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WASHINGTON, D.C. 20548

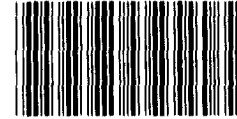
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RELEASED

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B-199338

✓ The Honorable Patricia Schroeder  
The Honorable Gladys Neff Spellman  
The Honorable Jim Leach, James A.S.  
House of Representatives



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✓ The Honorable Abraham A. Ribicoff  
✓ The Honorable Max Baucus  
United States Senate

Subject: [Apportioning Retirement Benefits to Former Spouses of Federal Employees] (FPCD-80-56)

Your joint letter of January 24, 1980, asked that we examine into the sufficiency of the economic protection provided to widows or widowers and divorced spouses of Federal employees. As requested, we evaluated the equity of the current law, its administration by the Office of Personnel Management (OPM), and some possible alternative methods of providing retirement income to former spouses. The results of our review are included in the enclosure.

(Public Law 95-366, enacted on September 15, 1978, required OPM to comply with State court orders or decrees that divide civil service retirement benefits in divorce actions.) Before this law, divorced spouses of Federal employees and retirees could receive direct payment of retirement benefits only through garnishment actions to enforce court-ordered child support or alimony payments. Otherwise, the previous law had allowed direct benefit payments only to retirees and the spouses to whom employees and retirees were married at the time of death.

As of March 1980, OPM had received 261 court orders requesting apportionment of retirement benefits. OPM was able to honor many of the court orders and provide payments to the former spouses. However, for various reasons, as discussed in the enclosure, OPM did not honor 30 of the court orders.

The Foreign Service retirement system did not include the apportionment provision until July 18, 1979. At the time of our review, the Department of State had received

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only one court order. Thus, we limited our review to the 261 court orders received by OPM for the civil service retirement system.

(In general, we believe the current provisions in the civil service and Foreign Service retirement systems of allowing the courts to decide, on a case-by-case basis, whether, and in what amounts, retirement benefits should be apportioned between Federal retirees and their former spouses are preferable to automatic apportionment of these benefits as has been proposed in legislation now being considered by the Congress.] Providing divorced spouses a statutory right to a portion of an annuity would not consider such individual factors as the financial status of each party, property settlements, children involved, and the reasons for the divorce. The courts are in a better position to determine, on a case-by-case basis, an individual's obligation to his or her former spouse.

It should be pointed out that [except for garnishment actions, the uniformed services retirement system does not allow for direct payment of retirement benefits to former spouses in compliance with court orders]. We know of no reason why this system should not be consistent with the civil service and Foreign Service systems.

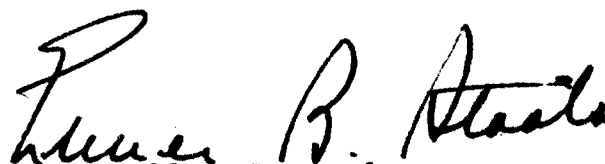
(An important issue that our review reinforced is the lack of comparable protection for former spouses of some Federal employees and retirees to protection provided in the non-Federal sector by the social security program.) A basic function of social security is to provide for these types of social needs. Under social security, divorced spouses are entitled to an amount equal to 50 percent of the retired worker's benefit if the marriage lasted at least 10 years.] The retired worker's benefit is not reduced, and, if remarried, the second spouse may also receive benefits. [Social security also guarantees full survivor benefits to divorced spouses after 10 years of marriage.] Extending social security to all Federal personnel, with appropriate redesign of the civil service and other Federal retirement systems to supplement social security, where necessary, is one of the alternatives discussed in this report.

The Universal Social Security Coverage Study Group, established by the Congress, concluded in a March 1980 report that extending social security to all Federal personnel would not have an adverse or a disruptive effect on their employment and retirement incentives. We had earlier supported and called for expanded social security coverage as

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one of the needed policy changes to insure greater equity and consistency in Federal retirement programs. (Of some 38 Federal retirement systems, 25 already provide social security coverage to covered employees.)

