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(vi) The standard Federal income tax withholding tables;

(vii) The amount of cost-of-living adjustments under section 8340 or section 8462 of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(viii) The amount of pay adjustments to the General Schedule under section 5303 (or section 5305 prior to November 5, 1990) of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(ix) The provision of law under which a retiree has retired; and

(x) Whether a retiree has elected to provide survivor benefits for a current spouse, former spouse, or a person with an insurable interest.

(c)(1) A court order directed at employee annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the employee annuity.

(2) A court order directed at employee annuity is not a court order acceptable for processing if it awards the former spouse a ''community property'' fraction, share, or percentage of the employee annuity and does not provide a formula by which OPM can compute the amount of the former spouse's share of the employee annuity from the face of the court order or from normal OPM files.

(d) A court order directed at employee annuity is not a court order acceptable for processing if the court order awards a portion of the ''present value'' of an annuity unless the amount of the ''present value'' is stated in the court order.

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by—

(1) A fixed amount or fixed annual amounts that are stated in the order;

(2) The rate of cost-of-living or salary adjustments as those terms are described in § 838.622;

(3) The percentage change in pay that the employee actually received excluding changes in grade and/or step; or

(4) The percentage change in either of the national indices used to compute cost-of-living or salary adjustments as those terms are described in § 838.622.

§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.

(a) A court order directed at employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are net annuity, gross annuity, or self-only annuity, which are defined in § 838.103. Unless the court order otherwise directs, OPM will apply the formula, percentage, or fraction to gross annuity. Section 838.625 contains information on other methods of describing these types of annuity.

Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions

REGULATORY STRUCTURE

§ 838.401 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders that affect refunds of employee contributions under CSRS or FERS. OPM must comply with court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that—

(1) Award a portion of a refund of employee contributions to a former spouse; or

(2) If the requirements of §§838.431 and 838.505 are met, bar payment of a refund of employee contributions.

(b) This subpart prescribes—

(1) The circumstances that must occur before refunds of employee contributions are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of a refund of employee contributions based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart E of this part contains the rules that a court order directed at a refund of employee contributions must satisfy to be a court order acceptable for processing.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect on a refund of employee contributions of a court order acceptable for processing.

AVAILABILITY OF FUNDS

§838.411 Amounts subject to court orders.

(a)(1) Refunds of employee contributions are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the refund of employee contributions to the separated employee have been met, including, but not limited to—

(i) Separation from a covered position in the Federal service;

(ii) Application for payment of the refund of employee contributions by the separated employee; and

(iii) Immediate entitlement to a refund of employee contributions.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at refunds of employee contributions.

(b) Payment under a court order may not exceed the amount of the refund of employee contributions.

APPLICATION AND PROCESSING PROCEDURES

§838.421 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of a refund of employee contributions. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at a refund of employee contributions.

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or separated employee, such as his or her full name, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee or separated employee has not applied for a refund of employee contributions, the current mailing address of the employee or separated employee.

§838.422 Timeliness of application.

(a) Except as provided in §838.431 and paragraph (b) of this section, a court order acceptable for processing that is directed at a refund of employee contributions is not effective unless OPM receives the documentation required by §838.421 not later than—

(1) The last day of the second month before payment of the refund; or

(2) Twenty days after OPM receives the Statement required by §831.2007(c) or §843.208(b) of this chapter if the former spouse has indicated on that Statement that such a court order exists.

(b) If OPM receives a copy of a court order acceptable for processing that is directed at a refund of employee contributions but not all of the documentation required by §838.421, OPM will notify the former spouse that OPM must receive the missing items within 15 days after the date of the notice or

OPM cannot comply with the court order.

[57 FR 33574, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993]

§ 838.423 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at a refund of employee contributions, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order;

(iii) Whether OPM has a record of unrefunded employee contributions on the employee;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of a refund of employee contributions; and

(vi) That, if the former spouse disagrees with the formula, the former spouse must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of the refund of employee contributions;

(vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) The failure of OPM to provide, or of the employee or separated employee or the former spouse to receive, the information specified in this section does not affect the validity of payment under the court order.

§ 838.424 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart E of this part.

§ 838.425 Contesting the validity of court orders.

(a) An employee or separated employee who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee or separated employee submits a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.

PAYMENT PROCEDURES

§ 838.431 Correcting failures to provide required spousal notification.

The interests of a former spouse with a court order acceptable for processing that is directed at a refund of employee

contributions who does not receive notice of an application for refund of employee contributions because the employee or separated employee submits fraudulent proof of notification or fraudulent proof that the former spouse's whereabouts are unknown are protected if, and only if—

(a) The former spouse files a court order acceptable for processing that affects or bars the refund of employee contributions with OPM no later than the last day of the second month before the payment of the refund; or

(b) The former spouse submits proof that—

(1) The evidence submitted by the employee was fraudulent; and

(2) Absent the fraud, the former spouse would have been able to submit the necessary documentation required by §838.421 within the time limit prescribed in §838.422.

§838.432 Court orders barring payment of refunds.

A court order, notice, summons, or other document that attempts to restrain OPM from paying a refund of employee contributions is not effective unless it meets all the requirements of §838.505 or part 581 of this chapter.

PROCEDURES FOR COMPUTING THE AMOUNT PAYABLE

§838.441 Computing lengths of service.

(a) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

(b) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions

§838.501 Purpose and scope.

This subpart regulates the requirements that a court order directed at or barring a refund of employee contributions must meet to be a court order acceptable for processing.

(a) A court order is directed at a refund of employee contributions if it awards a former spouse a portion of a refund of employee contributions.

(b) A court order bars a refund of employee contributions if it prohibits payment of a refund of employee contributions to preserve a former spouse's court-awarded entitlement to a portion of an employee annuity or to a former spouse survivor annuity.

§838.502 Expressly dividing a refund of employee contributions.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it expressly awards a former spouse a portion of a refund of employee contributions as provided in paragraph (b) of this section.

(b) To expressly award a former spouse a portion of a refund of employee contributions as required by paragraph (a) of this section, the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in §838.611; and

(2) Expressly state that the former spouse is entitled to a portion of a refund of employee contributions using terms that are sufficient to identify the refund of employee contributions as explained in §838.612.

§838.503 Providing for payment to the former spouse.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it provides for OPM to pay a portion of a refund of employee contributions to the former spouse as provided in paragraph (b) of this section.

(b) To provide for OPM to pay a portion of a refund of employee contributions to the former spouse as required by paragraph (a) of this section, the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the employee or separated employee to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the refund of employee