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(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