We did not obtain official comments from OPM on this report. As you requested, we will make no further distribution of this report until 30 days from the report date. At that time, we will send copies to interested persons and make copies available to others upon request.

  
Comptroller General  
of the United States

Enclosure

EVALUATION OF ADEQUACY OF RETIREMENT  
INCOME PROTECTION FOR FORMER SPOUSES OF  
FEDERAL EMPLOYEES AND RETIREES

IMPLEMENTATION OF PUBLIC LAW 95-366

Public Law 95-366 enacted on September 15, 1978, provides that payments under the civil service retirement system which would otherwise be made to an employee or annuitant on the basis of his or her service shall be paid (in whole or in part) to a former spouse if expressly provided for in the terms of a State court decree of divorce, annulment, legal separation, or court-approved property settlement in connection with a court decree of divorce annulment or legal separation.

Before Public Law 95-366, the civil service retirement law permitted the garnishment of annuity payments but only when necessary to enforce court-ordered child support or alimony payments. No other direct payments to divorced spouses were permitted under the system.

To request apportionment of a Federal employee's retirement benefits, the Office of Personnel Management (OPM) requires the former spouse to submit (1) a certified copy of the court order requiring such apportionment, (2) a statement that the order has not been amended, superseded, or set aside, and (3) information concerning the Federal employee or retiree, such as full name, claim number, and date of birth.

Upon receipt of a court order and necessary documentation to apportion retirement benefits, OPM makes a determination whether the court order is a qualifying court order. According to OPM officials, the decree must meet all the following requirements before apportionment can be initiated:

- The decree explicitly divides an individual's civil service retirement benefits and awards all or a portion of such benefits to a former spouse.
- The retiree or OPM is instructed to pay the former spouse's share. (Before March 1980, OPM regulations provided that payments would be made directly to the spouse only if the court order specifically required OPM to make the payments.)
- The amount must be a specific dollar amount or a percentage of the annuity and be ascertainable from the information in the order and OPM's records.

Unless the court order meets all the above requirements, OPM will notify the former spouse that it is necessary for the order to be amended by the court (to provide the missing requirements) before OPM will honor it.

Once OPM determines that a court order is qualified, it notifies the affected employee or retiree that a court order has been received, which requires the apportionment of his or her retirement benefit. OPM provides the individual with a copy of the court order. The notice will inform the individual (1) that OPM intends to honor the court order, (2) of the effect it will have on the individual's retirement benefit, and (3) that he or she will be given a 30-day period (from the notice date) to contest the court order before any payments are made to a former spouse.

The former spouse will also be notified (1) that OPM intends to honor the court order, (2) of the amount that he or she is entitled to receive and, in instances which require apportionment on a percentage basis, how the amount was computed, and (3) that payment is being delayed for a period of 30 days to give the individual an opportunity to contest the court order.

OPM will make the apportionment in accordance with the above notification if the individual or former spouse fails to respond within the 30-day notice period. When the individual contests the apportionment, however, the former spouse's claim will be denied if it is shown that the court order is not a qualifying court order or that the order is inconsistent with a subsequent court order.

If the retiree objects to the payment based on the validity of the court order and if the record contains some support for the objection, he or she will be granted an additional 30 days to initiate legal action to determine the validity of the objection. If evidence is submitted that legal action has been started before the 30 days have expired, OPM will continue to withhold the spouse's allotment but will make no payment to the former spouse pending judicial determination of the validity of the court order.

