousal agreement authorizing the annuity makes no provision for cost-of-living increases.
- (e) The annuity of survivors becomes effective as specified in this subsection but is not paid until the survivor submits an Application for Death Benefits, supported by such proof as may be required, for example, death, marriage, and/or divorce certificates. In the event that such is not submitted during an otherwise eligible beneficiary's lifetime, no annuity is due or payable to the beneficiary's estate.

Subsection VI-6 Death during Active Duty

- (a) Annuity for surviving former spouse. In the event a participant dies before separation from the Service and leaves a former spouse, such former spouse is entitled to a regular survivor annuity (see Subsection VI-2) computed as if the participant had retired on the date of death unless a court order or spousal agreement is on file in the Department waiving such entitlement or providing for some other computation, or unless the former spouse had been found missing and an election filed under the procedures of Subsection VI-4 waiving a survivor benefit for that person. Any assumed service authorized to be used under paragraph (b) of this subsection in computing the annuity for a surviving spouse may not be counted as "years of marriage" when determining whether the previous spouse qualifies as a "former spouse" or when computing the "pro rata share". A former spouse is entitled to an additional survivor annuity (see Subsection V-5) provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

- (b) Annuity for surviving spouse. If a participant who has at least 18 months of civilian service credit toward retirement under the System, excluding extra service credited for unhealthful post duty in accordance with the Act, dies before separation from the Service, and is survived by a spouse (i.e., has a surviving spouse") such survivor will be entitled to an annuity equal to 55 percent of the annuity computed in accordance with Subsection V-1 less any annuity payable to a former spouse under paragraph a. If the participant had less than three years of creditable civilian service at the time of death, the survivor annuity is computed on the basis of the average salary for the entire period of such service. If, at time of death, the participant had less than 20 years of creditable service, the annuity will be computed on the assumption that the participant has had 20 years of service, but such additional service credit will in no case exceed the difference between the participant's age on the date of death and age 65. A spouse is entitled to an additional survivor annuity (see Subsection V-5) provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.
- (c) Annuity for a child or children. If a participant described in paragraph (b) of this subsection is survived by a child or children, each surviving child is entitled to an annuity as described in Subsection VI-7.
- (d) Annuity changes. Annuities based on a death in service are subject to the provisions (see Subsection VI-5) governing commencement, adjustment, termination and resumption of annuities.

Subsection VI-7 Annuity Payable to Surviving Child or Children

- (a) If a participant who has at least 18 months of civilian service credit under the System dies in service, or if an annuitant who was a former participant dies, annuities are payable to a surviving "child" or "children".
- (b) Recomputation of annuity for child or children. If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children will be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children will be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

Subsection VI-8 Required Elections between Survivor Benefits

- (a) Bar against concurrent payment under the Act and Workers' Compensation Act. Except as stated below, survivor annuities and survivors' compensation for work injuries are not payable concurrently if both are based on the death of the same principal. A survivor entitled to both must elect which of the two benefits he/she prefers. Should all eligible survivors of a deceased principal elect to receive the compensation benefit rather than the survivor annuity, their rights to the latter are terminated and, if the lump-sum credit has not been exhausted, a lump-sum payment will become due (see Section VIII). The one exception to this rule occurs when a widow or widower is being paid the balance of a scheduled compensation award (see 5 U.S.C. 8107) due the deceased principal. If so, the widow or widower may receive the survivor annuity and compensation award concurrently.

- (b) Election between survivor annuity and social security benefits. Pursuant to 42 U.S.C. 417 (a) and (e), survivors who are eligible for annuity which is based in part on military service performed by a principal between September 16, 1940, and December 31, 1956, and also for survivor benefits under the Social Security system, may elect to have the military service credited toward the Social Security benefit. In practice, the survivors should apply for both benefits, ask the Department and the Social Security Administration for statements showing the amount of each benefit, and then make their election of where to credit the military service. If Social Security benefits are elected, the rights of all survivors to a foreign service annuity are terminated.

SECTION VII

EMPLOYMENT IN A GOVERNMENT AGENCY

Employment in a Government Agency

An annuitant who is reemployed by a Federal Government agency may not receive a combination of salary and annuity which exceeds his/her Foreign Service salary at the time of retirement. (See Subsection IV-4).

SECTION VIII

LUMP-SUM PAYMENT

Subsection VIII-1 Lump-Sum Credit

"Lump-sum credit" is the compulsory and special contributions to the credit of a participant or former participant in the Fund or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity.

