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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN: 3206-AM67

Federal Employees' Group Life Insurance Program: Court Orders Prior To July 22, 1998

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to amend regulations regarding the effect of any court decree of divorce, annulment, or legal separation, or any court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation (hereinafter "court order") where the court order expressly provides that an individual receive Federal Employee's Group Life Insurance (FEGLI) benefits. The interim regulations will allow court orders submitted to the appropriate Federal agency before July 22, 1998 to be effective for providing FEGLI benefits if the court order was received in the appropriate office before the insured Federal employee's or annuitant's death. This revision does not affect the current statutory limitation that court orders apply only when FEGLI benefits are based on insured individuals who died after July 22, 1998.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Marguerite Martel, Senior Policy Analyst, at (202) 606-0004 or e-mail: marguerite.martel@opm.gov.

SUPPLEMENTARY INFORMATION: Public Law 105-205, 112 Stat. 683, enacted July 22, 1998, amending section 8705 of title 5, United States Code, required benefits to be paid in accordance with the terms of a court order instead of the otherwise existing statutory order of precedence for payment of benefits under FEGLI. On October 8, 1999, OPM published a final regulation interpreting the law to mean that only those court orders received in the appropriate office after the date the law was enacted would be valid to name a FEGLI beneficiary. The regulation amended § 870.01(d)(2), of title 5, Code of Federal Regulations.

Based on *Pascavage v. Office of Personnel Management*, 773 F. Supp.2d 452 (D. Del. 2011), OPM is changing this regulation to provide FEGLI benefits based on court orders submitted to the appropriate Federal agency before July 22, 1998, so long as the court order was received in the appropriate office before the insured Federal employee's or annuitant's death. This change is consistent with the settlement agreement in this case, *Pascavage v. Office of Personnel Management*, C.A. No.: 09-276-LPS-MPT (D. Del. filed Aug. 6, 2012)¹. This revision does not affect the current statutory limitation that court orders apply only when FEGLI benefits are based on insured individuals who died after July 22, 1998.

Under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551, et seq.) a general notice of proposed rulemaking is required unless an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. In addition, the APA exempts interpretative rules from

¹ The settlement agreement has been preliminarily approved by the Court.

proposed rulemaking procedures. This rule expands benefit eligibility based on a court-approved settlement agreement which requires the agency to amend current regulations in an expeditious manner. Therefore, OPM has concluded that delaying implementation of this rule due to a full notice and public comment period would be impracticable and contrary to the public interest. Further, OPM has determined that this rule is an interpretive rule implementing a court decision and adds little substantive interpretation of the law. For the foregoing reasons, OPM asserts that good cause exists to implement this rule as an interim rule under the APA, 5 U.S.C. § 553(b) and accordingly, adopts this rule on that basis.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule is not considered a major rule because OPM estimates there are relatively few court orders received by the appropriate office before July 22, 1998.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal employees, annuitants and their former spouses.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

John Berry,
Director.

Accordingly, OPM is amending 5 CFR Part 870 as follows:

PART 870--FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. The authority citation for 5 CFR part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251, and section 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106-522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110-279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C.

8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110-177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104-106, 110 Stat. 521.

2. In § 870.801, paragraph (d)(2) is revised to read as follows:

§ 870.801 Order of precedence and payment of benefits.

* * * * *

(d) * * *

(2) To qualify a person for such payment, a certified copy of the court order must be received in the appropriate office before the death of the insured.

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