At the time of our review, OPM had 261 court orders requiring the division of retirement benefits in divorce actions. <sup>1/</sup> In all but one of the cases, the Federal employee or retiree was male. The 261 orders are categorized as shown below:

<u>Status of court orders</u>	<u>Number</u>
Active	159
Pending	55
Rejected	30
Closed	<u>17</u>
Total	<u><u>261</u></u>

Active court orders are orders in which OPM is currently providing retirement benefits to former spouses. Pending court orders are orders received by OPM requesting apportionment of retirement benefits upon the future retirement of the Federal employee. Rejected court orders are orders that OPM has denied apportionment. Closed court orders are orders that cannot be honored because the employee has died or separated from Federal employment without entitlement to any future retirement benefits.

In addition, of the 261 orders, 188 included property settlements as part of the divorce decrees. The property settlements often included awarding of alimony and child support payments. Alimony was awarded in 92 of the divorce actions, child support was awarded in 64 actions, and both alimony and child support were awarded in 23 actions.

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<sup>1/</sup>These court orders were in OPM's files as of March 7, 1980. OPM representatives later advised us that additional court orders had since been received at a rate of about 15 to 20 a month. They also stated that another 50 to 100 court orders were received earlier but that the files had been retired to a records storage facility and would be difficult to identify and retrieve. They said that these earlier orders were not honored because they did not meet the law's criteria.

PAYMENT OF RETIREMENT BENEFITS

Of the 159 active cases, 116 specified that payment or allotment of retirement benefits to the former spouse should be made on a percentage basis--as opposed to a flat dollar amount. The amounts ranged from a low of 11 percent granted in one case to a high of 100 percent granted in two cases. However, 45 of the court orders stated that the retirement benefits should be divided equally between the annuitant and former spouse.

Monthly alimony payments ranged from \$50 to \$1,220, and monthly child support payments ranged from \$50 to \$400. In 26 of the cases, the retirement benefits awarded to the former spouse constituted the alimony and/or child support payment. This is illustrated by the following language contained in two divorce decrees.

"Husband shall pay wife alimony in the amount of \$1,220.00 a month; said amount being currently 40 percent of the husband's monthly gross retirement annuity from United States Civil Service Commission."

"Wife awarded 100 percent of husband's Civil Service retirement check for her support and child support."

Of the 159 active court orders, 60 were issued in California; 30 were issued in Texas, and 13 were issued in the State of Washington. These three States consider retirement benefits to be part of the community property acquired during a marriage. In all, orders were received from courts in 33 States. The effective date of divorce in 62 court orders was prior to the September 15, 1978, enactment of Public Law 95-366.

In 50 of the 214 qualifying court orders (21 of the 159 active orders and 29 of the 55 pending orders), the court specified that retirement benefits would be divided on the basis of the length of the marriage and Federal employment in accordance with the following formula:

$50\% \times \frac{\text{Length of Federal employment during marriage}}{\text{total length of Federal employment}}$	$= \text{Percentage of monthly retirement benefit payable to spouse upon retirement.}$
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REJECTED COURT ORDERS

As stated previously, OPM rejected 30 court orders. It notified the former spouses that the court orders were not qualifying orders and explained to the spouses why the wording in the orders precluded their being honored.

OPM rejected 20 of the court orders because the divorce decrees did not specifically direct OPM to pay a portion of a civil service retirement benefit to the former spouse. Either the court orders directed the husband to pay the former spouse a portion of his retirement benefits or the order was unclear as to exactly who should pay the former spouse. Shown below are several examples of the language used in the rejected court orders.

--"Husband is ordered within 5 days of receipt by him of his monthly Civil Service annuity check to deliver or mail by regular first class mail to the wife 35.1 percent of the gross amount of such check."

--"Husband shall pay the wife for her maintenance and support a sum equal to 50 percent of his Federal pension retirement each month."

--"Thirty five percent of the monthly gross payment of husband's U.S. Civil Service Commission disability retirement annuity to be paid monthly by husband to wife."

--"Wife has a one-half vested interest in husband's retirement with the Federal Government and husband shall pay to wife one-half of his retirement check as it is received."

