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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.