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order ending) the marriage if the court divides any marital property (or approves a property settlement agreement that divides any marital property) in that order, or in any order issued before that order); or

(ii) The original written order issued after the marriage has been terminated in which the court first divides any marital property (or first approves a property settlement agreement that divides any marital property) if no marital property has been divided prior to the issuance of that order.

(2) The first order dividing marital property does not include—

(i) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the court order making the amendment, explanation, clarification, or interpretation; or

(ii) Any court order issued under reserved jurisdiction or any other court order issued subsequent to the original written order that divide any marital property regardless of the effective date of the court order.

[57 FR 33574, July 29, 1992, as amended at 58 FR 3202, Jan. 8, 1993]

§ 838.807 Cost must be paid by annuity reduction.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, from annuity paid by OPM. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(b) The amount of the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, may be paid—

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is directed at employee annuity; or

(2) By reduction of the employee annuity.

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by section 8339(j)(4) or section 8419 of title, 5, United States Code, from the employee annuity.

Subpart I—Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

REGULATORY STRUCTURE

§ 838.901 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award a former spouse survivor annuity in a court order, and for OPM to determine whether a court order awarding a former spouse survivor annuity is a court order acceptable for processing and the amount of the former spouse survivor annuity.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse survivor annuity.

(2) This subpart informs the legal community about the definition to be applied to terms used in court orders, to permit the resulting orders to be more carefully drafted, using the proper language to accomplish the aims of the court.

(c)(1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse survivor annuity.

(2) By using the language in appendix A of this subpart, the court, attorneys, and parties will know that the court order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the appendix.

IDENTIFICATION OF BENEFITS

§ 838.911 Identifying the retirement system.

(a) To satisfy the requirements of §838.804(b)(1), a court order must contain language identifying the retirement system affected. For example, ''CSRS,'' ''FERS,'' ''OPM,'' or ''Federal Government'' survivor benefits, or ''survivor benefits payable based on service with the U.S. Department of Agriculture,'' etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits, does not satisfy the requirements of §838.804(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of §838.804(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to this entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of §838.804(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse survivor annuity under CSRS or FERS. Such a court order does not satisfy the requirements of §838.804(b)(1).

(d) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of §838.804(b)(1), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in §843.102 of this chapter at the time of the divorce.

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

§838.912 Specifying an award of a former spouse survivor annuity.

(a) To satisfy the requirements of §838.804(b)(2), a court order must specify that it is awarding a former spouse survivor annuity. The court order must contain language such as ''survivor annuity,'' ''death benefits,'' ''former spouse survivor annuity under 5 U.S.C. 8341(h)(1),'' etc.

(b)(1) A court order that provides that the former spouse is to ''continue as'' or ''be named as'' the beneficiary of CSRS survivor benefits or similar language satisfies the requirements of §838.804(b)(2).

(2) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of §838.804(b)(2), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in §843.102 of this chapter at the time of the divorce.

(c) Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Under CSRS, section 8341(h) of title 5, United States Code, provides for ''former spouse survivor annuities'' and section 8339(k) of title 5, United States Code, provides for ''insurable interest annuities.'' These are distinct benefits, each with its own advantages. The corresponding FERS provisions are sections 8445 and 8444, respectively.

(1) OPM will enforce court orders to provide section 8341(h) or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8341(h) or section 8445 annuity, the court order must use terms such as ''former spouse survivor annuity,'' ''section 8341(h) annuity,'' or ''survivor annuity.''

(2) OPM cannot enforce court orders to provide ''insurable interest annuities'' under section 8339(k) or section 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The retirees may also elect to cancel the insurable interest annuity to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the nonemployee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement or if another former spouse has already been awarded a section 8341(h) annuity. However, the court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM cannot enforce the court order. Language including the words ''insurable interest'' or referring to section 8339(k) or section 8444 does not

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

(if sufficient to cover the total cost—there will be no partial withholding); otherwise,

(2) The reduction will be taken from the employee annuity and collection from the former spouse will be a private matter between the parties.

