

Document

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4 April 1984

MEMORANDUM FOR: DD/Pers/SP
C/ALD/OGC

FROM:

[Redacted]

Legislation Division
Office of Legislative Liaison

STAT

SUBJECT:

OPM Report on H.R. 2300, the "Civil
Service Spouse Retirement Equity Act"

1. Attached for your review and comment is the Office of Personnel Management's (OPM) proposed report on H.R. 2300, the Civil Service Spouse Retirement Equity Act. Also attached for your convenience is a copy of H.R. 2300. The Office of Management and Budget (OMB) has requested this Agency's views on the OPM report by 20 April 1984.

2. H.R. 2300 would provide a former spouse of a Federal employee with a portion of the employee's Civil Service Retirement Annuity, similar to provisions of the CIARD's former spouse legislation. OPM's proposed report opposes the enactment of H.R. 2300.

3. Please provide me with your comments on OPM's proposed report by Wednesday, 18 April 1984.

[Redacted]

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Attachments

cc:

[Redacted]

, Liaison

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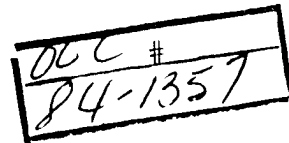
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ROD :csh (4 April 1984)



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**



March 27, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Defense
Department of State
Central Intelligence Agency

SUBJECT: OPM proposed report on H.R. 2300, the "Civil Service Spouse Retirement Equity Act."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than April 20, 1984.

Questions should be referred to Elaine Rideout (395-6156) or to Hilda Schreiber (395-4650), the legislative analyst in this office.

Naomi R. Sweeney
Naomi R. Sweeney for
**Assistant Director for
Legislative Reference**

Enclosures



United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable William D. Ford
Chairman
Committee on Post Office
and Civil Service
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the views of the Office of Personnel Management on H.R. 2300, the "Civil Service Spouse Retirement Equity Act."

Section 3 of H.R. 2300 would automatically entitle a former spouse (defined as one who had been married to a Federal employee for at least ten years during the employee's Government service) to a pro rata share of half of the employee's Civil Service Retirement annuity, unless a court order or spousal agreement provides otherwise. The pro rata share would equal the ratio of (1) the number of years of Federal service during which the former spouse and the employee were married to (2) the total number of years of the employee's Federal service. The former spouse's right to this annuity would terminate if the former spouse remarried before age 60. The retired employee's annuity would be reduced by the annuity paid to the former spouse, but this reduction would be disregarded in calculating any survivor annuity. If a disability annuitant became reemployed by the Government, payment of annuity to his or her former spouse would continue, but the employee's pay would be reduced by the amount of the former spouse's annuity, and the employing agency would reimburse the Retirement Fund for the cost of the payments to the former spouse.

The former spouse would also be entitled to the same pro rata share of the survivor annuity that is payable based on the employee's Federal service, unless otherwise provided by a court order or spousal agreement. Any part of the survivor annuity not paid to a former spouse would be available for a surviving spouse, but the sum of the survivor annuities could not exceed 55 percent of the retiree's annuity. The right to a survivor annuity would terminate upon remarriage before age 60 but would be reinstated if the remarriage later ended. The retiree's annuity would be reduced to provide the survivor annuity. This reduction would be eliminated if the former spouse's right to a survivor annuity terminated because of death or remarriage. However, the retiree could elect to continue the reduction in order to increase the amount of the survivor annuity available to a subsequent spouse. No change would be made with respect to any survivor annuity to the retiree's surviving spouse if a former spouse's survivor annuity is terminated after the retiree's death.

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A retiring employee who is married and/or has a former spouse would automatically have his or her annuity reduced to provide a survivor annuity for the spouse and/or former spouse. The survivor annuity could be waived or reduced by a joint election of the employee and the spouse or former spouse. The employee could make such an election alone if he or she could establish to OPM's satisfaction that the whereabouts of the former spouse could not be determined. OPM would be required, "to the maximum extent practicable," to inform spouses and former spouses of their rights to Civil Service Retirement benefits.

If a retiree has a former spouse who is entitled to a survivor annuity, the retiree could elect to provide an additional survivor annuity for his or her current spouse and/or any other former spouse. The total amount of additional annuities with respect to one retiree could not exceed 55 percent of the retiree's annuity. The retiree would have to pay for the entire actuarial value of the additional annuity, and could elect to provide such an annuity only if in good health. No cost-of-living adjustments would apply to additional survivor annuities unless authorized by OPM regulations. Section 8345(f) of title 5, United States Code, which establishes a floor on Civil Service annuities, would not apply to additional survivor annuities.

Section 3 of the bill would also entitle a former spouse to a pro rata share of half of an employee's lump-sum retirement credit in case the employee separates from the service and takes a refund of his or her retirement contributions, or the unexpended balance to the employee's or annuitant's credit in the Fund in case he or she dies.

