AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

satisfy the requirements of §838.804(b)(2).

(3) In court orders which contain internal contradictions about the type of annuity, such as ''insurable interest annuity under section 8341(h),'' the section reference will control.

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

COMPUTATION OF BENEFIT

§838.921 Determining the amount of a former spouse survivor annuity.

(a) A court order that contains no provision stating the amount of the former spouse survivor annuity provides the maximum former spouse survivor annuity permitted under §831.641 or §842.613 of this chapter and satisfies the requirements of §838.805.

(b)(1) A court order that provides that ''a former spouse will keep'' or ''an employee or retiree will maintain'' the survivor annuity to which he or she was entitled at the time of the divorce satisfies the requirements of §838.805 and provides a former spouse survivor annuity in the same proportion to the maximum survivor annuity under §831.641 or §842.613 of this chapter as the former spouse had at the time of divorce. For example, a former spouse of an employee would be entitled to a maximum survivor benefit; a former spouse of a retiree (who was married to the retiree at retirement and continuously until the divorce resulting in the court order) would be entitled to the survivor benefit elected at retirement.

(2) If, at the time of divorce, the employee covered by FERS had at least 18 months of civilian service creditable under FERS but less than 10 years of service creditable under FERS, a former spouse with a court order described in paragraph (b)(1) or paragraph (b)(2) of this section may be entitled to the basic employee death benefit as defined in §843.102 of this chapter, but is not entitled to any other former spouse survivor annuity based on the court order.

(c)(1) A court order that awards a former spouse survivor annuity of less than $12 per year satisfies the requirements of §838.805 and provides an initial rate of $1 per month plus all cost-of-living increases occurring after the later of—

(i) The date of the court order; or

(ii) The date when the employee retires.

(2) The reduction in the employee annuity will be computed as though the court order provided a former spouse survivor annuity of $1 per month.

(d)(1) A court order that awards a former spouse survivor annuity while authorizing the employee or retiree to elect a lesser former spouse survivor annuity upon the employee's or retiree's remarriage satisfies the requirements of §838.805, and provides the former spouse survivor annuity at the rate initially provided in the court order but does not allow the employee or retiree to elect a lesser benefit for the former spouse.

(2) To provide full survivor annuity benefits to a former spouse while authorizing the employee or retiree to elect a lesser former spouse survivor annuity benefit in order to provide survivor annuity benefits for a subsequent spouse, the court order must provide for a reduction in the former spouse survivor annuity upon the employee's or retiree's election of survivor annuity benefits for a subsequent spouse.

(3) A reduction in the amount of survivor benefits provided to the former spouse does not satisfy the requirements of §838.805 if it is contingent upon the employee's or annuitant's remarriage rather than his or her election of survivor annuity benefits for a subsequent spouse.

[57 FR 33574, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993; 58 FR 52882, Oct. 13, 1993]

§838.922 Prorata share defined.

(a) *Prorata share* means the fraction of the maximum survivor annuity allowable under §831.641 or §842.613 of this chapter whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a ''prorata share'' of a survivor annuity by using that term

and identifying the date when the marriage began satisfies the requirements of § 838.805 and awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of a survivor annuity, as of a specified date before the employee's retirement, awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the ''value'' of a survivor annuity as of a specific date before retirement, without specifying what ''value'' is, awards the former spouse a former spouse survivor annuity equal to a prorata share as defined in paragraph (a) of this section.

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

§ 838.923 Cost-of-living adjustment before the death of a retiree.

A court order that awards a former spouse survivor annuity is deemed to order OPM to add to the survivor annuity rate cost-of-living adjustments that occur before the death of a retiree (in the same manner as these adjustments are applied to the survivor rate generally) unless the court order contains an instruction expressly directing OPM not to add these adjustments to the survivor annuity rate. (See § 838.735 for information concerning cost-of-living adjustments after the death of an employee or retiree.)

MISCELLANEOUS PROVISIONS

§ 838.931 Court orders that provide temporary awards of former spouse survivor annuities.

A provision in a court order that temporarily awards a former spouse survivor annuity satisfies the requirements of § 838.804(b)(2), but the temporary award becomes permanent on the date on which OPM is barred from honoring a modification of the court order (the date of retirement or death, or, in the case of a post-retirement divorce, the date of the initial court order), as provided in sections 8341(h)(4) and 8445(d) of title 5, United States Code.

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

§ 838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.

(a) Except as provided in paragraph (b) of this section, a court order that gives the former spouse the right to elect a former spouse survivor annuity satisfies the requirements of § 838.804(b)(2) and provides a former spouse survivor annuity in the amount otherwise provided by the court order.

(b) A former spouse who has been awarded a former spouse survivor annuity by a court order that gives the former spouse the right to elect a former spouse survivor annuity may irrevocably elect not to be eligible for a former spouse survivor annuity based on the court order.

(c) The former spouse may make the election under paragraph (b) of this section at any time after the issuance of the court order. An election under paragraph (b) of this section—

(1) Must be in writing and in the form prescribed by OPM;

(2) Is effective on the first day of the month following the month in which OPM received the election; and

(3) Is irrevocable once it has become effective.

(d) The reduction in an employee annuity based on a court order that gives the former spouse the right to elect a former spouse survivor annuity terminates on the last day of the month in which OPM receives the former spouse's election under paragraph (b) of this section.

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

§ 838.933 Payment of the cost of a former spouse survivor annuity.

(a) A court order that unequivocally awards a former spouse survivor annuity and directs the former spouse to pay for that benefit satisfies the requirements of § 838.805, and—

(1) If the former spouse has also been awarded a portion of the employee annuity then the cost of the survivor benefit will be deducted from the former spouse's share of the employee annuity