Subsection VIII-2 Share payable to a former spouse.

A former spouse of a participant or annuitant is entitled to a pro rata share of 50 percent of any lump-sum payment authorized to be paid to a former participant under this Subsection who separated from the Service on or after February 15, 1981, unless otherwise directed in a court order or a spousal agreement.

Subsection VIII-3 Payment after death of principal.

If a participant or former participant dies and no claim for annuity is payable, the lump-sum credit is paid to surviving individuals in the following order of preference:

First, to the beneficiary or beneficiaries designated by the participant or former participant in a signed and witnessed writing received filed before his or her death;

Second, if there is no designated beneficiary, to the widow or widower of the participant or former participant;

Third, if none of the above, to the child or children (not including step-children not adopted by the participant or former participant) of the participant or former participant and descendants of deceased children by representation;

Fourth, if none of the above, to the surviving parent or parents of the participant or former participant;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the participant or former participant.

Sixth, if none of the above, to such other next of kin of the participant or former participant as the DoS determines to be entitled under the laws of the domicile of the participant or former participant at the date of his or her death.

SECTION VIX

WAIVER OF ANNUITY

Waiver of Annuity

An individual entitled to be paid an annuity may decline to accept all or any part of the annuity. However, a principal may not waive the portion of his/her annuity authorized to be paid to a former spouse (see Section II and Section IV) or to a beneficiary under Section I. An annuity waiver must be in writing and sent to the Department (HR/RET). A waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

SECTION X

REQUIRED NOTIFICATIONS TO DEPARTMENT RESPECTING SPOUSES AND FORMER SPOUSES

Subsection X-1 Notification from Participant or Annuitant

If a participant or former participant becomes divorced on or after February 15, 1981, he/she must notify HR/RET of the divorce on or prior to its effective date. The notice must include the effective date of the divorce, the full name, mailing address, and date of birth of the former spouse and the date of the member's marriage to that person, and enclose a certified copy of the divorce decree. If there is a court order or spousal agreement concerning payment or nonpayment of Foreign Service benefits to the former spouse, the original or a certified copy of the order or agreement must also be forwarded to HR/RET. In the absence of a court order or spousal agreement providing otherwise, the Department will pay a pro rata share of the principal's benefits to the former spouse. (A former spouse of a former participant who separated from the Service on or before February 15, 1981 is not eligible for a pension as described in Section IV, (i.e., not eligible for a pro rata share of the principal's annuity). Upon receipt of notice of a divorce, a court order, or spousal agreement, the Department will proceed as indicated in Section I or Section II. Delinquent notice to the Department of the divorce of an annuitant will result in retroactive payments to any qualified former spouse to the extent that the retroactive payments can be deducted from future annuity payments to the principal.

Subsection X-2 Notification to Department from Former Spouses

A former spouse is obligated to notify the Department of the following on a timely basis:

- (a) A divorce from a participant or former participant when the former spouse is notified by the court of the divorce before the participant is notified;
- (b) Any change in address; and
- (c) Any remarriage. Notices should be sent to the Department of State, (HR/RET), Room H-620, SA-1, Washington, DC 20522-0108.

Subsection X-3 Residence of spouse during service at unhealthful post.

(a) The calculation of the pro rata share of benefits for a former spouse, and the determination of whether a person qualifies as a former spouse depends on the length of the marriage. The latter, under the definition in the Act and when the principal has received extra service credit for an assignment to an unhealthful post, depends upon whether a spouse has resided with the principal at the unhealthful post. In order to determine residency for this purpose, whenever a married participant is assigned to an unhealthful post for which he/she *does not* receive post differential and does receive or request extra service credit, the participant must report on Form OF-140, Election to Receive Extra Service Credit Towards Retirement, whether his/her spouse is or is not residing at the post. Although a chief of mission is not required to submit Form OF-140 in order to receive extra credit for service at an unhealthful post, he/she must nevertheless submit this form if the chief of mission has a spouse that does not accompany him/her at post for the entire assignment. Both the participant and spouse must sign the completed form. If there is a change in residence of the spouse during the assignment, a new Form OF-140 must be filed to report the change.

(b) Whenever a participant retires or becomes divorced, or whenever a former participant becomes divorced who has extra service credit for assignment at unhealthful posts completed prior to the issuance of this regulation who was married during at least a portion of the assignment, the participant or former participant must submit a statement to HR/RET reporting on whether his/her spouse resided at the unhealthful post and the dates of such residence. The statement must be signed by the principal and his/her spouse or former spouse whenever possible.