The provisions of H.R. 2300 would take effect 120 days after enactment and, with certain exceptions, would apply in cases where divorce, annulment, or legal separation occurred after the effective date. In cases where the marriage dissolved before the effective date, a survivor annuity would be provided to the former spouse only if a court order or spousal agreement so provides. Court orders and spousal agreements could be made at any time before retirement, in the case of current employees, and within whatever period after the effective date that OPM prescribes, in the case of current retirees. If the employee or former employee is married on the effective date and has been married for more than one year, his or her current spouse would have to concur in an election to provide a survivor annuity for a former spouse. Finally, H.R. 2300 would provide a survivor annuity to the former spouse of a retiree who died before the effective date, if the retiree was married to the former spouse at the time of retirement, failed to elect not to provide a survivor annuity, subsequently became divorced, and did not leave a surviving spouse who was entitled to a Civil Service survivor annuity.

The Office of Personnel Management opposes enactment of H.R. 2300.

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Current law (5 U.S.C. 8345(j)) already enables OPM to recognize State court orders awarding some or all of an employee's annuity to a former spouse, and we believe this is an adequate protection of the rights of former spouses with respect to the employee's annuity, since it recognizes the primary responsibility of State courts to determine, on a case-by-case basis, a former spouse's entitlement to a portion of the employee's retirement benefits as a part of the courts' decision on all aspects of the divorce. Creating a statutory assumption of automatic entitlement by the former spouse regardless of the circumstances of a particular case, as H.R. 2300 would do, could foster new inequities in some cases.

H.R. 2300 resembles provisions of the Foreign Service Act of 1980 and the Intelligence Authorization Act for Fiscal Year 1983, providing benefits for former spouses of Foreign Service officers and CIA employees serving overseas, respectively. The Congressional consideration of the relevant portions of these two statutes focused in large part on the effects on a former spouse that follow from the unique nature of employment in the Foreign Service and overseas employment with the CIA--residence in foreign countries, frequent relocations, the spouse's involvement with the employee's duties, and the consequent likelihood that a spouse is unable to pursue his or her own career and establish separate retirement benefits. These conditions do not characterize the careers of most employees covered under the Civil Service Retirement System.

Although this bill is designed to benefit former spouses who were completely financially dependent on their Federally-employed spouses throughout long-term marriages, it would also impose an unreasonable and inequitable burden on many Government employees whose former spouses' incomes are equal to or greater than their own. H.R. 2300 implicitly recognizes this potential inequity by providing that the automatic provision of benefits to a divorced spouse may be superseded by a court order or spousal agreement. We agree that variables must be considered in individual cases, such as the financial status of both parties, property settlements, children involved, and the reasons for the divorce. Thus, we do not see a reason to abandon the present law, which simply provides for disposition of Civil Service Retirement benefits by State courts on a case-by-case basis.

We also note that new costs would be incurred by the Retirement System, largely because of the bill's retroactivity. The reduction in the employee's annuity to provide for a survivor annuity (2 1/2 percent of the first \$3600, plus 10 percent of the remainder) falls far short of the true cost of the survivor annuity. We estimate that the annuity reduction pays only one-third of the cost of the survivor's benefit. Because H.R. 2300 would require survivor annuities to be paid in many cases where none would be paid under current law (either because the employee never remarried after being divorced, or elected not to provide a survivor annuity for his or her spouse at the time of retirement), it would increase the cost to the Retirement System of providing survivor benefits. While it

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is impossible for us to know how many former spouses would become entitled to benefits if H.R. 2300 were enacted, the number could be significant, particularly because the bill would provide survivor annuities to former spouses of employees who have been retired or dead for several years. Each one-percent increase in the number of survivor annuities payable would cost about \$50 million a year. In cases where the retiree died before the bill's effective date, the reduction in the retiree's annuity to provide a survivor annuity presumably would have been eliminated at the time of divorce, further increasing the cost to the Government of providing the annuity.

Section 3(b) of H.R. 2300 concerns service credit under 5 U.S.C. 8332(k) and 8334(d). The former requires that employees on leave-without-pay while serving full-time with an employee organization must make retirement contributions for such periods after July 17, 1966, in order to receive credit for those periods. For such periods before July 18, 1966, a maximum of 6 months in a calendar year may be credited if the employee fails to make a deposit. Section 8334(d) requires an employee who has received a refund of Civil Service Retirement contributions to redeposit the refund, with interest, in order to receive credit for the period of service covered by the refund. Under section 3(b) of H.R. 2300, these periods could be used in computing annuities for former spouses, even if they were not covered by retirement contributions of the employee. This provision is unreasonable and inequitable, since it would allow a former spouse to receive credit for periods for which neither the employee nor the employee's surviving spouse could receive credit. Accordingly, this provision could enable the former spouse to receive more than a pro rata share of the employee's annuity and the survivor annuity.

Finally, it should be noted that the provision concerning additional survivor annuities is impractical and unrealistic. The employee would have to pay the full actuarial value of such an annuity, which would already have been reduced by $2\frac{1}{2}$ percent of the first \$3600 and 10 percent of the remainder in order to provide the basic survivor annuity. Moreover, it is likely that the employee's annuity will have been apportioned between the employee and the former spouse. From this already reduced annuity, yet a further reduction would be required to provide the second spouse with an additional survivor annuity, and even where the employee and second spouse are the same age, this reduction would have to be approximately 20 percent of the employee's unreduced annuity. Thus, few employees would be willing or financially able to provide an additional benefit for the second spouse.

