

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 shall submit a statement to PER/ER/RET reporting on whether his/her spouse resided at the unhealthful post and the dates of such residence. The statement shall 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 nonresidence at a post by a spouse which is not signed by the spouse, the determination of residence will be made by PER/ER/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.

§ 19.6 Court orders and divorce decrees.

§ 19.6-1 Orders by a court.

(a) A court may—

(1) Fix the amount of any pension to a former spouse under § 19.9, or order that none be paid;

(2) Fix the amount of any regular survivor annuity to a former spouse under paragraphs (a) and (b) of § 19.11, or order that none be paid;

(3) Order provision of an additional survivor annuity for a spouse or former spouse under § 19.10-5;

(4) Fix the amount of any benefit under § 19.10-6 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 none be paid;

(5) Fix the amount of any lump-sum payable to a former spouse under § 19.13 or order that none be paid;

(6) Order, to the extent consistent with any obligation stated in § 19.8 between a participant and a former spouse, and pursuant to any court decree of divorce, legal separation or an-

nulment 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 shall be paid (in whole or in part) by the Secretary of State 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” in § 19.2(f) 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.

§ 19.6-2 Qualifying court order.

(a) To be valid for purposes of this section, a court order must be found to be “qualified” by PER/ER/RET acting for the Secretary of State. 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 regulation;

(3) Direct that payments be made to an eligible beneficiary from a principal’s Foreign Service retirement benefit or survivor benefit. If a court directs or implies that a principal, rather than the Secretary of State 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 provided under § 19.6-6;

(4) Define the amount to be paid to a beneficiary in 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.

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(b) No apportionment of annuity to a beneficiary under §19.6-1(a) (1) or (6) shall exceed the net annuity of the principal. The net annuity is computed by excluding from the gross annuity the amounts which are:

- (1) Owed by the individual to the United States;
- (2) Deducted for health benefits premiums pursuant to section 8906 of Title 5, United States Code;
- (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 individual claimed all dependents to which he/she was entitled.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.6-3 Application for payment.

(a) To receive payment from the Fund pursuant to a court award, the beneficiary must submit an application in writing to the Chief of the Retirement Division (PER/ER/RET), Department of State, Washington, DC 20520. 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;
- (4) A statement that the court order has not been amended, superseded, or set aside;

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.

(b) When payments are subject to termination upon the occurrence of a condition subsequent, such as marriage, remarriage or termination of schooling, or death of the principal, no pay-

ment will be made until the beneficiary submits a statement to PER/ER/RET that—

- (1) The condition has not occurred;
- (2) He/she will notify the Department (PER/ER/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. PER/ER/RET may require periodic recertification of these statements.

§ 19.6-4 Date of court orders.

(a) A court order directing or barring payment of a pension to a former spouse under §19.9 may not be given effect by the Department if it is issued more than 12 months after the divorce becomes final. A court order adjusting the amount of a regular or additional survivor annuity to a former spouse under §19.11-2 or §19.10-5 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 in an amount other than provided in §19.9 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 under this chapter involving any payment other than a pension to a former spouse under §19.9 may not be given retroactive effect and shall not be effective until it is determined to be a qualifying order under §19.6-5.