

# Federal Register

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## Part IV

### Office of Personnel Management

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5 CFR Parts 831, et al.

**Court Orders Affecting Retirement Benefits;  
Proposed Rule**

**OFFICE OF PERSONNEL  
MANAGEMENT**

5 CFR Parts 831, 838, 841, 842, and 843  
RIN 3206-AE14

**Court Orders Affecting Retirement  
Benefits**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations to improve processing of court orders affecting retirement benefits under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The proposed regulations would establish rules of interpretation and procedures for processing court orders that divide retirement benefits or award survivor annuities, provide model paragraphs for use in preparing court orders, and create a single uniform set of procedures for processing court orders under FERS and CSRS. The regulations are needed to streamline OPM's procedures to allow disputes over the interpretation of State court orders to be brought to closure more easily and quickly, minimizing hardship to the former spouse.

**DATES:** Comments must be received on or before March 3, 1992.

**ADDRESSES:** Send comments to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street NW., Washington, DC.

Comments on the information collection requirements contained in this regulation also should be filed with the Office of Management and Budget. (See below under Paperwork Reduction Act.)

**FOR FURTHER INFORMATION CONTACT:**  
Harold L. Siegelman, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** These regulations would replace the existing separate sets of interim regulations under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS).

On May 13, 1985, we published (at 50 FR 20064) interim regulations which, in part, revised our procedures for processing court orders affecting benefits under CSRS. Those interim rules were necessary to implement the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA) (Pub. L. 98-615).

On September 8, 1986, we published (at 51 FR 31927) interim regulations

amending the interim regulations published May 13, 1985. The September 8th interim regulations implemented several changes to CSRSEA made by the Federal Employees Benefits Improvement Act of 1986 (Pub. L. 99-251). The September 8th interim regulations also included changes based on comments received in response to the interim regulations published May 13, 1985.

On February 3, 1987, we published (at 52 FR 3209) interim regulations amending the interim regulations for processing court orders under CSRS to implement the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. 99-556).

On March 12, 1990, we published (at 55 FR 9093) amendments to the interim regulations implementing CSRSEA. The amendments included revised guidelines explaining how we interpret certain language used in court orders affecting CSRS benefits.

The interim regulations published May 13, 1985, as amended, remain in effect for court orders affecting CSRS benefits.

On December 30, 1986, we published (at 51 FR 47021) proposed regulations for revising our procedures for processing court orders under CSRS to expedite payments to the former spouses.

On December 31, 1986, we published (at 51 FR 47190) interim regulations for processing court orders affecting FERS basic benefits. Those interim regulations implemented for FERS the procedures that we had proposed the day before for CSRS. The interim regulations published December 31, 1986, remain in effect for court orders affecting FERS benefits.

**1. Reasons to Change Processing  
Procedures**

The proposed regulations will make it easier for the parties in a divorce to ensure that OPM will divide CSRS or FERS benefits, or provide a survivor benefit, in accordance with their wishes. In enacting the provisions allowing OPM to honor the decisions of State courts respecting a former spouse's interest in an employee's retirement benefits, the intent of Congress was that the Federal Government not insert itself into marital property disputes. The proposed regulations assure that the dispute-resolution role rests in the hands of the State courts as was originally intended by the Congress.

Under the current regulations for court orders, a process has evolved that, rather than truly protecting the rights of all parties, often simply resulted in delays in payments to former spouses and hardships to them. Under existing regulations, when we receive a court

order that awards a benefit to a former spouse of a CSRS or FERS retiree, the retiree can protest OPM's decision through frequently lengthy administrative procedures. This may create financial hardship because, under CSRS procedures, no money is paid while the administrative proceedings are pending. Since the aftermath of many divorces is often an emotionally charged situation, some retirees deliberately use the process to delay payments for as long as possible.

The proposed regulations synthesize our experience in processing court orders since 1978, and contain two important changes that we believe will improve our service to people affected by these orders. First, the regulations will make it easier for people to submit orders that will be acceptable to OPM. The regulations 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 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, 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.

Second, because the regulations prescribe in detail what is and is not acceptable for processing, OPM can now assume the appropriate role for itself, which is a ministerial role, rather than a mediator in marital property disputes. This 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 the retiree 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 retiree's complaint is the State court. OPM will require the employees and former spouses to settle the 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. This will result in faster resolution of disputes and eliminate the delay in payments to former spouses with court orders that

comply with the requirements of the regulations.

## 2. Changes Having Broad Application

The proposed regulations would consolidate the CSRS and FERS regulations concerning court orders affecting retirement benefits into a single set of regulations applicable to both retirement systems.

We have made several changes to make the regulations easier to use by both the legal community in drafting and submitting court orders and by OPM staff in applying the regulations to court orders. The proposed regulations distinguish clearly among regulations that affect employee annuities, refunds of employee contributions, and former spouse survivor annuities. Under the current regulation, some sections contain regulations pertaining to more than one of these different benefits. This resulted in a lack of clarity about which regulatory provisions apply to which types of benefit. The proposed regulations also divide rules into separate subparts covering procedures, requirements, and terminology. These changes make it easier for the legal community to focus on the provisions that affect benefits involved in the case with which they are concerned. A side effect of clearly dividing the regulations by the type of benefits the order seeks to affect is repetition of provisions that apply to more than one type of benefit. The repetition has added greatly to the length of these regulations; however, separate provisions about the effect of court orders on different types of benefits will simplify this very difficult subject and enhance the usability of the regulations.

These proposed regulations change several terms that have caused confusion or misunderstandings under the current regulations. We hope that the new terms will make the regulations easier to understand.

The term, "employee retirement benefits," that is used in the current regulations has been replaced by its two component parts, "Employee annuities" and "Refunds of employee contributions." The failure to distinguish between these two distinct types of benefits in the current regulations makes the regulations more complex and difficult to understand. Although most of the rules relating to "employee retirement benefits" apply to both annuities and refunds, some of the rules affecting "employee retirement benefits" make sense only for annuities, and others, only for refunds. Treating annuities and refunds separately makes the regulations longer; however, we

believe that it also makes them simpler for attorneys and others to use.

The term, "former spouse annuity," which is used in the current regulations, has been replaced by "former spouse survivor annuity." Comments on prior regulations demonstrated that most commenters did not understand that "former spouse annuity" in the current regulations is only used when we are referring to the survivor benefit payable to a former spouse. The term has never included payments to a former spouse during a retiree's lifetime.

The term, "qualifying court order," which is used in the current regulations, has been replaced by "court order acceptable for processing." The principal reason for this change is to eliminate any similarity in terminology between court orders affecting CSRS and FERS benefits and "qualified domestic relations orders," QDRO's, under the Employees Retirement Income Security Act (ERISA), 29 U.S.C. 1001 *et seq.* In addition, the new term is more consistent with our role under the proposed regulations as the ministerial processor of court orders.

## 3. Preparing a Court Order

A court order may affect any of three types 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 separate and independent of the other two, and should exercise great care in each type of benefit they intend to affect. Our requirement that the award of each type of benefits 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 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. However, frequently, courts intend to award only a portion of the employee annuity or a survivor annuity, rather than a complete retirement package. The regulatory structure is designed to maintain a clear separation between court orders affecting different types of benefits. This permits a court that intends only to divide an employee annuity 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. More detail on the regulatory structure is available in the analysis of § 838.102.

## 4. Section Analysis

Section 838.101(a) states the purpose of the regulations. The regulations cover both CSRS and FERS. Our role under the proposed regulations changes from one of an active adjudicator of disputes concerning the interpretation of court orders to one of performing only the ministerial function of executing clear, specific, and unambiguous instructions. As we explained in the section of this supplementary information entitled "Reasons to Change Processing Procedures," the proper place to resolve disputes concerning division of retirement benefits upon termination of marriage is the State courts.

OPM's comments on the legislation that in 1978 enacted section 8345(j) of title 5, United States Code, favored placing the responsibility for deciding the issue of divisions of CSRS employee annuities and refunds of employee contributions as marital property in the State courts. On May 7, 1979, the supplementary information for the original proposed regulations (published at 44 FR 26885) recognized the traditional role of State courts in domestic relations matters. Despite the legislative intent to have all property issues resolved in the State court, we, in interpreting ambiguous orders, have been drawn into marital disputes. Section 838.101(a) states our intent to separate ourselves from these marital disputes. The approach of these regulations is to require the State courts to resolve all disputes, requiring us to perform only the ministerial function of following the State courts' instructions.

Section 838.101(b) states what is covered by these court order regulations. Four principal areas are covered. The first area is the requirements that a court order must meet to enable us to process the court order without any adjudicatory role for OPM, that is, making OPM's function merely a ministerial act. The second area is the procedures that the former spouse must follow to apply for benefits based on a court order. The third area is the procedures that OPM will follow in executing court orders and in making payments based on court orders. The procedures cover how we handle applications based on court orders and the limitations that we must apply in executing court orders. The final area is the meanings assigned to words and phrases commonly used in court orders to provide notice of the effect that these

terms will have if used in a court order. With this notice, we must assume that courts use these terms with a full understanding of their regulatory definition, making terms that could otherwise be ambiguous, completely clear and precise, thereby allowing us to process the court order as a ministerial act.

Section 838.101(c) provides the rule for determining whether we will process a court order under the new regulations. We must retain the old CSRS regulations for court orders filed before the new regulations begin to apply to preserve the legitimate expectations of people who filed court orders that were drafted in reliance on the current regulations. We have thousands of court orders on file that, under the current regulation, we are holding without decision until benefits become payable. The acceptability of these court orders must be judged under the regulatory standards in effect at the time that they were filed. Applying the new, more stringent standards of these regulations to them would be unfair to the employees and former spouses who obtained the court orders in good faith.

The delay before the new regulations become effective is necessary to give the public, especially the legal community, notice of the new requirements and standards that apply to court orders affecting CSRS or FERS benefits and to provide an adjustment period before those requirements and standards apply. We must assume that State courts and attorneys involved with divorces of Federal employees and retirees will become thoroughly familiar with the requirements and terminology in the regulations. We do not wish to require the parties to return to court unnecessarily. The delayed effective date provides time for the effective dissemination of this information.

Section 838.102 provides a guide to finding regulations that relate to court orders. Paragraph (a) outlines the structure of part 838. Subpart A contains definitions and other material of significance to all types of court orders affecting CSRS and FERS. The rest of the part is 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 explains 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 § 838.102 contain cross references to other regulations concerning court orders or former spouse benefits. This information may assist people doing research.

Section 838.103 contains definitions of terms. These definitions apply to subparts A through I. Subpart J (for orders filed before the new requirements and procedures become applicable) contains its own definitions. Most of the definitions are the same as used in the current CSRS regulations. As explained in the section of the Supplementary Information entitled "Changes Having Broad Application," the term "court order acceptable for processing" replaces "qualifying court order," and "employee annuity" and "refund of employee contributions" replace "employee retirement benefits."

The definition of "net annuity" is changed to exclude from "net annuity" amounts withheld for State income taxes under section 8345(k) or section 8469 of title 5, United States Code to the same extent that current regulations exclude amounts withheld for Federal income tax. "Net annuity" has two applications. First, "net annuity" is the maximum amount of employee annuity that a State court can award to a former spouse. "Net annuity" is also one of the three types of annuity that may be used to satisfy the requirements of § 838.306 for identifying the type of annuity to which a formula, percentage, or fraction applies. The other two types, "gross annuity" and "self-only annuity" are also defined in section 838.103. Those definitions are essentially the same as under the current regulations.

Section 838.111 states the general statutory exemption from legal process under section 8346(a) or section 8470 of title 5, United States Code. Neither

CSRS or FERS benefits are subject to State court orders except when expressly authorized by Federal statute. These regulations (part 838) contain the regulations for the exceptions that permit State court orders under section 8345(j), section 8341(h), section 8467, or section 8445 of title 5, United States Code. Part 581 of title 5, Code of Federal Regulations, regulates the exception for garnishments for alimony and child support under sections 659, 661, and 662 of title 42, United States Code.

Sections 838.121 through 838.124 state the responsibilities of everyone affected by the process. OPM's role is limited to the ministerial function of complying with court orders that meet the statutory and regulatory requirements. The State court is the proper forum for resolving all disputes over the validity or the effect of court orders. The court is also responsible for issuing orders that conform to the statutory and regulatory requirements. The former spouse must comply with the application requirements of these regulations. The person who worked under CSRS or FERS and the former spouse must submit all their disputes concerning entitlement to benefits to the appropriate State court for resolution.

Section 838.131 contains rules for computing the timeliness throughout part 838. Paragraph (a) provides that the normal CSRS and FERS rules for computing timeframes apply under part 838. Paragraph (b) provides rules for determining the date when OPM receives a court order. The date of receipt may be important for determining whether the order is controlled by subparts A through I or subpart J, the timeliness of filing, or the commencing date of benefits. The methodology for determining the date of receipt is similar to the methodology applicable to determining the date of service of process for garnishments under subpart B of part 581 of title 5, Code of Federal Regulations.

Section 838.132 states the statutory payment schedule for CSRS and FERS annuity benefits under sections 8345(a) and 8463 of title 5, United States Code, respectively. We are required by statute to pay CSRS and FERS annuity benefits on the first business day of the month after the month in which the benefits accrue. State courts have no authority to alter this payment schedule.

Section 838.133 continues the rule under section 831.1713(b) of title 5, Code of Federal Regulations, and Guidelines I.G of appendix A and III.F of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that provides that the minimum monthly amount



payable under a court order is one dollar. This section discontinues the provision in the current regulation that requires that the former spouse's share of employee annuity be rounded to the nearest whole dollar. Although the gross amount of an employee annuity is always in whole dollars, the amount paid to the employee after deductions usually is not. Rounding the former spouse benefit to the nearest dollar appears to serve no useful purpose.

Section 838.134 states the order of precedence for honoring court orders when we receive more than one court order affecting one employee or retiree. This section does not change the current rules. Except for court orders that make prohibited modifications of survivor annuity provisions (i.e., modifications that are ineffective under sections 8341(h)(4) and 8445(d) of title 5, United States Code), the last court order concerning any former spouse supersedes all earlier court orders affecting that former spouse. For cases involving more than one former spouse, the court order issued first has priority. Section 838.134(c) provides the rules that we will follow if the employee or retiree and the former spouse obtain conflicting court orders. The rules for determining which court order we must follow provide that we will honor the determination by courts of the employee's domicile (as shown by our records) in preference to the courts of any other jurisdiction and we will honor a later determination in preference to an earlier one. The former is appropriate because the courts of the employee's or retiree's domicile have the best claim to jurisdiction over his or her property, including the employee annuity. The latter is appropriate because the latest court order is presumably issued with knowledge of all earlier court orders and is intended to supersede them.

Section 838.135 eliminates the former spouse's option under § 831.1718 of title 5, Code of Federal Regulations, to have us honor an agreement between an employee or retiree and the former spouse that gives the former spouse a smaller portion of the employee's or retiree's benefits than the former spouse would receive under the court order. The current regulation should be changed because it is inconsistent with OPM's role of merely following the court instructions. If the employee or retiree and the former spouse agree on an amount other than the one that we determine must be paid in accordance with these regulations based on the terms of the court order, they must obtain an amended court order

acceptable for processing to change the amount.

