

§ 19.7-4

22 CFR Ch. I (4-1-09 Edition)

§ 19.7-4 Form of agreement.

(a) A spousal agreement is any legal agreement between the parties accepted by PER/ER/RET as meeting the requirements of this section. If in accordance with the regulations, PER/ER/RET will accept as a valid spousal agreement a property settlement agreed to by the parties and approved by a court regardless of the date of the agreement.

(b) A spousal agreement must either be authenticated by a court or notarized.

§ 19.7-5 Limitations.

(a) A spousal agreement may not provide for any payment from the Fund in excess of the amount otherwise authorized to be paid, or at a time not authorized by these regulations, or to a person other than a spouse or former spouse.

(b) A spousal agreement must be filed with the Department, Attention PER/ER/RET, and accepted by that office as in conformance with the Act and these regulations prior to the times specified in §§ 19.7-2 and 19.7-3. That office will provide advice to the parties on the validity of any proposed agreement and on proper format.

(c) A spousal agreement may apply only to payments from the Fund for periods after receipt of a valid agreement by the Department.

(d) Paragraphs (b), (c) and (d) of §§ 19.6-9 and 19.6-10 apply to spousal agreements and payments made pursuant to spousal agreements to the same extent that they apply to court orders and court ordered payments.

§ 19.7-6 Duration and precedence of spousal agreements.

(a) A spousal agreement may be revised or voided by agreement of the parties (by filing a new agreement under this section) at any time prior to the last day for filing an agreement determined in accordance with § 19.7-2 or § 19.7-3, except spousal agreements for additional survivor annuities are irrevocable. After the last day for filing a particular agreement, such agreement is irrevocable.

(b) A valid spousal agreement entered into subsequent to the issuance of a court order affecting the same parties

will override the court order, and shall govern payments from the Fund.

(c) A spousal agreement may not override a previous spousal agreement involving the same principal but a different spouse or former spouse without agreement of such spouse or former spouse.

§ 19.8 Obligations of members.

Participants and former participants are obligated by the Act and these regulations to provide the following benefits to others and must accept the necessary reductions in their own retirement benefits to meet these obligations:

(a) A pension to a former spouse pursuant to § 19.9;

(b) A court ordered apportionment of annuity to a previous spouse or child under § 19.6-1 (a)(6) (the benefit to a child referred to here is paid during the annuitant's lifetime as distinguished from the automatic survivorship annuity to a child described in § 19.11-7);

(c) A regular survivor annuity to a former spouse who has not remarried prior to age 60, and to a spouse to whom married when annuity commences, pursuant to §§ 19.11-2 and 19.11-3;

(d) An additional survivor annuity for a spouse or former spouse under § 19.10-5 when elected by the participant or ordered by a court;

(e) Lump-sum payments to a former spouse pursuant to § 19.13;

(f) Benefits ordered by a court under § 19.6 or specified in a spousal agreement under § 19.7.

§ 19.9 Pension benefits for former spouses.

§ 19.9-1 Entitlement.

(a) Unless otherwise expressly provided by a spousal agreement under § 19.7 or a court order under § 19.6, a person who, after February 15, 1981, becomes a former spouse of a participant (or former participant who separated from the Service after February 15, 1981) and who has not remarried prior to becoming 60 years of age, becomes entitled to a monthly pension benefit effective on a date determined under § 19.9-2 in an amount determined under § 19.9-3.

(b) A former spouse shall not be qualified for a pension under this subsection if, before the commencement of that pension, the former spouse remarries before becoming 60 years of age.

(c) A pension benefit under this section is treated the same as a survivor annuity for purposes of § 19.11-5(b): a former spouse who elects to receive a pension under this section must waive simultaneous receipt of any survivor annuity.

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

§ 19.9-2 Commencement and termination.

(a) The pension of a former spouse under this subsection commences on the latter of the day the principal becomes entitled to a Foreign Service annuity or on the first day of the month in which the divorce becomes final. (Suspension or reduction of a Foreign Service annuity because or reemployment does not affect the commencement of a pension to a former spouse.) In the case of any former spouse of a disability annuitant, the pension of such former spouse shall commence on the latter of:

- (1) The date the principal would qualify for an annuity (other than a disability annuity) on the basis of his/her creditable service;
- (2) The date the disability annuity begins; or
- (3) The first of the month in which the divorce becomes final.

(b) The pension of a former spouse and the right thereto terminate on:

- (1) The last day of the month before the former spouse dies or remarries before 60 years of age; or
- (2) The date the annuity of the former participant terminates unless the termination results from recall, reappointment or reinstatement in the Foreign Service or reemployment in Government service.

§ 19.9-3 Computation and payment of pension to former spouse.

(a) A pension to a former spouse is paid monthly on the same date that annuity is paid to the principal.

(b) No spousal agreement or court order may provide for a pension or any combination of pensions to former

spouses of any one principal which exceeds the net annuity of the principal as defined in § 19.6-2(b).

(c) A pension to a former spouse not fixed by a spousal agreement or court order shall equal the former spouse's pro rata share of 50 percent of the annuity to which the principal is entitled on the date the divorce becomes final, or, if not then entitled to an annuity, 50 percent of the annuity to which the principal first becomes entitled following that date. A pension to a former spouse of a disability annuitant shall be calculated on the basis of an annuity for which the participant would qualify if not disabled. A pension to a former spouse will be increased by the same percentage of each cost-of-living adjustment received by the principal.

(d) The Department will initiate payment of a pension to a former spouse after complying with the notification and other procedures described in § 19.6.

(e) If a pension can not be paid because a former spouse is missing, the principal may file an affidavit with PER/ER/RET that he/she does not know the whereabouts of the former spouse. In such an event, the principal and the Department will follow the procedures in § 19.11-4 in an effort to locate the former spouse. The annuity of the principal will be reduced by the amount of the pension to the former spouse even though the latter is not being paid. If the former spouse has not been located during the 12-month period following the date the principal files an affidavit under this section, the annuity of the principal will be recomputed effective from its commencing date (or on the date following the last month a pension payment was made to the former spouse) and paid without reduction of the amount of pension to the former spouse. If the former spouse subsequently is located, pension payments to him/her will be initiated at that time at the rate that would have been payable had they been paid continuously from the original effective date. The Department shall not be liable to make any pension payments to the former spouse for the missing period if the procedures under this section were faithfully complied with nor will the Department be responsible for recovering any payments made to the