(c) In the event of a disagreement between a principal and his/her spouse or former spouse concerning residency at an unhealthful post, or the submission of a report or statement by a principal showing a period of non-residence at a post by a spouse which is not signed by the spouse, the determination of residence will be made by HR/RET and based on records in the Department of payments for travel and allowances plus any other evidence that can be adduced. In the absence of any evidence to the contrary, the assumption will be made that the spouse resided at the post.

SECTION XI

LIFE INSURANCE

Subsection XI-1 Assignment of Life Insurance Coverage

A Federal employee or former employee (including an annuitant) may make an irrevocable assignment of his or her coverage under the Federal Employees' Group Life Insurance (FEGLI) policy to another person or to a trust. Individuals who assign their FEGLI ownership continue to be insured under the FEGLI Program. However, they irrevocably transfer to the assignee many of the attendant rights, benefits, and responsibilities for their basic, standard optional, and additional insurance. (Family optional insurance cannot be assigned.)

An assignment automatically cancels a prior designation of beneficiary. The distinction between a designation of beneficiary and an assignment is addressed later.

Assignments of insurance coverage are generally made to comply with the requirements of a court order upon divorce or for personal financial planning purposes.

- (a) **To comply with a court order.** An assignment of FEGLI coverage may be made by a Federal employee or former employee in order to comply with a court order for divorce. Frequently, the court will order a Federal employee or former employee to name a former spouse as the beneficiary of his or her life insurance proceeds. However, under the FEGLI law, an insured person may change his or her designation of beneficiary at any time. This is true even if a court order directs otherwise, because the FEGLI law preempts state law, and court orders based on state law, to the extent that the state law is inconsistent with the FEGLI contract. Assigning FEGLI coverage to a former spouse, however, provides a means for ensuring that, when FEGLI benefits are awarded to a former spouse in a divorce, the employee is not able to circumvent the award by changing the designation of beneficiary or cancelling the coverage at some later date. It should be noted that the law does not authorize the Office of Personnel Management (OPM) to enforce or comply with the provisions of a court order directing OPM or a Federal employee or former employee to assign FEGLI coverage. The law merely allows the Federal employee or former employee to make an assignment of

FEGLI coverage, if he or she so chooses. It is the responsibility of the court-designated assignee to ensure that the order is enforced.

- (b) **For inheritance tax purposes.** An absolute assignment of an insured's interest in a group life policy, made at least 3 years before the insured's death, will generally remove the insurance proceeds from the insured's estate. Current Federal estate tax law allows an unlimited marital deduction for that portion of the gross estate passed to a surviving spouse. Thus, there is no apparent immediate tax advantage to assigning ownership of a life insurance policy to a spouse. However, since state tax laws vary and tax savings under Federal or state law can be considerable if insurance proceeds are not subject to estate taxes, it is important to consult with, and rely on, the advice of a competent estate tax advisor.

If an insured owns more than one type of coverage -- both basic and standard optional, for example -- he or she must assign all of the insurance. An insured may not assign only a portion of the coverage. Family optional insurance may not be assigned. An insured may not name contingent assignees in the event the primary assignee predeceases him or her. If the assignment of the insurance is to two or more persons, the insured must specify percentage shares, rather than dollar amounts or types of insurance, to go to each assignee.

Once insurance is assigned, the assignee to whom the insured transfers FEGLI ownership may, for the insurance assigned to him or her:

- (1) designate beneficiaries;
- (2) convert the insurance to an individual policy if the insured's eligibility for group insurance ceases; and
- (3) cancel the insurance or reduce the amount of coverage.

When insurance is assigned to more than one person, these people must agree when exercising the right to cancel or reduce coverage.

The Federal employee or former employee (assignor) retains the right to elect new insurance coverage, though all new insurance (excluding family optional insurance) is subject to an existing assignment. The assignor also retains the right to decide, at time of retirement or receipt of workers' compensation, to maintain more than the minimum percentage of his or her

basic life insurance. The assignor also continues to be responsible for premium payments under the group policy. Premium payments will continue to be withheld from the assignor's pay, annuity, or compensation.

An assignment is not to be confused with a designation of beneficiary under the FEGLI Program. A Federal employee or former employee may designate a person or legal entity to receive any FEGLI insurance payable at death. Designations of beneficiary do not convey any ownership rights under the insurance policy and can be changed by the Federal employee or former employee at any time. Upon assigning FEGLI coverage, however, the employee or former employee gives up the right to make a designation of beneficiary or change beneficiaries, and the assignee assumes those rights.