(b) a court order that conditions the award of a former spouse survivor annuity on the former spouse's payment of the cost of the benefit satisfies the requirements of §838.805 only if a court order acceptable for processing also awards the former spouse a portion of the employee annuity sufficient to cover the cost.

MODEL PARAGRAPHS

APPENDIX A TO SUBPART I OF PART 838—RECOMMENDED LANGUAGE FOR COURT ORDERS AWARDING FORMER SPOUSE SURVIVOR ANNUITIES

This appendix provides recommended language for use in court orders awarding former spouse survivor annuities. A former spouse survivor annuity is not a continuation of a former spouse's share of an employee annuity after the death of the employee. A former spouse's entitlement to a portion of an employee annuity cannot continue after the death of the employee. A court order that attempts to extend the former spouse's entitlement to a portion of an employee annuity past the death of the employee is not effective. The model language in this appendix does not award benefits payable to the former spouse during the lifetime of the employee. A separate, distinct award of a portion of the employee annuity is necessary to award a former spouse a benefit during the lifetime of the employee. Appendix A to subpart F of this part contains model language for a portion of an employee annuity.

Attorneys should exercise great care in preparing provisions concerning former spouse survivor annuities because sections 8341(h)(4) and 8445(d) of title 5, United States Code, prohibit OPM from accepting modifications after the retirement or death of the employee. (See §838.806 concerning unacceptable modifications.) A court order awarding a former spouse survivor annuity should include four elements:

- Identification of the retirement system;
- Explicit award of the former spouse survivor annuity.
- Method for computing the amount of the former spouse's benefit; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language uses the terms ''[former spouse]'' to identify the spouse who is receiving a former spouse survivor 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, except when the provision applies only to the basic employee death benefit (defined in §843.103 of this chapter) that is available only under the Federal Employees Retirement System, the models are drafted for employees covered by the Civil Service Retirement System (5 U.S.C. 8331 *et seq.*). The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System (5 U.S.C. chapter 84.).

Statutory references used in the models are to CSRS provisions (such as section 8341(h) of title 5, United States Code). When appropriate, the corresponding FERS provision (such as section 8445 of title 5, United States Code) should be used.

TABLE OF CONTENTS

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

¶701 Award of the maximum survivor annuity.
¶702 Award that continues the pre-divorce survivor annuity benefits.
¶703 Award of a prorata share.
¶704 Award of a fixed monthly amount.
¶705–710 [Reserved]
¶711 Award of a percentage or fraction of the employee annuity.
¶712 Award based on a stated formula as a share of employee annuity.
¶713–720 [Reserved].
¶721 Award of a percentage or fraction of the maximum survivor annuity.
¶722 Award based on a stated formula as a share of maximum survivor annuity.
¶723–750 [Reserved].
¶751 Changing amount of former spouse survivor annuity based on remarriage before retirement.
¶752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

800 Series—Paying the cost of a former spouse survivor annuity.

¶801 Costs to be paid from the employee annuity.
¶802 Costs to be paid from former spouse's share of the employee annuity.

900 Series—Refunds of employee contributions.

¶901 Barring payment of a refund of employee contributions.
¶902 Dividing a refund of employee contributions.

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

Paragraphs 701 through 704 contain model language for awards of former spouse survivor annuities in amounts that do not require specification of the base on which the former spouse's share will be computed. Situations in which the computational base need not be specified include amounts defined by law or regulation. For example, the maximum former spouse survivor annuity is fixed by statute generally at 55 percent of the employee annuity under CSRS and 50 percent of the employee annuity under FERS.

Paragraphs 711 and 712 contain model language for awards of former spouse survivor annuities that use the employee annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Paragraphs 721 and 722 contain model language for awards of former spouse survivor annuities that use the maximum possible survivor annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Using the maximum possible survivor annuity as the base will generally award 55 percent under CSRS and 50 percent under FERS of the amount that using the employee annuity as the base would produce.

Paragraphs 750 and higher contain model language to implement the most common other types of awards.

Each model paragraph includes a reference to the statutory provision under CSRS that authorizes OPM to honor court orders awarding former spouse survivor annuities. The FERS statutory provision that corresponds to section 8341(h) (mentioned in the first sentence of each example) is section 8445.