In addition to these substantive objections to H.R. 2300, we would like to point out the following technical deficiencies in the bill's provisions:

- (1) The use of a capital letter in denoting a section ("8341A") is inconsistent with the style used throughout title 5, U.S. Code. "8341a" should be used instead.

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- (2) The definition of "court" should stipulate whether or not territorial courts are included.
- (3) Proposed section 8341A(c)(3)(C) of title 5, U.S.Code, should be amended by inserting "or spouse" after "If a former spouse". This change is needed in order to reflect that an additional survivor annuity may be provided either for a former spouse or a current spouse. Similarly, in section 8341A(c)(4), "spouse's or" should be inserted before "former spouse's death".
- (4) Proposed section 8341A(c)(3)(C) provides that, if a former spouse predeceases the employee or remarries before age 60, the annuity reduction or salary allotment by which the employee is providing for an additional survivor annuity will be terminated and whatever contributions the employee has made for this purpose will be refunded, but only to the extent that the employee's contributions have exceeded the actuarial cost of providing additional survivor benefits for the period such benefits were provided. The latter clause is confusing. There is no actuarial cost of providing an additional survivor annuity unless such an annuity is actually paid. If such an annuity has been paid, the retiree must be deceased, so it is unclear to whom his or her contributions would be refunded. In any event, this kind of payment should never be refunded, since it, in essence, amounts to a purchase of insurance.
- (5) In the proposed new 5 U.S.C. 8339(j)(4)(B), as added by section 4(a) of the bill, "or" should be changed to "and".
- (6) Section 6(d) of the bill refers erroneously to 5 U.S.C. 8339(b)(2). This should be changed to 5 U.S.C. 8339(j)(2).

Although the Office of Personnel Management cannot support H.R. 2300 for the reasons we have cited, there are two defects in the Civil Service Retirement System with respect to survivor benefits which we strongly believe should be corrected. One of these defects is that, although the Civil Service Retirement law since 1980 has required retiring employees who waive survivor benefits to inform their spouses of the waiver, spousal consent to the waiver is not required. The President's proposed Pension Equity Act (H.R. 4032) would require such consent under private pension plans, and we favor amending the Civil Service Retirement law to impose a similar requirement under the Civil Service Retirement System.

Second, while current law allows us to apportion a retired employee's annuity to a former spouse, subject to a court order, there is no authority under which we can pay a survivor annuity to a former spouse. The Office of Personnel Management would support an amendment authorizing payment of survivor benefits to former spouses pursuant to a court order in the same way we can pay a portion of a retired employee's annuity to a former spouse. Such a provision would conform to the requirements the President's proposed Pension Equity Act would impose on private-sector pension plans.

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We believe these changes would significantly enhance the equity of the Retirement System with respect to spouses and former spouses of Federal employees, and we would be pleased to work with the Committee on drafting such changes.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Donald J. Devine
Director

98TH CONGRESS
1ST SESSION

H. R. 2300

To provide that a former spouse of a Federal employee who is married to such employee for ten years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1983

Mrs. SCHROEDER introduced the following bill; which was referred to the
Committee on Post Office and Civil Service

DECEMBER 14, 1983

Additional sponsors: Mr. ACKERMAN, Mr. BERMAN, Mr. BOSCO, Mrs. BOXER, Mr. DWYER of New Jersey, Mr. EDWARDS of California, Mr. EVANS of Iowa, Mr. FASCELL, Mr. FRANK, Mr. FRENZEL, Mr. FROST, Mr. LEHMAN of Florida, Mr. LEVIN of Michigan, Ms. MIKULSKI, Mr. MITCHELL, Mr. MRACEK, Ms. OAKAR, Mr. OBERSTAR, Mr. OWENS, Mr. PEASE, Mr. RATCHFORD, Mr. SMITH of Florida, Mr. WALGREEN, Mr. WEISS, Mr. WILLIAMS of Montana, Mr. YATES, Ms. FERRARO, Mr. NEAL, Mr. STUDDS, Ms. SNOWE, Mr. MORRISON of Connecticut, Mr. MATSUI, Mr. PORTER, Mr. SCHUMER, Mrs. COLLINS, Mr. GUARINI, Mr. WISE, Mr. BILIRAKIS, and Mr. MINETA

A BILL

To provide that a former spouse of a Federal employee who is married to such employee for ten years or more shall be entitled to a portion of such employee's annuity and to a portion of the annuity of any surviving spouse of such employee, and for other purposes.

1 by that individual which are creditable under section
2 8332 of this title;

3 “(26) ‘pro rata share’, in the case of any former
4 spouse of any individual, means a percentage which is
5 equal to the percentage that (A) the number of years
6 during which the former spouse was married to the in-
7 dividual during the creditable service of that individual
8 is of (B) the total number of years of such creditable
9 service; and

10 “(27) ‘spousal agreement’ means any agreement
11 between an individual and that individual’s spouse or
12 former spouse which is in writing and acknowledged
13 before a notary public.”.

14 (b) Such section 8331 of title 5, United States Code, is
15 further amended—

16 (1) by striking out “and” at the end of paragraph
17 (21), and

18 (2) by striking out the period at the end of para-
19 graph (22) and inserting in lieu thereof a semicolon.

20 ANNUITIES AND SURVIVOR ANNUITIES FOR FORMER
21 SPOUSES

22 SEC. 3. (a) Subchapter III of chapter 83 of title 5,
23 United States Code, relating to civil service retirement, is
24 amended by inserting after section 8341 the following new
25 section:

1 **“§ 8341A. Former spouse annuities**

2 “(a)(1) Unless otherwise expressly provided by any
3 spousal agreement or court order under section 8345(j) of this
4 title, a former spouse of an employee or Member retired
5 under this subchapter is entitled to an annuity—

6 “(A) if married to the employee or Member
7 throughout that employee’s or Member’s period of
8 creditable service, equal to 50 percent of the annuity
9 (determined without regard to the reduction under
10 paragraph (5) of this subsection) to which such employ-
11 ee or Member is entitled, or

12 “(B) if not married to the employee or Member
13 throughout the period of creditable service, equal to
14 that former spouse’s pro rata share of 50 percent of
15 such annuity.

16 “(2) A former spouse shall not be qualified for an annu-
17 ity under this subsection if before the commencement of that
18 annuity the former spouse remarries before becoming 60
19 years of age.

20 “(3) The annuity of a former spouse under this subsec-
21 tion commences on the later of the day the employee or
22 Member upon whose service the annuity is based becomes
23 entitled to an annuity under this subchapter or the first day of
24 the month in which the divorce or annulment involved be-
25 comes final. The annuity of such former spouse and the right
26 thereto terminate on—

1 “(A) the last day of the month before the former
2 spouse dies or remarries before 60 years of age; or

3 “(B) the date the annuity of the employee or
4 Member terminates (except in the case of an annuity
5 subject to paragraph (5)(B)).

6 “(4) No spousal agreement or court order under section
7 8345(j) of this title involving any employee or Member may
8 provide for an annuity or any combination of annuities under
9 this subsection which exceeds the annuity of the employee or
10 Member, nor may any such court order relating to an annuity
11 under this subsection be given effect if it is issued more than
12 12 months after the date the divorce or annulment involved
13 becomes final.

14 “(5)(A) The annuity payable to any employee or
15 Member shall be reduced by the amount of an annuity under
16 this subsection paid to any former spouse based upon the
17 service of that employee or Member. Such reduction shall be
18 disregarded in calculating the survivor annuity for any
19 spouse, former spouse, or other survivor under this sub-
20 chapter, and in calculating any reduction in the annuity of
21 the employee or Member to provide survivor benefits under
22 subsection (b) or section 8341(b)(1) of this title.

23 “(B) If any disability annuitant whose annuity is re-
24 duced under subparagraph (A) becomes reinstated or reap-
25 pointed in the civil service, the pay of that annuitant shall be

1 reduced by the same amount as the annuity would have been
2 reduced if it had continued. Amounts equal to the reductions
3 under this subparagraph shall be deposited in the Treasury of
4 the United States to the credit of the Fund.

5 “(6) Notwithstanding paragraph (3), in the case of any
6 former spouse of a disability annuitant—

7 “(A) the annuity of that former spouse shall com-
8 mence on the date the employee or Member would
9 qualify on the basis of the employee’s or Member’s
10 creditable service for an annuity under this subchapter
11 (other than a disability annuity) or the date the disabil-
12 ity annuity begins, whichever is later, and

13 “(B) the amount of the annuity of the former
14 spouse shall be calculated on the basis of the annuity
15 for which the employee or Member would otherwise so
16 qualify.

17 “(b)(1) Subject to any election under section 8339(j) of
18 this title and unless otherwise expressly provided by any
19 spousal agreement or court order under section 8345(j) of this
20 title, if a former employee or Member who is entitled to re-
21 ceive an annuity is survived by a former spouse, the former
22 spouse shall be entitled to a survivor annuity—

23 “(A) if married to the employee or Member
24 throughout the creditable service of the employee or
25 Member, equal to 55 percent of the full amount of the

1 employee's or Member's annuity, as computed under
2 section 8339 of this title, or

3 "(B) if not married to the employee or Member
4 throughout such creditable service, equal to that former
5 spouse's pro rata share of 55 percent of the full
6 amount of such annuity.

7 "(2) A former spouse shall not be qualified for an annu-
8 ity under this subsection if before the commencement of that
9 annuity the former spouse remarries before becoming 60
10 years of age.

11 "(3) An annuity payable from the Fund to a surviving
12 former spouse under this subsection shall commence on the
13 day after the annuitant dies and shall terminate on the last
14 day of the month before the former spouse's death or remar-
15 riage before attaining age 60. If such a survivor annuity is
16 terminated because of remarriage, it shall be restored at the
17 same rate commencing on the date such remarriage is termi-
18 nated if any lump sum paid upon termination of the annuity is
19 returned to the Fund.

20 "(4)(A) The maximum survivor annuity or combination
21 of survivor annuities under this section (and section 8341(b))
22 with respect to any employee or Member may not exceed 55
23 percent of the full amount of the employee's or Member's
24 annuity, as calculated under section 8339 of this title.