An assignment is effective on the date the insured's employing office receives a properly completed, signed, and witnessed assignment. Each assignee and each beneficiary is responsible for keeping the employing office informed of his or her current address. For retirees, the "employing office" is the administrator of retirement system (e.g., OPM or DoS). For FSRDS and FSPS annuitants, assignments should be sent to Department of State, (HR/RET), Room H-620, SA-1, Washington, DC 20522-0108.

Assignments must be made on OPM Form RI 76-10, Assignment of Federal Employees' Group Life Insurance. Employees and annuitants may obtain the form from HR/RET.

Subsection XI-2 Statutory Provisions.

Section 8706(e) of title 5, United States Code, permits Federal employees and former employees to irrevocably assign their Federal Employees' Group Life Insurance coverage to another person.

SECTION XII

HEALTH BENEFITS

Subsection XII-1 Former Spouse Health Benefits Coverage

Former spouses may enroll for Federal Employees Health Benefits (FEHB) coverage in their own right if they meet the spouse equity requirements of the FEHB law. Former spouses of Federal employees or retirees may not continue to receive FEHB coverage under the employee or retiree's enrollment after divorce because the former spouse does not meet the definition of family member under section 8901(5) of title 5, United States Code. Further, **OPM cannot honor a court order requiring it to provide FEHB coverage to a former spouse**, because section 8902(m)(1) of title 5, United States Code, preempts state law in matters relating to the nature and extent of coverage or benefits.

Basically, a former spouse's entitlement to continue FEHB coverage after divorce is contingent on four requirements. The former spouse must:

- (1) be covered as a family member under the employee/retiree's FEHB enrollment for at least 1 day during the 18 months prior to divorce;
- (2) be entitled to receive a portion of the retirement annuity after the employee retires or a survivor annuity at the time the employee/retiree dies;
- (3) within 60 days after divorce, apply to the agency employing office where the Federal employee worked at the time of divorce by submitting written notice that he or she wants to continue FEHB coverage under the spouse equity provisions of the FEHB law (if divorce occurred after retirement the employing office is the retirement system); and
- (4) not remarry prior to age 55.

An individual who qualifies as a former spouse must enroll for FEHB coverage in his or her own right and must pay both the employee's and the Government's share of the premium. Coverage is prospective from the first day of the pay period after the employing office receives all properly completed qualifying documents. To avoid a break in coverage, the former spouse may want to enroll for a temporary continuation of FEHB coverage, pending a decision on eligibility for coverage as a

former spouse. Former spouses who do not meet the criteria for FEHB coverage may elect to continue coverage for 3 years from the date of the divorce. The former spouse can obtain information about this through the employing office where the Federal employee worked (e.g., DoS) at the time of divorce or through the administrating office of the annuitant's retirement system (e.g., HR/RET). To avoid a break in coverage, the former spouse may want to enroll for a temporary continuation of FEHB coverage (see Subsection XII-2), pending a decision on eligibility for coverage as a former spouse.

A qualifying court order which grants the former spouse a portion of the retiree's annuity provides the former spouse eligibility to continue FEHB coverage until the employee dies. A court order acceptable for processing granting a survivor annuity provides the former spouse eligibility to continue FEHB coverage until the former spouse dies. A court order acceptable for processing providing both a portion of the retirement annuity and a survivor annuity provides the former spouse eligibility to continue FEHB coverage until the former spouse dies.

Subsection XII-2 Temporary Continuation of Coverage (TCC)

A former spouse who was covered under FEHB as a family member of a Federal employee or retiree **terminates** on the date of divorce, subject to a temporary 31-day extension of coverage and conversion privilege convert to a non-group contract with the same health carrier.

A former spouse who does not qualify to continue FEHB coverage as provided for under Subsection XII, above (due to a failure to meet requirement (1) under Subsection XII-1 and/or because, before January 1, 1990, he or she remarried before age), may be eligible to elect to continue FEHB coverage for 36 months. To qualify for this Temporary Continuation of Coverage (TCC), the former spouse must (a) lose eligibility for the regular FEHB program on or after January 1, 1990, (b) agree to pay the **total monthly premium** (employee/retiree's share and Government's share) plus a 2 percent administration fee, and (c) apply for enrollment within 60 days of the date of divorce or within 60 days of the date of a notification letter of eligibility (from HR/RET), whichever is later.

