
A Handbook for Attorneys on Court-ordered Retirement, Health Benefits and Life Insurance Under the

- **Civil Service Retirement Benefits**
 - **Federal Employees Retirement Benefits**
 - **Federal Employees Health Benefits**
 - **Federal Employees Group Life Insurance Program**
-
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**United States
Office of
Personnel
Management**

**Retirement and
Insurance
Service**

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Court Orders Affecting
Civil Service Retirement Benefits
Federal Employees Retirement Benefits
Federal Employees Health Benefits
and
Federal Employees Group Life Insurance Benefits
Statutes and Regulations

Introduction

This publication contains the Federal statutes and regulations applicable to court orders affecting retirement benefits under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The United States Office of Personnel Management (OPM) administers both of these retirement systems. CSRS covers most employees first hired before 1984. FERS generally covers employees

first hired by the Federal Government after 1983, plus other Federal employees who elected to transfer from CSRS to FERS. The publication also includes the statutes and regulations describing the conditions under which a former spouse's Federal Employees Health Benefits (FEHB) coverage may be continued after a divorce, as well as the statute under which an employee or former employee may make an irrevocable assignment of his or her Federal Employees' Group Life Insurance (FEGLI) coverage.

This publication is for attorneys and others who are involved in the preparation of divorce and separation agreements that involve a current or former employee of the Federal Government.

This publication is for attorneys and others who are involved in the preparation of divorce and separation agreements that involve a current or former employee, including an annuitant, of the Federal Government who is or was covered by the CSRS or FERS.

Introduction

The pocket at the end of this publication contains a 3.5 inch diskette containing the model language that may be used in drafting court orders. The diskette contains three files with the model language in three common word processor formats. **COMODEL.WP** is in *WordPerfect* format. **COMODEL.WRD** is in *Word* format. **COMODEL.GEN** is in a generic word processor format.

Note: Certain individuals who may be covered by other retirement systems (such as the Foreign Service Retirement System) still participate in the FEHB and FEGLI programs. The rules concerning continuation of FEHB coverage for former spouses after divorce and assignment of FEGLI coverage to a former spouse also apply to this group of individuals.

RETIREMENT

Retirement

OPM published revised regulations on court orders affecting retirement benefits in the *Federal Register* on July 29, 1992. These regulations synthesize our experience in processing court orders since 1978. They are designed to make it easier for parties in a divorce to ensure that court orders will be acceptable to OPM for processing, and that OPM will divide CSRS or FERS benefits, or provide a survivor benefit, in accordance with their wishes.

The new regulations, which are reproduced in this document, are very detailed as to what constitutes a court order that is acceptable for processing, and as to the exact meaning of court order terminology. The definitions in these

Appendices to the regulations contain model paragraphs that attorneys can use to ensure that, in drafting orders, the language they select will both produce the intended result and meet OPM's processing requirements.

regulations are designed to give the most commonly-used meaning to words most often encountered in court orders. This will allow OPM to accept as many court orders as possible rather than rejecting orders, which would require the parties to return to State court. To further facilitate preparation of acceptable orders,

The regulations . . . apply to court orders that OPM receives on or after January 1, 1993.

appendices to the regulations contain model paragraphs that attorneys can use to ensure that, in drafting orders, the language they select will both produce the intended result and meet OPM's processing requirements. While the regulations

themselves apply to court orders that OPM receives on or after January 1, 1993, a court order prepared using them also will be acceptable under the regulations that apply to orders that OPM receives before January 1, 1993. In addition, OPM strongly encourages use of the model language to ensure that a court order will be acceptable for processing by OPM.

OPM's role is ministerial, rather than that of a mediator in marital property disputes.

OPM's role is ministerial, rather than that of a mediator in marital property disputes. This latter role belongs to the State courts. If a court order is so flawed that it is not sufficiently clear to satisfy our requirements, the appropriate action is for the parties to return to the State court to correct the problem. Likewise, if a party contends that the court intended its order to have a different meaning than the clear meaning it has under these regulations, the proper forum for the individual's complaint is the State court. OPM will require employees and former spouses to settle disputes in the State courts where they belong, not in Federal proceedings. The courts issuing the orders are in the best position to determine the meaning of their own orders.

Please note that this publication does not contain information on garnishment of pay or annuity of an employee or annuitant for alimony or child support. OPM's regulations governing garnishments may be found in Part 581 of title 5 of the Code of Federal Regulations.

Preparing a Court Order

Exemption from ERISA

A substantial number of State court orders are drafted under the mistaken belief that the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 et seq.) applies to CSRS or FERS benefits. Sections 1003(b)(1) and 1051 of title 29, United States Code, exempt CSRS and

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FERS from ERISA, because CSRS and FERS are "governmental plans" as defined in section 1001(23) of title 29, United States Code.

ERISA created the term "qualified domestic relations order" (QDRO) to describe a court order that summarizes the division of retirement benefits under ERISA plans. QDRO's are not acceptable to affect CSRS or FERS benefits. OPM has seen from experience that attorneys prepare these orders on the assumption that they can provide any benefits available under ERISA to CSRS and FERS. (For example, the most important difference between ERISA plans and CSRS and FERS is that under ERISA the former spouse's share of the benefit can begin when the employee

An order labelled as a QDRO is not acceptable.

reaches the minimum retirement age, even if the employee is still working. However, this benefit is not available under CSRS or FERS. The availability of this early benefit, or lack of availability, can seriously alter negotiations over a settlement agreement.)

Since CSRS and FERS are exempt from ERISA, some provisions that ERISA plans must honor do not apply to CSRS and FERS. For OPM to be able to process court orders in the way intended by the parties, OPM and the court must be speaking the same language. To assure that the court has used our terminology, rather than ERISA's terminology, an order labelled as a QDRO is not acceptable. However, this prohibition against labelling the order as a QDRO does not apply if court orders also **expressly state that they are written in conformity with OPM's regulations**. This exception will guarantee that the purpose of the ban--that the court understands that we are exempt from ERISA and that the court is using the terminology as provided in the regulations--is satisfied by requiring that any QDRO mention the regulations. Model paragraph

¶1001 in appendix A to subpart F of the regulations provides the required language. (See page 74.)

A substantial number of State court orders are drafted under the mistaken belief that the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 et seq.) applies to CSRS or FERS benefits. Sections 1003(b)(1) and 1051 of title 29, United States Code, exempt CSRS and FERS from ERISA.

Benefits payable

A court order may affect any of three types

In preparing a court order, attorneys should keep in mind that we consider each of the three types of awards as separate and independent of the other two, and should exercise great care in each type of benefit they intend to affect.

of retirement benefits paid by OPM. The regulations treat each of the three--employee annuities, refunds of employee contributions, and survivor annuities--independently. In preparing a court order, attorneys should keep in mind that we consider each of the three types of awards as separate and independent of the other two, and should exercise great care in each type of benefit

Retirement

they intend to affect. Our requirement that the award of each type of benefit be independent does not mean that the court award of one type of benefit cannot affect another. For example, awarding a former spouse survivor annuity requires a reduction in the employee annuity. If the former spouse has also been awarded a portion of the gross or net employee annuity, the former spouse's portion of the employee annuity will be affected.

A complete court order requires three separate provisions--one addressing each type of benefit that the court can affect.

A complete court order requires three separate provisions--one addressing each type of benefit that the court can affect. However, frequently, courts intend to award only a portion of the employee annuity or a survivor annuity, rather than a complete retirement package. A court that intends only to divide an employee annuity needs to consider only subparts A, B, C, and F of these regulations. Similarly, if the court intends to award only a survivor annuity, only subparts A, G, H, and I of these regulations apply. To provide a former spouse with a share of an employee annuity or refund of employee contributions and a survivor annuity, the order must include the language required by the appropriate subparts and, preferably, the model language appendices. Note that if the employee receives a refund of retirement contributions, the former spouse's future annuity entitlement will be voided. The court may wish to prevent payment of the refund of retirement contributions or award the former spouse a portion of the refund. Subparts A, D, E, and F apply to refunds of retirement contributions. Paragraph 401 in appendix A to subpart F contains language that may be used to prevent a refund of retirement contributions. (See pages 80-81.) The complete regulatory structure is addressed in section 838.102 of regulations. (See page 31.)

State court orders cannot affect several types of benefits payable under CSRS and FERS. OPM must pay any accrued annuity that is not paid before a retiree's death and any unexpended balance of an employee's retirement contributions that are paid as a death benefit in accordance with the order of precedence established by Federal law. Similarly, eligibility for children's survivor benefits is governed entirely by Federal law and cannot be affected by State court orders.

The employing agency is the proper source for employment and pay information about a current employee's service with that agency.

Information Available From the Federal Government

Information available on current employees

The employing agency is the proper source for employment and pay information about a current employee's service with that agency. OPM does not receive records until after an employee leaves an agency's employment. With regard to requests for an individual's employment and pay records, agency personnel must comply with Privacy Act rules and applicable regulations before disclosing the information.

However, if a current employee has previous employment with a **different** Federal agency (for example, someone who currently is a civilian employee with the Department of the Army, but who previously worked for the U.S. Postal Service), information about the employee's contributions to the Retirement Fund during the **prior** service is only available from OPM.

Retirement

Commonly requested information, which agencies can provide in response to a subpoena signed by a judge or a release signed by the employee, includes a statement of retirement system coverage (CSRS or FERS), the amount of money withheld by that agency to the employee's credit in the retirement fund, and an annuity estimate using the employee's service history to date. The exact requirements for obtaining information vary among agencies. Information about the agency's procedures for obtaining such information should be obtained from the agency involved. If an agency provides an annuity estimate--as agencies generally do for employees at or near retirement--that benefit calculation is only an estimate, and is **not** binding on the Government. Agencies should not provide estimates that would require speculation about future promotions, program changes, or any other non-factual information and should avoid giving annuity estimates for employees who are not close to retirement. Official computations are made by OPM only at the time benefits become payable.

Information on retirees and former employees

OPM is the proper source of information about retirees and former employees.

OPM is the proper source of information about retirees and former employees. OPM has information available on former employees and retirees similar to the information, described in the previous paragraph, available from agencies on current employees. In addition, OPM has annuity rate information on retirees. OPM can release this information only in response to a subpoena signed by a judge or a release signed by the retiree or former employee. The subpoena or release should be sent to:

Associate Director for
Retirement and Insurance

U.S. Office of Personnel
Management
Post Office Box 16
Washington, DC 20044-0016

Please note that a different agency, the Federal Retirement Thrift Investment Board (the Board) administers the Thrift Savings Plan for Federal employees. The Board's regulations governing court orders are in subparts G and I of part 1650 of Title 5, Code of Federal Regulations. Questions about an individual's thrift account or the Board's rules governing court orders should be directed to the

Office of General Counsel
Federal Retirement Thrift
Investment Board
805 15th Street, NW
Washington, DC 20005-2207

Information Not Available From the Government

Federal agency personnel do **not** advise an employee, an employee's spouse, or an attorney about how to draft a court order to award CSRS or FERS benefits. This is the task of the attorneys involved. The requirements that must be satisfied for OPM to honor a court order are set out in the law and regulations provided in this publication. The regulations contain two appendices that provides model language recommended for use in court orders. An agency's efforts to advise individuals in legal matters involving domestic disputes can, despite good intentions, harm more than help.

