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INFORMATION
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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

by the employee or Member. *Retiree,* as used in the subpart, does not include a current spouse, former spouse, child or person with an insurable interest.

Self-only annuity means the recurring payment to a retiree who has elected not to provide a survivor annuity to anyone.

[50 FR 20077, May 13, 1985, as amended at 55 FR 9103, Mar. 12, 1990; 56 FR 45884, Sept. 9, 1991. Redesignated and amended at 57 FR 33596–33598, July 29, 1992]

§838.1004 Qualifying court orders.

(a) A former spouse is entitled to a portion of an employee's retirement benefits only to the extent that the divison of retirement benefits is expressly provided for by the court order. The court order must divide employee retirement benefits, award a payment from employee retirement benefits, or award a former spouse annuity.

(b) The court order must state the former spouse's share as a fixed amount, a percentage or a fraction of the annuity, or by a formula that does not contain any variables whose value is not readily ascertainable from the face of the order or normal OPM files.

(c)(1) For purposes of payments from employee retirement benefits, OPM will review court orders as a whole to determine whether the language of the order shows an intent by the court that the former spouse should receive a portion of the employee's retirement benefits directly from the United States.

(i) Orders that direct or imply that OPM is to make payment of a portion of employee retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid in accordance with §838.1009.

(ii) Orders that specifically direct the retiree to pay a portion of employee retirement benefits to a former spouse (and do not contain language to show the court intends payment from the Civil Service Retirement System) will be honored unless the retiree objects to direct payment by OPM within the 30-day notice period prescribed in §838.1008, but will not be honored even if the retiree raises only a general objection to payment by OPM within that 30-day notice period.

(2) For purposes of awarding a former spouse annuity, the court order must either state the former spouse's entitlement to a survivor annuity or direct an employee, Member, or retiree to provide a former spouse annuity.

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; or

(2)(i) The marriage was terminated on or after May 7, 1985; and

(ii) The employee or Member retired under CSRS before May 7, 1985; and

(iii)(A) The employee or Member had elected not to provide a current spouse annuity for that spouse at the time of retirement; or,

(B) In the case of a post-retirement marriage, the annuitant had not elected to provide a survivor annuity for that spouse before May 7, 1985.

(e)(1) For purposes of awarding, increasing, reducing, or eliminating a former spouse survivor annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order dividing the marital property of the retiree and the former spouse.

(2) In paragraph (e)(1) of this section, ''date of retirement'' means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (e)(1) and (e)(4) of this section ''issued'' means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued nunc pro tunc).

(4)(i) In paragraph (e)(1)(ii) of this section, the ''first order dividing the marital property of the retiree and the former spouse'' means—

(A) The original written order that first ends (or first documents an oral 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

(B) 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.

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

(A) 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

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

[50 FR 20077, May 13, 1985, as amended at 51 FR 31936, Sept. 8, 1986; 52 FR 3210, Feb. 3, 1987; 53 FR 48896, Dec. 5, 1988; 53 FR 49638, Dec. 8, 1988. Redesignated and amended at 57 FR 33596–33597, July 29, 1992]

§ 838.1005 Applications by former spouse.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for benefits under this subpart. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order granting benefits under CSRS; and

(2) A statement that the court order has not been amended, superseded, or set aside; and

(3) Identifying information concerning the employee, Member, or retiree such as his or her full name, claim number, date of birth, and social security number, if available; and

(4) The mailing address of the former spouse.

(c) When payments are subject to termination upon remarriage, no payment shall be made until the former spouse submits to the Associate Director a statement on the form prescribed by OPM certifying—

(1) That a remarriage has not occurred; and

(2) That the former spouse will notify the Associate Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage. The Associate Director may subsequently require recertification of these statements.

§ 838.1006 Amounts payable.