Subsequent to these rejections, OPM modified its position that court orders would be rejected when the retiree, rather than OPM, was instructed to make payments to the former spouse. Effective March 7, 1980, OPM procedures provide for direct payments to the former spouse, if the retiree does not object to such a procedure, even though the court specifically stated that the retiree was to make the payment. This action was taken in an effort to honor as many court orders as possible and thereby expedite payments to the former spouse. At the time of our review, OPM had no plans to reexamine the 20 cases discussed above to determine whether the new criteria would allow payments to be made.



Six court orders were rejected because they were contingent on facts or events which could not be ascertained from the order or from the records OPM maintained.

- Two court orders provided that apportionment of retirement annuities would terminate upon remarriage of the former spouse. OPM rejected these on the basis that it would not know when a former spouse remarried; therefore, overpayments could possibly result. However, OPM later revised its policy covering these types of cases and now takes the position that once the former spouse remarries he or she must notify OPM. The former spouse is personally liable for any overpayment resulting from the lack of notification. At the time of our review, OPM had not notified these two former spouses of the revised regulations, even though the regulations were changed in August 1979.
- One court order required the ex-husband to pay his former spouse one-half of his retirement benefits until the spouse retired from her own employment, when the order would be modified to reduce the payments by the amount of her retirement benefits. OPM refused to honor this court order since the former spouse was still employed and the amount of her future pension was unknown. OPM representatives stated that neither the former spouse nor her employer would have any reason to notify OPM when she retired. Thus OPM would not know when to modify the civil service retirement payments.
- Another court order stated that the former spouse was to receive a portion of her ex-husband's pension only if it would not reduce the amount he was receiving. Because the wording of this decree was unclear as to how the annuity should be divided, OPM concluded that no payment should be made.
- One court order required the ex-husband to pay \$516 each month to his former spouse, and this obligation was to be met from both his private retirement plan and his Federal civil service benefits. However, the husband's monthly civil service annuity, alone, was more than \$516. OPM did not honor this court order because it did not know the amount of the private retirement payments and considered the intent of the court to be unclear.

--In one order the court found that the parties involved possessed a community interest in the husband's retirement and other benefits associated with his Federal employment. However, the court did not require any benefit payments to be made to the former spouse and reserved jurisdiction to determine, at a future date, the disposition of any pension rights and benefits, including the right to add additional parties to the proceedings.

The remaining four decrees were rejected for various other reasons as shown below.

A decree which OPM honored initially was subsequently rejected because, before payments started, the annuitant waived all his future retirement benefits except for an amount necessary to cover his health insurance premium. (The decree had provided that one-half of the annuity be paid to the former spouse.) According to OPM representatives, waivers are not allowed once payments to the former spouse have begun.

One decree had requested the retiree to voluntarily assign his civil service retirement benefits to his former spouse. A voluntary assignment was made but was not honored. Under the law (5 U.S.C. 8345(h)), OPM may, at its discretion, honor voluntary assignment requests. According to OPM representatives, however, OPM chose not to honor such requests because of the administrative costs involved; but they did advise us that this policy was being reevaluated.

Another decree contained contradictions as to the amount of the payment. The decree stated that the wife needed alimony and that the husband was able to pay alimony of \$245 a month or one-half of his retirement pay. They did not honor the court order, OPM officials said, because the amount of payment was not readily ascertainable from the order submitted and they would need further direction from the court before awarding payment.

One decree did not show any division of retirement benefits. If a decree does not indicate the allotment of a specific amount or a percentage of the annuity, OPM will not authorize apportionment of retirement benefits.

POSSIBLE ALTERNATIVE METHODS OF  
PROVIDING RETIREMENT BENEFITS  
TO DIVORCED SPOUSES

In recent years, many State courts have ruled that future retirement benefits earned during a marriage should be considered community property in the event of a legal separation, divorce, or annulment. Enactment of Public Law 95-366 permitted Federal cooperation with State laws and court rulings to comply with property settlements and thereby provide retirement income to divorced spouses of Federal employees. The financial settlements associated with the divorce are determined on a case-by-case basis. Based on the decrees received by OPM, the circumstances existing in individual divorce actions have caused the courts to vary the amount payable to former spouses from case to case.