1 “(B) Once a survivor annuity has been provided for
2 under this subsection for any former spouse, a survivor annu-
3 ity may thereafter be provided for under this subsection (or
4 section 8341(b)) with respect to an employee or Member only
5 for that portion (if any) of the maximum available which is
6 not committed for survivor benefits for any former spouse
7 whose prospective right to such annuity has not terminated
8 by reason of death or remarriage.

9 “(C) After the death of an employee or Member, a court
10 order under section 8345(j) of this title may not adjust the
11 amount of the annuity of any former spouse under this
12 subsection.

13 “(5)(A) For each full month after a former spouse of an
14 employee or Member dies or remarries before attaining age
15 60, the annuity of the employee or Member, if reduced to
16 provide a survivor annuity for that former spouse, shall be
17 recomputed and paid as if the annuity had not been so re-
18 duced, unless an election is in effect under subparagraph (B).

19 “(B) Subject to paragraph (4)(B), the employee or
20 Member may elect in writing within one year after receipt of
21 notice of the death or remarriage of the former spouse to
22 continue the reduction in order to provide a higher survivor
23 annuity under section 8341(b) of this title for any spouse of
24 the employee or Member.

1 “(c)(1) In the case of any employee or Member provid-
2 ing a survivor annuity benefit under subsection (b) for a
3 former spouse—

4 “(A) such employee or Member may elect, or

5 “(B) a spousal agreement or court order under
6 section 8345(j) of this title may provide for,
7 an additional survivor annuity under this subsection for any
8 other former spouse or spouse surviving the employee or
9 Member, if the employee or Member satisfactorily passes a
10 physical examination as prescribed by the Office of Personnel
11 Management.

12 “(2) Neither the total amount of survivor annuity or an-
13 nnuities under this subsection with respect to any employee or
14 Member, nor the survivor annuity or annuities for any one
15 surviving spouse or former spouse of such employee or
16 Member under this section and section 8341 of this title, shall
17 exceed 55 percent of the full amount of the employee’s or
18 Member’s annuity, as computed under section 8339 of this
19 title.

20 “(3)(A) In accordance with regulations which the Office
21 shall prescribe, the employee or Member involved may pro-
22 vide for any annuity under this subsection—

23 “(i) by a reduction in the annuity or an allotment
24 from the pay of the employee or Member,

1 “(ii) by a lump sum payment or installment pay-
2 ments to the Fund, or

3 “(iii) by any combination thereof.

4 “(B) The present value of the total amount to accrue to
5 the Fund under subparagraph (A) to provide any annuity
6 under this subsection shall be actuarially equivalent in value
7 to such annuity, as calculated upon such tables of mortality
8 as may from time to time be prescribed for this purpose by
9 the Office.

10 “(C) If a former spouse predeceases the employee or
11 Member or remarries before attaining age 60 (or, in the case
12 of a spouse, the spouse does not qualify as a former spouse
13 upon dissolution of the marriage)—

14 “(i) if an annuity reduction or salary allotment
15 under subparagraph (A) is in effect for that spouse or
16 former spouse, the annuity shall be recomputed and
17 paid as if it had not been reduced or the salary allot-
18 ment terminated, as the case may be, and

19 “(ii) any amount accruing to the Fund under sub-
20 paragraph (A) shall be refunded, but only to the extent
21 that such amount may have exceeded the actuarial cost
22 of providing benefits under this subsection for the
23 period such benefits were provided, as determined
24 under regulations prescribed by the Office.

1 “(D) Under regulations prescribed by the Office, an an-
2 nnuity shall be recomputed (or salary allotment terminated or
3 adjusted), and a refund provided (if appropriate), in a manner
4 comparable to that provided under subparagraph (C), in order
5 to reflect a termination or reduction of future benefits under
6 this subsection for a spouse in the event a former spouse of
7 the employee or Member dies or remarries before attaining
8 age 60 and an increased annuity is provided for that spouse
9 in accordance with this subchapter.

10 “(4) An annuity payable under this subsection to a
11 spouse or former spouse shall commence on the day after the
12 employee or Member dies and shall terminate on the last day
13 of the month before the former spouse’s death or remarriage
14 before attaining age 60.

15 “(5) Section 8340 of this title shall not apply to any
16 annuity under this subsection, unless authorized under regu-
17 lations prescribed by the Office.

18 “(d)(1) Section 8345(f) of this title shall not apply—

19 “(A) to any annuity payable under subsection (a)
20 or (b) to any former spouse if the amount of that annu-
21 ity varies by reason of a spousal agreement or court
22 order under section 8345(j), or an election under sec-
23 tion 8339(j), from the amount which would be calculat-
24 ed under subsection (a)(1) or (b)(1), as the case may be,

1 in the absence of such spousal agreement, court order,
2 or election; and

3 “(B) to any annuity payable under subsection (c).

4 “(2) A former spouse is not entitled to an annuity under
5 this subchapter based upon the service of an employee or
6 Member unless the former spouse elects to receive it instead
7 of any other annuity to which the former spouse may be enti-
8 tled under this subchapter or any retirement system for Gov-
9 ernment employees on the basis of a marriage to someone
10 other than the employee or Member.”.