It is **not** appropriate for agency personnel to attempt a "present value" computation of an employee's future benefits. Also, agencies should not attempt to determine the proper division of benefits between the employee and spouse. Present value computations should be prepared by a qualified private actuary. Such computations of the total actuarial value of retirement benefits require application of various economic and

Retirement

mortality assumptions, and are beyond the scope of an employing agency's or OPM's responsibility.

CSRS Statutory Provisions

Section 8346(a) of title 5, United States Code, exempts CSRS benefits from most State court proceedings. It provides:

§ 8346. Exemption from legal process; recovery of payments

§ 8346. Exemption from legal process; recovery of payments

(a) The money mentioned by this subchapter is not assignable, either in law or equity, except under the provisions of subsection (h) and (j) of section 8345 of this title, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

* * * * *

CSRS Statutory Provisions

Section 8345(j) of title 5, United States Code, permits State courts to award a former spouse certain CSRS benefits. Only benefits that would otherwise be payable to the employee and that are based on the employee's service may be awarded under this provision. Section 8345(j) provides:

**§ 8345. Payment of
benefits; commencement,
termination, and waiver of
annuity**

**§ 8345. Payment of benefits; commencement, termination, and
waiver of annuity**

* * * * *

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(3) As used in this subsection, "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

CSRS Statutory Provisions

Section 8341(h) of title 5, United States Code, permits State courts to award a former spouse entitlement to a survivor annuity in the event that the employee predeceases the former spouse. Special attention should be given to the restriction on modifications provided in paragraph (h)(4). Section 8341(h) provides:

§ 8341. Survivor annuities

§ 8341. Survivor annuities

* * * * *

(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between--

(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

(B) The applicable amount, for purposes of subparagraph(A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable--

(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph(A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in this first sentence of such subsection; or

(iii) under subparagraph(A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

CSRS Statutory Provisions

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity--

(A) shall not commence before--

(i) the day after the employee, Member, or annuitant dies, or

(ii) the first day of the second month beginning after the date on which the Office received written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate--

(i) in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective--

(A) if such modification is made after the retirement or death of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

CSRS Statutory Provisions

(6) Any payment under this subsection to a person bars recovery by any other person.

(7) As used in this subsection, "court" means any court of any State, the District of Columbia, and Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

CSRS Statutory Provisions

Section 8342(j)(1)(B) of title 5, United States Code, permits State courts to block payments of refunds of employee contributions but only if a former spouse has been awarded a portion of the employee annuity or a survivor annuity. Section 8342(j)(1)(B) provides:

**§ 8342. Lump-sum
benefits; designation of
beneficiary; order of
precedence**

**§ 8342. Lump-sum benefits; designation of beneficiary; order of
precedence**

* * * * *

(j)(1) Payment of the lump-sum credit under subsection (a) of
this section--

* * * * *

(B) shall be subject to the terms of a court decree of divorce,
annulment, or legal separation or any court order or court
approved property settlement agreement incident to such decree
if--

(i) the decree, order, or agreement expressly relates to
any portion of the lump-sum credit involved; and

(ii) payment of the lump-sum credit would extinguish
entitlement of the employee's or Member's spouse or former
spouse to a survivor annuity under section 8341(h) of this title
or to any portion of an annuity under section 8345(j) of this
title.

* * * * *

FERS Statutory Provisions

FERS Statutory Provisions

Section 8470(a) of title 5, United States Code, exempts FERS benefits from most State court proceedings. It provides:

§ 8470. Exemption from legal process; recovery of payments

§ 8470. Exemption from legal process; recovery of payments

(a) An amount payable under subchapter II, IV, and V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as otherwise may be provided by Federal laws.

* * * * *

Section 8467 of title 5, United States Code, permits State courts to award a former spouse certain FERS benefits. Only benefits that would otherwise be payable to the employee and that are based on the employee's service may be awarded under this provision. Section 8467 provides:

§ 8467. Court orders

§ 8467. Court orders

(a) Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined under section 8331) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this subsection to a person bars recovery by any other person.

(b) Subsection (a) shall apply only to payments made by the Office or the Executive Director under this chapter after the date on which the Office or the Executive Director (as the case may be) receives written notice of such decree, order, or agreement, and such additional information and documentation as the Office or the Executive Director may require.

FERS Statutory Provisions

Section 8445 of title 5, United States Code, permits State courts to award a former spouse entitlement to a survivor annuity in the event that the employee predeceases the former spouse. Special attention should be given to the restriction on modifications provided in paragraph (d). Section 8445 provides:

§ 8445. Rights of a former spouse

§ 8445. Rights of a former spouse

(a) Subject to subsections (b) through (e), a former spouse of a deceased employee, Member, or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417(b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(b)(1) The annuity payable to a former spouse under this section may not exceed the difference between--

(A) the amount applicable in the case of such former spouse, as determined under paragraph (2); and

(B) the amount of any annuity payable under this section to any other former spouse of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417(b), or a court order previously issued or agreement previously entered into as described in subsection (a).

(2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse were a widow or widower entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.

(c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity--

FERS Statutory Provisions

(1) shall not commence before--

(A) the day after the employee, Member, or annuitant, or former employee or Member, dies; or

(B) the first day of the second month beginning after the date on which the Office received written notice of the order, decree, agreement, or election as the case may be together with such additional information or documentation as the Office may prescribe;

whichever is later, and

(2) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(d) For purposes of this chapter, a modification in a decree, order, agreement, or election referred to in subsection (a) shall not be effective--

(1) if such modification is made after the retirement or death of the employee, Member, or annuitant, or former employee or Member, concerned; and

(2) to the extent that such modification involves an annuity under this section.

(e) For purposes of this chapter, a decree, order, agreement, or election referred to in subsection (a) shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse under section 8416(a).

(f)(1) Any amount under section 8442(b)(1)(A) which would otherwise be payable to a widow or widower based on the service of another individual shall be paid (in whole or in part) by the Office to a former spouse of such individual if and to the extent expressly provided for in the terms of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement incident to any decree of divorce, annulment, or legal separation.

FERS Statutory Provisions

(2) Paragraph (1) shall apply only to payments made by the Office after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(g) Any payment under this section to a person bars recovery by any other person.

FERS Statutory Provisions

Section 8401(7) defines the term "court" as that term is used in FERS. It provides:

§ 8401. Definitions

§ 8401. Definitions

* * * * *

(7) [T]he term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court[.]

* * * * *

Section 8424(b)(1)(B) of title 5, United States Code, permits State courts to block payments of refunds of employee contributions but only if a former spouse has been awarded a portion of the employee annuity or a survivor annuity. Section 8424(b)(1)(B) provides:

§ 8424. Lump-sum Benefits; designation of beneficiary; order of precedence

§ 8424. Lump-sum Benefits; designation of beneficiary; order of precedence

* * * * *

(b)(1) Payment of the lump-sum credit under subsection (a)--

* * * * *

(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if--

(i) the decree expressly relates to any portion of the lump-sum credit involved; and

(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467.

How the Regulations Are Organized

Subpart A of the regulations contains definitions and other material of significance to all types of court orders affecting CSRS or FERS. The rest of the regulations are divided into three major units depending on whether the court order applies to employee annuities, refunds of employee contributions, or former spouse survivor annuities. For each unit, separate subparts cover procedures for processing, requirements that court orders must satisfy, and definitions of terms frequently used in court orders. (The terminology section for employee annuities and refunds of employee contributions are combined to avoid excessive duplication.)

The subparts (B, D and G) regulating procedures contain rules relating to former spouse filing requirements and to our actions upon receipt of court orders. In addition, they contain rules and limitations that the State court cannot change such as when benefits are paid. The subparts (C, E, and H) regulating requirements that court orders must satisfy contain rules pertaining to the requirements that a court order must meet to be acceptable for processing. The subparts (F and I) defining terms explain our understanding of the meaning of terms commonly used in court orders. By choosing the correct term, the State court can tell us exactly what to do. We assume that State courts are familiar with our assigned meanings of these terms and have used them in the way that they are defined in these subparts.

Paragraphs (b) through (i) of section 838.102 contain cross references to other regulations concerning court orders or former spouse benefits. This information may assist in identifying areas in which research may be necessary.

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PART 838--COURT ORDERS AFFECTING RETIREMENT BENEFITS

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Subpart J--Court Orders Received Before January 1, 1993

[Omitted.]

Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, and J also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

Retirement Regulations Court Orders Generally

Subpart A--Court Orders Generally

ORGANIZATION AND STRUCTURE OF REGULATIONS ON COURT ORDERS

§ 838.101 Purpose and scope.

Subpart A--Court Orders Generally

ORGANIZATION AND STRUCTURE OF REGULATIONS ON COURT ORDERS

§ 838.101 Purpose and scope.

(a)(1) This part regulates the Office of Personnel Management's handling of court orders affecting the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), both of which are administered by the Office of Personnel Management (OPM). Generally, OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees, Members, or retirees that award a portion of the former employee's or Member's retirement benefits or a survivor annuity to a former spouse.

(2) In executing court orders under this part, OPM must honor the clear instructions of the court. Instructions must be specific and unambiguous. OPM will not supply missing provisions, interpret ambiguous language, or clarify the court's intent by researching individual State laws. In carrying out the court's instructions, OPM performs purely ministerial actions in accordance with these regulations. Disagreement between the parties concerning the validity or the provisions of any court order must be resolved by the court.

(b) This part prescribes--

(1) The requirements that a court order must meet to be acceptable for processing under this part;

(2) The procedures that a former spouse must follow when applying for benefits based on a court order under sections 8341(h), 8345(j), 8445 or 8467 of title 5, United States Code;

(3) The procedures that OPM will follow in honoring court orders and in making payments to the former spouse; and

(4) The effect of certain words and phrases commonly used in court orders affecting retirement benefits.

(c)(1) Subparts A through I of this part apply only to court orders received by OPM on or after January 1, 1993.

Retirement Regulations Court Orders Generally

(2) Subpart J of this part applies only to court orders received by OPM before January 1, 1993.

(d) This part has no application to the Thrift Savings Plan described in subchapter III of chapter 84 of title 5, United States Code.

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§ 838.102 Regulatory structure.

§ 838.102 Regulatory structure.

(a) This part is organized as follows:

(1) Subpart A contains information and rules of general application to all court orders directed at CSRS or FERS retirement benefits.

(2) Subparts B and C of this part contain information about court orders directed at ongoing employee annuity payments.

(3) Subparts D and E of this part contain information about court orders directed at refunds of employee contributions.

(4) Subpart F of this part contains information about the effect of words and phrases commonly used in court orders affecting ongoing employee annuity payments and refunds of employee contributions.

