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APPENDIX A TO SUBPART J OF PART 838—GUIDELINES FOR INTERPRETING STATE COURT ORDERS DIVIDING CIVIL SERVICE RETIREMENT BENEFITS

UNITED STATES OF AMERICA

OFFICE OF PERSONNEL MANAGEMENT

RETIREMENT AND INSURANCE GROUP

GUIDELINES FOR INTERPRETING STATE COURT ORDERS DIVIDING CIVIL SERVICE RETIREMENT BENEFITS

These guidelines explain the interpretation that the Office of Personnel Management (OPM) will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

A substantial number of State court orders are drafted under the mistaken belief that the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 *et seq.*) applies to CSRS benefits. Sections 1003(b)(1) and 1051 of title 29, United States Code, exempt CSRS from ERISA, because CSRS is a ''governmental plan'' as defined in section 1001(23) of title 29, United States Code. Accordingly, OPM does not honor ERISA Qualifying Domestic Relations Orders (QDRO's) except to the extent that the law governing CSRS expressly authorizes compliance with State court orders. OPM will honor the orders to the extent permitted by CSRS. However, many provisions of ERISA QDRO's are not authorized under CSRS. Most significantly, a court cannot require that payments to the former spouse begin before the employee actually retires (i.e., begins to receive benefits) and, unless the order expressly provides that the former spouse is entitled to a survivor annuity, the payments to the former spouse cannot continue after the employee dies.

I. Computations generally

A. Adjustments affecting court-awarded benefits. 1. Orders that award adjustments to a former spouse stated in terms such as ''cost-of-living adjustments'' or ''COLAs'' occurring after the date of the decree but before the date of retirement will be interpreted to award increases equal to the adjustments described in or effected under section 8340 of title 5, United States Code.

2. Orders that award adjustments to a former spouse stated in terms such as ''salary adjustments'' or ''pay adjustments'' occurring after the date of the decree will be interpreted to award increases equal to the adjustments described in or effected under section 5303 of title 5, United States Code until the date of retirement.

3. Unless otherwise specified in the order, adjustments described in section 8340 of title 5, United States Code will be applied after the date of retirement.

B. Application of COLAs. 1. Unless the court directly and unequivocally orders otherwise, decrees that divide annuities either on a percentage basis or by use of a formula will be interpreted to entitle the former spouse to salary adjustments occurring after the date of the decree and cost-of-living adjustments occurring after the date of the decree or occurring after the date of the employee's retirement, whichever comes later.

2. On the other hand, decrees that award a former spouse a specific dollar amount from the annuity will be interpreted as excluding salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.

3. Orders that contain a general instruction to calculate the former spouse's share effective at the time of divorce or separation will not be interpreted to prevent the inclusion of salary adjustments occurring after the specified date. To prevent the application of salary adjustments after the date of the divorce or separation, the decree must either state the exact dollar amount of the award to the former spouse or specifically state that salary adjustments after the specified date are to be disregarded in computing the former spouse's share.

4. Orders that require OPM to compute a benefit as of a specified date, and specifically state that salary adjustments after the specified date are to be disregarded in computing the former spouse's share will not be interpreted to prevent the application of COLAs *after* the date of the Federal employee's retirement. To award COLAs between the specified date and the Federal employee's retirement, the order must specifically state that the former spouse will receive the benefit of any COLAs occurring between the specified date and the date of the Federal employee's retirement. To prevent the application of COLAs after the retirement date, the decree must either state the exact dollar amount of the award to the former spouse or specifically state that the former spouse will not receive the benefit of COLAs occurring after the date of the Federal employee's retirement.

C. Present value. 1. Orders that award a portion of the ''present value'' of an annuity will not be honored unless the amount of the ''present value'' is stated in the order. (See 5 CFR 838.1004(b).)

2. Orders that award a portion of the ''present value'' of an annuity stated in the order will be interpreted as awarding ''a specific dollar amount.'' Unless the court specifically states otherwise, such an award payable from a monthly annuity benefit will be paid in equal installments at 50 percent of the monthly annuity rate at the time of retirement or the date of the order, whichever comes later, until the specific dollar amount is reached.

3. Orders that award a portion of the ''value'' of an annuity as of a specific date before retirement, without specifying what ''value'' is, will be interpreted as awarding a portion of the annuity equal to the monthly annuity rate at the time of retirement times a fraction, the numerator of which is the number of months of ''creditable service'' or service worked as of the date specified and the denominator of which is the total number of months as of the time of retirement of ''creditable service'' or service worked, whichever term is used in the court order. (See III. C. of these Guidelines.)

