

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES**PART III - EMPLOYEES****Subpart G - Insurance and Annuities****CHAPTER 84 - FEDERAL EMPLOYEES RETIREMENT SYSTEM****SUBCHAPTER IV - SURVIVOR ANNUITIES****§ 8445. Rights of a former spouse**

- (a) Subject to subsections (b) through (e), a former spouse of a deceased employee, Member, or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417 (b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.
- (b) (1) The annuity payable to a former spouse under this section may not exceed the difference between—
- (A) the amount applicable in the case of such former spouse, as determined under paragraph (2); and
 - (B) the amount of any annuity payable under this section to any other former spouse of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417 (b), or a court order previously issued or agreement previously entered into as described in subsection (a).
- (2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse were a widow or widower entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.
- (c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—
- (1) shall not commence before—
 - (A) the day after the employee, Member, or annuitant, or former employee or Member, dies; or
 - (B) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe;whichever is later; and
 - (2) except as provided in subsection (h), shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.
- (d) For purposes of this chapter, a modification in a decree, order, agreement, or election referred to in subsection (a) shall not be effective—
- (1) if such modification is made after the retirement or death of the employee, Member, or annuitant, or former employee or Member, concerned; and
 - (2) to the extent that such modification involves an annuity under this section.
- (e) For purposes of this chapter, a decree, order, agreement, or election referred to in subsection (a) shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse under section 8416 (a).
- (f) (1) Any amount under section 8442 (b)(1)(A) which would otherwise be payable to a widow or widower based on the service of another individual shall be paid (in whole or in part) by

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

the Office to a former spouse of such individual if and to the extent expressly provided for in the terms of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement incident to any decree of divorce, annulment, or legal separation.

(2) Paragraph (1) shall apply only to payments made by the Office after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(g) Any payment under this section to a person bars recovery by any other person.

(h) (1) Subsection (c)(2) (to the extent that it provides for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8419 (b)(1)(B) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 564; amended Pub. L. 105–61, title V, § 518(b)(2), Oct. 10, 1997, 111 Stat. 1308.)

Amendments

1997—Subsec. (c)(2). Pub. L. 105–61, § 518(b)(2)(B), substituted “except as provided in subsection (h), shall” for “shall”.

Subsec. (h). Pub. L. 105–61, § 518(b)(2)(A), added subsec. (h).

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–61 applicable with respect to remarriages occurring on or after Jan. 1, 1995, see section 518(c) of Pub. L. 105–61, set out as a note under section 8341 of this title.