Under the current law, however, divorced spouses are not entitled to survivor benefits, regardless of the number of years they were married, even if the annuitant wishes to make the former spouse the beneficiary of the survivor benefits. We found that, in 14 divorce actions, the court assigned all or part of the employees' survivor benefits to their former spouses. However, in accordance with the law, OPM could not honor the court orders.

One alternative to provide additional protection to divorced spouses would be to amend Public Law 95-366 to allow the payment of survivor benefits to former spouses when ordered by the courts. This would continue the current approach of permitting the courts, on a case-by-case basis, to determine an individual's obligation to a former spouse in matters of domestic relations and property rights.

This alternative would appear to be relatively simple. However, some practical difficulties are involved. Under the system's provisions, married retirees may elect to provide survivor benefits to their spouses by accepting a reduced annuity at the time of retirement. An election not to participate in the survivorship program is irrevocable. Survivor benefits could not be paid in such cases even if the law were changed to allow divorced spouses to receive survivor benefits.

Another difficulty with this alternative concerns persons who became divorced while still employed. Under the law, benefits are automatically payable to the surviving spouse of active employees and, under this alternative, could be paid to a former spouse if so ordered by the court

at the time of divorce. However, if the court had ordered that such benefits be paid, the law would need to require that the employee accept a reduced annuity at the time of retirement even though he or she may still be unmarried and the benefits ordered to be paid to the former spouse may be less than the full amount surviving spouses are entitled to receive under the law. In such cases, the unmarried retiree would have to accept the same annuity reduction as married retirees even though the survivor benefits payable upon his or her death would be less.

Another alternative would be to grant the former spouses of Federal employees a statutory right to specified portions of any retirement benefits, lump-sum refunds, and survivor benefits as has been proposed by H.R. 2818 for the civil service retirement system. (The same alternative would be incorporated into the uniformed services and Foreign Service retirement systems by H.R. 2817 and H.R. 2857, respectively.)

These bills would provide a former spouse who was married to the employee throughout all the period of his or her creditable service 50 percent of the retirement and survivor benefits to which the employee is entitled. If the former spouse was not married to the employee during all of his or her creditable service, the retirement and survivor annuities would be prorated on the basis of the ratio of the number of years of creditable service during which the former spouse was married to the employee to the employee's total years of creditable service. (As previously indicated, many of the court orders being honored under the current law used this same formula to apportion retirement benefits.)

Information is not available on the number of Federal employees and retirees who are divorced. Therefore, it is not possible to accurately estimate the cost of this alternative. It is evident, however, that providing survivor benefits to former spouses would result in additional costs if the employee or retiree does not remarry since, under the current law, no survivor benefits would be payable in such situations.

If the employee or retiree were to remarry, dividing survivor benefits among more than one spouse could, depending on individual circumstances, either increase or decrease or have no effect on survivor benefit costs. The costs would depend upon the age of the employee's second spouse when the employee remarries. The possible effects on survivor benefit costs are illustrated in the following hypothetical examples.

Assume:

Survivor annuity is \$6,000 a year.  
 Estimated life expectancy of a female at age 50 is 29 years.  
 Estimated life expectancy of a female at age 60 is 21 years.  
 Retiree was married to each spouse for 15 years during his  
 30 years of creditable service.

Example 1: Retiree's current spouse is younger (age 50) than former spouse (age 60). Upon the death of the retiree, the amounts payable to each spouse under the current law and the proposed legislation are as follows:

	<u>Current law</u>	<u>H.R. 2818</u>
Estimated total annuity payable to current spouse	\$174,000 (\$6,000 X 29 years)	\$87,000 (\$3,000 X 29 years)
Estimated total annuity payable to former spouse	0 ..... <u>          </u>	\$ 63,000 (\$3,000 X <u>21 years</u> )
 Total	 <u>\$174,000</u>	 <u>\$150,000</u>

As shown in this example, when an employee remarries a younger spouse, dividing the survivor benefits between both spouses will result in an overall savings to the retirement fund of \$24,000.

