DON’T OVERLOOK CRITICAL DECISIONS

FOR MANY CURRENT AND FORMER FEDERAL EMPLOYEES, A KEY BENEFIT FROM A LIFETIME OF FEDERAL SERVICE IS the security of knowing that upon their passing, a significant portion of their good federal benefits will be transferred to their surviving spouse or beneficiary. Unfortunately, due to oversights, different benefit eligibilities and inflexible cutoffs for certain survivor benefits, that sometimes doesn’t happen.
Kenneth McCollum, a former deputy program manager at the U.S. Department of the Navy in Dahlgren, VA, retired in 1994 under the Civil Service Retirement System (CSRS) and married in 1997. However, he failed to notify the Office of Personnel Management (OPM) within two years of his marriage to formally elect to receive a reduced CSRS annuity to provide his wife a survivor annuity. As a result, in 2001, OPM refused to allow him to provide her a survivor annuity and coverage under the Federal Employees Health Benefits Program (FEHBP) when he dies.

“The notices of the two-year requirement were set in very small print on the backs of two pay stubs, which I did not read,” says McCollum, who participated in a Narfe magazine survey on survivor benefits issues. “I don’t remember anything about this in the [retirement] debriefing.” His subsequent protestations to OPM to forgive his oversight in the interests of his wife did not lead to a reversal. “There was no effort to understand the cause of the issue, just denial because of the two-year notification requirement,” McCollum says. A subsequent appeal to the Merit Systems Protection Board was denied in 2007.

Had McCollum made a timely election to OPM, his wife would have been entitled to up to 55 percent of McCollum’s CSRS annuity payments for the rest of her life if he predeceases her, with McCollum’s own benefit reduced by roughly 10 percent while he lives to cover his wife’s future survivor annuity.

**DETAILS MATTER**

If there is a lesson learned, McCollum says, it is that retiring federal employees in preretirement counseling, and through subsequent self-education, must pay attention to all the ramifications of potential life events, notably marriage and divorce, even if they do not apply to the retiree at the time of retirement.

McCollum and many others also have learned the painful way that some of the hard numbers that govern eligibility for survivor benefits, many imposed by law, are hard indeed. The two-year marriage notification rule for annuitants is one such number, though OPM officials note that there are some instances in which belated elections have been allowed.

Another is the age 55 in a statutory provision governing survivor annuitant remarriages. Namely, survivor annuities under CSRS and the Federal Employees Retirement System (FERS) terminate if a current or former surviving spouse remarries before the age of 55 (See 5 U.S.C. § 8341(b)(3)(B) (CSRS) and 5 U.S.C. § 8442(d)(1)(B) (FERS)). An exception allows restoration of such benefits for current spouses if they were married for at least 30 years to the deceased employee or annuitant (see 5 U.S.C. § 8341(k)(1) (CSRS) and 5 U.S.C. § 8442(d)(3) (FERS)).

Obligated to follow statutory mandates, OPM frequently draws a tough line on such deadlines, says Denise Clark, a Washington, DC, attorney who assists many federal employees and annuitants with benefits issues.

“The rules regarding timeliness to file claims and to act upon notices are generally very difficult to overcome unless there is a very, very clear reason why the claim wasn’t filed that makes sense,” Clark says.

Some provisions of federal law do attempt to safeguard survivors. In particular, the annuity of a married retiring employee must be reduced to provide a maximum survivor benefit unless the retiree and the spouse jointly waive the spouse’s right to a survivor annuity in writing. An exception exists for this requirement if the spouse’s whereabouts cannot be determined. The retirement application does include an option for the retiring employee to elect a maximum survivor annuity as verification that that is, in fact, what the retiree wants to provide. (See 5 U.S.C. § 8339(j)(1) (CSRS) and 5 U.S.C. § 8416(a) (FERS)).

With many of the rules, narrow exceptions and other noteworthy considerations apply. In addition to the 30-year marriage exception to the under-55 remarriage statutory provision described above, if a surviving spouse whose federal benefits were cut off by remarriage before age 55 has a remarriage that ends in death, divorce or annulment, the annuity restarts in the same amount. (See 5 U.S.C. § 8341(g) (CSRS) and 5 U.S.C. § 8442(d)(2) (FERS)). Given such fine points, federal employees, annuitants and their spouses must carefully read full descriptions of the rules and statutes to fully understand them.
BASIC EDUCATION
A large issue in marriages in which the federal employee or annuitant maintained finances for the couple is that many survivors are not even aware that they are entitled to federal benefits or assume the decedent took necessary actions. “With respect to the need to name a new survivor within two years of marriage, these are often very sad stories – the wife assumes that the husband is taking care of it, and he doesn’t,” says Washington, DC-based federal benefits attorney Edward Passman.

Such events underscore the importance of having both partners in a marital or romantic relationship regularly discuss federal benefits and their requirements and deadlines. It is also important that employees make sure they have all of the designation of beneficiary forms completed in their personnel folders and that they are current at retirement, notes Mary Venerable, NARFE California Federation Service Committee chair.

PARSING THE DETAILS
When a federal annuitant dies after retirement, a designated and eligible surviving spouse is entitled to an annuity at a percentage of what the annuitant would have received, so long as the annuitant made the required survivor benefit elections and deductions. As noted for CSRS, the maximum survivor amount is 55 percent of base salary. For those under the FERS plan, the survivor annuity for a widow or widower can be either at 50 percent of the retiree’s annuity (i.e., the maximum survivor annuity) or 25 percent of the retiree’s annuity. (See 5 U.S.C. § 8442(a)).

Another important requirement is nine months of marriage. Namely, the annuitant must have been married to the spouse for nine months for the spouse to qualify for an annuity under FERS or CSRS, unless a child was born of the marriage or the death of the annuitant was accidental.

As for children, under both plans, unmarried children who are dependent upon the employee may receive survivor annuity benefits until they reach age 18, marry or die, or until 22 if they are full-time students attending a recognized school. There is no age limit for benefits to unmarried, disabled dependent children if the disability occurred before age 18. The guardian or responsible adult for the child may need to work with OPM to ensure that benefits are not discontinued for disabled dependent children, notes Venerable.

If the federal employee dies before retiring, different rules apply. A FERS employee who completes 18 months of creditable civilian service and was subject to FERS deductions who dies before retiring entitles an eligible spouse to up to two categories of benefits. The spouse must have been married to him or her for nine months or, if married for less time, a child must have been born of the marriage, or the employee’s death must have been accidental.

The first category is the Basic Employee Death Benefit (BEDB), which includes $15,000 (increased by all CSRS cost-of-living adjustments [COLAs] beginning Dec. 1, 1987), plus 50 percent of the employee’s final salary as shown on his or her form SF-50 (or high-three average salary if higher). (See 5 U.S.C. 8442(b)). The effect of the COLAs has been to increase the $15,000 to more than $30,000 currently. This amount can be rolled over to an individual retirement account or paid out in 36 installments, which, given that the BEDB is taxable, can be more desirable from a taxation standpoint.

If the deceased FERS employee also completed 10 years of creditable service and died while FERS deductions were occurring, his or her surviving spouse also is entitled to a monthly survivor annuity, computed based on the amount to which the survivor would be entitled had the deceased employee retired on the date of death at 50 percent of the deceased employee’s annuity.

A CSRS employee who dies before retiring leaves an annuity (but not a BEDB benefit) to a surviving spouse if he or she completed 18 months’ service and was subject to CSRS deduc

OPM says that statutes limit its ability to excuse deadline violations.
SURVIVOR BENEFITS

tions and if the surviving spouse was married to him or her for nine months or, if married for less time, a child was born of the marriage, or the employee’s death was accidental. The benefit amount is 55 percent of the annuity computed as if the employee had retired on disability as of the date of his or her death, including a 40 percent guaranteed minimum.

A lump sum that includes the unpaid balance of retirement contributions made by the employee or annuitant to fund his or her FERS or CSRS retirement plan, and not paid out through annuity or survivor annuity payments, also may be payable to designated survivors or other beneficiaries. This lump sum is payable to a designated beneficiary or under the order of precedence, which is to the surviving spouse, then children, then parents and then to several additional categories.

As for health benefits, a widow or widower of a deceased retiree or employee who is eligible for a survivor annuity under either CSRS or FERS, and who was covered under a self and family option under the FEHBP at the time of the retiree’s or employee’s death, can continue to participate in the program at the same cost as applies to federal employees and retirees. But those spouses not receiving survivor benefits will lose FEHBP upon the death of the retiree.

Notes Venerable: “No survivor benefits means no health insurance after death.”

For annuitants who marry or remarry and contact OPM to elect survivor benefits within the two-year limit to enable a survivor benefit for their new spouse, one expensive surprise is that, pursuant to statute, OPM will go back and apply a deduction that would have been subtracted for the new spouse had the annuitant been married at the time of retirement, even though there was no spouse to be covered.