Subpart B regulates the procedures that apply to former spouse's applications and our processing of court orders directed at employee annuities. The distinctions among procedures, requirements and terminology are discussed in connection with § 838.102. Section 838.201 lists the topics covered by subpart B and contains cross references to related regulations.

Section 838.211 regulates when a former spouse's share of employee annuity becomes available for payment and the maximum amount payable to a former spouse. These rules are unchanged from the current regulations, §§ 831.1706 and 841.905 of title 5, Code of Federal Regulations.

Section 838.211(c) regulates when a court order prevents a retiree from waiving his or her annuity under section 8345(d) or 8465(a) of title 5, United States Code. Our rule has always been that waiver is permitted until the court order has affected the annuity. Under CSRS, the court order affects an annuity only after expiration of the 30-day notice period during which the retiree can file an objection to give reasons that OPM should not honor the court order. Accordingly, § 831.1706(b) of title 5, Code of Federal Regulations, ends the right to waive at the end of the 30-day notice period. Under FERS and the proposed regulations, the court order affects the annuity when we receive the court order. Accordingly, § 841.905(b) of title 5, Code of Federal Regulations, and § 838.221(c) terminate the right to waive the employee annuity at that time.

Section 838.221 states the application requirements that a former spouse must meet. The requirements are the same as the current FERS requirements under § 841.905 of title 5, Code of Federal Regulations. The only difference from the CSRS requirements under § 831.1705 of title 5, Code of Federal Regulations, is that the former spouse must provide the employee's mailing address if the court order affects the benefits of someone who is still an employee. Under the CSRS regulations, we do not process court orders until benefits become payable. Under the current FERS regulations and the proposed regulations, we need the employee's mailing address because we process the court order upon receipt. In processing a court order, we send information to the employee.

Sections 838.222 and 838.223 provide procedures for our processing of court orders. The procedures eliminate the delays in payments to the former spouse and streamline our handling of court

orders. The regulations state the information that OPM will provide to the employee or retiree and the former spouse affected by a court order. Section 838.222(d) provides that payments to the former spouse and withholding from the employee annuity will begin on time, even if the information is not provided to the retiree before the annuity withholding begins.

Section 838.224 provides procedures that the employee or retiree must follow to dispute the validity of the court order. The burden is on the employee or retiree to obtain a court order invalidating the court order submitted by the former spouse. The proper forum for deciding issues relating to the validity of court orders is the courts, not Federal administrative proceedings. Paragraphs 838.224 (a) and (b) require the retiree to submit all challenges to the validity of a court order to the court for adjudication.

Section 838.225 regulates processing amended court orders. Amended court orders are processed as new court orders. Paragraph (b) clarifies the rule for collection of amounts past due or correcting excessive payments under § 831.1711(a)(2) or § 841.910(b)(1) of title 5, Code of Federal Regulations. To have OPM collect an arrearage or correct for excessive payments the court order must expressly tell us to take that action, tell us the total amount of the adjustment, and tell us how much of the adjustment should be made each month.

Section 838.231 regulates the commencing date of payments to the former spouse. Section 838.231(a) provides that the former spouse's share of an employee annuity begins to accrue on the first day of the second month after we receive a court order acceptable for processing. The statute does not provide a commencing date. This commencing date corresponds to the earliest commencing date permitted by statute for a survivor annuity based on a court order under sections 8341(h)(3)(A) and 8445(c)(1) of title 5, United States Code. This commencing date is the same as is used in the current FERS regulations under § 841.910(b)(2) of title 5, Code of Federal Regulations.

Section 838.231(b) regulates the commencing dates of accrual and payment of the former spouse's share of an employee annuity when the former spouse submits an incomplete application. Former spouses frequently submit copies of court orders that do not bear original court certifications, and therefore, do not satisfy the requirements of § 838.221. We also receive applications lacking other documents required by that section for proving validity of the court order.

Section 838.231(b) provides that the only document necessary to begin accrual of the former spouse's share of the employee annuity is a copy of the court order, even if that copy is not an original court certified copy. However, we cannot pay accrued benefits to the former spouse until we have received all the required documentation. If necessary, we will make a retroactive payment to the former spouse covering annuity that accrued after we receive a copy of the court order but prior to our receipt of all necessary documentation.

Section 838.232(a) restates the requirement under § 831.1713(d) or § 841.912(b) of title 5, Code of Federal Regulations, that we must suspend a former spouse's share of an employee annuity if the employee annuity is stopped. Section 838.232(b) provides an exception to the suspension requirement to curb abuses by retirees.

Section 838.233 regulates the termination of the former spouse's share of an employee annuity. It does not change current practice. Paragraph (a) provides for termination in accordance with the terms of the court order. Paragraph (b) provides for termination as soon as possible after we receive a court order invalidating the court order submitted by the former spouse. If we receive the court order at least 20 days before the end of the month we generally can stop the next check (which is for annuity accruing during the month in which we received the court order). If we receive the court order when there are fewer than 20 days left in the month, we will not stop the check for the month in which we receive the court order, but the former spouse's share of the employee annuity will cease accruing at the end of that month. Paragraph (c) provides that a court order becomes ineffective when an amended court order that supersedes it becomes effective. Paragraph (d) provides that if the retiree dies, the former spouse's share stops when annuity to the retiree stops, effective at the end of the month before death. No Federal statute gives State courts any authority over accrued, unpaid annuity that would have been due the retiree for the part of the month in which the retiree dies. We must pay it in accordance with the order of precedence in section 8342 or section 8424 of title 5, United States Code. For cases in which the former spouse predeceases the retiree, paragraph (e) provides that unless the court order expressly provides otherwise, accrual of the former spouse's share ceases at the end of the month before the former spouse dies.

Section 838.234 provides the special requirements applicable to a court order that directs us to collect an arrearage. The special requirement is discussed in connection with § 838.225.

Section 838.235 states how we will pay lump-sum awards from employee annuity. If the court specifies the monthly rate of payment, we will use that rate. Otherwise, we will withhold at the rate of 50 percent of the gross annuity at the time that payments start. Payments will continue at the same rate until the lump sum has been paid.

No Federal statute authorizes State courts to delay or stop annuity payments. We are required by sections 8345(a) and 8463 of title 5, United States Code, to pay employee annuity monthly. Sections 8345(j) and 8467 of title 5, United States Code, authorize State courts in certain situations to direct payment to someone other than the retiree but not to stop payments. Section 838.236 states this statutory prohibition against court orders seeking to stop payments that we are required to make.

Section 838.237 changes the procedures that we will follow upon the death of the former spouse. Currently, § 831.1712 of title 5, Code of Federal Regulations, requires us to contact the State court when the former spouse dies. At that time, we request the State court to provide additional instructions for the disposition of the former spouse portion of the employee annuity. Only a court order issued after the death of the former spouse meets the requirements of the current regulation. Section 838.237 changes our approach to eliminate our involvement in the process. We will no longer solicit additional instructions from the court or require an after-death court order to resolve entitlement. Unless that court order includes express instructions telling us what to do with the former spouse's share of the employee annuity when the former spouse dies, the former spouse's share reverts to the employee upon the death of the former spouse. The limitations on whom we will pay after the death of the former spouse that currently exist under § 831.1712 of title 5, Code of Federal Regulations, would continue under § 838.237.