11 (b) Section 8332 of title 5, United States Code, relating
12 to creditable service, is amended by adding at the end thereof
13 the following new subsection:

14 “(n)(1) Service of an employee or Member shall be con-
15 sidered creditable service for purposes of applying provisions
16 of this subchapter relating to former spouses if such service
17 would be creditable—

18 “(A) under subsection (k) (1) or (2) but for the fact
19 an election was not made under subsection (k)(1) or a
20 special contribution was not made under subsection
21 (k)(2), and

22 “(B) under section 8334(d) but for the fact that a
23 refund of contributions has not been repaid unless the
24 former spouse received under this subchapter a portion

1 of the lump sum (or a spousal agreement or court order
2 provided otherwise).

3 “(2) A former spouse shall not be considered as married
4 to an employee or Member for periods assumed to be credit-
5 able service under section 8341(d)(2) of this title.”.

6 (c)(1) Section 8341(b) of title 5, United States Code,
7 relating to survivor spouse annuities, is amended by adding at
8 the end thereof the following new paragraph:

9 “(4) Notwithstanding the preceding paragraphs in this
10 subsection and subsection (d), the amount of the annuity cal-
11 culated under this subsection for a surviving spouse in any
12 case in which there is also a surviving former spouse who
13 qualifies for an annuity under section 8341A(b) with respect
14 to the same employee or Member may not exceed 55 percent
15 of the portion (if any) of the base for survivor benefits which
16 remains available under section 8341A(b)(4)(B).”.

17 (2) Section 8341(d) of title 5, United States Code, relat-
18 ing to survivor spouse annuities in the case of death in serv-
19 ice, is amended by adding at the end thereof the following
20 new sentence: “Any surviving former spouse shall be entitled
21 to an annuity under section 8341A(b) as if the employee or
22 Member died after being entitled to an annuity under this
23 subchapter.”.

24 (d)(1) Section 8342(a) of title 5, United States Code,
25 relating to lump-sum benefits, is amended by striking out “is

1 entitled” and inserting in lieu thereof “(and any former
2 spouse of such employee or Member, in accordance with sub-
3 section (j)) are entitled”.

4 (2) Section 8342 of title 5, United States Code, is
5 amended by adding at the end thereof the following:

6 “(j) Unless otherwise expressly provided by any spousal
7 agreement or court order under section 8345(j) of this title,
8 the amount of an employee’s or Member’s lump-sum credit
9 payable to a former spouse shall be—

10 “(1) if the former spouse was married to the em-
11 ployee or Member throughout the period of creditable
12 service, 50 percent of the lump-sum credit to which
13 such employee or Member would be entitled in the ab-
14 sence of this subsection, or

15 “(2) if such former spouse was not married to the
16 employee or Member throughout the period of his cred-
17 itable service, an amount equal to such former spouse’s
18 pro rata share of 50 percent of such lump-sum credit.

19 The lump-sum credit of the employee or Member shall be
20 reduced by the amount of the lump-sum credit payable to the
21 former spouse.”.

22 (e) Section 8344 of title 5, United States Code, relating
23 to annuities and pay on reemployment, is amended by re-
24 designating subsection (e) as subsection (f) and by inserting
25 after subsection (d) the following new subsection:

1 “(e) The Office shall prescribe regulations to provide for
2 the application of this section in any case in which an annu-
3 itant has a former spouse entitled to an annuity under section
4 8341A of this title.”.

5 (f) The table of sections for chapter 83 of title 5, United
6 States Code, is amended by inserting after the item relating
7 to section 8341 the following new item:

“8341A. Former spouse annuities.”.

8 **JOINT EMPLOYEE-SPOUSE ELECTIONS**

9 **SEC. 4.** (a) Section 8339(j) of title 5, United States
10 Code, relating to election of survivor annuities, is amended to
11 read as follows:

12 “(j)(1)(A) Except to the extent provided otherwise under
13 a written election under subparagraph (B) or (C), if at the
14 time of retirement an employee or Member is married (or has
15 a former spouse who has not remarried before attaining age
16 60), the employee or Member shall receive a reduced annuity
17 and provide a survivor annuity under section 8341(b) for the
18 employee’s or Member’s spouse or a survivor annuity under
19 section 8341A(b) for the former spouse, or a combination of
20 such annuities, as the case may be.

21 “(B) At the time of retirement, a married employee or
22 Member and the employee’s or Member’s spouse may jointly
23 elect to waive a survivor annuity for that spouse under sec-
24 tion 8341(b) (or under section 8341A(b) if the spouse later
25 qualifies as a former spouse under section 8331(25)), or to

1 reduce such a survivor annuity by designating a portion of
2 the annuity of the employee or Member as the base for the
3 survivor benefit. Any such election shall be in writing and
4 shall be acknowledged before a notary public. In the event
5 the marriage is dissolved following an election for such a re-
6 duced annuity and the spouse qualifies as a former spouse,
7 the base used in calculating any annuity of the former spouse
8 under section 8341A(b) may not exceed the portion of the
9 employee's or Member's annuity designated under this
10 subparagraph.