4. Orders that contain general language awarding a specified portion of a Federal employee's ''retirement benefits'' as of a specified date before retirement, but do not specify whether OPM should use ''creditable service'' or ''service worked'' as of the date specified to complete the computation, will be interpreted to award a portion of the annuity equal to the monthly annuity rate at the time of retirement times a fraction, the numerator of which is the number of months of service worked as of the date specified and the denominator of which is the number of months of ''creditable service'' as of the time of retirement.

D. Annuity as of a date before retirement. Orders that award a portion of an employee's annuity as of a specified date *before* the employee's retirement will be interpreted as awarding a portion of the annuity equal to the monthly annuity rate at the time of retirement times a fraction, the numerator of which is the number of months of ''creditable service'' or service worked as of the date specified and the denominator of which is the number of months of ''creditable service'' or service worked used in the retirement computation.

E. Formulas or percentage instructions. Orders that contain both a formula or percentage instruction and a dollar amount will be interpreted as including the dollar amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control.

F. Computation limited to a particular period of employment. In order to limit the computation of benefits to a particular period of employment, the court order must use language expressly limiting the period of service to be included in the computation. General language such as ''benefits accrued as a result of employment with the U.S. Postal Service * * *'' will be interpreted to mean only that CSRS retirement benefits are subject to division (see V.A. of appendix A to subpart J of part 838). Such language will not be interpreted to limit the period of service included in the computation (i.e., service performed with other Government agencies will be included). To limit the period of service, the court order should specify the number of months to be included in the computation or should describe specifically the period of service to be included in the computation (e.g., ''only U.S. Postal Service'' or ''exclusive of any service other than U.S. Postal Service employment'' or ''only service performed during the period Petitioner and Defendant were married'' or ''benefits based on service performed through the date of divorce,'' etc.).

G. Amounts less than $12 per year. Orders awarding a former spouse less than $12 per year are qualifying court orders. Such orders will be interpreted as an award of $1 per month.

II. Types of annuity

A. Gross annuity will be interpreted as the amount of the annuity payable after any applicable survivor reduction but before any other deduction.

B. 1. To divide an annuity before any applicable survivor reduction, the decree must contain language to the effect that the division is to be made on the self-only annuity, the life-rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of ''gross annuity'' will not accomplish this purpose.

2. To divide an annuity before the social security offset under section 8349 of title 5, United States Code, the order must expressly state that the division is to occur before the social security offset. The term ''unreduced annuity'' will mean annuity after the social security offset.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in §838.1003.

D. Orders that fail to state the type of annuity that they are dividing will be interpreted as dividing gross annuity (defined above).

E. Orders dividing a ''retirement check'' will be interpreted as dividing net annuity (as defined in §838.1003).

III. Calculating time

A. The smallest unit of time that will be used in computing a formula in a decree is a month.

1. This policy is based on section 8332 of title 5, United States Code, that allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts, even where the court order directs OPM to make a more precise calculation. However, if the court order states a formula using a specified simple or decimal fraction other than twelfth parts, OPM will use the specified number to perform simple mathematical computations. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measured *in years and twelfth parts.*

B. The term ''military service'' will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as ''military service,'' except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. 1. Unused sick leave is counted as ''creditable service'' on the date of separation for immediate retirement; it is not apportioned over the time when earned.

2. When an order contains a formula for dividing annuity that requires a computation of service worked as of a date prior to separation and using terms such as ''years of service,'' ''total service,'' or similar terms, the time attributable to unused sick leave will not be included.

3. When an order contains a formula for dividing annuity that requires a computation of ''creditable service'' (or some other phrase using ''credit'' or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows—

(i) If the amount of unused sick leave is specified, the order will be interpreted to award a portion of the annuity equal to the monthly annuity at retirement times a fraction, the numerator of which is the number of months of ''creditable service'' as of the date specified plus the number of months of unused sick leave specified and whose denominator is the months of ''creditable service'' used in the retirement computation.

(ii) If the amount of unused sick leave is not specified, the order will be interpreted to award a portion of the annuity equal to the monthly rate at the time of retirement times a fraction, the numerator of which is the number of months of ''creditable service'' as of the date specified (no sick leave included) and whose denominator is the number of months of ''creditable service'' used in the retirement computation.

IV. Distinguishing Between Divisions of Annuity and Refunds of Contributions

A. Orders that are unclear about whether they are dividing an annuity or a refund of contributions will be interpreted as dividing an annuity.

B. Orders using ''annuities,'' ''pensions,'' ''retirement benefits,'' or similar terms will be interpreted as dividing an annuity and whatever other employee benefits become payable, such as refunds. Orders using ''contributions,'' ''deductions,'' ''deposits,'' ''retirement accounts,'' ''retirement fund,'' or similar terms will be interpreted as dividing the amount of contributions the employee has paid into the Civil Service Retirement Fund. Unless the court order specifically states otherwise, when an annuity is payable, such orders will be paid in equal monthly installments at 50 percent of the monthly annuity at the time of retirement or the date of the order, whichever comes later, until the specific dollar amount is reached.

V. Identifying Benefits Affected

A. Orders that do not specify what pension or retirement benefits are to be divided will not be interpreted as dividing CSRS benefits. Terms such as ''CSRS,'' ''United States,'' ''OPM,'' ''Federal Government'' benefits, ''Postal Service retirement benefits,'' ''retirement benefits payable based on service with the U.S. Department of Agriculture,'' or similar terms will be considered sufficient to identify civil service retirement benefits for division.

B. Except as provided below, orders directed at other retirement systems will not be interpreted as affecting CSRS benefits.

1. Orders that mistakenly label CSRS benefits as Federal Employees Retirement System (FERS) benefits, will be interpreted as dividing CSRS benefits and *vice versa*.

2. Unless the order expressly provides otherwise, for employees transferring to FERS, orders directed at CSRS benefits will be interpreted as applying to the entire FERS basic benefit, including the CSRS component, if any.

C. Orders directed at other Federal retirement systems such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits will not be interpreted as dividing CSRS benefits.

D. Orders dividing military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, will not be interpreted as dividing CSRS benefits. (Such orders cannot be qualifying orders under section 838.1004(b), because the amount cannot be computed from the face of the order or from normal OPM files.)

VI. State Law not Specified in Court Orders

A. 1. Except as provided in Guideline VI.A.2., OPM will not research, interpret, or apply State law regarding community or marital property rights or divisions.

2. OPM will not divide disability retirement benefits when such a division would be contrary to State law unless the order expressly directs division of ''disability'' benefits.

B. Orders that do not specify the ''community property'' fraction or percentage of the former spouse's share will not be considered qualifying because the amount of the benefit cannot be computed from the face of the order or from normal OPM files (5 CFR 838.1004(b)).

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APPENDIX B TO SUBPART J OF PART 838—GUIDELINES FOR INTERPRETING STATE COURT ORDERS AWARDING SURVIVOR ANNUITY BENEFITS TO FORMER SPOUSES

UNITED STATES OF AMERICA

OFFICE OF PERSONNEL MANAGEMENT

RETIREMENT AND INSURANCE GROUP

GUIDELINES FOR INTERPRETING STATE COURT ORDERS AWARDING SURVIVOR ANNUITY BENEFITS TO FORMER SPOUSES

These guidelines explain the interpretation that the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Section 8341(h) of title 5, United States Code, provides for ''former spouse annuities.'' Section 8339(k) of title 5, United States Code, provides for ''insurable interest annuities.'' These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8341(h) 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) annuity, the order must use terms such as ''former spouse annuity,'' ''section 8341(h) annuity,'' or ''survivor annuity.''

B. OPM will not enforce State court orders to provide ''insurable interest annuities'' under section 8339(k). 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 retiree 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 non-employee 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 State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words ''insurable interest'' or referring to section 8339(k) will be interpreted as providing for this type of survivor benefit.

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

II. Orders Directed at Other Retirement Systems

A. Except as provided in paragraphs A1 and A2, orders directed at other retirement systems will not be interpreted as affecting Civil Service Retirement System (CSRS) benefits.

1. Orders that mistakenly label CSRS benefits as Federal Employee's Retirement System (FERS) benefits, will be interpreted as affecting CSRS benefits and *vice versa*.

2. Unless the order expressly provides otherwise, for employees transferring to FERS, orders directed at CSRS benefits will be interpreted as applying to the entire FERS basic benefit, including the CSRS component, if any.

B. Orders directed at other Federal retirement systems such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits will not be interpreted as awarding a former spouse annuity under CSRS. Thus, orders should contain language identifying the retirement system from which survivor benefits are being awarded. For example, orders should contain terms such as ''CSRS,'' ''OPM,'' ''Federal Government employee survivor benefits,'' or ''survivor benefits payable based on service with the U. S. Department of Agriculture,'' etc.

C. Orders affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, will not be interpreted as awarding a former spouse annuity under CSRS.