Section 838.241 states that we add cost-of-living adjustments to annuities in accordance with section 8340 or section 8462 of title 5, United States Code. If the court wants us to apply a different rate or add them at a different time, the court order must include specific instructions.

Section 838.242 states the current rules that we use to calculate lengths of service in evaluating formulas used in a court order. The current rule is in

guidelines I.A and I.C of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. Our policy not to compute lengths of time smaller than months is based on section 8332 of title 5, United States Code, that allows credit for service for years or twelfth parts thereof. We will not honor requests that we calculate smaller units of time.

Section 838.243 duplicates the minimum amount of a former spouse's share of employee annuity requirement established in § 838.133 of these regulations.

Subpart C states the requirements that a court order directed at employee annuity must satisfy to qualify as a court order acceptable for processing. Each section is structured to exclude court orders that do not satisfy the requirements of that section. This structure is designed to allow us to point to specific regulatory language that expressly states that a court order that does not contain a necessary provision is not acceptable for processing. Unless a specific regulation declares a court order not acceptable, the court order is acceptable for processing.

Section 838.302 clarifies that court orders that contain language that make it impossible for us to process the court order while maintaining our ministerial role are not acceptable for processing. Section 838.302(a) defines as unprocessable all court orders labeled "qualified domestic relations order" or issued on ERISA forms. Such a court order demonstrates on its face that the court does not understand that CSRS and FERS are not covered by ERISA. More importantly, the court order itself proves that our necessary presumption that the court is familiar with these regulations and that the court used the terms defined by these regulations intending those terms to have the meaning assigned by these regulations is incorrect. Accordingly, we cannot process such a court order.

Section 838.302(b) also defines as unprocessable court orders that attempt to award a former spouse a portion of an employee annuity that continues after the death of the employee. Our system provides only two types of benefits, employee annuities that are payable to the employee and terminate at the employee's death and survivor annuities that are payable to the employee's survivors after the employee's death. Sections 8345(j) and 8467 of title 5, United States Code, permit a State court to redirect payments that would otherwise be made to a former employee to a former spouse, but our system does not allow the State court to partition the employee

annuity to create a separate annuity that can continue independent of the employee's continued entitlement to the employee annuity. Only a survivor annuity can continue after the death of the employee.

Our current guidelines provide that unless the court order clearly and specifically provides that it is awarding an annuity that begins after the death of the employee or retiree, rather than a continuation of the former spouse's share of the employee annuity—a continuation not authorized by statute—the court order is not acceptable. How that distinction affects the use of these regulations is discussed in the section of this supplementary information concerning preparing a court order. This approach is justified for a number of reasons. Continuing the spouse's portion of an employee annuity after the death of the employee is a product of ERISA which permits a permanent partition of an employee annuity. As previously discussed, CSRS and FERS are exempt from ERISA and do not permit partition of an employee annuity. Our statutes only permit payment that would otherwise be made to a former employee to be redirected to the former spouse. We must also be assured that the court understood that the award of a survivor benefit results in a reduction of the employee's annuity. A court order that implies that partition of an employee annuity is permitted demonstrates that the court is not familiar with the requirements of these regulations. Thus, we must be able to rely on familiarity to make our function of executing court orders in accordance with these regulations ministerial.

We have, in the past, interpreted language that attempted to award the former spouse a portion of the employee annuity that would continue after the death of the employee as providing a portion of the employee annuity that terminates at the employee's death. However, such an interpretation would not be consistent with our limited ministerial role under these regulations. The number of court orders affected by this provision should be negligible.

Section 838.303 requires that the court order identify the retirement system and state that the former spouse is entitled to a portion of the employee annuity. This requirement is derived from current regulations, §§ 831.1704(a) and 841.903(b) of title 5, Code of Federal Regulations.

Section 838.304 changes the current rule on the degree of specificity required for a court order to direct us to pay the former spouse's share of an employee annuity directly to the former spouse. Under current CSRS regulations

(§ 831.1704(b) of title 5, Code of Federal Regulations), we will pay the former spouse if the court order directs us to pay, or if the court order is neutral concerning the source of payment, or if the court order directs the retiree to pay and the retiree does not object to our paying directly. Under the current FERS regulation (§ 841.903(b) of title 5, Code of Federal Regulations), we will pay the former spouse unless the court order expressly directs us not to pay the former spouse directly. Under both of these approaches, we acted in an adjudicatory role. Considering that most of the court orders that we currently accept are neutral concerning the source of payments and we do not wish to needlessly require former spouses to return to court to correct technical deficiencies in court orders, we will continue to accept court orders that are neutral concerning who is to make the payments. Nevertheless, we strongly recommend that court orders expressly direct OPM to pay the former spouse directly. Court orders that direct the retiree to pay the former spouse are not acceptable for processing.

Section 838.305 states the requirements for specifying how much of the employee annuity is payable to the former spouse. The section continues the current requirements of §§ 831.1704(b) and 841.903(b) of title 5, and guidelines I.C and VI of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations, with one exception. The current guidelines (guideline VI.A.2 of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations) provide one exception to the general rule that we "will not research, interpret, or apply State laws regarding community or marital property rights or divisions." The exception in current guidelines requires us to apply State law to determine whether disability retirement benefits are subject to division as marital property upon divorce. Section 838.305 abolishes that exception and applies the general rule to all court orders. Unless the court order expressly directs us not to apply it to an employee annuity based on disability, we will apply the court order to any employee annuity payable. If State law does not permit division of disability retirement benefits until the retiree reaches age 62, and the court wants OPM to follow the State rule, the court order must state that it does not apply to disability retirement benefits until the retiree reaches age 62 and provide sufficient instruction for dividing the employee annuity after age 62.

Section 838.305 (b)(2) and (e) contain new material concerning the information that courts can expect us to locate in

evaluating a formula. Both of these provisions arise from our concern about the types of salary rate information that will be available under the Federal Employees Pay Comparability Act of 1990, section 529 of Public Law 101-509, enacted November 5, 1990, especially, information about locality pay differentials under section 5305 of title 5, United States Code. Section 838.622(b)(2) contains a list of items that courts should feel comfortable in expecting us to evaluate. Courts should be wary about expecting us to evaluate variables that require us to find information not on the list. Section 838.622(e) provides that a court order is not acceptable for processing if it directs us to adjust the salary component of an annuity computation by an amount other than one of the four factors listed in the paragraph.

Section 838.306 provides that a court order that awards the former spouse a percentage or fraction of the employee annuity or gives us a formula for computing the amount of the former spouse's share of the employee annuity must use as a base for our computation the self-only, gross, or net annuity and must provide us with a way to tell which of these three types of annuity to use.

Subpart D regulates the procedures applicable to court orders directed at refunds of employee contributions. Its structure is similar to subpart B, which contains the corresponding rules for employee annuity. Sections 838.401, 838.411, 838.421, 838.423 through 838.425, and 838.441 correspond to §§ 838.201, 838.211, 838.221, 838.222 through 838.224 and 838.242, respectively.

Unlike annuities that are paid each month, refunds of employee contributions are paid only once and they extinguish any entitlement to a deferred annuity benefit. After the refund is paid, no funds are left to satisfy a court order.

Section 838.422 regulates the time limits for a former spouse to file an application for a court order to affect a refund of employee contributions. The time limits are the same as currently apply under § 831.2009 of title 5, Code of Federal Regulations. We must generally receive the court order no later than the last day of the second month before we pay the refund; however, if the former spouse indicates on the form for spousal notification of a refund application that he or she is submitting a court order, the court order is timely filed if we receive it no later than 20 days after we receive the form for spousal notification of a refund application.