SECTION XIII

APPEAL RIGHTS

Administrative Appeal Rights

- (a) Issues concerning application of regulations pertaining to court order and spousal agreements involving FSRDS and FSPS retirement and survivor annuities are not appealable to the Foreign Service Grievance Board. The Department's actions to apply such regulations are not subject to further administrative review.

- (b)
 - (1) Issues concerning the validity of regulations pertaining to court order and spousal agreements involving FSRDS and FSPS retirement and survivor annuities are appealable to the Foreign Service Grievance Board. Such an appeal must be filed in accordance with the procedures established by the Board and may not be filed before DoS has issued its final decision, including a notice of the right to appeal, on the validity of the regulation. Such an appeal is limited to the issue of the validity of the regulation.

 - (2) Any claim that a provision of these regulations is invalid, must be presented to the Foreign Service Grievance Board before the validity of the regulation may be reviewed in the Federal courts.

SECTION XIV

PROCEDURES & REGULATIONS -- PENSION BENEFITS

Subsection XIV-1 Computing Lengths of Service

- (a) (1) The smallest unit of time that DoS will calculate in computing a formula in a court order or spousal agreement is a month, even where the order or agreement directs DoS to make a more precise calculation.
- (2) If the court order spousal agreement states a formula using a specified simple or decimal fraction other than twelfth parts of a year, DoS will use the specified number to perform simple mathematical computations.
- (b) Unless the court order or spousal agreement otherwise expressly directs--
 - (1) For the purpose of describing a period of time to be excluded from any element of a computation, the term "military service" means military service as defined in Section XV, and does not include civilian service with the Department of Defense or the Coast Guard; and
 - (2) For the purpose of describing a period of time to be included in any element of a computation, the term "military service" means military service as defined in Section XV.
- (c) (1) When a court order or spousal agreement contains a formula for dividing a principal's annuity that requires a computation of service worked as of a date prior to separation and using terms such as "years of service," "total service," "service performed," or similar terms, the time attributable to unused sick leave will not be included.
- (2) When a court order or spousal agreement contains a formula for dividing a principal's annuity that requires a computation of "creditable service" (or some other phrase using "credit" or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows:

- (i) If the amount of unused sick leave is specified, the court order awards a portion of the principal's annuity equal to the monthly annuity at retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified plus the number of months of unused sick leave specified (which sum is rounded to eliminate partial months) and whose denominator is the months of "creditable service" used in the retirement computation.
 - (ii) If the amount of unused sick leave is not specified, the court order awards a portion of the principal's annuity equal to the monthly rate at the time of retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified (no sick leave included) and whose denominator is the number of months of "creditable service" used in the retirement computation (sick leave included).
- (d)
 - (1) General language such as "benefits earned as an employee with the Foreign Service . . ." provides only that FSRDS or FSPS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., when applicable, service performed with other Government agencies will be included).
 - (2) To limit the computation of benefits to a particular period of Federal employment, the court order or spousal agreement must --
 - (i) Use language expressly limiting the period of service to be included in the computation (e.g., "only Foreign Service" or "exclusive of any service other than Foreign Service employment"); or
 - (ii) Specify the number of months to be included in the computation;
or
 - (iii) Describe specifically the period of service to be included in the computation (e.g., "only service performed during the period Petitioner and Defendant were married" or "benefits based on service performed through the date of divorce").

Subsection XIV-2 Distinguishing Between Formulas and Fixed Amounts

(a) A court order or spousal agreement that contains both a formula or percentage instruction and a dollar amount is deemed to include the dollar amount only as the estimate of the initial amount of payment. The formula or percentage instruction controls.

(b) A court order that awards a portion of the "present value" of a principle's annuity and specifically states the amount of either the "present value" of the employee annuity or of the award **is deemed** to give the former spouse "a specific dollar amount" that is payable from a principal's monthly retirement annuity and will be paid as a lump-sum award. In processing lump-sum awards DoS will pay the former spouse equal monthly installments at 50 percent of the principal's gross annuity at the time of retirement or the date of the order, whichever comes later, until the lump-sum amount is paid.

Subsection XIV-3 Types of annuity.

- (a) Terms that are synonymous with "net annuity" are--
- (1) Disposable annuity; and
 - (2) Retirement check.
- (b) Terms that are synonymous with "full annuity" and "gross annuity" are--
- (1) Life rate annuity;
 - (2) Unreduced annuity; and
 - (3) Annuity without survivor benefit.
- (c) All court orders that do not specify "net annuity" apply to "gross annuity."