(5) Subparts G, H, and I of this part contain information about court orders awarding former spouse survivor annuities.

(6) Subpart J of this part contains the rules applicable to court orders filed under procedures in effect prior to the implementation of this part. These rules continue to apply to court orders received by OPM before January 1, 1993.

(b) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(c) Part 581 of this chapter contains information about garnishment of Government payments including salary and CSRS and FERS retirement benefits.

(d) Parts 294 and 297 of this chapter and sections 831.106 and 841.108 contain information about disclosure of information from OPM records.

(e) Subpart V of part 831 of this chapter and subpart G of part 842 of this chapter contain information about how court orders affect eligibility to make an alternative form of annuity election.

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§ 838.103 Definitions.

"ERISA" means the Employees Retirement Income Security Act, 29 U.S.C. 1001 *et seq.*

Retirement Regulations Court Orders Generally

Federal Employees Retirement System or FERS	"Federal Employees Retirement System" or "FERS" means the retirement system for Federal employees described in chapter 84 of title 5, United States Code.
Former spouse	"Former spouse" means (1) in connection with a court order affecting an employee annuity or a refund of employee contributions, a living person whose marriage to an employee has been subject to a divorce, annulment of marriage, or legal separation resulting in a court order, or (2) in connection with a court order awarding a former spouse survivor annuity, a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service covered by CSRS or who performed at least 18 months of civilian service creditable under FERS, and whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.
Former spouse survivor annuity	"Former spouse survivor annuity" means a recurring benefit under CSRS or FERS, or the basic employee death benefit under FERS as described in part 843 of this chapter, that is payable to a former spouse after the employee's or retiree's death.
Gross annuity	"Gross annuity" means the amount of monthly annuity payable after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, "gross annuity" also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.
Member	"Member" means a Member of Congress covered by CSRS or FERS.
Net annuity	"Net annuity" means the amount of monthly annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums under section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this chapter, (3) deducted for life insurance premiums under section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, (5) properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled, or (6) properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled. Unless the court order expressly provides otherwise, "net annuity" also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

Reduction to provide survivor benefits

Refund of employee contributions

Separated employee

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STATUTORY LIMIT ON COURT'S AUTHORITY

§ 838.111 Exemption from legal process except as authorized by Federal law.

§ 838.111 Exemption from legal process except as authorized by Federal law.

(a) Employees, retirees, and State courts may not assign CSRS and FERS benefits except as provided in this part.

(b) CSRS and FERS benefits are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

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Retirement Regulations Court Orders Generally

DIVISION OF RESPONSIBILITIES

§ 838.121 OPM's responsibilities.

§ 838.122 State courts' responsibilities.

§ 838.123 Claimants' responsibilities.

DIVISION OF RESPONSIBILITIES

§ 838.121 OPM's responsibilities.

OPM is responsible for authorizing payments in accordance with clear, specific and express provisions of court orders acceptable for processing.

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§ 838.122 State courts' responsibilities.

State courts are responsible for--

(a) Providing due process to the employee or retiree;

(b) Issuing clear, specific, and express instructions consistent with the statutory provisions authorizing OPM to provide benefits to former spouses and the requirements of this part for awarding such benefits;

(c) Using the terminology defined in this part only when it intends to use the meaning given to that terminology by this part;

(d) Determining when court orders are invalid; and

(e) Settling all disputes between the employee or retiree and the former spouse.

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§ 838.123 Claimants' responsibilities.

Claimants are responsible for--

(a) Filing a certified copy of court orders and all other required supporting information with OPM;

(b) Keeping OPM advised of their current mailing addresses;

(c) Notifying OPM of any changes in circumstances that could affect their entitlement to benefits; and

(d) Submitting all disputes with employees or retirees to the appropriate State court for resolution.

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§ 838.124 Employees' and retirees' responsibilities.

Employees and retirees are responsible for--

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PROCEDURES APPLICABLE TO ALL COURT ORDERS

§ 838.131 Computation of time.

- (a) The rules applicable for computation of time under §§ 831.107 and 841.109 of this chapter apply to this part.

- (b)(1) Appendix A of this subpart lists the proper addresses for submitting court orders affecting CSRS and FERS benefits.

- (2) A former spouse should submit the documentation required by this part to the address provided in Appendix A of this subpart. The component of OPM responsible for processing court orders will note the date of receipt on court orders that it receives.

- (3) If a court order is delivered to OPM at an address other than the address in Appendix A of this subpart, the recipient will forward the court order to the component of OPM responsible for processing court orders. However, OPM is not considered to have received the court order until the court order is received in the component of OPM responsible for processing court orders.

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§ 838.132 Payment schedules.

- (a) Under CSRS and FERS, employee annuities and survivor annuities are payable on the first business day of the month following the month in which the benefit accrues.

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Retirement Regulations Court Orders Generally

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§ 838.133 Minimum awards.

§ 838.133 Minimum awards.

Payments under this part will not be less than one dollar per month. Any court order that awards a former spouse a portion of an employee annuity or a former spouse survivor annuity in an amount of less than one dollar per month will be treated as an award of an annuity equal to one dollar per month.

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§ 838.134 Receipt of multiple court orders.

§ 838.134 Receipt of multiple court orders.

(a) Except as provided in paragraph (c) of this section, for court orders affecting employee annuities or awarding former spouse survivor annuities, in the event that OPM receives two or more court orders acceptable for processing--

(1) When the court orders affect 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 § 838.211 or § 838.711.

(2) When two or more court orders relate to the same former spouse or separated spouse, the one issued last will be honored.

(b)(1) Except as provided in paragraph (c) of this section, for court orders affecting refunds of employee contributions, in the event that OPM receives two or more court orders acceptable for processing--

(i) When the court orders affect two or more former spouses--

(A) The refund will not be paid if either court order prohibits payment of the refund of contributions; otherwise,

(B) The court orders will be honored in the order in which they were issued until the contributions have been exhausted.

(ii) When two or more court orders relate 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 refund of employee contributions.

(c) With respect to issues relating to the validity of a court order or to the amount of payment--

Retirement Regulations Court Orders Generally

(1) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from the same jurisdiction, OPM will consider only the latest court order; or

(2) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from different jurisdictions--

(i) If one of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the court order issued by that jurisdiction; or

(ii) If none of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the latest court order.
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§ 838.135 Settlements.

§ 838.135 Settlements.

(a) OPM must comply with the terms of a properly filed court order acceptable for processing even if the retiree and the former spouse agree that they want OPM to pay an amount different from the amount specified in the court order. Information about OPM's processing of amended court orders is contained in §§ 838.225 and 838.806.

(b)(1) OPM will not honor a request from the former spouse that an amount less than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.

(2) OPM will not honor a request from the retiree that an amount greater than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.
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§ 838.136 Administrative appeal rights.

§ 838.136 Administrative appeal rights.

(a) Issues concerning application of these regulations are not appealable to the Merit Systems Protection Board. OPM's actions to apply these regulations are not subject to further administrative review.

(b)(1) Issues concerning the validity of these regulations are appealable to the Merit Systems Protection Board. Such an appeal must be filed in accordance with the procedures established by the Board and may not be filed before OPM has issued its final decision, including a

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

(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.

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

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APPLICATION AND PROCESSING PROCEDURES

§ 838.221 Application requirements.

(b) The application letter must be accompanied by--

(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;

Retirement Regulations

Procedures for Processing Court Orders Affecting Employee Annuities

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

§ 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

Retirement Regulations

Procedures for Processing Court Orders Affecting Employee Annuities

(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 to 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

Procedures for Processing Court Orders Affecting Employee Annuities

PAYMENT PROCEDURES

§ 838.231 Commencing date of payments.

(a) A court order acceptable for processing is effective against employee annuity accruing beginning the first day of the second month after OPM receives the court order.

(2) If payments are delayed under paragraph (b)(1) of this section, after OPM receives all required documentation, it will authorize payment of the annuity that has accrued since the date determined under paragraph (a) of this section but the payment of which was delayed under paragraph (b)(1) of this section.

§ 838.232 Suspension of payments.

(a) Payments from employee annuities under this part will be discontinued whenever the employee annuity payments are suspended or terminated. If employee annuity payments to the retiree are restored, payments to the former spouse will also resume subject to the terms of any court order acceptable for processing in effect at that time.

(b) Paragraph (a) of this section will not be applied to permit a retiree to deprive a former spouse of payment by causing suspension of payment of employee annuity.

§ 838.233 Termination of payments.

A former spouse portion of an employee annuity stops accruing at the earliest of--

(a) The date on which the terms of the court order require termination:

(b)(1) The last day of the first month before OPM receives a court order invalidating, vacating, or setting aside the court order submitted by the former spouse if OPM receives the latest court order no later than 20 days before the end of the month; or

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Retirement Regulations

Procedures for Processing Court Orders Affecting Employee Annuities

former spouse if OPM receives the latest court order later than 20 days before the end of the month; or

(c) The last day of the first month after OPM receives an amended court order;

(d) The last day of the first month before the death of the retiree; or

(e) Except as provided in § 838.237, the date on which the former spouse dies.

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§ 838.234 Collection of arrearages.

§ 838.234 Collection of arrearages.

Specific instructions are required before OPM may pay any arrearage. Except as provided in § 838.225(b), OPM will not increase a former spouse's share of employee annuity to satisfy an arrearage due the former spouse. However, under § 838.225, OPM will prospectively honor the terms of an amended court order that either increases or decreases the former spouse's entitlement.

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§ 838.235 Payment of lump-sum awards.

§ 838.235 Payment of lump-sum awards.

If a court order acceptable for processing awards a former spouse a lump-sum amount from the employee annuity and does not state the monthly rate at which OPM should pay the lump-sum, OPM will pay the former spouse equal monthly installments at 50 percent of the gross annuity (subject to the limitations under § 838.211) at the time of retirement or the date of the order, whichever comes later, until the lump-sum amount is paid.

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§ 838.236 Court orders barring payment of annuities.

§ 838.236 Court orders barring payment of annuities.

(a) State courts lack authority to prevent OPM from paying employee annuities as required by section 8345(a) or section 8463 of title 5, United States Code. OPM will not honor court orders directing that OPM delay or otherwise not pay employee annuities at the time or in the amount required by statute.

(b) Except as otherwise provided in this subpart, OPM will honor court orders acceptable for processing that direct OPM to pay the employee annuity to the court, an officer of the court acting as a fiduciary, or a State or local government agency during the pendency of a divorce or legal separation proceeding.

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§ 838.237 Death of the former spouse.

(a) Unless the court order acceptable for processing expressly provides otherwise, the former spouse's share of an employee annuity terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee annuity reverts to the retiree.

(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 8341(a)(4) or section 8441(4) of title 5, United States Code.

PROCEDURES FOR COMPUTING THE AMOUNT PAYABLE

PROCEDURES FOR COMPUTING THE AMOUNT PAYABLE

Unless otherwise provided in the court order, when the terms of the court order or § 838.621 provide for cost-of-living adjustments on the former spouse's payment from employee annuity, the cost-of-living adjustment will be effected at the same time and at the same percentage rate as the cost-of-living adjustment in the employee annuity.

§ 838.242 Computing lengths of service.

(a)(1) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

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Retirement Regulations
Procedures for Processing Court Orders Affecting Employee Annuities

(b) Unused sick leave is counted as "creditable service" on the date of separation for an immediate CSRS annuity; it is not apportioned over the time when earned. Unused sick leave is not countable as "creditable service" in a FERS annuity (except in a CSRS component for an employee who transferred to FERS) or in a deferred CSRS annuity.
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§ 838.243 Minimum amount of awards.

§ 838.243 Minimum amount of awards.

OPM will treat any court order that awards a former spouse a portion of an employee annuity equal to less than \$12 per year as awarding the former spouse \$1 per month.

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Subpart C-- Requirements for Court Orders Affecting Employee Annuities

§ 838.301 Purpose and scope.

This subpart regulates the requirements that a court order directed at employee annuity must meet to be a court order acceptable for processing.

§ 838.302 Language not acceptable for processing.

Qualifying Domestic Relations Orders.

(a) *Qualifying Domestic Relations Orders.* (1) Any court order labeled as a "qualified domestic relations order" or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing unless the court order expressly states that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(2) When a court order is required by paragraph (a)(1) of this section to state that the provisions of a court order concerning CSRS or FERS benefits are governed by this part the court order must **expressly--**

(i) Refer to part 838 of Title 5, Code of Federal Regulations, and

(ii) State that the provisions of the court order concerning CSRS or FERS benefits are drafted in accordance with the terminology used in this part.

(3) Although any language satisfying the requirements of paragraph (a)(2) of this section is sufficient to prevent a court order from being unacceptable under paragraph (a)(1) of this section, OPM recommends the use of the language provided in ¶001 in appendix A to subpart F of this part to state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(4) A court order directed at employee annuity that contains the language described in paragraph (a)(2) of this section must also satisfy all other requirements of this subpart to be a court order acceptable for processing.

Benefits for the lifetime of the former spouse.

(b) *Benefits for the lifetime of the former spouse.* Any court order directed at employee annuity that expressly provides that the former spouse's portion of the employee annuity may continue after the death of

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§ 838.303 Expressly dividing employee annuity.

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§ 838.304 Providing for payment to the former spouse.

(c) Except when the court order directed at employee annuity contains a provision described in paragraph (b)(2) of this section, a court order directed at employee annuity that instructs the retiree to pay a portion of the employee annuity to the former spouse is not a court order acceptable for processing.

Retirement Regulations

Requirements for Court Orders Affecting Employee Annuities

(d) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that a court order directed at employee annuity provide for OPM to pay the former spouse, OPM strongly recommends that any court order directed at employee annuity expressly direct OPM to pay the former spouse directly.
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§ 838.305 OPM computation of formulas.

§ 838.305 OPM computation of formulas.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information that OPM can compute the amount of the former spouse's monthly benefit using only the express language of the court order, subparts A, B, and F of this part, and information from normal OPM files.

(b)(1) To provide sufficient instructions and information for OPM to compute the amount of the former spouse's share of the employee annuity as required by paragraph (a) of this section the court order must state the former spouse's share as--

(i) A fixed amount;

(ii) A percentage or a fraction of the employee annuity; or

(iii) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order directed at employee annuity or normal OPM files.

(2) Normal OPM files include information about--

(i) The dates of employment for all periods of creditable civilian and military service;

(ii) The rate of basic pay for all periods of creditable civilian service;

(iii) The annual rates of basic pay for each grade and step under the General Schedule since 1920;

(iv) The amount of premiums for basic and optional life insurance under the Federal Employees Group Life Insurance Program;

(v) The amount of the Government and the employee shares of premiums for any health insurance plan under the Federal Employees Health Benefits Program;

Retirement Regulations

Requirements for Court Orders Affecting Employee Annuities

(vi) The standard Federal income tax withholding tables;

(vii) The amount of cost-of-living adjustments under section 8340 or section 8462 of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(viii) The amount of pay adjustments to the General Schedule under section 5303 (or section 5305 prior to November 5, 1990) of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(ix) The provision of law under which a retiree has retired; and

(x) Whether a retiree has elected to provide survivor benefits for a current spouse, former spouse, or a person with an insurable interest.

(c)(1) A court order directed at employee annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the employee annuity.

(2) A court order directed at employee annuity is not a court order acceptable for processing if it awards the former spouse a "community property" fraction, share, or percentage of the employee annuity and does not provide a formula by which OPM can compute the amount of the former spouse's share of the employee annuity from the face of the court order or from normal OPM files.

(d) A court order directed at employee annuity is not a court order acceptable for processing if the court order awards a portion of the "present value" of an annuity unless the amount of the "present value" is stated in the court order.

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by--

(1) A fixed amount or fixed annual amounts that are stated in the order;

(2) The rate of cost-of-living or salary adjustments as those terms are described in § 838.622;

Retirement Regulations

Requirements for Court Orders Affecting Employee Annuities

(3) The percentage change in pay that the employee actually received excluding changes in grade and/or step; or

(4) The percentage change in either of the national indices used to compute cost-of-living or salary adjustments as those terms are described in § 838.622.

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§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.

§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.

(a) A court order directed at employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are net annuity, gross annuity, or self-only annuity, which are defined in § 838.103. Unless the court order otherwise directs, OPM will apply the formula, percentage, or fraction to gross annuity. Section 838.625 contains information on other methods of describing these types of annuity.

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§ 838.424 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 E of this part.

§ 838.425 Contesting the validity of court orders.

(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 or separated employee submits a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.

PAYMENT PROCEDURES

PAYMENT PROCEDURES

§ 838.431 Correcting failures to provide required spousal notification.

§ 838.431 Correcting failures to provide required spousal notification.

The interests of a former spouse with a court order acceptable for processing that is directed at a refund of employee contributions who does not receive notice of an application for refund of employee contributions because the employee or separated employee submits fraudulent proof of notification or fraudulent proof that the former spouse's whereabouts are unknown are protected if, and only if--

(b) The former spouse submits proof that--

(1) The evidence submitted by the employee was fraudulent; and

(2) Absent the fraud, the former spouse would have been able to submit the necessary documentation required by § 838.421 within the time limit prescribed in § 838.422.

**§ 838.432 Court orders
barring payment of
refunds.**

A court order, notice, summons, or other document that attempts to restrain OPM from paying a refund of employee contributions is not effective unless it meets all the requirements of § 838.505 or part 581 of this chapter.

PROCEDURES FOR COMPUTING THE AMOUNT PAYABLE

§ 838.441 Computing lengths of service.

(a) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

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Retirement Regulations

Requirements for Court Orders Affecting Refunds of Employee Contributions

(3) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order directed at a refund of employee contributions is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the refund of employee contributions.
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§ 838.505 Barring payment of refunds.

§ 838.505 Barring payment of refunds.

A court order barring payment of a refund of employee contributions is not a court order acceptable for processing unless--

(a) It expressly directs OPM not to pay a refund of employee contributions;

(b) It awards, or a prior court order acceptable for processing has awarded, the former spouse a former spouse survivor annuity or a portion of the employee annuity; and

(c) Payment of the refund of employee contributions would prevent payment to the former spouse under the court order described in paragraph (b) of this section.

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Retirement Regulations
Terminology Used in Court Orders Affecting Employee Annuities
or Refunds of Employee Contributions

**Subpart F--Terminology
Used in Court Orders
Affecting Employee
Annuities or Refunds of
Employee Contributions**

**Subpart F--Terminology Used in Court Orders Affecting Employee
Annuities or Refunds of Employee Contributions**

REGULATORY
STRUCTURE

REGULATORY STRUCTURE

**§ 838.601 Purpose and
scope.**

§ 838.601 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award benefits in a court order directed at an employee annuity or a refund of employee contributions. OPM applies the meanings to determine whether a court order directed at an employee annuity or a refund of employee contributions is a court order acceptable for processing and to establish the amount of the former spouse's share of an employee annuity or a refund of employee contributions.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse a portion of an employee annuity or a refund of employee contributions.

(2) This subpart informs the legal community about the definitions to apply terms used in drafting court orders so that the resulting court orders contain the proper language to accomplish the aims of the court.

(c)(1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, Appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse's share of an employee annuity or a refund of employee contributions.

(2) By using the language in Appendix A of this subpart, the court, attorneys, and parties will know that the court order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the Appendix.

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Retirement Regulations

Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

IDENTIFICATION OF BENEFITS

§ 838.611 Identifying the retirement system.

IDENTIFICATION OF BENEFITS

§ 838.611 Identifying the retirement system.

(a) To satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1), a court order must contain language identifying the retirement system to be affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" benefits, or benefits payable "based on service with the U.S. Department of Agriculture," etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits or Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to the entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse a portion of an employee annuity or a refund of employee contributions under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).
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§ 838.612 Distinguishing between annuities and contributions.

§ 838.612 Distinguishing between annuities and contributions.

(a) A court order using "annuities," "pensions," "retirement benefits," or similar terms satisfies the requirements of §§ 838.303(b)(2) and 838.502(b)(2) and may be used to divide an employee annuity and a refund of employee contributions.

(b)(1) A court order using "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity at the time of retirement or the date of the court order, whichever comes later, until the specific dollar amount is reached.

COMPUTATION OF BENEFITS

§ 838.621 Prorata share.

(a) "Prorata share" means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a prorata share of an employee annuity or a refund of employee contributions by using the term "prorata share" and identifying the date when the marriage began satisfies the requirements of §§ 838.305 and 838.504 and awards the former spouse a prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee's retirement awards the former spouse a prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the "value" of an annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a prorata share as defined in paragraph (a) of this section.

Retirement Regulations

Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

§ 838.622 Cost-of-living and salary adjustments.

§ 838.622 Cost-of-living and salary adjustments.

(a)(1) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "cost-of-living adjustments" or "COLA's" occurring after the date of the decree but before the date of retirement provides increases equal to the adjustments described in or effected under section 8340 or section 8462 of title 5, United States Code.

(2) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "salary adjustments" or "pay adjustments" occurring after the date of the decree provides increases equal to the adjustments described in or effected under section 5303 of title 5, United States Code until the date of retirement.

(b)(1) Unless the court order directly and unequivocally orders otherwise, a court order that awards a former spouse a portion of an employee annuity either on a percentage basis or by use of a fraction or formula provides that the former spouse's share of the employee annuity will be adjusted to maintain the same percentage or fraction whenever the employee annuity changes as a result of--

(i) Salary adjustments occurring after the date of the decree and before the employee retires; and

(ii) Cost-of-living adjustments occurring after the date of the decree and after the date of the employee's retirement.

(2) A court order that awards a former spouse a specific dollar amount from the employee annuity prevents the former spouse from benefiting from salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.