Section 838.431 provides a remedy for former spouses who are harmed by not

receiving notice of an application for a refund of employee contributions. This section continues the current rule under § 831.2009(f) of title 5, Code of Federal Regulations.

Section 838.432 states the statutory requirement under sections 8342(j) and 8424(b) of title 5, United States Code, that a State court may prevent the payment of a refund of employee contributions only if a court order entitles the former spouse to a portion of the employee annuity or to a former spouse survivor annuity. The current regulation implementing that statute is § 831.2009(g) of title 5, Code of Federal Regulations.

As subpart C states the requirements that a court order directed at employee annuity must satisfy to qualify as a court order acceptable for processing, subpart E contains similar rules for court orders directed at refunds of employee contributions. Its structure is similar to subpart C. Sections 838.501, and 838.502 through 838.504 correspond to §§ 838.301, and 838.303 through 838.305, respectively.

Section 838.505 implements the statutory requirements for barring payment of a refund of employee contributions that are stated in section 8342(j) or section 8424(b) of title 5, United States Code. A court order can prohibit payment of a refund of employee contributions only if it awards a former spouse a portion of employee annuity, or a former spouse survivor annuity, that would be extinguished by payment of the refund of employee contributions.

Subpart F explains our understanding of terms frequently used in court orders directed at employee annuities or refunds of employee contributions and states whether use of the term will satisfy specific requirements of subpart C or subpart E. When we process court orders, we must assume that courts are familiar with the meanings assigned to the terms defined in this subpart and have used the terms in the way assigned by subpart F.

Section 838.611 contains information about provisions that attempt to identify the retirement system to satisfy the requirements of § 838.303 or § 838.502 of these regulations. Section 838.611 continues the current rules under guideline V of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. The court order must clearly provide that it affects CSRS or FERS benefits. Court orders that award benefits paid by agencies other than OPM, most commonly military retired pay paid by the Department of Defense, are not acceptable even if the other benefit terminates to allow credit

toward the benefit paid by OPM. This is necessary for two reasons. A practical reason is that we would not be able to compute benefits based on a retirement system administered by another agency. The legal reason is that no court order authorizes OPM to pay a portion of the retiree annuity to the former spouse.

Section 838.612 contains information about provisions used to identify employee annuities or refunds of employee contributions to satisfy the requirements of § 838.303 or § 838.502 of these regulations. Section 838.612 continues the current rules under guideline IV of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. Paragraph (a) lists terms that are usually used to identify any type of retirement benefit actually paid. Although the literal meaning of some of the terms listed in paragraph (a), such as "pensions" or "annuities," would not include lump-sum distributions, such as refund of employee contributions, our experience has shown that these terms are broadly used to identify all retirement benefits payable. Accordingly, we will continue to accept these terms as affecting both employee annuities and refunds of employee contributions. Paragraph (b) lists terms used to describe lump-sum awards, that is, awards either of a specified amount that are usually based on the amount of the employee contributions (rather than on the amount of an employee annuity) or payable only from refunds of employee contributions.

Section 838.621 establishes a new term, "prorata share," for the most common type of formula used to divide retirement benefits. Court orders that use this term are instructing us to divide the benefits in accordance with the formula provided in paragraph (a). The section also identifies other terms that award a "prorata share."

Section 838.622 contains information about cost-of-living and salary adjustments that can be altered by provisions in court orders. It continues the current rules under guidelines I.A and I.B of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Section 838.623 contains information about terms used in court orders that attempt to describe periods of service or tell us how to compute lengths of service for use in formulas. It continues the current rules under guidelines I.D, I.F, and III of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations, except that the definition of "military service" has been changed to include periods of civilian employment with military agencies.

Under the current guidelines, "military service" excludes such periods of civilian employment "except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order." This change is necessary because exercising judgment to determine whether "the exclusion of such civilian service would be manifestly contrary to the intent of the court order," would be inconsistent with limiting our role in executing court orders to perform the ministerial function of carrying out the court's instructions. Our experience has shown that the court usually intends to include this civilian service in each element of the computation; therefore, we drafted the regulation to implement what has been the court's most likely intent. Again, we must assume that, unless the court provides its own definition, the court will use the term as we have defined it here.

Section 838.624 contains information about how we will treat court orders that contain inconsistent instructions for determining the amount of former spouse's share. It continues the current rules under guidelines I.E. and I.C.2 of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Section 838.625 contains lists of terms that are synonymous with the types of annuity defined in § 838.103. The terms may be used to satisfy the requirements of § 838.306 of these regulations. Section 838.625 continues the current rules under guideline II of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Subpart G regulates the procedures applicable to court orders awarding former spouse survivor annuities. Its structure is similar to subpart B that contains the corresponding rules for court orders awarding a portion of an employee annuity. Sections 838.701, 838.721 through 838.724, and 838.735 correspond to §§ 838.201, 838.221 through 838.224, and 838.241, respectively.

Section 838.711 states the statutory maximum amount that we may pay as a former spouse survivor annuity. The total of all monthly survivor annuities payable to the widow or widower and all former spouses (except for the former spouse survivor annuities authorized by section 4(b) of CSRSEA) may never exceed 55 percent of the employee annuity under CSRS or 50 percent of the employee annuity under FERS. The definition of former spouse survivor annuity in § 838.103 includes the basic employee death benefit as defined in § 843.102 of title 5, Code of Federal Regulations.



Section 838.725 states the statutory provision in section 8341(h)(4) or section 8445(d) of title 5, United States Code, declaring ineffective court orders that, after the employee retires or dies, modify any provision in a court order concerning a former spouse survivor annuity. This subject is covered in more detail by § 838.806.

Section 838.726 establishes as a regulation for the first time our existing policy for handling employee and retiree election rights in cases in which a former spouse is entitled to a former spouse survivor annuity. It provides that court orders affect our authority to pay benefits based on employee elections but do not affect the employee or retiree's rights to make survivor annuity elections. For example, a married employee who at the time of retirement has a former spouse who is entitled to the maximum former spouse survivor annuity by court order must elect (under § 831.604 or § 842.604 of title 5, Code of Federal Regulations) a reduced annuity to provide a current spouse survivor annuity to the spouse at the time of retirement unless that spouse consents to a different election. The employee annuity is reduced based on the court order that awards the former spouse survivor annuity. No additional reduction is necessary based on the election for the spouse at retirement because that spouse will not receive a benefit as long as the former spouse's entitlement under the court order continues. The benefit for the current spouse is discussed under § 838.733.

Sections 838.731 and 838.732 implement statutory requirements under section 8341(h)(3) or section 8445(c) of title 5, United States Code, for commencing and terminating former spouse survivor annuities.

Section 838.733 establishes as a regulation for the first time our existing policy for determining the rights of a current spouse as defined in §§ 831.603 or 842.602 of title 5, Code of Federal Regulations, for whom the retiree elected a reduced annuity to provide a survivor annuity, or a former spouse with a court order that cannot be honored because of a higher priority court order when a former spouse with entitlement to a former spouse survivor annuity by court order loses that entitlement. If the former spouse loses entitlement while the retiree is living, the annuity reduction would automatically continue to provide a survivor annuity to the current spouse or other former spouse. If the former spouse loses entitlement after the death of the retiree, the spouse at retirement (if he or she qualifies as a widow or

widower) or other former spouse would begin to receive a survivor annuity after the former spouse loses entitlement.

Section 838.734 states the rule that OPM will not honor court orders that award lump-sum payments (other than the FERS basic employee death benefit) to a former spouse upon the death of an employee or retiree.