(a) Money held by an executive agency or OPM that may be payable at some future date is not available for payment under court orders unless all of the conditions necessary for payment of the money to the former employee or Member have been met, including, but not limited to—

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

(2) Application for payment of the money by the former employee or Member; and

(3) The former employee's or Member's immediate entitlement to payment of the money subject to the order.

(b) Waivers of employee or Member annuity payments under the terms of section 8345(d) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked before the expiration of the 30-day notice period provided by § 838.1008.

(c) Payment under a court order may not exceed—

(1) In cases involving employee or Member annuities, the net annuity.

(2) In cases involving lump-sum payments (refunds), the amount of the lump-sum credit.

(3) In cases involving former spouse annuities, the amount provided in § 831.641 of this chapter.

(d) In cases in which court orders award former spouse annuities—

(1) Except as provided in paragraph (d)(2) of this section, former spouse annuities based on qualifying court orders will commence and terminate in accordance with the court order.

(2) A court order will not be honored to the extent it would require an annuity to commence prior to the day after the employee, Member, or retiree dies, or the first day of the second month beginning after the date on which OPM receives written notice of the court order together with the additional information required by §838.1005. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

(3) A court order will not be honored to the extent is is inconsistent with any joint designation or waiver previously executed under §831.614 of this chapter with respect to the former spouse involved.

[50 FR 20077, May 13, 1985, as amended at 51 FR 31936, Sept. 8, 1986. Redesignated and amended at 57 FR 33596–33598, July 29, 1992; 58 FR 52882, Oct. 13, 1993]

§838.1007 Preliminary review.

(a)(1) Upon receipt of a court order and documentation required by §838.1005 affecting the future civil service retirement benefits of an employee or Member who is living and has not applied for benefits under CSRS, the Associate Director will notify the former spouse that OPM has received the court order and documentation. The court order and documentation will be filed for further review when the employee or Member dies or funds become available under §838.1006.

(2) When OPM has received a court order and documentation required by §838.1005 affecting an employee or Member who retires, dies, or applies for a lump-sum benefit, the Associate Director will determine whether the court order is a qualifying court order under §838.1004.

(3) Upon receipt of a court order and necessary documentation required by §838.1005 affecting employee retirement benefits that are available under §838.1006 or awarding a former spouse annuity to a former spouse of an employee who retired under CSRS or died, the Associate Director will determine whether the court order is a qualifying court order under §838.1004.

(b) Upon preliminary determination that the court order is qualifying, the Associate Director will give the notifications required by §838.1008.

(c) Upon preliminary determination that the court order is not qualifying, the former spouse will be notified of the basis for the determination and the right to reconsideration under §831.109 of this chapter.

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

§838.1008 Notifications.

(a) In a case in which the court order affects employee retirement benefits:

(1) The Associate Director will notify the employee, Member, or retiree that a court order has been received that appears to require that a portion of his or her retirement benefits be paid to a former spouse and provide the employee, Member, or retiree with a copy of the court order. The notice will inform the former employee or Member—

(i) That OPM intends to honor the court order; and

(ii) Of the effect that the court order will have on the former employee or Member's retirement benefits; and

(iii) That no payments will be made to the former spouse for a period of 30 days from the notice date to enable the former employee or Member to contest the court order.

(2) The Associate Director will notify the former spouse—

(i) That OPM intends to honor the court order; and

(ii) Of the amount that the former spouse is entitled to receive under the court order, and in cases that award a portion of the benefits on a percentage basis or by a formula, how the amount was computed; and

(iii) That payment is being delayed for a period of 30 days to give the former employee or Member an opportunity to contest the court order.

(b) In a case in which the court order awards a former spouse annuity—

(1) The Associate Director will notify the retiree, if living, or, if the employee, Member, or retiree is dead, his or her surviving spouse, or the person entitled to the lump-sum death benefit under section 8342 of title 5, United States Code, if possible, that a court order has been received that requires

the payment of a former spouse annuity. The notice will include a copy of the court order. The notice will state—

(i) That OPM intends to honor the court order; and

(ii) The effect it will have on the potential retirement benefit of the person receiving the notice; and

(iii) That any objection to honoring the court order must be filed within 30 days from the notice date.