(c)(1)(i) Except as provided in paragraph (b) of this section, a court order that contains a general instruction to calculate the former spouse's share effective at the time of divorce or separation entitles the former spouse to the benefit of salary adjustments occurring after the specified date to the same extent as the employee.

(ii) To prevent the application of salary adjustments after the date of the divorce or separation, the court order must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply salary adjustments after the specified date in computing the former spouse's share of the employee annuity.

(ii) To award cost-of-living adjustments between a specified date and the employee's retirement, the court order must specifically instruct OPM to adjust the former spouse's share of the employee annuity by any cost-of-living adjustments occurring between the specified date and the date of the employee's retirement.

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§ 838.623 Computing lengths of service.

(b) Unless the court order otherwise expressly directs--

(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.

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Retirement Regulations

Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

(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").
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Retirement Regulations

Model Paragraphs

MODEL PARAGRAPHS

Appendix A to Subpart F of Part 838--Recommended Language for Court Orders Dividing Employee Annuities.

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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.

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¶503 Former spouse share paid to the court.

000 Series--Special Technical Provisions.

000 Series--Special Technical Provisions.

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."

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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.

Using the following paragraph will expressly divide employee annuity to satisfy the requirements of § 838.303 and direct OPM to pay the former spouse a share of an employee annuity to satisfy the requirements of § 838.304.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from 200 series of this appendix.] The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

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¶102-110 [Reserved].

¶111 Protecting a former spouse entitled to military retired pay.

Using the following paragraph will protect the former spouse interest in military retired pay in the event that the employee waives the military retired pay to allow crediting the military service under CSRS or FERS. The paragraph should be used only if the former spouse is awarded a portion of the military retired pay. "If [Employee] waives military retired pay to credit military service under the Civil Service Retirement System, [insert language for computing the former spouse's share from 200 series of this appendix.]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

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

Paragraphs 201 through 204 contain model language for the most common types of awards that court orders make to former spouses. Subsequent paragraphs in the 200 series contain model language for less common, more complex awards.

Awards other than fixed amounts require that the court order specify the type of annuity ("gross," "net," or self-only) on which the award is computed. The types of annuity are defined in § 838.103. Variations on type of annuity are covered by the 300 series of this appendix.

¶201 Award of a fixed monthly amount.

Using the following paragraph will award the former spouse a fixed monthly amount. OPM will not apply COLA's to a fixed monthly amount unless the court order expressly directs that OPM add COLA's using the language in ¶231 of this appendix or similar language.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to \$[insert a number] per month from [employee]'s civil service retirement benefits. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

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¶202 Award of a percentage.

¶202 Award of a percentage.

Using the following paragraph will award the former spouse a stated percentage of the employee annuity. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert a number] percent of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."
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¶203 Award of a fraction.

¶203 Award of a fraction.

Using the following paragraph will award the former spouse a stated fraction of the employee annuity. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert fraction]ths of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."
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¶204 Award of a prorata share.

¶204 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the employee annuity. Prorata share is defined in § 838.621. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's

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share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s [insert "gross," "net," or self-only] monthly annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

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¶205-210 [Reserved].

¶211 Award based on a stated formula.

¶211 Award based on a stated formula.

Using the following paragraphs will award the former spouse a share of the employee annuity based on a formula stated in the court order. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to apply the formula unless the necessary data is contained in normal OPM files.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a share of [employee]'s [insert "gross," "net," or self-only] monthly annuity under the Civil Service Retirement System to be computed as follows: "[Insert formula for computing the former spouse's share.]

"The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

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¶212-230 [Reserved].

¶231 Awarding COLA's on fixed monthly amounts.

Using the following paragraph will award COLA's in addition to a fixed monthly amount to the former spouse. The model awards COLA's at the same rate applied to the employee annuity.

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¶232 Excluding COLA's on awards other than fixed monthly amounts.

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or prorata share of the employee annuity, rather than a fixed dollar amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶202, ¶203, ¶204, or ¶211 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert "when [employee] retires" if the employee has not retired, or "of this order" if the employee is already retired] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

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300 Series--Type of annuity.

300 Series--Type of annuity.

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the "gross," "net," or self-only annuity as defined in § 838.103 in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from "gross," "net," or self-only annuity as defined in § 838.103.

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¶301 Awards based on benefits actually paid.

¶301 Awards based on benefits actually paid.

The court order may include a formula that effectively uses the court's definition of net annuity rather than the one provided by § 838.103. For example, using the following paragraph will award the former spouse a prorata share of the employee annuity reduced only by the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s monthly annuity under the Civil Service Retirement System, where monthly annuity means the self-only annuity less the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."
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¶302-310 [Reserved].

¶311 Awards of earned annuity in cases where the actual annuity is based on disability.

¶311 Awards of earned annuity in cases where the actual annuity is based on disability.

Using the following paragraph will award a former spouse a prorata share of what the employee annuity would have been based on only the employee's actual service in cases where the actual employee annuity is based on disability. The paragraph also allows the court order to provide for the former spouse's share to begin when the employee reaches a stated age, using age 62 as an example. As with all other formulas the court order must specify whether the computation applies to "gross," "net," or self-only annuity. OPM will apply COLA's that occurred after the date of the disability retirement to the former spouse's share. The following paragraph should be used only for disability retirees under CSRS. Under FERS, section 8452 of title 5, United States Code, provides a formula for recomputation of disability annuities at age 62 to approximate an earned annuity. Therefore to award a portion of the "earned" benefit under FERS add the introductory phrase, "Starting when [employee] reaches age 62," to the paragraph describing how to compute the amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United

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400 Series--Refunds of employee contributions.

¶401 Barring payment of a refund of employee contributions.

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¶402 Dividing a refund of employee contributions.

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500 Series--Death of the former spouse.

¶501 Full annuity restored to the retiree.

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¶502 Former spouse share paid to children.

"If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to surviving children of the marriage including any adopted children, in equal shares. Upon the death of any child, that child's share will be distributed among the other surviving children."

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¶503 Former spouse share paid to the court.

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Retirement Regulations
Procedures for Processing Court Orders Awarding
Former Spouse Survivor Annuities

**Subpart G--Procedures
for Processing Court
Orders Awarding Former
Spouse Survivor
Annuities**

**Subpart G--Procedures for Processing Court Orders Awarding
Former Spouse Survivor Annuities**

REGULATORY
STRUCTURE

REGULATORY STRUCTURE

**§ 838.701 Purpose and
scope.**

§ 838.701 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 awarding former spouse survivor annuities under CSRS or FERS (including the FERS basic employee death benefit as defined in § 843.602 of this chapter). 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 former spouse survivor annuities.

(b) This subpart prescribes--

(1) The commencing and terminating dates of former spouse survivor annuities based on court orders acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a former spouse survivor annuity based on a court order under section 8341(h) or section 8445 of title 5, United States Code.

(c)(1) Subpart H of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to award a former spouse survivor annuity.

(2) Subpart I of this part contains definitions that OPM uses to determine the effect of a court order in connection with a former spouse survivor annuity.

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(A) That the former spouse has not remarried before age 55;

(C) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage before age 55.

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

(1) The former spouse--

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

(ii) Of the date on which OPM received the court order; and

(2) The retiree--

(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;

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Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

(v) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the amount of the former spouse survivor annuity; and

(vi) 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.

(b) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity, but the employee, separated employee, or retiree has died, 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 will begin to accrue, and if known the date on which OPM will commence payment under the court order; and

(iii) Of the amount on the monthly former spouse survivor annuity and the formula OPM used to compute the former spouse survivor annuity.

(2) Anyone whom OPM knows will be adversely affected by the court order--

(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;

(iv) How the court order may adversely affect him or her; and

(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.

(c) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity and the employee or separated employee has not retired or died, OPM will attempt to inform--

(1) The former spouse--

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PAYMENT PROCEDURES

§ 838.731 Commencing date of payments.

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

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§ 838.732 Termination of entitlement.

(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 § 843.602 of this chapter based on a court order acceptable for processing terminates in accordance with the terms of the court order.

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(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--

Retirement Regulations

Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

(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 the 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 § 831.604, § 831.605, § 831.612, § 831.613, § 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

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(4) A court order directed at employee annuity that contains the language described in paragraph (a)(2) of this section must also satisfy all other requirements of this subpart to be a court order acceptable for processing.

(b) *Employee annuity cannot continue after the death of the retiree.* Any court order that provides that the former spouse's portion of the employee annuity shall continue after the death of the employee or retiree, by using language such as "will continue to receive benefits after the death of" the employee, that the former spouse "will continue to receive benefits for his (or her) lifetime," or "that benefits will continue after the death of" the employee, but does not use terms such as "survivor annuity," "death benefits," "former spouse annuity," or similar terms is not a court order acceptable for processing.

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§ 838.804 Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it expressly awards a former spouse survivor annuity or expressly directs an employee or retiree to elect to provide a former spouse survivor annuity as described in paragraph (b) of this section.

(b) To expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity as required by paragraph (a) of this section the court order must--

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.911; and

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§ 838.805 OPM
computation of formulas
in computing the
designated base.

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Retirement Regulations

Requirements for Court Orders Awarding Former Spouse Survivor Annuities

(2) The first order dividing the marital property of the retiree and the former spouse.

(c) A court order that awards a former spouse survivor annuity and that is issued after the first order dividing the marital property of the retiree and the former spouse has been vacated, set aside, or otherwise declared invalid is not a court order acceptable for processing if--

(1) It is issued after the date of retirement or death of the retiree;

(2) It changes any provision concerning a former spouse survivor annuity in the court order that was vacated, set aside or otherwise declared invalid; and

(3)(i) The court order is effective prior to the date when it is issued;
or

(ii) The retiree and former spouse do not compensate the Civil Service Retirement and Disability Fund for any uncollected annuity reduction due as a result of the court order vacating, setting aside, or otherwise invalidating the first order terminating the marital relationship between the retiree and the former spouse.

(d) In this section, "date of retirement" means the later of--

(1) The date that the employee files an application for retirement; or

(2) The effective commencing date for the employee's annuity.

(e) In this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued nunc pro tunc).

(f)(1) In this section, the "first order dividing the marital property of the retiree and the former spouse" means--

(i) The original written order that first ends (or first documents an oral order ending) the marriage if the court divides any marital property (or approves a property settlement agreement that divides any marital property) in that order, or in any order issued before that order; or

(ii) The original written order issued after the marriage has been terminated in which the court first divides any marital property (or first approves a property settlement agreement that divides any marital

(2) The first order dividing marital property does not include--

(ii) Any court order issued under reserved jurisdiction or any other court orders issued subsequent to the original written order that divide any marital property regardless of the effective date of the court order.

§ 838.807 Cost must be paid by annuity reduction.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, from annuity paid by OPM. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is directed at employee annuity; or

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, from the employee annuity.

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Subpart I--Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

REGULATORY STRUCTURE

IDENTIFICATION OF BENEFITS

Retirement Regulations

Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

(b)(1) A court order that provides that the former spouse is to "continue as" or "be named as" the beneficiary of CSRS survivor benefits or similar language satisfies the requirements of § 838.804(b)(2).

