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(3) The court has considered sections 8416(a) of title 5, United States Code, and this section as they relate to waiver of the spousal consent requirement for a married Federal employee to elect an annuity without a reduction to provide a survivor benefit to a spouse at retirement; and

(4) The court finds that exceptional circumstances exist justifying waiver of the nonemployee spouse's consent.

[52 FR 2061, Jan. 16, 1987, as amended at 57 FR 54679, Nov. 20, 1992]

§842.608 Changes of election before final adjudication.

An employee or Member may name a new survivor or change his or her election of type of annuity if, not later than 30 days after the date of the first regular monthly payment, the named survivor dies or the employee or Member files with OPM a new written election. All required evidence of spousal consent or justification for waiver of spousal consent, if applicable, must accompany any new written election under this section.

[56 FR 65419, Dec. 17, 1991]

§842.609 [Reserved]

§842.610 Changes of election after final adjudication.

(a) Except as provided in §842.611, §842.612, or paragraph (b) of this section, an employee or Member may not revoke or change the election or name another survivor later than 30 days after the date of the first regular monthly payment.

(b)(1) Except as provided in §842.605 and paragraphs (b)(2) and (b)(3) of this section, a retiree who was married at the time of retirement and has elected a self-only annuity, a one-half reduced annuity to provide a current spouse annuity, a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity, or an insurable interest rate may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

(2) A current spouse annuity based on an election under paragraph (b)(1) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under §842.613.

(3) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full no later than 18 months after the time of retirement, a deposit equal to the sum of the monthly differences between the annuity paid to the retiree and the annuity that would have been paid if the additional annuity reduction elected under paragraph (b)(1) of this section had been in effect since the time of retirement, plus—

(i) If the election under paragraph (b)(1) of this section changes the annuity from a self only annuity to a fully reduced annuity, 24.5 percent of the retiree's annual annuity, plus 6 percent interest on both; or

(ii) If the election under paragraph (b)(1) of this section changes the annuity from a self only annuity to a one-half reduced annuity or from a one-half reduced annuity to a fully reduced annuity, 12.25 percent of the retiree's annual annuity, plus 6 percent interest on both.

(4) If a retiree makes an election under paragraph (b)(1) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended 30 days after OPM sends the notice of the amount of the deposit.

(5) An election under paragraph (b)(1) of this section cancels any spousal consent under §842.603.

(6) An election under paragraph (b)(1) of this section is void unless filed with OPM before the retiree dies.

(7) If a retiree who had elected a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity (or annuities) makes an election under paragraph (b)(1) of this section which would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under §842.613, the former spouse annuity (or annuities)

must be reduced to not exceed the maximum allowable under § 842.613.

[52 FR 2061, Jan. 16, 1987, as amended at 56 FR 65419, Dec. 17, 1991; 57 FR 54680, Nov. 20, 1992]

§ 842.611 Post-retirement election of a fully reduced annuity or one–half reduced annuity to provide a former spouse annuity.

(a) Except as provided in paragraphs (b) and (c) of this section, when a retiree's marriage terminates after retirement, the retiree may elect in writing a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(b)(1) Qualifying court orders prevent payment of former spouse annuities to the extent necessary to comply with the court order and § 842.613.

(2) A retiree who elects a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity may not elect to provide a former spouse annuity in an amount that either—

(i) Is smaller than the amount required by a qualifying court order; or

(ii) Would cause the sum of all current and former spouse annuities based on a retiree's elections under §§ 842.603, 842.604, 842.612 and this section to exceed the maximum allowed under § 842.613.

(3) An election under this section is void—

(i) In the case of a married retiree, if the current spouse does not consent to the election on a form as described in § 842.606(c) and spousal consent is not waived by OPM in accordance with § 842.607; or

(ii) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 842.603(a)(1) or (a)(2).

(c) An election under this section is not permitted unless the retiree agrees to deposit the amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (a) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest (computed under § 841.107 of this chapter) from the date when each difference occurred.

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

(1) The retiree elects, within 2 years after the event causing the former spouse to lose eligibility, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

(e) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section equals—

(1) Ten percent of the employee's or Member's annuity if the employee or Member elects a fully reduced annuity; or

(2) Five percent of the employee's or Member's annuity if the employee or Member elects a one-half reduced annuity.

[52 FR 2061, Jan. 16, 1987, as amended at 57 FR 54680, Nov. 20, 1992]

§ 842.612 Post-retirement election of a fully reduced annuity or one-half reduced annuity to provide a current spouse annuity.

(a) Except as provided in paragraph (c) of this section, a retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a one-half reduced annuity to provide a current spouse annuity.

(b) Except as provided in paragraph (c) of this section, a retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage—