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(iii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in §843.102 of this chapter, if applicable); and

(iv) That, if he or she—

(A) 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; or

(B) Disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before he or she retires or dies.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree, the former spouse, or anyone else to receive, the information specified in this section does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the former spouse's entitlement as determined under §838.731.

[57 FR 33574, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993]

§838.723 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in §838.103 or does not meet one or more of the requirements of subpart H of this part.

§838.724 Contesting the validity of court orders.

(a) An employee, retiree or person adversely affected by a court order who alleges that a court order is invalid must prove the invalidity of the court order by submitting to OPM a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee, separated employee, retiree, or person adversely affected by the court order submits to OPM a court order described in paragraph (a) of this section or, if issued before the retirement or death of the employee or separated employee, a court order acceptable for processing amending or superseding the court order submitted by the former spouse.

§838.725 Effect on employee and retiree election rights.

(a) A court order acceptable for processing that awards a former spouse survivor annuity does not affect a retiring employee's or retiree's rights and obligations to make survivor elections under subpart F of part 831 of this chapter or subpart F of part 842 of this chapter.

(b) A court order acceptable for processing that awards a former spouse survivor annuity requires OPM to pay a former spouse survivor annuity and prevents OPM from paying an elected survivor benefit to a widow or widower or another former spouse if the election is inconsistent with the court order.

PAYMENT PROCEDURES

§838.731 Commencing date of payments.

(a) A former spouse survivor annuity based on a court order acceptable for processing begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(1) The first day after the date of death of the employee, separated employee, or retiree; or

(2) The first day of the second month after OPM receives a copy of the court order acceptable for processing.

(b) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and supporting documentation required under §838.721.

§ 838.732 Termination of entitlement.

(a) A former spouse survivor annuity (other than the FERS basic employee death benefit as defined in § 843.102 of this chapter) or the right to a future former spouse survivor annuity based on a court order acceptable for processing terminates in accordance with the terms of the court order but no later than the last day of the month before the former spouse remarries before age 55 or dies.

(b) If the employee dies before the former spouse remarries before age 55 or dies, the former spouse's entitlement to the FERS basic employee death benefit as defined in § 843.102 of this chapter based on a court order acceptable for processing terminates in accordance with the terms of the court order.

[57 FR 33574, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993]

§ 838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.

(a) If a former spouse of a retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing while the retiree is living and—

(1) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will continue the reduction to comply with court orders in the order specified in § 838.135;

(2) If paragraph (a)(1) of this section does not obligate the entire entitlement lost by he former spouse, OPM will continue the reduction to provide a current spouse survivor annuity or a former spouse survivor annuity based on a timely-filed election under § 831.611, § 831.612, § 831.631, § 831.632, § 842.603, § 842.604, § 842.611, or § 842.612 of this chapter; or

(3) If paragraphs (a)(1) and (a)(2) of this section do not obligate the entire entitlement lost by the former spouse, the retiree (except a retiree under CSRS who retired before May 7, 1985 and who remarried before February 27, 1986) may elect within 2 years after the former spouse loses entitlement to continue the reduction to provide a survivor annuity for a spouse acquired after retirement.

(b)(1) If a former spouse of an employee or retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing after the death of the employee or retiree and—

(i) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will pay the next entitled former spouse in the order specified in § 838.135; or

(ii) If paragraph (b)(1) of this section does not obligate the entire entitlement lost by the former spouse, OPM will pay the balance to a current spouse of the deceased—

(A) Retiree who had elected a reduced annuity to provide a current spouse annuity (as defined in § 831.603 or § 842.602); or

(B) Employee.

(2) Except as provided in § 838.734—

(i) The former spouse survivor annuity based on paragraph (b)(1)(i) of this section begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(A) The first day of the month in which the former spouse with the earlier-issued court order loses entitlement; or

(B) The first day of the second month after OPM receives a copy of the court order acceptable for processing; or

(ii) The current spouse annuity under paragraph (b)(1) (ii) of this section begins to accrue on the first day of the month in which the former spouse loses entitlement.

(c) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and supporting documentation required under § 838.721.

[57 FR 33574, July 29, 1992, as amended at 58 FR 52882, Oct. 13, 1993]

§ 838.734 Payment of lump-sum awards by survivor annuity.

OPM will not honor court orders awarding lump-sum payments (other than the FERS basic employee death benefit as defined in § 843.102 of this chapter) to a former spouse upon the death of an employee or retiree.

[57 FR 33574, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993]