Subpart H regulates the requirements applicable to court orders awarding former spouse survivor annuities. Its structure is similar to subpart C, which contains the corresponding rules for court orders awarding a portion of an employee annuity. Sections 838.801, 838.803, and 838.805 correspond to §§ 838.301, 838.302, and 838.305, respectively.

Section 838.802 states the statutory requirements under CSRS that a court order may award a former spouse survivor annuity only if the marriage terminated on or after May 7, 1985, and, if the retiree retired before May 7, 1985, the former spouse was the beneficiary of a reduced annuity to provide a current spouse survivor annuity on May 7, 1985. These requirements result from section 4(a)(1) of CSRSEA, which controls the effective date of section 8341(h) of title 5, United States Code, the statutory authority for State court orders that award former spouse survivor annuities.

Section 838.804 states the requirement that a court order must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity. This continues the current requirement of § 831.1704(d) of title 5 and guideline II of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. Sections 838.303 and 838.304 are the corresponding sections applicable to employee annuity.

Section 838.806 contains the special requirements applicable to an amended court order. Sections 8341(h)(4) and 8445(d) of title 5, United States Code, do not allow us to accept court orders that contain modified provisions affecting survivor annuities if the modification is issued after the retirement or death of the employee. We explained these statutory provisions in detail (at 53 FR 29057, August 2, 1988, and 53 FR 46895, December 5, 1988) when we issued §§ 831.1704(e) and 841.903(d) of title 5, Code of Federal Regulations. Section 838.806 continues to treat as prohibited modifications the same amended court orders that were prohibited under §§ 831.1704(e) and 841.903(d). In addition, § 838.806 establishes standards for determining whether orders that vacate or set aside divorces are pretexts

for evading the statutory prohibition against modification.

Section 838.807 states the current requirement under guideline III.C of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that the cost of providing the survivor annuity must be taken from the employee annuity or the former spouse's share of the employee annuity. If the court order directs us to take the cost from the former spouse's share of the employee annuity and the former spouse's share of the employee annuity is sufficient to pay the entire cost, we will take the cost from the former spouse's share of the employee annuity. Otherwise, the entire cost to provide the former spouse survivor annuity must be taken from the employee annuity in accordance with section 8339(j) or section 8417(a) of title 5, United States Code.

Subpart I explains our understanding of terms frequently used in court orders awarding former spouse survivor annuities and states whether use of the terms will satisfy specific requirements of subpart H. When we process a court order, we must assume that the court is familiar with the meanings assigned the terms defined in this subpart and have used the terms in the way assigned by this subpart.

Section 838.911 is similar to § 838.611 in most respects. It sets a similar standard for provisions in court orders that attempt to identify the retirement system to satisfy the requirements of § 838.804 of these regulations. The only noteworthy difference is the effect that we accord the term "maintain." We treat a provision in a court order that requires a retiree to "maintain" the survivor annuity coverage that the former spouse had prior to the divorce as sufficient to identify our benefits if the former spouse would have been entitled to a survivor annuity as the widow or widower except for the divorce. For example, in the case of a post-retirement divorce, the retiree must have elected to provide a survivor annuity for the spouse. Section 838.911 continues the current rules under guidelines II and III.A of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. The court order must clearly provide that it awards survivor annuity benefits paid by OPM. Court orders that award survivor annuity benefits paid by other agencies, most commonly military retired pay paid by the Department of Defense, are not acceptable even if the other benefit terminates to allow credit from the other benefit to be counted toward the benefit paid by OPM.

Section 838.912 corresponds to § 838.612 in the sense that it contains information about provisions used to identify former spouse survivor annuities to satisfy the requirements of § 838.604 of these regulations, just as § 838.612 contains information about provisions concerning employee annuities or refunds of employee contributions to satisfy the requirements of § 838.303 or § 838.502 of these regulations. However, as under current rules, the standards for identifying survivor annuities are stricter than the standards for identifying employee annuities or refunds of employee contributions. Section 838.912 continues the current rules under guidelines I and III.B of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. Also, if the court order awards the former spouse a survivor annuity under the statute authorizing survivor annuities to a person with an insurable interest in certain retirees, applicable statutes do not authorize us to comply with the court order. As in § 838.611, the term, "maintain" is accorded special significance if the former spouse is covered prior to the divorce.

Section 838.921 contains information about terminology used to describe the amount of a former spouse survivor annuity. Paragraph (a) continues the current rule under guideline III.E of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders that award a former spouse survivor annuity, but do not contain express instructions for determining the amount of the former spouse survivor annuity, award the maximum amount available. Paragraph (b) continues the current rule under guideline III.D of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. The rule is that a court order that provides that the former spouse will keep or that the retiree will maintain the survivor annuity to which the former spouse was entitled before divorce awards a former spouse survivor annuity in the same amount as the former spouse had at the time of divorce. Paragraph (c) restates the rule under guideline III.F of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that the minimum former spouse survivor annuity is \$1 per month and that cost of living increases must be added to survivor annuities. Paragraph (d) continues the current rule under guideline III.G of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that a court order may authorize a reduction in the amount of a former spouse survivor annuity based

on a retiree's election to provide a survivor annuity for a new spouse because the election is an event that will be documented in normal OPM files, but a court order may not authorize a reduction in the amount of a former spouse survivor annuity based on an employee's or retiree's remarriage because the remarriage is not an event that will be documented in normal OPM files. As under the current guideline, only the reduction opportunity is nullified; we treat the court order as awarding a former spouse survivor annuity because that is the probable intent of the court.

Section 838.922 establishes the new term, "prorata share," for the most common type of formula used to divide survivor annuity benefits, as § 838.621 did for court orders dividing employee annuities. Court orders that use this term instruct us to divide the benefits in accordance with the formula provided in paragraph (a). The section also identifies other terms that award a "prorata share."

Section 838.931 continues our current practice, which has not previously been included in the regulations, concerning a divorce decree that provisionally awards a former spouse survivor annuity until further order of the court can be acceptable. Such a court order provides a survivor annuity until the court issues a court order acceptable for processing that changes it. However, if the new court order is issued after the employee retires or dies, it cannot effectively change or terminate the provisional award. If the divorce occurs after the employee retires, section 8341(h) or section 8445 of title 5, United States Code, does not permit us to accept a court order changing or terminating the provisional award. Effectively, that makes the provisional award permanent.

Section 838.932 changes the rule under guideline III.G of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders cannot authorize former spouses to exercise a right to elect a former spouse survivor annuity. The current guideline, under which the election right is nullified and the court order is treated as unequivocally awarding a former spouse survivor annuity, deviates farther than necessary from the instructions of the court. Under § 838.932, a court order providing for such an election awards a former spouse survivor annuity until the former spouse notifies OPM otherwise in a form prescribed by OPM. If the former spouse elects no survivor annuity, the election is irrevocable. A former spouse's election of no survivor

annuity under this provision is effective and the employee annuity will be restored to the unreduced rate (unless a reduction is still required as a result of another court order or the retiree's election) effective on the first day of the month after OPM receives the election.

Section 838.933 contains information about terminology used to describe the source of payment of the cost of a former spouse survivor annuity. It continues the current rule under guideline III.C of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders that unequivocally award former spouse survivor annuities and direct the former spouse to pay the costs are acceptable to award a former spouse survivor annuity but the cost must be paid in accordance with § 838.807 of these regulations. On the other hand, court orders that award a former spouse survivor annuity conditioned upon the former spouse paying the cost are not acceptable unless the former spouse is also entitled to a sufficient portion of the employee annuity to cover the cost.

Subpart J contains the current CSRS regulations that will continue to apply to court orders that are currently on file and that we receive prior to January 1, 1993.

