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(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