(2) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(2), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in § 843.602 of this chapter at the time of the divorce.

(c) Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Under CSRS, section 8341(h) of title 5, United States Code, provides for "former spouse survivor annuities" and section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages. The corresponding FERS provisions are sections 8445 and 8444, respectively.

(1) OPM will enforce court orders to provide section 8341(h) or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8341(h) or section 8445 annuity, the court order must use terms such as "former spouse survivor annuity," "section 8341(h) annuity," or "survivor annuity."

(2) OPM cannot enforce court orders to provide "insurable interest annuities" under section 8339(k) or section 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The retiree may also elect to cancel the insurable interest annuity to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the nonemployee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8341(h) annuity. However, the court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM cannot enforce the court order. Language including the words "insurable interest" or referring to section 8339(k) or section 8444 does not satisfy the requirements of § 838.804(b)(2).

(3) In court orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8341(h)," the section reference will control.

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COMPUTATION OF BENEFIT

§ 838.921 Determining the amount of a former spouse survivor annuity.

(b)(1) A court order that provides that "a former spouse will keep" or "an employee or retiree will maintain" the survivor annuity to which he or she was entitled at the time of the divorce satisfies the requirements of § 838.805 and provides a former spouse survivor annuity in the same proportion to the maximum survivor annuity under § 831.614 or § 842.613 of this chapter as the former spouse had at the time of divorce. For example, a former spouse of an employee would be entitled to the maximum survivor benefit; a former spouse of a retiree (who was married to the retiree at retirement and continuously until the divorce resulting in the court order) would be entitled to the survivor benefit elected at retirement.

(2) If, at the time of divorce, the employee covered by FERS had at least 18 months of civilian service creditable under FERS but less than 10 years of service creditable under FERS, a former spouse with a court order described in paragraph (b)(1) or paragraph (b)(2) of this section may be entitled to the basic employee death benefit as defined in § 843.602 of this chapter, but is not entitled to any other former spouse survivor annuity based on the court order.

(c)(1) A court order that awards a former spouse survivor annuity of less than \$12 per year satisfies the requirements of § 838.805 and provides an initial rate of \$1 per month plus all cost-of-living increases occurring after the later of--

- (i) The date of the court order; or
- (ii) The date when the employee retires.

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(3) A reduction in the amount of survivor benefits provided to the former spouse does not satisfy the requirements of § 838.805 if it is contingent upon the employee's or annuitant's remarriage rather than his or her election of survivor annuity benefits for a subsequent spouse.
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(d) A court order that awards a portion of the "value" of a survivor annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a former spouse survivor annuity equal to a prorata share as defined in paragraph (a) of this section.
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**§ 838.923 Cost-of-living
adjustment before the
death of a retiree.**

A court order that awards a former spouse survivor annuity is deemed to order OPM to add to the survivor annuity rate cost-of-living adjustments that occur before the death of a retiree (in the same manner as these adjustments are applied to the survivor rate generally) unless the court order contains an instruction expressly directing OPM not to add these adjustments to the survivor annuity rate. (See § 838.735 for information concerning cost-of-living adjustments after the death of an employee or retiree.)

MISCELLANEOUS PROVISIONS

§ 838.931 Court orders that provide temporary awards of former spouse survivor annuities.

A provision in a court order that temporarily awards a former spouse survivor annuity satisfies the requirements of § 581.804(b)(2), but the temporary award becomes permanent on the date on which OPM is barred from honoring a modification of the court order (the date of retirement or death, or, in the case of a post-retirement divorce, the date of the initial court order), as provided in sections 8341(h)(4) and 8445(d) of title 5, United States Code.

§ 838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.

(a) Except as provided in paragraph (b) of this section, a court order that gives the former spouse the right to elect a former spouse survivor annuity satisfies the requirements of § 838.804(b)(2) and provides a former spouse survivor annuity in the amount otherwise provided by the court order.

(c) The former spouse may make the election under paragraph (b) of this section at any time after the issuance of the court order. An election under paragraph (b) of this section--

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Retirement Regulations Model Paragraphs

MODEL PARAGRAPHS

Appendix A to Subpart I of Part 838-- Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities.

MODEL PARAGRAPHS

Appendix A to Subpart I of Part 838--Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities.

This appendix provides recommended language for use in court orders awarding former spouse survivor annuities. A former spouse survivor annuity is not a continuation of a former spouse's share of an employee annuity after the death of the employee. A former spouse's entitlement to a portion of an employee annuity cannot continue after the death of the employee. A court order that attempts to extend the former spouse's entitlement to a portion of an employee annuity past the death of the employee is not effective. The model language in this appendix does not award benefits payable to the former spouse during the lifetime of the employee. A separate, distinct award of a portion of the employee annuity is necessary to award a former spouse a benefit during the lifetime of the employee. Appendix A to subpart F of this part contains model language for a portion of an employee annuity.

Attorneys should exercise great care in preparing provisions concerning former spouse survivor annuities because sections 8341(h)(4) and 8445(d) of title 5, United States Code, prohibit OPM from accepting modifications after the retirement or death of the employee. (See § 838.806 concerning unacceptable modifications.) A court order awarding a former spouse survivor annuity should include four elements:

- Identification of the retirement system;
 - Explicit award of the former spouse survivor annuity;
 - Method for computing the amount of the former spouse's benefit;
- and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language uses the terms "[former spouse]" to identify the spouse who is receiving a former spouse survivor 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]."

Retirement Regulations

Model Paragraphs

Similarly, except when the provision applies only to the basic employee death benefit (defined in § 843.103 of this chapter) that is available only under the Federal Employees Retirement System, the models are drafted for employees covered by the Civil Service Retirement System (5 U.S.C. 8331 *et seq.*). The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System (5 U.S.C. chapter 84.).

Statutory references used in the models are to CSRS provisions (such as section 8341(h) of title 5, United States Code). When appropriate, the corresponding FERS provision (such as section 8445 of title 5, United States Code) should be used.

Retirement Regulations Model Paragraphs

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Retirement Regulations Model Paragraphs

700 Series--Computing the amount of the former spouse's benefit.

700 Series--Computing the amount of the former spouse's benefit.

Paragraphs 701 through 704 contain model language for awards of former spouse survivor annuities in amounts that do not require specification of the base on which the former spouse's share will be computed. Situations in which the computational base need not be specified include amounts defined by law or regulation. For example, the maximum former spouse survivor annuity is fixed by statute generally at 55 percent of the employee annuity under CSRS and 50 percent of the employee annuity under FERS.

Paragraphs 711 and 712 contain model language for awards of former spouse survivor annuities that use the employee annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Paragraphs 721 and 722 contain model language for awards of former spouse survivor annuities that use the maximum possible survivor annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Using the maximum possible survivor annuity as the base will generally award 55 percent under CSRS and 50 percent under FERS of the amount that using the employee annuity as the base would produce.

Paragraphs 750 and higher contain model language to implement the most common other types of awards.

Each model paragraph includes a reference to the statutory provision under CSRS that authorizes OPM to honor court orders awarding former spouse survivor annuities. The FERS statutory provision that corresponds to section 8341(h) (mentioned in the first sentence of each example) is section 8445.

¶701 Award of the maximum survivor annuity.

For a spouse who was married to a retiree at the time of retirement and consented to an election of less than a full survivor annuity, the maximum is the amount elected at retirement. For a spouse acquired after retirement and for whom the retiree elected less than the maximum survivor benefit, this language should be used only if the intent is to increase the survivor benefit to the maximum.

¶701 Award of the maximum survivor annuity.

Using the following paragraph will award the maximum possible former spouse survivor annuity. Under CSRS, the maximum possible survivor annuity is 55 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time. Under FERS, the maximum possible survivor annuity is 50 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System."

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Retirement Regulations Model Paragraphs

¶702 Award that continues the pre-divorce survivor annuity benefits.

If a survivor benefit election of less than the full amount is in effect at the time of divorce, use of this language will emphasize that the lower benefit will remain in effect after the divorce. In all other instances this language will produce the maximum survivor annuity.

¶702 Award that continues the pre-divorce survivor annuity benefits.

Using the following paragraph will award a former spouse survivor annuity equal to the amount that the former spouse would have received if the marriage were never terminated by divorce.

"Under section 8341(h)(1) of title 5, United States Code, [Former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System in the same amount to which [former spouse] would have been entitled if the divorce had not occurred."
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¶703 Award of a prorata share.

¶703 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the maximum possible survivor annuity. Prorata share is defined in § 838.922. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage began on [insert date]."
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¶704 Award of a fixed monthly amount.

¶704 Award of a fixed monthly amount.

Using the following paragraph will award a former spouse survivor annuity that will start at the amount stated in the order when the employee or retiree dies, unless the stated amount exceeds the maximum possible former spouse survivor annuity. If the amount stated in the order exceeds the maximum possible former spouse survivor annuity, the court order will be treated as awarding the maximum. After payment of the former spouse survivor annuity has begun, COLA's will be applied in accordance with § 838.735. If the final sentence of this model paragraph is omitted, OPM will add COLA's occurring after the date of the employee's retirement or the date of issuance of the court order, whichever is later.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to \$[insert a number] per month. The Office of

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¶711 Award of a percentage or fraction of the employee annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the employee annuity. The stated percentage or fraction may not exceed 55 percent under CSRS or 50 percent under FERS.

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¶712 Award based on a stated formula as a share of employee annuity.

Using the following paragraphs will award a former spouse survivor annuity in an amount to be determined by applying a stated formula to employee annuity. The amount of the former spouse survivor annuity may not exceed 55 percent of the employee annuity under CSRS or 50 percent under FERS. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

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¶721 Award of a percentage or fraction of the maximum survivor annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the maximum possible survivor annuity. The stated percentage or fraction may not exceed 100 percent.

¶722 Award based on a stated formula as a share of maximum survivor annuity.

Using the following paragraphs will award a former spouse survivor annuity based on a stated formula to be applied to the maximum possible survivor annuity. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the maximum possible survivor annuity computed as follows:

"[Insert formula.]"

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Retirement Regulations Model Paragraphs

¶751 Changing amount of former spouse survivor annuity based on remarriage before retirement.

¶751 Changing amount of former spouse survivor annuity based on remarriage before retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries before retirement. Upon the employee's remarriage before retirement the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts may be substituted. Similar language is not acceptable for remarriages after retirement.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] remarries before retirement. If [employee] remarries before retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert date]."

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¶752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

¶752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries after retirement and elects to provide a survivor annuity for the spouse acquired after retirement. Upon the employee's remarriage after retirement and election to provide a survivor annuity for the spouse acquired after retirement, the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts may be substituted. The change in the amount of the former spouse survivor annuity must be triggered by the election, which is a part of normal OPM files, rather than the remarriage, which is not documented in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] elects to provide a survivor annuity for a new spouse acquired after retirement. If [employee] elects to provide a survivor annuity to a new spouse acquired after retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert date]."