#### Paperwork Reduction Act

The information collection requirements contained in §§ 838.221, 838.421, and 838.721 have been submitted to the Office of Management and Budget for approval in accordance with the requirements of the Paperwork Reduction Act. It is estimated that there will be approximately 7000 responses annually, with an estimated average burden of 6 minutes per response, for a total annual burden of 700 hours. Comments regarding these proposed collections of information through the letters of application should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Joseph Lackey, Desk Officer for the Office of Personnel Management. Comments should be received on or before March 3, 1992. All other comments should be sent to OPM as instructed above under "ADDRESSES."

#### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities

because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

#### List of Subjects

##### 5 CFR Parts 831, 841, 842, and 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

##### 5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, as follows:

#### **PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS**

1. Part 838 is added to read as follows:

#### **PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS**

##### **Subpart A—Court Orders Generally**

##### **Organization and Structure of Regulations on Court Orders**

Sec.

- 838.101 Purpose and scope.
- 838.102 Regulatory structure.
- 838.103 Definitions.

##### **Statutory Limit on Court's Authority**

- 838.111 Exemption from legal process except as authorized by Federal law

##### **Division of Responsibilities**

- 838.121 OPM's responsibilities.
- 838.122 State courts' responsibilities.
- 838.123 Claimants' responsibilities.
- 838.124 Employees' and retirees' responsibilities.

##### **Procedures Applicable to All Court Orders**

- 838.131 Computation of time.
- 838.132 Payment schedules.
- 838.133 Minimum awards.
- 838.134 Receipt of multiple court orders.
- 838.135 Settlements.

##### **Address for Filing Court Orders With OPM**

**Appendix A to Subpart A of Part 838—Addresses for Serving Court Orders Affecting CSRS or FERS Benefits**

##### **Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities**

##### **Regulatory Structure**

- 838.201 Purpose and scope.

##### **Availability of Funds**

- 838.211 Amounts subject to court orders.

##### **Application and Processing Procedures**

- 838.221 Application requirements.
- 838.222 OPM action on receipt of a court order acceptable for processing.
- 838.223 OPM action on receipt of a court order not acceptable for processing.
- 838.224 Contesting the validity of court orders.
- 838.225 Processing amended court orders.

##### **Payment Procedures**

- 838.231 Commencing date of payments.
- 838.232 Suspension of payments.
- 838.233 Termination of payments.
- 838.234 Collection of arrearages.
- 838.235 Payment of lump-sum awards.
- 838.236 Court orders barring payment of annuities.
- 838.237 Death of the former spouse.

##### **Procedures for Computing the Amount Payable**

- 838.241 Cost-of-living adjustments.
- 838.242 Computing lengths of service.
- 838.243 Minimum amount of awards.

##### **Subpart C—Requirements for Court Orders Affecting Employee Annuities**

- 838.301 Purpose and scope.
- 838.302 Language not acceptable for processing.
- 838.303 Expressly dividing employee annuity.
- 838.304 Providing for payment to the former spouse.
- 838.305 OPM computation of formulas.
- 838.306 Specifying type of annuity for application of formula, percentage or fraction.

##### **Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions**

##### **Regulatory Structure**

- 838.401 Purpose and scope.

##### **Availability of Funds**

- 838.411 Amounts subject to court orders.

##### **Application and Processing Procedures**

- 838.421 Application requirements.
- 838.422 Timeliness of application.
- 838.423 OPM action on receipt of a court order acceptable for processing.
- 838.424 OPM action on receipt of a court order not acceptable for processing.
- 838.425 Contesting the validity of court orders.

##### **Payment Procedures**

- 838.431 Correcting failures to provide required spousal notification.
- 838.432 Court orders barring payment of refunds.

##### **Procedures for Computing the Amount Payable**

- 838.441 Computing lengths of service.

##### **Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions**

- 838.501 Purpose and scope.

- 838.502 Expressly dividing a refund of employee contributions.
- 838.503 Providing for payment to the former spouse.
- 838.504 OPM computation of formulas.
- 838.505 Barring payment of refunds.

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

##### **Regulatory Structure**

- 838.601 Purpose and scope.

##### **Identification of Benefits**

- 838.611 Identifying the retirement system.
- 838.612 Distinguishing between annuities and contributions.

##### **Computation of Benefits**

- 838.621 Prorata share.
- 838.622 Cost-of-living and salary adjustments.
- 838.623 Computing lengths of service.
- 838.624 Distinguishing between formulas and fixed amounts.
- 838.625 Types of annuity.

##### **Model Paragraphs**

##### **Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities**

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

##### **Regulatory Structure**

- 838.701 Purpose and scope.

##### **Limitations on Survivor Annuities**

- 838.711 Maximum former spouse survivor annuity.

##### **Application and Processing Procedures**

- 838.721 Application requirements.
- 838.722 OPM action on receipt of a court order acceptable for processing.
- 838.723 OPM action on receipt of a court order not acceptable for processing.
- 838.724 Contesting the validity of court orders.
- 838.725 Amended court orders.
- 838.726 Effect on employee and retiree election rights.

##### **Payment Procedures**

- 838.731 Commencing date of payments.
- 838.732 Termination of entitlement.
- 838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.
- 838.734 Payment of lump-sum awards by survivor annuity.
- 838.735 Cost-of-living adjustments.

##### **Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities**

- 838.801 Purpose and scope.
- 838.802 CSRS limitations.
- 838.803 Language not acceptable for processing.

- 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.
- 838.805 OPM computation of formulas in computing the designated base.
- 838.806 Amended court orders.
- 838.807 Cost must be paid by annuity reduction.

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

##### Regulatory Structure

- 838.901 Purpose and scope.

##### Identification of Benefits

- 838.911 Identifying the retirement system.
- 838.912 Specifying an award of a former spouse survivor annuity.

##### Computation of Benefit

- 838.921 Determining the amount of a former spouse survivor annuity.
- 838.922 Prorata share defined.

##### Miscellaneous Provisions

- 838.931 Court orders that provide temporary awards of former spouse survivor annuities.
- 838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.
- 838.933 Payment of the cost of a former spouse survivor annuity.

##### Model Paragraphs

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

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).

#### 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 July 1, 1992.

(2) Subpart J of this part applies only to court orders received by OPM before July 1, 1992.

###### § 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 July 1, 1992.

(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 §§ 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.

(f) Part 1600 of this title contains information about court orders affecting the Federal Employees Thrift Savings Plan.

(g) Subpart F of part 831 of this chapter, subpart F of part 841 of this chapter, and part 843 of this chapter contain information about entitlement to survivor annuities.

(h) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about refunds of employee contributions and lump-sum death benefits.

(i) Parts 870, 871, 872, and 873 of this chapter contain information about the Federal Employees Group Life Insurance Program.

###### § 838.103 Definitions.

In this part (except subpart J)—  
*Civil Service Retirement System* or *CSRS* means the retirement system for Federal employees described in subchapter III of chapter 83 of title 5, United States Code.

*Court order* means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands, or any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

*Court order acceptable for processing* means a court order as defined in this section that meets the requirements of subpart C of this part to affect an employee annuity, subpart E of this part to affect a refund of employee contributions, or subpart H of this part to award a former spouse survivor annuity.

*Employee* means an employee or Member covered by CSRS or FERS.

*Employee annuity* means the recurring payments under CSRS or FERS made to a retiree. "Employee annuity" does not include payments of accrued and unpaid annuity after the death of a retiree under section 8342(g) or 8424(h) of title 5, United States Code.



**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** 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** 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** 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 8420a of title 5, United States Code.

