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MODEL PARAGRAPHS

APPENDIX A TO SUBPART F OF PART 838—RECOMMENDED LANGUAGE FOR COURT ORDERS DIVIDING EMPLOYEE ANNUITIES

This appendix provides recommended language for use in court orders attempting to divide employee annuity. A court order directed at employee annuity should include five elements:

- Identification of the benefits;
- Instructions that OPM pay the former spouse;
- A method for computing the amount of the former spouse's benefit;
- Identification of the type of annuity to which to apply a fraction, percentage or formula; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

The court order may also include instructions for disposition of the former spouse's share if the former spouse dies before the employee. By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language in this appendix does not award a benefit that is payable after the death of the employee. A separate, distinct award of a former spouse survivor annuity is necessary to award a former spouse a benefit that is payable after the death of the employee. Appendix A to subpart I of this part contains model language for awarding survivor annuities and contains some examples that award both a portion of an employee annuity and a survivor annuity.

The model language uses the terms ''[former spouse]'' to identify the spouse who is receiving a former spouse's portion of an employee annuity and ''[employee]'' to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as ''Petitioner'' and ''Respondent,'' or the names of the parties should replace ''[former spouse]'' and ''[employee].''

Similarly, the models are drafted for employees covered by the Civil Service Retirement System. The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System.

TABLE OF CONTENTS

000 Series—Special technical provisions.

¶001 Language required in Qualified Domestic Relations Orders.

100 Series—Identification of the benefits and instructions that OPM pay the former spouse.

¶101 Identifying retirement benefits and directing OPM to pay the former spouse.
¶102–110 [Reserved].
¶111 Protecting a former spouse entitled to military retired pay.

200 Series—Computing the amount of the former spouse's benefit.

¶201 Award of a fixed monthly amount.
¶202 Award of a percentage.
¶203 Award of a fraction.
¶204 Award of a prorata share.
¶205–210 [Reserved].
¶211 Award based on a stated formula.
¶212–230 [Reserved].
¶231 Awarding COLA's on fixed monthly amounts.
¶232 Excluding COLA's on awards other than fixed monthly amounts.

300 Series—Type of annuity.

¶301 Awards based on benefits actually paid.
¶302–310 [Reserved].
¶311 Awards of earned annuity in cases where the actual annuity is based on disability.

400 Series—Refunds of employee contributions.

¶401 Barring payment of a refund of employee contributions.
¶402 Dividing a refund of employee contributions.

500 Series—Death of the former spouse.

¶501 Full annuity restored to the retiree.
¶502 Former spouse share paid to children.
¶503 Former spouse share paid to the court.

000 Series—Special technical provisions.

¶001 Language required in Qualified Domestic Relations Orders.

Using the following paragraph will expressly state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part. A court order directed at employee annuity (or awarding a survivor annuity) that is labelled a ''Qualified Domestic Relations Order'' or is issued on an ERISA form will not be automatically rendered unacceptable under §838.302(a) or §838.803(a) if the court order contains the following paragraph.

''The court has considered the requirements and standard terminology provided in part 838 of Title 5, Code of Federal Regulations. The terminology used in the provisions of this order that concern benefits under the Civil Service Retirement System are governed by the standard conventions established in that part.''

100 Series—Identification of the benefits and instructions that OPM pay the former spouse.

¶ 101 Identifying retirement benefits and directing OPM to pay the former spouse.

Using the following paragraph will expressly divide employee annuity to satisfy the requirements of §838.303 and direct OPM to pay the former spouse a share of an employee annuity to satisfy the requirements of §838.304.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from 200 series of this appendix.] The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 102–110 [Reserved].

¶ 111 Protecting a former spouse entitled to military retired pay.