(2) The former spouse will be notified—

(i) That OPM intends to honor the court order; and

(ii) Of the amount of survivor annuity that he or she will be entitled to receive and how the amount was computed; and

(iii) That anyone adversely affected has a period of 30 days in which to contest the court order.

(c) In a case in which the court order affects employee retirement benefits and awards a former spouse annuity all of the notices under paragraphs (a) and (b) of this section will be provided.

§ 838.1009 Decisions.

(a)(1) When the individual does not respond within the 30-day notice period provided for by §838.1008, the court order will be honored in accordance with the notification.

(2) When a timely response to the notification is received, the Associate Director will consider the response. The former spouse's claim will be denied and the former spouse will be notified of the right to request reconsideration under §831.109 of this chapter whenever is is shown that—

(i) The court order is not a qualifying court order; or

(ii) The court order is inconsistent with a contemporaneous or subsequent court order.

(b) If any person who may lose benefits if OPM honors the court order objects to payment based on the validity of the court order and the record contains reasonable support for the objection, he or she will be granted 30 days to initiate legal action to determine the validity of the objection. If funds are available under §838.1006 and evidence is submitted that legal action had been started before the 30 days have expired, money will continue to be withheld, but no payment will be made to the former spouse pending judicial determination of the validity of the court order.

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

§ 838.1010 Court orders or decrees preventing payment of lump sums.

(a) Payment of the lump-sum credit to a former employee or Member will be subject to the terms of any court order or decree issued with respect to any former spouse or to any current spouse from whom the employee or Member was legally separated, if—

(1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and

(2) Payment of the lump-sum credit would extinguish entitlement of the current or former spouse to a survivor annuity under section 8341(h) of title 5, United States Code, or to any portion of an annuity under section 8345(j) of title 5, United States Code.

(b) For paragraph (a) of this section to have effect, OPM must be in receipt of the court order or decree before authorizing payment of the refund.

(c)(1) In the event that OPM receives two or more court orders or decrees—

(i) When there are two former spouses, the court orders or decrees will be honored in the order in which they were issued until the lump-sum has been exhausted.

(ii) When there are two or more court orders or decrees relating to the same former spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the lump-sum credit.

(d) OPM is not liable for any payment made from money due from or payable by OPM to any individual pursuant to a court order or decree regular on its face, if such payment is made in accordance with this subpart.

(e) Except as provided in paragraph (f) of this section, a court order or decree directed at a refund of retirement contributions is not effective unless the court order or decree and supporting documentation required by §838.1005 are received by OPM 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) of this chapter if the former spouse has indicated on that Statement that such an order exists.

(f) The interests of a former spouse with a court order or decree who does not receive notice of a refund application because the former employee or Member submits fraudulent proof of notification or fraudulent proof that the former spouse's whereabouts are unknown are protected if, and only if—

(1) The former spouse files the court order or decree with OPM no later than the last day of the second month before the payment of the refund; or

(2) The former spouse submits proof that—

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

(ii) Absent the fraud, the former spouse would have been able to submit the necessary documentation required by §838.1005 within the time limit prescribed in paragraph (e) of this section.

(g) Court orders, notices, summons, or other documents that attempt to restrain OPM from paying refunds of retirement contributions are not effective unless they meet all the requirements of—

(1) Paragraph (a) of this section, including the requirement that the court order or decree, or a prior court order or decree, has awarded the former spouse a former spouse annuity as defined in §831.603 of this chapter or a portion of the employee's or Member's future annuity benefit; or

(2) Part 581 of this chapter.

[50 FR 20081, May 13, 1985, as amended at 51 FR 31937, Sept. 8, 1986; 55 FR 9106, Mar. 12, 1990. Redesignated and amended at 57 FR 33596–33598, July 29, 1992]

§838.1011 Effective dates.