Example 2: Retiree's current spouse (age 60) is older than former spouse (age 50). Upon the death of the retiree, the amounts payable to each spouse under the current law and proposed legislation are as follows:

	<u>Current law</u>	<u>H.R. 2818</u>
Estimated total annuity payable to current spouse	\$126,000 (\$6,000 X 21 years)	\$63,000 (\$3,000 X 21 years)
Estimated total annuity payable to former spouse	0 ..... <u>          </u>	\$87,000 (\$3,000 X <u>29 years</u> )
 Total	 <u>\$126,000</u>	 <u>\$150,000</u>

When the second spouse is older, dividing survivor benefits between spouses will cause additional costs-- \$24,000 in this example.

The approach of providing divorced spouses a statutory right to a portion of an annuity would not consider such individual factors as the financial status of both parties, property settlements, children involved, and the reason for divorce. In matters of domestic relations and property rights, the courts are in a better position, on a case-by-case basis, to determine an individual's obligation to a former spouse. Also the inherent difficulties, previously discussed, in providing survivor benefits to former spouses would remain.

A combination of the case-by-case and automatic apportionment approaches has also been proposed. H.R. 6790 would amend the Foreign Service retirement law to require automatic apportionment of retirement and survivor benefits based on the number of years of marriage during employment, but such apportionments could be changed by the courts or by an agreement of the two parties involved. Except for the survivor-benefit difficulties, we believe this method of apportioning benefits to former spouses has merit.

Another alternative would be the social security approach of providing full retirement and survivor benefits to more than one spouse. If married 10 years and upon reaching age 65, a divorced spouse is entitled to an amount equal to 50 percent of the retired worker's social security benefits. The retired worker's benefit is not reduced and, if remarried, the second spouse may also receive benefits. Social security also guarantees full survivor benefits to divorced spouses after 10 years of marriage. A widow(er) or surviving spouse is entitled to the worker's full benefit at age 65 or a reduced benefit at age 60. Furthermore, if the surviving divorced spouse has custody of a surviving child, upon the worker's death he or she is entitled to the survivor benefit, regardless of age.

Utilizing the hypothetical examples discussed previously, the social security approach would provide each spouse full retirement benefits as well as full survivor benefits upon the death of the worker. In these examples, each spouse would receive annual survivor benefits of \$6,000. This approach could, depending on the number of Federal employees and retirees who become divorced, greatly increase retirement system costs.

Another alternative would be the coverage of Federal civilian personnel by the social security program. Employees covered by the civil service retirement system do not participate in social security.

In a report issued December 29, 1978 ("Need for Overall Policy and Coordinated Management of Federal Retirement Systems," FPCD-78-49), we pointed out that one of the major inconsistencies of Federal retirement systems is that social security coverage is provided to some personnel but is denied to others. Therefore, some Federal personnel do not receive the basic protection afforded by social security to virtually all other workers in the country. Of 38 retirement systems established by the Government and its instrumentalities, employees covered by 25 of the systems are also covered by social security. We could find no persuasive reasons why Federal personnel should not be covered by social security and their retirement programs redesigned to supplement social security benefits.

The issue of extending social security coverage to all Federal personnel was explored in a March 1980 report by the Universal Social Security Coverage Study Group on the results of a study mandated by the Social Security Amendments of 1977. Although the study group concluded only that social security coverage for all Federal personnel was feasible, the chairman of the study group concluded that social security should be extended to all Federal personnel. A major reason cited for the chairman's conclusion was that social security coverage would provide more adequate safeguards for spouses, especially in the event of divorce.