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800 Series--Paying the cost of a former spouse survivor annuity.

¶801 Costs to be paid from the employee annuity.

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¶802 Costs to be paid from former spouse's share of the employee annuity.

Using the following paragraph will award the former spouse a prorata share of the employee annuity and a prorata share of the maximum possible survivor annuity and provide that the cost associated with the survivor annuity be deducted from the former spouses's share of the employee annuity. Prorata share and self-only annuity are used as examples only; another amount or type of annuity may be substituted.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s self-only monthly annuity under the Civil Service Retirement System. [Former spouse]'s share of [employee]'s employee annuity will be reduced by the amount of the costs associated with providing the former spouse survivor annuity awarded in the next paragraph. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share.

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Retirement Regulations Model Paragraphs

900 Series--Refunds of employee contributions.

900 Series--Refunds of employee contributions.

Court orders that award a former spouse survivor annuity based on the service of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee requests a refund of employee contributions before becoming eligible to retire. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

¶901 Barring payment of a refund of employee contributions.

¶901 Barring payment of a refund of employee contributions.

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a former spouse survivor annuity. "The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

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¶902 Dividing a refund of employee contributions.

¶902 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The award of a prorata share is used only an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. A refund of employee contributions voids the employee's rights to an employee annuity unless the employee is reemployed under the retirement system. Payment of the refund of employee contributions will also extinguish the former spouse's right to a court-ordered portion of an employee annuity or a former spouse survivor annuity unless the employee is reemployed and reestablishes title to annuity benefits.

"If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

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HEALTH BENEFITS

Former spouse health benefits coverage

Former spouses may enroll for Federal Employees Health Benefits (FEHB) coverage in their own right if they meet the spouse equity requirements of the FEHB law. Former spouses

Former spouses may enroll for Federal Employees Health Benefits (FEHB) coverage in their own right if they meet the . . . requirements of the FEHB law. Former spouses of Federal employees or retirees may not continue to receive FEHB coverage under the employee or retiree's enrollment after divorce.

of Federal employees or retirees may not continue to receive FEHB coverage under the employee or retiree's enrollment after divorce because the former spouse does not meet the definition of family member under section 8901(5) of title 5, United States Code. Further, the Office of

The Office of Personnel Management cannot honor a court order requiring it to provide FEHB coverage to a former spouse.

Personnel Management cannot honor a court order requiring it to provide FEHB coverage to a former spouse, because section 8902(m)(1) of title 5, United States Code, preempts State law in matters relating to the nature and extent of coverage or benefits.

The provisions of law and regulation contained in the following pages govern the continuation of FEHB coverage for a former spouse. Basically, a former spouse's entitlement to continue FEHB coverage (under section 8905 of title 5, United States Code) after divorce is

contingent on four requirements. The former spouse must:

(1) be covered as a family member under the employee/retiree's FEHB enrollment for at least 1 day during the 18 months prior to divorce;

(2) be entitled to receive a portion of the retirement annuity after the employee retires or a survivor annuity at the time the employee/retiree dies;

The former spouse must . . . be entitled to receive a portion of the retirement annuity after the employee retires or a survivor annuity at the time the employee/retiree dies [and] within 60 days after divorce, apply to the agency employing office where the Federal employee worked at the time of divorce.

(3) within 60 days after divorce, apply to the agency employing office where the Federal employee worked at the time of divorce by submitting written notice that he or she wants to continue FEHB coverage under the spouse equity provisions of the FEHB law (if divorce occurred after retirement the employing office is the retirement system); and

(4) not remarry prior to age 55.

An individual who qualifies as a former spouse must enroll for FEHB coverage in his or her own right and must pay both the employee's and the Government's share of the premium. Coverage is prospective from the first day of the pay period after the employing office receives all properly completed qualifying documents. To avoid a break in coverage, the former spouse may want to enroll for a temporary continuation of FEHB coverage under section 8905a of title 5, United States Code, pending a decision on eligibility for coverage as a former spouse.

Health Benefits

Former spouses who do not meet the criteria for FEHB coverage under section 8905 of title 5, United States Code may continue coverage for 3 years from the date of the divorce under section 8905a of title 5, United States Code. The former spouse can get information about this through the agency employing office where the Federal employee worked at the time of divorce or through the annuitant's retirement system.

To avoid a break in coverage, the former spouse may want to enroll for a temporary continuation of FEHB coverage under section 8905a of title 5, United States Code, pending a decision on eligibility for coverage as a former spouse.

A court order acceptable for processing granting the former spouse a portion of the retiree's annuity provides the former spouse with a monthly payment after the employee retires and continued FEHB coverage until the employee dies. A court order acceptable for processing granting a survivor annuity provides the former spouse with continued FEHB coverage until the former spouse dies, but the annuity does not begin until the employee/retiree dies. A court order acceptable for processing providing **both** a portion of the retirement annuity and a survivor annuity ensures an annuity payment from the date of retirement or death and continued FEHB coverage until the former spouse dies. The minimum amount of a former spouse annuity is discussed under § 838.133 of Title 5, Code of Federal Regulations, at page 37 of this publication.

No model language is included in this section because the former spouse's continued entitlement to FEHB coverage is based on the court order requirements for a former spouse annuity. Children's eligibility for FEHB coverage is also controlled entirely by Federal law and cannot be affected by any language in a State court order.

FEHB Statutory Provisions

FEHB Statutory Provisions

Section 8901(10) of title 5, United States Code, defines "former spouse" for determining eligibility for FEHB coverage. It provides:

§ 8901. Definitions

§ 8901. Definitions

For the purpose of this chapter--

* * * * *

(10) "former spouse" means a former spouse of an employee, former employee, or annuitant--

(A) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

(B) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the dissolution of the marriage to the employee, former employee, or annuitant, and

(C)(i) who is receiving any portion of an annuity under section 8345(j) or 8467 of this title or a survivor annuity under section 8341(h) or 8445 of this title (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System or the Federal Employees' Retirement System),

(ii) as to whom a court order or a decree referred to in section 8341(h), 8345(j), 8445 or 8467 of this title (or similar provision of law under any such retirement system other than the Civil Service Retirement System or the Federal Employees' Retirement System) has been issued, or for whom an election has been made under section 8339(j)(3) or 8417(b) of this title (or similar provision of law), or

(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees,

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dissolved after the former employee's separation from the service (other than by retirement)[.]

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FEHB Statutory Provisions

Section 8905(c) of title 5, United States Code, establishes the requirement that a former spouse must satisfy to enroll for FEHB. It provides:

§ 8905. Election of Coverage

§ 8905. Election of Coverage

* * * * *

(c)(1) A former spouse may--

(A) within 60 days after the dissolution of the marriage, or

(B) in the case of a former spouse of a former employee whose marriage was dissolved after the employee's retirement, within 60 days after the dissolution of the marriage or, if later, within 60 days after an election is made under section 8339(j)(3) or 8417(b) of this title for such former spouse by the retired employee,

enroll in an approved health benefits plan described by section 8903 or 8903a of this title as an individual or for self and family as provided in paragraph (2) of this subsection, subject to agreement to pay the full subscription charge of the enrollment, including the amounts determined by the Office to be necessary for administration and reserves pursuant to section 8909(b) of this title. The former spouse shall submit an enrollment application and make premium payments to the agency which, at the time of divorce or annulment, employed the employee to whom the former spouse was married in the case of a former spouse who is receiving annuity payments under section 8341(h), 8345(j), 8445, or 8467 of this title, to the Office of Personnel Management.

(2) Coverage for self and family under this subsection shall be limited to--

(A) the former spouse; and

(B) unmarried dependent natural or adopted children of the former spouse and the employee who are--

(i) under 22 years of age; or

(ii) incapable of self-support because of mental or physical disability which existed before age 22.

PART 890--FEDERAL
EMPLOYEES HEALTH
BENEFITS PROGRAM

**Subpart H--Benefits for
Former Spouses**

§ 890.801 Introduction.

§ 890.802 Definition.

**§ 890.803 Who may
enroll.**

PART 890--FEDERAL EMPLOYEES HEALTH BENEFITS
PROGRAM

* * * * *

Subpart H--Benefits for Former Spouses

§ 890.801 Introduction.

This subpart sets forth policies and procedures for obtaining health benefits coverage that are unique to former spouses of Federal employees and retirees.
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§ 890.802 Definition.

In this subpart, a "Qualifying court order" means a court order acceptable for processing as defined in § 838.103 of this chapter or qualifying court order as defined in § 838.1003 of this chapter.
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§ 890.803 Who may enroll.

- (a) Except as specified in paragraph (b) of this section, a former spouse is eligible to enroll in a health benefits plan under this part provided that--
- (1) The former spouse whose marriage to an employee, employee annuitant, or a former Central Intelligence agency (CIA) or Foreign Service employee is dissolved has not remarried before age 55; and
- (2) The former spouse was enrolled in a health benefits plan under this part as a family member at any time during the 18 months preceding the date of the dissolution of marriage; and
- (3)(i) The former spouse currently receives, or has future title to receive (A) a portion of annuity payable to the employee upon retirement based on a qualifying court order for purposes of 5 U.S.C. 8345(j) or 5 U.S.C. 8467; (B) survivor annuity benefits based on a qualifying court order for purposes of 5 U.S.C. 8341(h) or 5 U.S.C. 8445; or (C) a survivor annuity elected by the employee under 5 U.S.C. 8339(j)(3) or 5 U.S.C. 8417(b), including a former spouse who is designated as an insurable interest pursuant to 5 CFR 831.605(a) and (b) and 842.606(a) and (b) (or benefits similar to those under this paragraph under another retirement system for Government employees); or
- (ii) The former spouse was married to an employee who retired before May 7, 1985, and (A) the employee annuitant elects to provide a survivor annuity to the former spouse under procedures prescribed in § 831.621 of this title; or, (B) the former spouse satisfies all of the conditions for a survivor annuity in § 831.622 of this title; or

(iv) The former spouse was married to an employee or former employee of the Foreign Service for at least 10 years during the employee's government service, and the marriage was dissolved before May 7, 1985.

(c) If a former spouse cannot apply for benefits on his or her own behalf because of a mental or physical disability, application may be filed by a court-appointed guardian.

§ 890.804 Coverage.

Type of enrollment.

Proof of dependency.

(i) A legitimate child;

(ii) An adopted child;

(iv) A recognized natural child for whom a judicial determination of support has been obtained; or

Exclusions from coverage.

(b) Former spouses who meet the requirements in § 890.803(a)(3)(iv) of this part must apply for health benefits coverage by April 1, 1987. Where circumstances warrant, the former spouse may request that the filing date be waived. The authority of the Director of Central Intelligence to direct OPM to waive the filing date has been delegated to CIA's Office of Personnel. Requests for waiver should be addressed to the Office of Personnel, Retirement Division, Central Intelligence Agency, Washington, DC 20505. OPM will waive the April 1, 1987, filing date upon notification to do so from the Director of Central Intelligence.