(a)(1) The provisions of this subpart apply to any employee retirement benefits regardless of the date of issuance of the court order or the date when the employee or Member retires.

(2) The Associate Director will not increase the amount apportioned from current retirement benefits to satisfy an arrearage due the former spouse unless the court order states the amount of the arrearage and directs that it be paid from the employee retirement benefit. However, the Associate Director will honor the terms of a new or revised court order that either increases or decreases the former spouse's entitlement. These changes will be prospective only.

(3) Benefits payable to a former spouse from a retiree's annuity begin to accrue no earlier than the beginning of the month after receipt of a qualifying court order and the documentation required by §838.1005, and terminate no later than the last day of the month before the death of the retiree.

(b)(1) The provisions of this subpart concerning former spouse annuities apply only with respect to a former spouse of an employee, Member, or retiree who retires or dies while employed in a position covered by CSRS on or after May 7, 1985, or a former spouse whose marriage to an employee, Member, or retiree is terminated on or after May 7, 1985, regardless of the date the employee separates from a position covered by CSRS.

(2) The survivor annuity for a former spouse commences and terminates in accordance with the court order. However, a court order will not be honored to the extent it would require an annuity to commence before—

(i) The day after the employee, Member, or retiree dies; or

(ii) The first day of the second month beginning after OPM receives the court order, together with such additional information required by §838.1005, whichever is later. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

[50 FR 20077, May 13, 1985, as amended at 51 FR 31936, Sept. 8, 1986. Redesignated and amended at 57 FR 33596–33597, July 29, 1992]

§838.1012 Death of the former spouse.

(a) Unless the qualifying court order expressly provides otherwise, the former spouse's share of employee retirement benefits terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee retirement benefits reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a qualifying court order or an amended qualifying court order that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

(1) The court;

(2) An officer of the court acting as a fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8342(c) or section 8424(d) of title 5, United States Code.

[57 FR 33597, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993]

§ 838.1013 Limitations.

(a) Employee retirement benefits are subject to apportionment by court order only while the former employee or Member is living. Payment of apportioned amounts will be made only to the former spouse and/or the children of the former employee or Member. Payment will not be made to any of the following:

(1) The heirs or legatees of the former spouse; or

(2) The creditors of the former employee or Member, or the former spouse; or

(3) Other assignees of the former employee or Member, or the former spouse.

(b) The amount of payment under this subpart will not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars.

(c) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence of a special schedule of accrual or payment of amounts due the former spouse.

(d) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse will also resume.

(e) Since the former spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 838.1014 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the FEDERAL REGISTER a notice of the guidelines it uses in interpreting court orders. Upon publication of the notice in the FEDERAL REGISTER of such guidelines, they will become an appendix to this subpart.

§ 838.1015 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to a court order if such payment is made in accordance with the provisions of this subpart.

§ 838.1016 Receipt of multiple court orders.

In the event that OPM receives two or more qualifying court orders—

(a) When there are two or more former spouses, the court orders will be honored in the order in which they were issued to the maximum extent possible under §§ 831.641 of this chapter and 838.1006.

(b) Where there are two or more court orders relating to the same former spouse, the one issued last will be honored.

[50 FR 20077, May 13, 1985. Redesignated and amended at 57 FR 33596–33598, July 29, 1992; 58 FR 52882, Oct. 13, 1993]

§ 838.1017 Cost-of-living adjustments.

In cases where the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases unless the court directs otherwise.

§ 838.1018 Settlements.

The former spouse may request that an amount be withheld from the retirement benefits that is less than the amount stipulated in the court order. This lower amount will be deemed a complete fulfillment of the obligation

of OPM for the period in which the request is in effect.

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)).

[55 FR 9103, Mar. 12, 1990. Redesignated and amended at 57 FR 33596–33597, July 29, 1992]

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.