One annuitant who retired from the U.S. Department of Veterans Affairs (VA) in 2008 and remarried in 2011, says that when he sought to add the survivor annuity for his new spouse, he discovered that that gap amounted to $34,772 and would result in a permanent $257 per month “actuarial” reduction to his annuity, even if the new marriage ended. When added to the $860 per month standard reduction to enable a survivor annuity, electing a survivor benefit for his new wife would have reduced his annuity from $8,832 to $7,715 to provide her with a $4,857 survivor’s benefit. “We decided to drop the whole thing and not enroll my new wife as a potential survivor for my CSRS annuity,” the VA annuitant says.

DIVORCE

Divorce is one of the other major areas of controversy for survivor benefits. Basically, OPM will follow the terms of the divorce decree as to what a former spouse or spouses will receive as survivors of annuitants and deceased employees. If the federal employee divorced before separating from federal service, OPM will require a copy of the divorce decree to process the annuity. However, the onus is on the divorced spouse or his or her legal representative to demonstrate that the divorce decree expressly provides for the surviving ex-spouse to receive a benefit and to provide the divorce decree to OPM to begin receiving the benefit.

“You should guide your divorce attorney to the OPM website and make sure they insert the necessary sections from there into the divorce decree,” says Clark. “Also, make sure that you walk through with the divorce attorney what federal benefits are available, and take into account the possibility of a second spouse and detail in the agreement about how survivor benefits will be handled if that occurs.”

CHANGING STATUS

Notice to OPM of changed beneficiary status – such as the passing of a survivor – should be done with great clarity as to what life event occurred to whom, and which benefits should and should not be adjusted or eliminated, a number of respondents to the narfe magazine survey noted. Some survey respondents said OPM had made errors in executing the changes that took months to correct.

There are also tax considerations posed by federal benefits to survivors, notes David Snell, director of federal benefits service for NARFE. “One issue is how the IRS treats retirement contributions for purposes of taxation,” Snell says. “Part of the monthly annuity is nontaxable as an employee contribution. So when you get to the end of the year, the form 1099-R received by annuitants from OPM describes which amounts...
are taxable and which are nontaxable. But they don’t provide that breakout for survivors, who may not be aware that a portion of their survivor annuity benefits are not taxable. They have to look at IRS Publication 721, which shows how U.S. civil service retirees should handle taxable and nontaxable portions and provides a formula to determine the relevant breakdown.” Snell also notes that there are occasions when a survivor might wish to disclaim benefits temporarily, such as to qualify for Medicaid or other benefits that have an income cap. He notes that federal rules allow survivors to waive receipt of benefit, rather than the benefit itself, which enables the beneficiary to reactivate payments at a later date, though payments already waived cannot be recovered.

**SOCIAL SECURITY**

Certain family members may be eligible to receive monthly Social Security benefits from a decedent who paid into the system, even before the retirement of that individual, including:

1. A widow or widower can receive full retirement benefits at that individual’s full retirement age, or reduced benefits at 60 or older (age 50 or older if disabled);
2. A widow or widower at any age who is caring for the deceased’s child under age 16 or disabled;
3. An unmarried child of the deceased who is: either younger than age 18 (or up to age 19 if he or she is a full-time student in an elementary or secondary school), or age 18 or older with a disability that began before age 22;
4. A stepchild, grandchild, stepgrandchild or adopted child under certain circumstances;
5. Parents, age 62 or older, who were dependent on the deceased for at least half of their support; and
6. A surviving divorced spouse, under certain circumstances.

However, federal annuitants who receive a federal annuity based on work where they did not pay Social Security taxes, such as those under CSRS, may see their spouse’s, widow’s or widower’s Social Security benefits reduced by two-thirds of his or her government pension. (See www.ssa.gov/pubs/EN-05-10007.pdf.) Some narfe magazine survey respondents complained that the Government Pension Offset completely eliminated the Social Security survivor benefits they otherwise would have received after their spouse died.

In addition, a surviving spouse or child may receive a special lump-sum death payment of $255 if they meet certain requirements.

**THRIFT SAVINGS PLAN**

In the event of a Thrift Savings Plan (TSP) holder’s death, the funds in a participant’s account are distributed to the beneficiary(ies) indicated on Form TSP3, Designation of Beneficiary. If no form is on file with the TSP, the TSP order of precedence, similar to the rules that states have for distribution of estate assets when decedents do not create wills, takes effect. “If the participant is married and the surviving spouse wants to, he or she can convert the participant’s account to a spousal beneficiary account,” says TSP spokeswoman Kim Weaver. “That allows the surviving spouse to retain the money in the TSP. The surviving spouse cannot contribute new money into the account, but he or she can manage the money in the account.” A guide for beneficiaries is located at www.tsp.gov/PDF/formspubs/tspbk33.pdf and discusses treatment of benefits at death at pages 14-15.

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