

**CSRS**

**FERS**

**Former Spouse Survivor Benefits**

**Chapter 74**

***Important Notice***

*On June 26, 2013, the Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. As a result of the Supreme Court's decision, the United States Office of Personnel Management (OPM) will now be able to extend certain benefits to Federal employees and annuitants who have legally married a spouse of the same sex, regardless of the employee's or annuitant's state of residency. OPM is currently in the process of updating and revising the website to reflect this change, and will be updating this information as soon as possible. Please check back in the coming weeks for updates.*

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**Subchapter 74A CSRS and FERS****Section 74A1.1-1 Overview**

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**A. Introduction** This chapter discusses the survivor benefits payable under CSRS and FERS to the former spouses of deceased employees and retirees.

NOTE: Under FERS, survivor benefits also may be paid to the former spouse of a deceased former employee.

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**B. Topics Covered** This subchapter covers:

- The conditions under which former spouse survivor annuities are payable; and
  - When former spouse survivor benefits terminate.
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**Section 74A1.1-1 Overview (Cont.)****C. Organization of Subchapter**

This subchapter has five sections.

<b>Section</b>	<b>Name of Section</b>	<b>Page</b>
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**D. Reference**

Information on related topics may be found in:

1. Chapter 5, Court Orders, which covers, among other things, how a former spouse survivor annuity can be provided by a court order;
2. Chapter 32, Refunds, which covers former spouse provisions that apply to application for refunds at separation (see section 32A1.1-5 and 32A1.1-6, in particular); and
3. Chapter 52, Survivor Benefit Elections, which covers all survivor benefit elections permitted under the retirement law.

**E. Statement of Authority**

This subchapter and its contents are based on the laws and regulations cited below.

- United States Code: 5 U.S.C. 8331(23); 8339(j)(3); 8341(h); 8401(12); 8417-8419; and 8445
- Code of Federal Regulations: 5 CFR Part 831, Subparts F and Q; Part 841, Subpart I; Part 842, Subpart F; Part 843, Subpart C

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**Section 74A1.1-2 Definitions**

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- A. Court Order** "Court order" means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.
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- B. Former Spouse** In connection with a court order awarding a former spouse survivor annuity, "former spouse" means a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service covered by CSRS or who performed at least 18 months of civilian service creditable under FERS, and whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.
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- C. Former Spouse Survivor Annuity** "Former spouse survivor annuity" means a recurring benefit that is payable after the employee's or retiree's death to a former spouse who has not remarried before becoming 55 years of age.
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- D. Insurable Interest Annuity** "Insurable interest annuity" means the recurring payments to a retiree who has elected a reduction in annuity to provide a survivor annuity to a person with an insurable interest in the retiree.
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**Section 74A1.1-3 Conditions Under Which a Former Spouse Survivor Annuity Will Be Paid**

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**A. Court Order**

1. The former spouse of a CSRS employee or retiree may be awarded a survivor annuity pursuant to a court order.

NOTE: The former spouse of a separated CSRS employee entitled to a deferred annuity may be awarded survivor benefits. However, no benefits are payable unless the employee dies after retirement.

2. The former spouse of a FERS employee, retiree, or separated employee with title to a deferred annuity may be awarded a survivor annuity and/or basic employee death benefit pursuant to a court order.

NOTE: A court order that awards a FERS survivor annuity also awards a corresponding share of the basic employee death benefit unless the order expressly provides otherwise.

3. A modification in a court order is not effective to the extent that it involves a former spouse survivor annuity if the modification is made after the retirement or death of the employee.

NOTE: See Chapter 5 for further information about court orders.

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**B. Elections**

1. An employee retiring under CSRS or FERS may voluntarily elect a fully reduced annuity or a partially reduced annuity to provide a former spouse survivor annuity. If the employee is married, he or she may make such an election only if the current spouse consents to the election or OPM waives the spousal consent requirement.
2. A retiring employee also may elect an insurable interest survivor annuity for a former spouse. Spousal consent is not required.

NOTE: See Chapter 52 for further information.

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**Section 74A1.1-3 Conditions Under Which a Former Spouse Survivor Annuity Will Be Paid (Cont.)**

- C. Void Elections**      A voluntary election to provide a former spouse survivor annuity is void if:
1. It is for an amount smaller than the amount required by a qualifying court order; or
  2. It would cause the total of all elected current and former spouse survivor annuities (not including election under the insurable interest provision) to exceed:
    - 55 percent of the self-only annuity to which the retiree would be entitled under CSRS; or
    - 50 percent of the self-only annuity to which the retiree would be entitled under FERS.
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**Section 74A1.1-4 Termination of a Former Spouse Survivor Annuity**

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- A. Rule** Entitlement to a former spouse survivor annuity terminates at the end of the month preceding the earliest of:
- The death of the former spouse;
  - The remarriage of the former spouse before age 55; or
  - The survivor annuity termination date established under the terms of the court order.
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- B. Effect of Termination** If a former spouse annuity terminates under one of the conditions described in paragraph A, any reduction in the retiree's annuity to provide a former spouse annuity will cease the first day of the month after the terminating event unless:
1. The retiree elects, within 2 years after the former spouse's death or remarriage, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide for or increase a current spouse annuity; or
  2. A qualifying court order requires the retiree to provide another former spouse annuity.
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- C. Reinstatement of Former Spouse Annuity** A former spouse who loses entitlement to a survivor annuity because he or she remarries before age 55 cannot have the survivor annuity reinstated if the marriage later ends by **death or divorce**.
- A former spouse who loses entitlement to a survivor annuity because he or she remarries before age 55 cannot have the survivor annuity reinstated if the marriage later ends upon **annulment** unless--
1. The decree of annulment states that the marriage is without legal effect retroactively from the marriage's inception; **and**



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**Section 74A1.1-4 Termination of a Former Spouse Survivor Annuity (Cont.)****C. Reinstatement of  
Former Spouse  
Annuity (Cont.)**

2. The former spouse's entitlement is based on section 4(b)(1)(B) or section (4)(b)(4) of Public Law 98-615 which provide survivor annuities in limited circumstances without any reduction to the retiree's benefit.

NOTE: If a retiree who is receiving a reduced annuity to provide a former spouse annuity and who has remarried that former spouse (before the former spouse attained age 55) dies, the retiree will be deemed to have elected to continue the reduction to provide a current spouse annuity unless the retiree requested in writing that OPM terminate the reduction.

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**Section 74A1.1-5 Miscellaneous**

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**A. Procedures**

In general, a former spouse must follow the same procedures as a current spouse when applying for survivor benefits.

For the procedures to be followed when an employee dies, see Chapter 70, Spouse Benefits - Death of an Employee; for procedures to be followed when an annuitant dies, see Chapter 71, Spouse Benefits - Death of an Annuitant.

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**B. Continuing  
Health Benefits  
Coverage**

The rules for allowing certain former spouses to continue Federal health benefits coverage are covered in The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices (formerly FPM Supplement 890-1, Subchapter S17).

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