Subsection XIV-4 Specifying Type of Annuity for application of formula, Percentage or Fraction

(a) A court order or spousal agreement directed at a principal's annuity that states the former spouse's share of the principal's annuity as a formula, percentage, or fraction is not a court order acceptable for processing **unless**

DoS can determine the type of annuity on which to apply the formula, percentage, or fraction.

- (b) The standard types of annuity to which DoS can apply the formula, percentage, or fraction are net annuity or gross annuity. **Unless the court order or spousal agreement otherwise directs, DoS will apply the formula, percentage, or fraction to the principal's gross annuity.**

Subsection XIV-5 Death of the former spouse.

- (a) Unless the court order acceptable for processing **expressly provides** otherwise, the former spouse's share of a principal's annuity terminates on the last day of the month before the death of the former spouse, and the former spouse's share of principal's annuity reverts to the retiree.
- (b) Except as otherwise provided, DoS will honor a court order acceptable for processing or an amended court order acceptable for processing that directs DoS to pay, after the death of the former spouse, the former spouse's share of the principal's annuity to--
 - (1) The court;
 - (2) An officer of the court acting as a fiduciary;
 - (3) The estate of the former spouse; or
 - (4) One or more of the retiree's children.

SECTION XV

PROCEDURES & REGULATIONS -- SURVIVOR BENEFITS

Subsection XV-1 Computation of Formulas

- (a) A court order directing a principal's annuity payment is not a court order acceptable for processing unless the court order provides sufficient instructions and information that DoS can compute the amount of the former spouse's monthly benefit using only the express language of the court order and information from normal DoS files.
- (b) (1) To provide sufficient instructions and information for DoS to compute the amount of the former spouse's share of the principal's annuity as required by paragraph (a) of this section the court order must state the former spouse's share as--
 - (i) A fixed amount;
 - (ii) A percentage or a fraction of the principal's annuity; or
 - (iii) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order directed at principal's annuity or normal DoS files.
- (c) A court order directed at a refund of a principal's contributions is not a court order acceptable for processing if DoS would have to examine a state statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the refund of the principal's contributions.

Subsection XV-2 Barring Payment of Refunds

A court order barring payment of a refund of a principal's contributions is not a court order acceptable for processing unless--

- (a) It expressly directs DoS not to pay a refund of the principal's contributions;

- (b) It awards, or a prior court order acceptable for processing has awarded, the former spouse a former spouse survivor annuity or a portion of the principal's annuity; and
- (c) Payment of the refund of the principal's contributions would prevent payment to the former spouse under the court order described in paragraph (b) of this section.

Subsection XV-3 Former Spouse Survivor Annuity Court Order

- (a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it **expressly** awards a former spouse survivor annuity or expressly directs principal to elect to provide a former spouse survivor annuity as described in paragraph (b) of this section.
- (b) To **expressly** award a former spouse survivor annuity or **expressly** direct a principal to elect to provide a former spouse survivor annuity as required by paragraph (a) of this section the court order must--
 - (1) Use terms that **expressly** and sufficiently identify the retirement system involved (e.g., FSRDS, FSPS); and
 - (2)
 - (i) **Expressly state** the former spouse is entitled to a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity (e.g., survivor annuity, survivor benefits, death benefits); or
 - (ii) **Expressly** direct the retiree to elect to provide a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in under (2)(i) above.

Subsection XV-4 Computation of Formulas in Computing the Designated Base.

- (a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information so that DoS can determine the amount of the former spouse's monthly benefit using only the **express** language of the court order and information from normal DoS files.

- (b) To provide sufficient instructions and information for DoS to compute the amount of a former spouse survivor annuity as required by paragraph (a) of this subsection, if the court order uses a formula to determine the former spouse survivor annuity, it must not use any variables whose values are not readily ascertainable from the face of the court order or normal DoS files.
- (c) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if DoS would have to examine a state statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse survivor annuity.

Subsection XV-5 Amended court orders.