11 “(C) If an employee or Member has a former spouse, the
12 employee or Member and such former spouse may jointly
13 elect by spousal agreement under section 8345(j) to waive a
14 survivor annuity under section 8341A(b) for that former
15 spouse if the election is made (i) before the end of the 12-
16 month period after the divorce or annulment involving that
17 former spouse becomes final or (ii) at the time of retirement,
18 whichever occurs first.

19 “(D) The Office of Personnel Management may pre-
20 scribe regulations under which an employee or Member may
21 make an election under subparagraph (B) or (C) without the
22 employee's or Member's spouse or former spouse if the em-
23 ployee or Member establishes to the satisfaction of the Office
24 that the employee or Member does not know, and has taken

1 all reasonable steps to determine, the whereabouts of the
2 spouse or former spouse.

3 “(2) The annuity of an employee or Member providing a
4 survivor benefit under section 8341(b) (or section 8341A(b)),
5 excluding any portion of the annuity not designated or com-
6 mitted as a base for any survivor annuity, shall be reduced by
7 2½ percent of the first \$3,600 plus 10 percent of any
8 amount over \$3,600. The reduction under this paragraph
9 shall be calculated before any reduction under section
10 8341A(a)(5).

11 “(3) An annuity which is reduced under this subsection
12 or any similar prior provision of law to provide a survivor
13 benefit for a spouse shall, if the marriage of the employee or
14 Member is dissolved, be recomputed and paid for each month
15 during which the employee or Member is not married (or is
16 remarried if there is no election in effect under the following
17 sentence) as if the annuity had not been reduced, subject to
18 any reduction required to provide a survivor benefit under
19 section 8341A (b) or (c). Upon remarriage the retired em-
20 ployee or Member may irrevocably elect, by means of a
21 signed writing received by the Office within one year after
22 such remarriage, to receive during such marriage a reduction
23 in annuity for the purpose of allowing an annuity for the new
24 spouse of the annuitant in the event such spouse survives the
25 annuitant. Such reduction shall be equal to the reduction in

1 effect immediately before the dissolution of the previous mar-
2 riage (unless such reduction is adjusted under section
3 8341A(b)(5)), and shall be effective the first day of the first
4 month beginning one year after the date of remarriage.

5 “(4) The Office shall, on an annual basis—

6 “(A) inform each employee and Member of the
7 rights of election under this subsection; and

8 “(B) to the maximum extent practicable, inform
9 spouses or former spouses of employees and Members
10 of their rights under this subchapter.”.

11 (b) Section 8339(k)(1) of title 5, United States Code,
12 relating to annuities for individuals having insurable interests,
13 is amended by inserting after “an unmarried employee or
14 Member” the following: “who does not have a former spouse
15 for whose benefit a reduction is made in the employee’s or
16 Member’s annuity and”.

17 (c) Section 8341(b)(1) of title 5, United States Code, is
18 amended by striking out “unless the employee or Member
19 has notified the Office” and all that follows and inserting in
20 lieu thereof the following: “unless an election has been made
21 under section 8339(j)(1) or, in the case of remarriage, an
22 election has not been made under section 8339(j)(3).”.

23 (d) Section 8344(a) of title 5, United States Code, relat-
24 ing to annuities and pay on reemployment, is amended by
25 striking out “unless, at the time of claiming the increase pay-

1 able under subparagraph (A), the annuitant notifies the Office
2 of Personnel Management in writing that he does not desire
3 the survivor annuity to be increased” and inserting in lieu
4 thereof “unless the annuitant and the annuitant’s spouse
5 jointly elect to the contrary at the time in a written election
6 acknowledged before a notary public”.

7 SPOUSAL AGREEMENTS AND COURT ORDERS

8 SEC. 5. Section 8345(j) of title 5, United States Code,
9 relating to court orders concerning the dissolution of mar-
10 riage, is amended to read as follows:

11 “(j)(1)(A) In the case of any employee or Member who
12 has a former spouse who is covered by a court order or who
13 is a party to a spousal agreement—

14 “(i) any right of the former spouse to any annuity
15 under section 8341A(a) in connection with any retire-
16 ment or disability annuity of the employee or Member,
17 and the amount of any such annuity;

18 “(ii) any right of the former spouse to a survivor
19 annuity under section 8341A (b) or (c), and the amount
20 of any such annuity; and

21 “(iii) any right of the former spouse to any pay-
22 ment of a lump-sum credit under section 8342;

23 shall be determined in accordance with that spousal agree-
24 ment or court order, if and to the extent expressly provided
25 for in the terms of that spousal agreement or court order.

1 “(B) This paragraph shall not apply in the case of any
2 spousal agreement or court order which, as determined by
3 the Office of Personnel Management, is inconsistent with the
4 requirements of this subchapter.

5 “(2) Except with respect to obligations between employ-
6 ees or Members and former spouses, payments under this
7 subchapter which would otherwise be made to an employee
8 or Member based upon the employee’s or Member’s service
9 shall be paid (in whole or in part) by the Office to another
10 individual to the extent expressly provided for in the terms of
11 any order or any court decree of legal separation, or the
12 terms of any court order or court-approved property settle-
13 ment agreement incident to any court decree of legal
14 separation.