III. Specificity Required To Award a Former Spouse Annuity.

A. Orders must contain language identifying the benefits affected. For example, ''CSRS,'' ''OPM,'' or ''Federal Government'' survivor benefits, or ''survivor benefits payable based on service with the U.S. Department of Agriculture,'' etc., will be considered sufficient identification.

B. 1. Except as provided paragraphs B2 through B4, orders must specify the benefit being awarded. Orders must contain language such as ''survivor annuity,'' ''death benefits,'' ''former spouse annuity under 5 U.S.C. 8341(h)(1),'' etc.

2. Orders that provide that the former spouse is to ''continue as'' or ''be named as'' the ''designated beneficiary'' of CSRS benefits will be interpreted to award a former spouse annuity.

3. Orders that provide that the former spouse will ''continue to receive benefits after the death of'' the employee or ''that benefits will continue after the death of'' the employee, but do not use terms such as ''survivor annuity,'' ''death benefits,'' ''former spouse annuity,'' or similar terms will not be interpreted to award a former spouse annuity.

4. Orders that give the former spouse the right to elect a former spouse annuity will be interpreted to award a former spouse annuity. The former spouse does not have an election opportunity. OPM will not accept an election by the former spouse to eliminate the court-awarded former spouse annuity.

C. 1. Orders that unequivocally award survivor annuity and direct the former spouse to pay for that benefit are qualifying court orders. If the former spouse has also been awarded a portion of the retiree's benefits then the cost of the survivor benefit will be deducted from the former spouse's portion of the annuity (if sufficient to cover the total cost—there will be no partial withholding). Otherwise, the reduction will be taken from the retiree's annuity and collection from the former spouse will be a private matter between the parties.

2. Orders that condition the award of survivor annuity on the former spouse's payment of the cost of the benefit are qualifying only if there is also an award of retirement benefits sufficient to cover the cost. Absent a sufficient award of employee retirement benefits to pay the cost of survivor benefits, the order is not qualifying.

D. Orders providing that former spouses will keep the survivor annuity to which they were entitled at the time of the divorce will be interpreted to award a former spouse annuity in the same amount as they had at the time of divorce.

E. Orders that fail to state the amount of the former spouse annuity will be interpreted as providing the maximum former spouse annuity.

F. Orders awarding a former spouse annuity of less than $12 per year are qualifying court orders. Such orders will be interpreted to provide an initial rate of $1 per month plus all cost-of-living increases occurring after the date of the order. The reduction in the retiree's annuity will be computed as though the order provided a former spouse annuity of $1 per month.

G. Orders that provide *full* survivor annuity benefits to a former spouse with the contingency that the employee or annuitant may elect a *lesser* benefit for the former spouse upon his or her remarriage will be interpreted to provide only a full survivor annuity benefit to the former spouse. In order to provide full survivor annuity benefits to a former spouse with the contingency that the employee or annuitant may provide a lesser survivor annuity benefit to the former spouse in order to provide survivor annuity benefits for a subsequent spouse, the order should allow a reduction in the former spouse benefit contingent upon the employee's or annuitant's *election* of survivor annuity benefits for a subsequent spouse. A reduction in the amount of survivor benefits provided to the former spouse will not be permitted 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. (See 5 CFR 838.1004(b).)

[55 FR 9105, Mar. 12, 1990. Redesignated and amended at 57 FR 33596–33597, July 29, 1992]

Subpart K—Court Orders Under the Child Abuse Accountability Act

SOURCE: 59 FR 66637, Dec. 28, 1994, unless otherwise noted.

REGULATORY STRUCTURE

§838.1101 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 child abuse judgment enforcement orders.

(b) This subpart prescribes—

(1) The circumstances that must occur before employee annuities or refunds of employee contributions are available to satisfy a child abuse judgment enforcement order; and

(2) The procedures that a child abuse creditor must follow when applying for