¶ 701 Award of the maximum survivor annuity.

Using the following paragraph will award the maximum possible former spouse survivor annuity. Under CSRS, the maximum possible survivor annuity is 55 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time. Under FERS, the maximum possible survivor annuity is 50 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System.''

¶ 702 Award that continues the pre-divorce survivor annuity benefits.

Using the following paragraph will award a former spouse survivor annuity equal to the amount that the former spouse would have received if the marriage were never terminated by divorce.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System in the same amount to which [former spouse] would have been entitled if the divorce had not occurred.''

¶ 703 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the maximum possible survivor annuity. Prorata share is defined in §838.922. 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.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annunity under the Civil Service Retirement System. The amount of the former spouse survivor annunity will be equal to a prorate share. The marriage began on [insert date].''

¶ 704 Award of a fixed monthly amount.

Using the following paragraph will award a former spouse survivor annunity that will start at the amount stated in the order when the employee or retiree dies, unless the stated amount exceeds the maximum possible former spouse survivor annunity. If the amount stated in the order exceeds the maximum possible former spouse survivor annunity, the court order will be treated as awarding the maximum. After payment of the former spouse survivor annuity has began, COLA's will be applied in accordance with §838.735. If the final sentence of this model paragraph is omitted, OPM will add COLA's occurring after the date of the employee's retirement or the date of issuance of the court order, whichever is later.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annunity under the Civil Service Retirement System. The amount of the former spouse survivor annunity will be equal to $[insert a number] per month. The Office of Personnel Management is ordered not to increase this amount by COLA's occurring before death of [employee or retiree].''

¶ 705–710 [Reserved].

¶ 711 Award of a percentage or fraction of the employee annunity.

Using the following paragraph will award a former spouse survivor annunity equal to the stated percentage or fraction of the employee annunity. The stated percentage or fraction may not exceed 55 percent under CSRS or 50 percent under FERS.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annunity under the Civil Service Retirement System. The amount of the former spouse survivor annunity will be equal to [insert a percentage or fraction] percent of the [employee]'s employee annunity.''

¶ 712 Award based on a stated formula as a share of employee annuity.

Using the following paragraphs will award a former spouse survivor annuity in an amount to be determined by applying a stated formula to employee annuity. The amount of the former spouse survivor annuity may not exceed 55 percent of the employee annuity under CSRS or 50 percent under FERS. 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 evaluate the formula unless the necessary data is contained in normal OPM files.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the [employee]'s employee annuity computed as follows:

''[Insert formula.]''

¶ 713–720 [Reserved].

¶ 721 Award of a percentage or fraction of the maximum survivor annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the maximum possible survivor annuity. The stated percentage or fraction may not exceed 100 percent.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to [insert a percentage or fraction] of the maximum possible survivor annuity.

¶ 722 Award based on a stated formula as a share of maximum survivor annuity.

Using the following paragraphs will award a former spouse survivor annuity based on a stated formula to be applied to the maximum possible survivor annuity. 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 evaluate the formula unless the necessary data is contained in normal OPM files.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the maximum possible survivor annuity computed as follows:

''[Insert formula.]''

¶ 723–750 [Reserved].

¶ 751 Changing amount of former spouse survivor annuity based on remarriage before retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries before retirement. Upon the employee's remarriage before retirement the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts may be substituted. Similar language is not acceptable for remarriages after retirement.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] remarries before retirement. If [employee] remarries before retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert data].''

¶ 752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries after retirement and elects to provide a survivor annuity for the spouse acquired after retirement. Upon the employee's remarriage after retirement and election to provide a survivor annuity for the spouse acquired after retirement, the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts maybe substituted. The change in the amount of the former spouse survivor annuity must be triggered by the election,

which is a part of normal OPM files, rather than the remarriage, which is not documented in normal OPM files.

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] elects to provide a survivor annuity for a new spouse acquired after retirement. If [employee] elects to provide a survivor annuity to a new spouse acquired after retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert data].''