Using the following paragraph will protect the former spouse interest in military retired pay in the event that the employee waives the military retired pay to allow crediting the military service under CSRS or FERS. The paragraph should be used only if the former spouse is awarded a portion of the military retired pay. ''If [Employee] waives military retired pay to credit military service under the Civil Service Retirement System, [insert language for computing the former spouse's share from 200 series of this appendix]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

200 Series—Computing the amount of the former spouse's benefits.

Paragraphs 201 through 204 contain model language for the most common types of wards that court orders make to former spouses. Subsequent paragraphs in the 200 series contain model language for less common, more complex awards.

Awards other than fixed amounts require that the court order specify the type of annuity (''gross,'' ''net,'' or self-only) on which the award is computed. The types of annuity are defined in §838.103. Variations on type of annuity are covered by the 300 series of this appendix.

¶ 201 Award of a fixed monthly amount.

Using the following paragraph will award the former spouse a fixed monthly amount. OPM will not apply COLA's to a fixed monthly amount unless the court order expressly directs that OPM and COLA's using the language in ¶231 of this appendix or similar language.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 202 Award of a percentage.

Using the following paragraph will award the former spouse a stated percentage of the employee annuity. Unless the court order expressly directly that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert a number] percent of [employee]'s [insert ''gross,'' ''net,'' or ''self-only''] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 203 Award of a fraction.

Using the following paragraph will award the former spouse a stated fraction of the employee annuity. Unless the court order expressly directly that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert fraction] ths of [employee]'s [insert ''gross,'' ''net,'' or ''self-only''] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 204 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the employee annuity. Prorata share is defined in §838.621. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s [insert 'gross,' 'net,' or self-only] monthly annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 205–210 [Reserved].

¶ 211 Award based on a stated formula.

Using the following paragraphs will award the former spouse a share of the employee annuity based on a formula stated in the court order. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to apply the formula unless the necessary data is contained in normal OPM files.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a share of [employee]'s [insert 'gross,' 'net,' or self-only] monthly annuity under the Civil Service Retirement System to be computed as follows: [Insert formula for computing the former spouse's share.]''

''The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 212–230

¶ 231 Awarding COLA's on fixed monthly amounts.

Using the following paragraph will award COLA's in addition to a fixed monthly amount to the former spouse. The model awards COLA's at the same rate applied to the employee annuity.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. When COLA's are applied to [employee]'s retirement benefits, the same COLA applies to [former spouse]'s share. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 232 Excluding COLA's on awards other than fixed monthly amounts.

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or prorata share of the employee annuity, rather than a fixed dollar amount.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶202, ¶203, ¶204, or ¶211 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert 'when [employee] retires' if the employee has not retired, or 'of this order' if the employee is already retired] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

300 Series—Type of annuity.

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the ''gross,'' ''net,'' or self-only annuity as defined in §838.103 in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from ''gross,'' ''net,'' or self-only annuity as defined in §838.103.

¶ 301 Awards based on benefits actually paid.

The court order may include a formula that effectively uses the court's definition of net annuity rather than the one provided by §838.103. For example, using the following paragraph will award the former spouse a prorata share of the employee annuity reduced only by the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s monthly annuity under the Civil Service Retirement System, where monthly annuity means the self-only annuity less the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶ 302–310 [Reserved].

¶ 311 Awards of earned annuity in cases where the actual annuity is based on disability.

Using the following paragraph will award a former spouse a prorata share of what the employee annuity would have been based on only the employee's actual service in cases where the actual employee annuity is based on disability. The paragraph also allows the court order to provide for the former spouse's share to begin when the employee reaches a stated age, using age 62 as an example. As with all other formulas the court order must specify whether the computation applies to ''gross,'' ''net,'' or self-only annuity. OPM will apply COLA's that occurred after the date of the disability retirement to the former spouse's share. The following paragraph should be used only for disability retirees under CSRS. Under FERS, section 8452 of title 5, United States Code, provides a formula for recomputation of disability annuities at age 62 to approximate an earned annuity. Therefore to award a portion of the ''earned'' benefit under FERS add the introductory phrase, ''Starting when [employee] reaches age 62,'' to the paragraph describing how to compute the amount.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United State's Government. Starting when [employee] reaches age 62, [former spouse] is entitled to a prorata share of [employee]'s [insert ''gross,'' ''net,'' or self-only] monthly annuity under the Civil Service Retirement System, where monthly annuity means the amount of [employee]'s monthly annuity computed as though [employee] had retired on an immediate, nondisability annuity on the commencing date of [employee]'s annuity based on disability. In computing the amount of the immediate annuity, the United States Office of Personnel Management will deem [employee] to have been age 62 at the time that [employee] retired on disability. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

