AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(2) For the purpose of describing a period of time to be included in any element of a computation, the term ''military service'' means all periods of military and civilian service performed with the Department of Defense or the Coast Guard.

(c)(1) When a court order contains a formula for dividing employee annuity that requires a computation of service worked as of a date prior to separation and using terms such as ''years of service,'' ''total service,'' ''service performed,'' or similar terms, the time attributable to unused sick leave will not be included.

(2) When a court order contains a formula for dividing employee annuity that requires a computation of ''creditable service'' (or some other phrase using ''credit'' or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation (involving a CSRS employee annuity or the CSRS component of a FERS employee annuity) as follows:

(i) If the amount of unused sick leave is specified, the court order awards a portion of the employee annuity equal to the monthly employee annuity at retirement times a fraction, the numerator of which is the number of months of ''creditable service'' as of the date specified plus the number of months of unused sick leave specified (which sum is rounded to eliminate partial months) and whose denominator is the months of ''creditable service'' used in the retirement computation.

(ii) If the amount of unused sick leave is not specified, the court order awards a portion of the employee annuity equal to the monthly rate at the time of retirement times a fraction, the numerator of which is the number of months of ''creditable service'' as of the date specified (no sick leave included) and whose denominator is the number of months of ''creditable service'' used in the retirement computation (sick leave included).

(d)(1) General language such as ''benefits earned as an employee with the U.S. Postal Service * * *'' provides only that CSRS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., service performed with other Government agencies will be included).

(2) To limit the computation of benefits to a particular period of employment, the court order must—

(i) Use language expressly limiting the period of service to be included in the computation (e.g., ''only U.S. Postal Service'' or ''exclusive of any service other than U.S. Postal Service employment''); or

(ii) Specify the number of months to be included in the computation; or

(iii) Describe specifically the period of service to be included in the computation (e.g., ''only service performed during the period Petitioner and Defendant were married'' or ''benefits based on service performed through the date of divorce'').

§ 838.624 Distinguishing between formulas and fixed amounts.

(a) A court order that contains both a formula or percentage instruction and a dollar amount is deemed to include the dollar amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction controls.

(b) A court order that awards a portion of the ''present value'' of an employee annuity and specifically states the amount of either the ''present value'' of the employee annuity or of the award is deemed to give the former spouse ''a specific dollar amount'' that is payable from a monthly employee annuity and will be paid as a lump-sum award in accordance with § 838.235.

§ 838.625 Types of annuity.

(a) Terms that are synonymous with net annuity are—

(1) Disposable annuity; and

(2) Retirement check.

(b) Terms that are synonymous with self-only annuity are—

(1) Life rate annuity;

(2) Unreduced annuity; and

(3) Annuity without survivor benefit.

(c) All court orders that do not specify net annuity or self-only annuity apply to gross annuity.

MODEL PARAGRAPHS

APPENDIX A TO SUBPART F OF PART 838—RECOMMENDED LANGUAGE FOR COURT ORDERS DIVIDING EMPLOYEE ANNUITIES

This appendix provides recommended language for use in court orders attempting to divide employee annuity. A court order directed at employee annuity should include five elements:

- Identification of the benefits;
- Instructions that OPM pay the former spouse;
- A method for computing the amount of the former spouse's benefit;
- Identification of the type of annuity to which to apply a fraction, percentage or formula; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

The court order may also include instructions for disposition of the former spouse's share if the former spouse dies before the employee. By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language in this appendix does not award a benefit that is payable after the death of the employee. A separate, distinct award of a former spouse survivor annuity is necessary to award a former spouse a benefit that is payable after the death of the employee. Appendix A to subpart I of this part contains model language for awarding survivor annuities and contains some examples that award both a portion of an employee annuity and a survivor annuity.

The model language uses the terms ''[former spouse]'' to identify the spouse who is receiving a former spouse's portion of an employee annuity and ''[employee]'' to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as ''Petitioner'' and ''Respondent,'' or the names of the parties should replace ''[former spouse]'' and ''[employee].''

Similarly, the models are drafted for employees covered by the Civil Service Retirement System. The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System.

TABLE OF CONTENTS

000 Series—Special technical provisions.

¶001 Language required in Qualified Domestic Relations Orders.

100 Series—Identification of the benefits and instructions that OPM pay the former spouse.

¶101 Identifying retirement benefits and directing OPM to pay the former spouse.
¶102–110 [Reserved].
¶111 Protecting a former spouse entitled to military retired pay.

200 Series—Computing the amount of the former spouse's benefit.

¶201 Award of a fixed monthly amount.
¶202 Award of a percentage.
¶203 Award of a fraction.
¶204 Award of a prorata share.
¶205–210 [Reserved].
¶211 Award based on a stated formula.
¶212–230 [Reserved].
¶231 Awarding COLA's on fixed monthly amounts.
¶232 Excluding COLA's on awards other than fixed monthly amounts.

300 Series—Type of annuity.

¶301 Awards based on benefits actually paid.
¶302–310 [Reserved].
¶311 Awards of earned annuity in cases where the actual annuity is based on disability.

400 Series—Refunds of employee contributions.

¶401 Barring payment of a refund of employee contributions.
¶402 Dividing a refund of employee contributions.

500 Series—Death of the former spouse.

¶501 Full annuity restored to the retiree.
¶502 Former spouse share paid to children.
¶503 Former spouse share paid to the court.

000 Series—Special technical provisions.

¶ 001 Language required in Qualified Domestic Relations Orders.

Using the following paragraph will expressly state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part. A court order directed at employee annuity (or awarding a survivor annuity) that is labelled a ''Qualified Domestic Relations Order'' or is issued on an ERISA form will not be automatically rendered unacceptable under §838.302(a) or §838.803(a) if the court order contains the following paragraph.

''The court has considered the requirements and standard terminology provided in part 838 of Title 5, Code of Federal Regulations. The terminology used in the provisions of this order that concern benefits under the Civil Service Retirement System are governed by the standard conventions established in that part.''