800 Series—Paying the cost of a former spouse survivor annuity.

A court order awarding a former spouse survivor annuity requires that the employee annuity be reduced. The reduction lowers the gross employee annuity. The costs associated with providing the former spouse survivor annuity must be paid by annuity reduction. Under §838.807, if the former spouse is awarded a portion of the employee annuity sufficient to pay the cost associated with providing the survivor annuity, the former spouse's share maybe reduced to pay the cost.

¶ 801 Costs to be paid from the employee annuity.

No special provision on payment of the costs associated with providing the former spouse survivor annuity is necessary if the court intends the cost to be taken from the employee annuity.

¶ 802 Costs to be paid from former spouse's share of the employee annuity.

Using the following paragraph will award the former spouse a prorata share of the employee annuity and a prorata share of the maximum possible survivor annuity and provide that the cost associated with the survivor annuity be deducted from the former spouse's share of the employee annuity. Prorata share and self-only annuity are used as examples only; another amount or type of annuity may be substituted.

''[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 self-only monthly annuity under the Civil Service Retirement System. [Former spouse]'s share of [employee]'s employee annuity will be reduced by the amount of the costs associated with providing the former spouse survivor annuity awarded in the next paragraph. 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].''

''Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share.

900 Series—Refunds of employee contributions.

Court orders that award a former spouse survivor annuity based on the service 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 requests a refund of employee contributions before becoming eligible to retire. 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.

¶ 901 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 former spouse survivor annuity. ''The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions.''

¶ 902 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 award of a prorata share is used only an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. A refund of employee contributions voids the employee's rights to an employee annuity unless the employee is reemployed under the retirement system. Payment of the refund of employee contributions will also extinguish the former spouse's right to a court-ordered portion of an employee annuity or a former spouse survivor annuity unless the employee is reemployed and reestablishes title to annuity benefits.

''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.]''

Subpart J—Court Orders Affecting Civil Service Retirement Benefits

SOURCE: 50 FR 20077, May 13, 1985, unless otherwise noted. Redesignated at 57 FR 33596, July 29, 1992.

§ 838.1001 [Reserved]

§ 838.1002 Relation to other regulations.

(a) Part 581 of this chapter contains information about garnishment of Government payments including salaries and civil service retirement benefits.

(b) Parts 294 and 297 of this chapter and § 831.106 of this chapter contain information about disclosure of information from OPM records.

(c) Subpart F of part 831 of this chapter, subpart F of part 842 of this chapter, and subpart C of part 843 of this chapter contain information about entitlement to survivor annuities.

(d) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about entitlement to lump-sum death benefits.

(e) Parts 870, 871, 872, and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(f) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(g) Section 831.109 of this chapter contains information about the administrative review rights available to a person who has been adversely affected by an OPM action under this subpart.

[50 FR 20077, May 13, 1985. Redesignated and amended at 57 FR 33596, 33598, July 29, 1992]

§ 838.1003 Definitions.

In this subpart:

Associate Director means the Associate Director for Retirement and Insurance in the OPM or an OPM official authorized to act on his or her behalf.

Court order means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

CSRS means subchapter III of chapter 83 of title 5, United States Code.

Employee retirement benefits means employees' and Members' annuities and refunds of retirement contributions but does not include survivor annuities or lump-sum payments made pursuant to section 8342 (c) through (f) of title 5, United States Code.

Former spouse means (1) in connection with a court order affecting employee retirement benefits, a living person whose marriage to an employee, Member, or retiree has been subject to a divorce, annulment, or legal separation resulting in a court order; or (2) in connection with a court order awarding a former spouse annuity, a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

Former spouse annuity means a former spouse annuity as defined in § 831.603 of this chapter.

Gross annuity means the amount of a self-only annuity less only applicable survivor reduction, but before any other deduction.

Member means a Member of Congress.

Net annuity means the amount of annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums pursuant to section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this title, (3) deducted for life insurance premiums pursuant to section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, or (5) properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the individual claimed all dependents to which he or she was entitled.

Qualifying court order means a court order that meets the requirements of § 838.1004.

Retiree means a former employee or Member who is receiving recurring payments under CSRS based on service