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§ 890.806 Effective dates of coverage.

(a) *Generally.* (1) The effective date of enrollment is the first day of the pay period that begins after the date the employing office receives the properly completed Standard Form 2809 or an appropriate substitute (i.e., a signed statement with sufficient information to execute enrollment) and satisfactory proof of eligibility.

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Health Benefits Regulations

§ 890.807 Termination of enrollment.

§ 890.807 Termination of enrollment.

(a)(1) Except for former spouses meeting the requirements in § 890.803(a)(3)(iv) and (v) of this part, a former spouse's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which the earliest of the following events occurs:

(i) Court order ceases to provide entitlement to survivor annuity or portion of retirement annuity under a retirement system for Government employees.

(ii) Former spouse remarries before age 55.

(iii) Former spouse dies.

(iv) Employee or annuitant on whose service the benefits are based dies and no survivor annuity is payable.

(v) Separated employee on whose service the benefits are based dies before the requirements for deferred annuity have been met.

(vi) Employee on whose service benefits are based leaves Federal service before establishing title to an immediate annuity or a deferred annuity.

(vii) Refund of retirement money is paid to the separated employee on whose service the health benefits are based.

(2) OPM may authorize a longer time frame for the temporary extension of coverage for conversion than the 31 days provided in § 890.401(a) if in OPM's judgment the former spouse could not have known that (1) the employee on whose service benefits are based left Federal service before establishing title to an immediate or deferred annuity; or (2) the separated employee on whose service the benefits are based died before the requirements for deferred annuity had been met. In such cases, the right of conversion may be exercised up to 31 days after the employing office's notice of termination. The former spouse must pay the full premium (employee's and Government's share) during the extended period, exclusive of the 31-day period following the notice.

(3) Termination of enrollment for failure to pay premiums within the time frame established in accordance with § 890.808(d)(1) is retroactive to the end of the last pay period for which payment has been timely received.

(4) A former spouse whose enrollment is terminated under this paragraph may not reenroll.

Coverage of members of the family.

- (b) *Administration of the enrollment process.* (1) The employing office will set up a method for accepting applications for enrollment informing the former spouse what documents to submit and where to submit them for an eligibility determination, and collecting premium

Health Benefits Regulations

payments. The method will include procedures for verifying the eligibility requirements under § 890.803(a)(1) and (2) of this part. The employing office must obtain OPM, Foreign Service Retirement and Disability System (FSRDS), or CIA Retirement and Disability System (CIARDS) documentation that the former spouse meets the additional requirement under § 890.803(a)(3) (i), (ii), (iii), (iv) or (v) of this part. A request for the retirement system's determination whether a court order is a qualifying court order for health benefits enrollment under this subpart must be accompanied by the documentation specified in § 838.221, § 838.721, or § 838.1005 of this chapter.

(2) The employing office will send the former spouse notice, in writing, of its decision. When an employing office informs a former spouse of his or her eligibility to enroll, it will identify the documents on which it based its decision and will include a premium payment schedule and statement of the requirements for continued enrollment under § 890.803. If the former spouse does not qualify for health benefits coverage, the employing office must give the former spouse a reconsideration right under § 890.104. Reconsideration requests from former spouses applying for benefits under § 890.803(a)(3)(iv) of this part must be directed to the Office of Personnel, Retirement Division, Central Intelligence Agency, Washington, DC 20505. Reconsideration requests from former spouses applying for benefits under § 890.803(a)(3)(v) of this part must be directed to the Department of State, Retirement Division, Washington, DC 20520.

(3) The agency employing office will maintain a health benefits file for the former spouse as a file separate from the personnel records of the employee or former employee. The retirement system acting as employing office for the former spouse may file the former spouse health benefits records in with the annuitant's retirement records.

(4) The former spouse will be required to certify that he or she meets the requirements listed in § 890.803 and that he or she will notify the employing office within 31 days of an event that results in failure to meet one or more of the requirements.

Qualifying court order.

(c) *Qualifying court order.* Subject to a 31-day extension period for conversion, the duration of health benefits coverage will coincide with any period specified in the qualifying court order providing for an annuity. A court order not meeting the requirements under part 838 of this title will not be used to establish or continue entitlement to a former spouse's health benefits coverage.

Premium payments.

(d) *Premium payments.* (1) The former spouse must remit to the employing office the full subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in §§ 890.401 and 890.807(a)(2). Payment must be made after the pay period in which

(2) If the individual was prevented by circumstances beyond his or her control from making payment with 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the employing office. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The employing office will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

Withholding from annuity.

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LIFE INSURANCE

Assignment of life insurance coverage

A Federal employee or former employee (including an annuitant) may make an irrevocable assignment of his or her coverage under the Federal Employees' Group Life Insurance (FEGLI) policy to another person or to a trust. Individuals who assign their FEGLI ownership continue to be insured under the FEGLI Program. However, they irrevocably transfer to the assignee many of the attendant rights, benefits, and

A Federal employee or former employee (including an annuitant) may make an irrevocable assignment of his or her Federal Employees' Group Life Insurance (FEGLI) policy to another person

responsibilities for their basic, standard optional, and additional optional insurance. (Family optional insurance cannot be assigned.)

Assignments of insurance are generally made to comply with the requirements of a court order upon divorce or for personal financial

An assignment automatically cancels a prior designation of beneficiary. The distinction between a designation of beneficiary and an assignment is addressed later.

Assignments of insurance coverage are generally made to comply with the requirements of a court order upon divorce or for personal financial planning purposes.

(a) **To comply with a court order.** An assignment of FEGLI coverage may be made by a Federal employee or former employee in order to comply with a court order for divorce. Frequently, the court will order a Federal employee or former employee to name a former spouse as the beneficiary of his or her life insurance proceeds. However, under the FEGLI law, an insured person may change his or her designation of beneficiary at any time. This is true even if a court order directs otherwise, because the FEGLI law preempts State law, and court orders based on state law, to the extent that the state law is inconsistent with the FEGLI

Assigning FEGLI coverage to a former spouse, however, provides a means for ensuring that, when FEGLI benefits are awarded to a former spouse in a divorce, the employee is not able to circumvent the award by changing the designation of beneficiary or cancelling the coverage at some

contract. Assigning FEGLI coverage to a former spouse, however, provides a means for ensuring that, when FEGLI benefits are awarded to a former spouse in a divorce, the employee is not able to circumvent the award by changing the designation of beneficiary or cancelling the coverage at some later date.

It should be noted that the law does not authorize the Office of Personnel Management (OPM) to enforce or comply with the provisions of a court order directing OPM or a Federal employee or former employee to assign FEGLI coverage. The law merely allows the Federal employee or former employee to make an assignment of FEGLI coverage, if he or she so chooses. It is the responsibility of the court-designated assignee to ensure that the order is enforced.

Life Insurance

(b) **For inheritance tax purposes.** An absolute assignment of an insured's interest in a group life policy, made at least 3 years before the insured's death, will generally remove the insurance proceeds from the insured's estate. Current Federal estate tax law allows an unlimited marital deduction for that portion of the gross estate passed to a surviving spouse. Thus, there is no apparent immediate tax advantage to assigning ownership of a life insurance policy to a spouse. However, since State tax laws vary and tax savings under Federal or State law can be considerable if insurance proceeds are not subject to estate taxes, it is important to consult with, and rely on, the advice of a competent estate tax advisor.

The Office of Personnel Management assumes no responsibility or obligation with respect to the validity, sufficiency, or the consequences of an assignment under the Internal Revenue Code.

If an insured owns more than one type of coverage--both basic and standard optional, for example--he or she must assign all of the

A determination whether the FEGLI proceeds are included in the insured's gross estate must ultimately be made by the Internal Revenue Service at the time of the insured's death. In attempting to determine the tax effect of an assignment, the assignor should refer to tax laws, case law, and IRS regulations. In addition, the assignor should consider obtaining a ruling from the IRS.

If an insured owns more than one type of coverage--both basic and standard optional, for example--he or she must assign all of the insurance. An insured may not assign only a portion of the coverage. Family optional insurance may not be assigned. An insured may not name contingent assignees in the event the primary assignee predeceases him or her. If the assignment of the insurance is to two or more

persons, the insured must specify percentage shares, rather than dollar amounts or types of insurance, to go to each assignee.

Once insurance is assigned, the assignee to whom the insured transfers FEGLI ownership may, for the insurance assigned to him or her: (1) designate beneficiaries, (2) convert the insurance to an individual policy if the insured's eligibility for group insurance ceases, and (3) cancel the insurance or reduce the amount of coverage. When insurance is assigned to more than one person, these people must agree when exercising the right to cancel or reduce coverage.

The assignor also continues to be responsible for premium payments

The Federal employee or former employee (assignor) retains the right to elect new insurance coverage, though all new insurance (excluding family optional insurance) is subject to an existing assignment. The assignor also retains the right to decide, at time of retirement or receipt of workers' compensation, to maintain more than the minimum percentage of his or her basic life insurance. The assignor also continues to be responsible for premium payments under the group policy. Premium payments will continue to be withheld from the assignor's pay, annuity, or compensation.

An assignment is not to be confused with a designation of beneficiary under the FEGLI Program. A Federal employee or former employee may designate a person or legal entity to receive any FEGLI insurance payable at death. Designations of beneficiary do not convey any ownership rights under the insurance policy and can be changed by the Federal employee or former employee at any time. Upon assigning FEGLI coverage, however, the employee or former employee gives up the right to make a designation

Life Insurance

of beneficiary or change beneficiaries, and the assignee assumes those rights.

An assignment is effective on the date the insured's employing office receives a properly completed, signed, and witnessed assignment. Each assignee and each beneficiary of an

assignee is responsible for keeping the employing office informed of his or her current address. For retirees, the "employing office" is the administrator of the retirement system. For retirees under the Civil Service Retirement System and Federal Employees Retirement System, assignments should be sent to the U.S. Office of Personnel Management, Retirement Operations Center, Boyers, PA 16017-0440.

Assignments must be made on OPM Form RI 76-10, Assignment of Federal Employees' Group Life Insurance. Employees may obtain the form from their personnel offices, and annuitants from their retirement systems.

Note: Until the enactment of Public Law 103-336 on October 3, 1994, assignments of FEGLI coverage were limited to Federal judges. OPM will publish revised regulations in 5 CFR Part 874 on the assignment of FEGLI coverage to include all Federal employees and former employees.

FEGLI Statutory Provisions

Section 8706(e) of title 5, United States Code, permits Federal employees and former employees to irrevocably assign their Federal Employees' Group Life Insurance coverage to another person. The statute provides:

§8706. Termination of Insurance; Assignment of Ownership

§8706. Termination of Insurance; Assignment of Ownership

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(e) Under regulations prescribed by the Office, each policy purchased under this chapter shall provide that an insured employee or former employee may make an irrevocable assignment of the employee's or former employee's incidents of ownership in the policy.

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