400 Series—Refunds of employee contributions.

Court orders that award a former spouse a portion of a future employee annuity of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee separates before becoming eligible to retire and requests a refund of employee contributions. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

¶ 401 Barring payment of a refund of employee contributions.

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a portion of the employee annuity. ''The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions.''

¶ 402 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The sentence on the beginning date of the marriage is unnecessary if the beginning is stated elsewhere in the order. The award of a prorata share is used only as an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. Note that a refund of employee contributions voids the employee's rights to an employee annuity and the former spouse's right to any portion of that annuity.

''If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

500 Series—Death of the former spouse.

¶ 501 Full annuity restored to the retiree.

No special provision is necessary to restore the entire annuity to the retiree upon the death of the former spouse. Unless the court order expressly provides otherwise, OPM will pay the former spouse's share to the retiree after the death of the former spouse.

¶ 502 Former spouse share paid to children.

Using the following paragraph will award the former spouse's share of an employee annuity to the children, including any adopted children, of the employee and former spouse.

''If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to surviving children of the marriage including any adopted children, in equal shares. Upon the deaths of any child, that child's share will be distributed among the other surviving children.''

The language may be modified to terminate the payments to the children when they reach a stated age. A court order that includes such a provision for termination must include sufficient information (such as the children's dates of birth) to permit OPM to

determine when the children's interest terminate. OPM will not consider evidence outside the court order (and normal OPM files) to establish the children's dates of birth.

¶ 503 Former spouse share paid to the court.

Using the following paragraph will provide for payment of the former spouse's share of an employee annuity to the court after the death of the former spouse. This would allow a court officer to administer the funds. ''If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to this court at the following address: ''[Insert address where checks should be sent. The address may be up to six lines and should include sufficient information for court officials to credit the correct account.]''

Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

§ 838.701 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 awarding former spouse survivor annuities under CSRS or FERS (including the FERS basic employee death benefit as defined in § 843.102 of this chapter). OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award former spouse survivor annuities.

(b) This subpart prescribes—

(1) The commencing and terminating dates of former spouse survivor annuities based on court orders acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a former spouse survivor annuity based on a court order under section 8341(h) or section 8445 of title 5, United States Code.

(c)(1) Subpart H of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to award a former spouse survivor annuity.

(2) Subpart I of this part contains definitions that OPM uses to determine the effect of a court order in connection with a former spouse survivor annuity.

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

Limitations on Survivor Annuities

§ 838.711 Maximum former spouse survivor annuity.

(a) Under CSRS, payments under a court order may not exceed the amount provided in § 831.641 of this chapter.

(b) Under FERS, payments under a court order may not exceed amount provided in § 842.613 of this chapter plus the basic employee death benefit as defined in § 843.102 of this chapter.

[57 FR 33574, July 29, 1992, as amended at 58 FR 52882, Oct. 13, 1993]

Application and Processing Procedures

§ 838.721 Application requirements.

(a)(1) A former spouse (personally or through a representative) must apply in writing to be eligible for a former spouse survivor annuity based on a court order acceptable for processing. No special form is required to give OPM notice of the court order.

(2) OPM may require an additional application after the death of the employee, separated employee, or retiree. This additional application will be on a form prescribed by OPM.

(b)(1) The application letter under paragraph (a)(1) of this section must be accompanied by—

(i) A certified copy of the court order;

(ii) 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;

(iii) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(iv) The current mailing address of the former spouse;

(v) If the employee has not retired or died, the mailing address of the employee; and