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(b) The address for delivery of court orders affecting CSRS or FERS benefits by process servers, express carriers, or other forms of handcarried delivery is—

Court-ordered Benefits Section, Allotments Branch, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC

[57 FR 33574, July 29, 1992, as amended at 58 FR 3202, Jan. 8, 1993]

Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

REGULATORY STRUCTURE

§ 838.201 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 State court orders directed at employee annuities under CSRS or FERS. OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award a portion of an employee annuity to a former spouse.

(b) This subpart prescribes—

(1) The circumstances that must occur before employee annuities are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of an employee annuity based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart C of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to affect an employee annuity.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect on employee annuity of a court order acceptable for processing.

AVAILABILITY OF FUNDS

§ 838.211 Amounts subject to court orders.

(a)(1) Employee annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the employee annuity to the former employee have been met, including, but not limited to—

(i) Separation from a position in the Federal service covered by CSRS or FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively;

(ii) Application for payment of the employee annuity by the former employee; and

(iii) The former employee's immediate entitlement to an employee annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at employee annuities.

(3) OPM cannot pay a former spouse a portion of an employee annuity before the employee annuity begins to accrue.

(b) Payment to a former spouse under a court order may not exceed the net annuity.

(c) Waivers of employee annuity payments under the terms of section 8345(d) or section 8465(a) 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 or received before the date that OPM receives a court order acceptable for processing.

APPLICATION AND PROCESSING PROCEDURES

§ 838.221 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of an employee annuity. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at employee annuity;

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS

claim number, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee has not retired under CSRS or FERS or died, the mailing address of the employee.

(c)(1) When court-ordered payments are subject to termination (under the terms of the court order) if the former spouse remarries, no payment will be made until the former spouse submits to OPM a statement in the form prescribed by OPM certifying—

(i) That a remarriage has not occurred;

(ii) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage; and

(iii) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage.

(2) OPM may subsequently require periodic recertification of the statements required under paragraph (c)(1) of this section.

§ 838.222 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins to accrue, and if known, the date on which OPM commences payment under the order;

(iii) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit; and

(iv) That, if he or she disagrees with the amount of the monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins or accrue, and if known, the date on which OPM commences payment under the court order;

(iv) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit;

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vi) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree dies after payments from an employee to a former spouse have begun, OPM will inform the former spouse that the employee or retiree has died and that OPM can only honor court orders dividing employee annuities during the lifetime of the retiree.

(c) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is not in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) That benefits cannot begin to accrue until the employee retires;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit; and

(iv) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee, separated employee, or retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit;