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GPO

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