15 “(3) Paragraphs (1) and (2) shall apply only to payments
16 made under this subchapter for periods beginning after the
17 date of receipt by the Office of written notice of such decree,
18 order, or agreement, and such additional information and
19 such documentation as the Office may require.

20 “(4) Any payment under this subsection to an individual
21 bars recovery by any other individual.

22 “(5) The 10-year requirement of section 8331(25), or
23 any other provision of this subchapter, shall not be construed
24 to affect the rights any spouse or individual formerly married
25 to an employee or Member may have, under any law or rule

1 of law of any State or the District of Columbia, with respect
2 to an annuity of an employee or Member under this
3 subchapter.”.

4 SURVIVOR BENEFITS IN THE CASE OF DIVORCES PRIOR
5 TO EFFECTIVE DATE

6 SEC. 6. (a) Any current or former employee or Member
7 in the Civil Service Retirement and Disability System who
8 on the effective date, has a former spouse shall receive a
9 reduced annuity and provide a survivor annuity for such
10 former spouse under section 8341A(b) of title 5, United
11 States Code, if—

12 (1) the employee or Member so elects by means of
13 a spousal agreement, or

14 (2) a court order so provides.

15 (b)(1) If the employee or Member has not retired under
16 such system on or before the effective date, an election under
17 subsection (a)(1) may be made, or a court order under subsec-
18 tion (a)(2) may be issued, at any time before retirement.

19 (2) If the employee or Member has retired under such
20 system on or before the effective date of this Act, an election
21 under subsection (a)(1) may be made, or a court order under
22 subsection (a)(2) may be issued, within such period after the
23 effective date as the Office of Personnel Management may
24 prescribe.

1 (3) In any case in which an employee or Member is
2 married and has been married for more than one year, an
3 election under subsection (a)(1) may only be made with the
4 written concurrence of the spouse of the employee or
5 Member.

6 (4) For purposes of applying subchapter III of chapter
7 83 of title 5, United States Code, any such election or court
8 order shall be treated the same as if it were a spousal agree-
9 ment or court order under section 8345(j) of title 5, United
10 States Code.

11 (c)(1) An election under subsection (a)(1) may provide
12 for a survivor benefit based on all or any portion of that part
13 of the annuity of the employee or Member which is not desig-
14 nated or committed as a base for survivor benefits for a
15 spouse or any other former spouse of the employee or
16 Member. The employee or Member and the employee's or
17 Member's spouse may make an election under section
18 8339(j)(1)(B) of title 5, United States Code, prior to the time
19 of retirement for the purpose of allowing survivor benefits to
20 be provided under this section.

21 (2) A court order under subsection (a)(2) may provide for
22 an annuity for a former spouse which does not exceed that
23 former spouse's pro rata share of 55 per centum of the full
24 amount of the annuity of employee or Member.

1 (d) The amount of the reduction in the employee's or
2 Member's annuity shall be determined in accordance with
3 section 8339(b)(2) of title 5, United States Code. Such reduc-
4 tion shall be effective as of—

5 (1) the commencing date of the employee's or
6 Member's annuity, in the case of an election under sub-
7 section (b)(1), or

8 (2) the effective date of this Act, in the case of an
9 election under subsection (b)(2).

10 (e) In the case of an employee or Member who died
11 before the effective date of this Act after becoming entitled to
12 an annuity and who—

13 (1) at the time the employee or Member became
14 entitled to an annuity was married and did not elect
15 not to provide for a survivor annuity for any surviving
16 spouse under section 8339(j)(1) of title 5, United States
17 Code;

18 (2) subsequently was divorced from the spouse to
19 whom the employee or Member was married at the
20 time of retirement;

21 (3) died and was not married at the time of death
22 (or if then married, was not married to an individual
23 entitled to an annuity under section 8341(b) of title 5,
24 United States Code),

1 the individual to whom the employee or Member was married
2 at the time the employee or Member retired shall be entitled
3 to an annuity under section 8341 of title 5, United States
4 Code, as if married to the Member at the time of death if the
5 individual is qualified as a former spouse.

6 (f) For purposes of this section, the terms "former
7 spouse", "employee", "Member", "court order", and "spou-
8 sal agreement" have the same meanings as when used in
9 subchapter III of chapter 83 of title 5, United States Code.

10 EFFECTIVE DATE

11 SEC. 7. (a) The provisions of this Act shall take effect
12 beginning on the one hundred and twentieth day after the
13 date of the enactment of this Act.

14 (b) The preceding sections of this Act regarding the
15 rights of former spouses to any annuity under section
16 8341A(a) of title 5, United States Code, shall apply in the
17 case of any individual who after the effective date of this Act
18 becomes a former spouse of a current or former employee or
19 member in the Civil Service Retirement and Disability
20 System.

21 (c) Except to the extent provided in section 6, the provi-
22 sions of this Act regarding the rights of former spouses to
23 receive survivor annuities under subchapter III of chapter 83
24 of such title 5 shall apply in the case of any individual who
25 after the effective date of this Act becomes a former spouse of

25

- 1 a current or former employee or Member in the Civil Service
- 2 Retirement and Disability System.

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