- (a) A court order awarding a former spouse **survivor annuity** is not a court order acceptable for processing if it is issued after the date of retirement or death of the principal or retiree **and** modifies or replaces the first order dividing the marital property of the principal and the former spouse.
- (b) For purposes of awarding, increasing, reducing, or eliminating a former spouse **survivor annuity**, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse survivor annuity, the court order must be--
 - (1) Issued on a day prior to the date of retirement or date of death of the principal; or
 - (2) The first court order dividing the marital property of the retiree and the former spouse.
- (c) A court order that awards a former spouse **survivor annuity** and that is issued after the first order dividing the marital property of the retiree and the former spouse has been vacated, set aside, or otherwise declared invalid is not a court order acceptable for processing if--
 - (1) It is issued after the date of retirement or death of the retiree;
 - (2) It changes any provision concerning a former spouse survivor annuity in the court order that was vacated, set aside or otherwise declared invalid; and

- (3) (i) The court order is effective prior to the date when it is issued;
or
- (ii) The retiree and former spouse do not compensate the Fund for any uncollected annuity reduction due as a result of the court order vacating, setting aside, or otherwise invalidating the first order terminating the marital relationship between the retiree and the former spouse.
- (d) In this section, "date of retirement" means the later of--
 - (1) The date that the principal files an application for retirement; or
 - (2) The effective commencing date for the principal's annuity.
- (e) In this subsection, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued nunc pro tunc).
- (f) (1) In this section, the "first order dividing the marital property of the retiree and the former spouse" means--
 - (i) The original written order that first ends (or first documents an oral order ending) the marriage if the court divides any marital property (or approves a property settlement agreement that divides any marital property) in that order, or in any order issued before that order; or
 - (ii) The original written order issued after the marriage has been terminated in which the court first divides any marital property (or first approves a property settlement agreement that divides any marital property) if no marital property has been divided prior to the issuance of that order.
- (2) The first order dividing marital property does not include--
 - (i) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the

court order making the amendment, explanation, clarification, or interpretation; or

- (ii) Any court order issued under reserved jurisdiction or any other court orders issued subsequent to the original written order that divide any marital property regardless of the effective date of the court order.

Subsection XV-6 Cost Must be Paid by Annuity Reduction

- (a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits DoS to collect the cost of survivor annuity by a reduction in the retirement annuity paid by DoS. DoS will not honor a court order that provides for the retiree or former spouse to pay DoS such cost any other means.
- (b) The amount of the annuity reduction required to pay the cost of the survivor annuity may be paid--
 - (1) By a reduction of the former spouse's entitlement (share) under a court order acceptable for processing that is directed at the retirement annuity; or
 - (2) By reduction of the retiree's annuity.
- (c) Unless the court order otherwise directs, DoS will collect the required annuity reduction from the retiree's annuity.

Subsection XV-7 Full Annuity Restored after Death

No special provision is necessary to restore the entire annuity to the retiree upon the death of the former spouse. Unless the court order expressly provides otherwise, DoS will pay the former spouse's share to the retiree after the death of the former spouse.

DEFINITIONS

The following listing defines the meaning of terms used in this handbook:

1. "Act" means the Foreign Service Act of 1980, as amended.
2. "Agencies" means the Department, the Agency for International Development (AID), the International Communication Agency (USICA), the Foreign Agricultural Service (FAS), and the Foreign Commercial Service (FCS).
3. "Annuitant" means any person including a former participant or survivor who meets all requirements for an annuity from the Fund under the provisions of the FSRDS or FSPS and who has filed claim therefore.
4. "Chief of Mission" means a principal officer in charge of a diplomatic mission of the United States or of a United States Office abroad which has been designated diplomatic in nature or any member of the Foreign Service assigned under the terms of the Act to be charge´ d'affaires or head of such a mission or office.
5. "Child" means except with reference to lump-sum payments, an unmarried child, under the age of 18 years, or such unmarried child regardless of age who because of physical or mental disability incurred before age 18 is incapable of self-support. In addition to the offspring of the participant, the term includes:
 - a. An adopted child;
 - b. A stepchild or recognized natural child who received more than one-half support from the participant; and
 - c. A child who lived with and for whom a petition of adoption was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death. "Child" also means an unmarried student under the age of 22 years. For this purpose, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while a student, is deemed to have become 22 years of age on the first day of July after the birthday.

6. "Court" means any court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.
7. "COLA" means annuity cost-of-living adjustments.
8. "Court order" means any court decree of divorce or annulment, or any court approved property settlement agreement incident to any court decree of divorce or annulment.
9. "Creditable service" means service which is creditable under FSRDS or FSPS retirement benefits. In computing a participant's length of creditable service, 30 days constitutes a month and any period less than 30 days is not counted.
10. "Department" or "DoS" means the Department of State.
11. "Divorce" means the dissolution of a marriage by a final decree of divorce or annulment.
12. "Disability annuitant" means a participant in FSRDS or FSPS entitled to a disability annuity and a disability annuity means an annuity computed under FSRDS or FSPS.
13. "FEGLI" means the Federal Employees' Group Live Insurance Program.
14. "FEHB" means the Federal Employees Health Benefits Program.
15. "Expressly provide" means to communicate intension by using language which clearly states in specific detail and not by inference or use of generalities. Example: If an intension of a divorce court ordered property settlement agreement was to express a former spouse's waiver of all rights to FSRDS and/or FSPS benefits based on marriage to a "principal," the order would not be accepted by DoS if such intension was expressed by using such general terms as "former spouse waives all rights to property acquired during the marriage".
16. "Foreign Service" or "Service" means the Foreign Service of the United States.

17. "Former participant" means an individual who, based on his/her former employment, participated in the FSRDS or FSPS.
18. "Former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during the participant's creditable service under the FSRDS or FSPS, and whose divorce from such participant occurred **on or** after February 15, 1981.

NOTE: A former spouse is not be considered as married to a participant for periods assumed creditable in computing a disability retirement annuity or a death in service survivor annuity.

19. "FSPS" means the Foreign Service Pension System established by subchapter II, chapter 8, of the Act.
20. "FSRDS" means the Foreign Service Retirement and Disability System established by subchapter I, chapter 8, of the Act.
21. "Full annuity" means an annuity computed without any survivorship reduction.
22. "Fund" means the Foreign Service Retirement and Disability Fund maintained by the U.S. Secretary of the Treasury.
23. "Gross annuity" has the same meaning as the term "full annuity".
24. "HR/RET" means the Department's Office of Retirement. (Mailing address: Department of State, (HR/RET), Room H-620, SA-1, Washington, DC 20522-0108)
25. "Lump-sum credit." (See Subsection VII-1.)
26. "Lump-sum payment" means the payment of a participant's or former participant's lump-sum credit.
27. "Military service" means honorable active service:
 - (1) In the Armed Forces of the United States;
 - (2) In the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

- (3) As commissioned officer of the National Oceanic and Atmospheric Administration (NOAA) or predecessor organization after June 30, 1961.

NOTE: This definition does not include service in the National Guard, except when ordered to active duty in the service of the United States.

28. "Net annuity" is computed by excluding from the full (gross) annuity the amounts which are:
 - (1) Owed by the participant to the United States;
 - (2) Deducted for health insurance benefits premiums;
 - (3) Deducted for life insurance premiums under the Government Life Insurance Program;
 - (4) Owed due to overpayment of annuity;
 - (5) Properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the participant claimed all dependents to which he/she was entitled; and
 - (6) Reductions for the cost of any survivorship benefits.
29. "OPM" means the U.S. Office of Personnel Management.
30. "Participant" means an individual who, based on his/her current employment, participates in the FSRDS or FSPS.
31. "Pension" means a FSRDS or FSPS retirement annuity or benefit.
32. "Principal" means a participant or former participant whose service forms the basis for a benefit under FSRDS or FSPS for a spouse, previous spouse, former spouse, or child of a participant.
33. "Previous spouse" means any person formerly married to a participant or former participant, whether or not such person qualifies under the definition of a "former spouse."

34. "Pro rata share" means, in the case of any former spouse of any participant or former participant, a percentage which is equal to the percentage that (1) the number of years and months during which the former spouse was married to the participant during the creditable service of the participant is of (2) the total number of years and months of such creditable service.

NOTE: In calculating item (1) above, a former spouse will not be considered as married to a participant for periods assumed creditable in computing a disability retirement annuity or a death in service survivor annuity. In addition, a former spouse will not be considered married to a participant for any extra period of creditable service based on the participant's service at an unhealthful post unless the former spouse resided with the participant during the participant's service at the unhealthful post. In calculating item (2) above, a participant's creditable service shall include: (a) entire periods of approved leave without pay during full-time service with an organization composed primarily of Government employees; (b) entire period of Government service for which participant received a refund of retirement contributions which he/she has not repaid unless the former spouse received a portion of such refund or unless a spousal agreement or court order provided that no portion be paid to the former spouse; and (c) all creditable service including service in excess of 35 years. Item (2) excludes service credits for unused sick leave.

35. "Spousal agreement" means any notarized written agreement between a participant or former participant, and such participant's spouse or former spouse.
36. "Student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semesters, or terms if the interim or other period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of HR/RET Division that the child has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.
37. "Surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of death in service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding death or is the parent of a child born of the marriage.

38. "Survivor annuity" means a FSRDS or FSPS benefit which may be paid to an eligible surviving spouse, former spouse, or child, if a principal dies in active service or after retirement.