**Member** means a Member of Congress covered by CSRS or FERS.

**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 8420a of title 5, United States Code.

**Reduction to provide survivor benefits** means the reduction required by section 8339(j)(4) or section 8419(a) of title 5, United States Code.

**Refund of employee contributions** means a payment of the lump-sum credit to a separated employee under section 8342(a) or section 8424(a) of title 5, United States Code. *Refund of employee contributions* does not include lump-sum payments made under section 8342 (c) through (f) or section 8424 (d) through (g) of title 5, United States Code.

**Retiree** means a former employee or Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee. *Retiree* does not include a person receiving an annuity only as a current spouse, former spouse, child, or person with an insurable interest.

**Self-only annuity** means the recurring payments to a retiree who has elected not to provide a survivor annuity to anyone. Unless the court order expressly provides otherwise, *self-only annuity* also includes any lump-sum payments made to the retiree under section 8343a or 8420a of title 5, United States Code.

**Separated employee** means a former employee or Member who has separated from a position in the Federal Government covered by CSRS and FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively, and is not currently employed in such a position, and who is not a retiree.

#### Statutory Limit on Court's Authority

##### § 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.

#### 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.

##### § 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.

##### § 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.

##### § 838.124 Employees' and retirees' responsibilities.

Employees and retirees are responsible for—

(a) Raising any objections to the validity of a court order in the appropriate State court; and

(b) Submitting all disputes with former spouses to the appropriate State court for resolution.

#### 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.

**§ 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.

(b) In honoring and complying with a court order, OPM will not disrupt the payment schedule described in paragraph (a) of this section, despite any provision in the court order directing a different schedule of accrual or payment of amounts due the former spouse.

**§ 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.

**§ 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—

(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.

**§ 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 838.725.

(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.

**Address for Filing Court Orders with OPM****Appendix A to Subpart A of Part 838—Addresses for Serving Court Orders Affecting CSRS or FERS Benefits**

(a) The mailing address for delivery of court orders affecting CSRS or FERS benefits by the United States Postal Service is—Office of Personnel Management, Retirement and Insurance Group, P.O. Box 17, Washington, DC 20044.

(b) The address for delivery of court orders affecting CSRS or FERS benefits by process servers, express carriers, or other forms of handcarried delivery is—Court-ordered Benefits Section, Allotments Branch, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC.

**Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities****Regulatory Structure****§ 838.201 Purpose and scope.**

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders directed at employee annuities under CSRS or FERS. OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award a portion of an employee annuity to a former spouse.

(b) This subpart prescribes—

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

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

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

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

**Availability of Funds****§ 838.211 Amounts subject to court orders.**

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

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

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

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

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

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

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

(c) Waivers of employee annuity payments under the terms of section 8345(d) or section 8465(a) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked or received before the date that OPM receives a court order acceptable for processing.

#### Application and Processing Procedures

##### § 838.221 Application requirements.

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

(b) The application letter must be accompanied by—

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

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

(3) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

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

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

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

(i) That a remarriage has not occurred;

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

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

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

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

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

(1) The former spouse—

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

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

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

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

(2) The retiree—

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

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

(iii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins 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

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

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

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

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

(iv) 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

(v) 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.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

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

(2) The commencing date of the reduction in the employee annuity or the commencing date of the accrual of former spouse benefits as determined under § 838.231.

##### § 838.223 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 court order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart C of this part.

##### § 838.224 Contesting the validity of court orders.

(a) An employee, separated employee, or retiree who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares the court order submitted by the former spouse is invalid; 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 OPM receives 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.

**§ 838.225 Processing amended court orders.**

(a) If the employee, separated employee, retiree, or former spouse submits an amended court order pertaining to payment of a portion of the employee annuity, OPM will process the amended court order prospectively only, effective against employee annuity accruing beginning the first day of the second month after OPM receives the amended court order.

(b) A court order is not effective to adjust payments prior to the first day of the second month after OPM receives the court order unless—

- (1) The court order—
  - (i) Expressly directs OPM to adjust for payment made under the prior court order; and
  - (ii) Determines the total amount of the adjustment or the length of time over which OPM will make the adjustment; and
  - (iii) Provides a specific monthly amount of the adjustment or a formula to compute the amount of the monthly adjustment; and
- (2) Annuity continues to be available from which to make the adjustment.

**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.

(b)(1) OPM will not begin payments to the former spouse until OPM receives all the documentation required by § 838.221 (b) and (c).

(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

(2) The last day of the month in which 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 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

(b) Except as otherwise provided in this subpart, OPM will honor a court order acceptable for processing or an amended court order acceptable for processing that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

- (1) The court;
- (2) An officer of the court acting as a fiduciary;
- (3) The estate of the former spouse; or
- (4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

**Procedures for Computing the Amount Payable**

**§ 838.241**

**Cost-of living adjustments.**

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.

(2) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

(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.

**§ 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.

**Subpart C—Requirements for Court Order 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.**

(a) 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.

(b) 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 the employee or retiree, such as a court order providing that the former spouse's portion of the employee annuity will continue for the lifetime of the former spouse, is not a court order acceptable for processing.

**§ 838.303 Expressly dividing employee annuity.**

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it expressly divides the employee annuity as provided in paragraph (b) of this section.

(b) To expressly divide employee 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 § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of the employee annuity using terms that are sufficient to identify the employee annuity as explained in § 838.612.

**§ 838.304 Providing for payment to the former spouse.**

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it provides for OPM to pay the former spouse a portion of an employee annuity as provided in paragraph (b) of this section.

(b) To provide for OPM to pay the former spouse a portion of an employee annuity as required by paragraph (a) of this section the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the retiree to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the employee annuity awarded 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.

(d) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that a court 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.

**§ 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 spouses'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;

(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;

(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.

**§ 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.

**Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions**

**Regulatory Structure**

**§ 838.401 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 that affect refunds of employee contributions under CSRS or FERS. OPM must comply with court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that—

(1) Award a portion of a refund of employee contributions to a former spouse; or

(2) If the requirements of §§ 838.431 and 838.505 are met, bar payment of a refund of employee contributions.

(b) This subpart prescribes—

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

(2) The procedures that a former spouse must follow when applying for a portion of a refund of employee contributions based on a court order

under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart E of this part contains the rules that a court order directed at a refund of employee contributions must satisfy to be a court order acceptable for processing.

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

**Availability of Funds**

**§ 838.411 Amounts subject to court orders.**

(a)(1) Refunds of employee contributions are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the refund of employee contributions to the separated employee have been met, including, but not limited to—

(i) Separation from a covered position in the Federal service;

(ii) Application for payment of the refund of employee contributions by the separated employee; and

(iii) Immediate entitlement to a refund of employee contributions.

(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 refunds of employee contributions.

(b) Payment under a court order may not exceed the amount of the refund of employee contributions.

**Application and Processing Procedures**

**§ 838.421 Application requirements.**

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

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at a refund of employee contributions.

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

(3) Information sufficient for OPM to identify the employee or separated employee, 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 or separated employee has not applied for a refund of employee contributions, the current

mailing address of the employee or separated employee.

**§ 838.422 Timeliness of application.**

(a) Except as provided in § 838.431 and paragraph (b) of this section, a court order acceptable for processing that is directed at a refund of employee contributions is not effective unless OPM receives the documentation required by § 838.421 not later than—

(1) The last day of the second month before payment of the refund; or

(2) Twenty days after OPM receives the Statement required by § 831.2007(c) or § 843.208(b) of this chapter if the former spouse has indicated on that Statement that such a court order exists.

(b) If OPM receives a copy of a court order acceptable for processing that is directed at a refund of employee contributions but not all of the documentation required by § 838.421, OPM will notify the former spouse that OPM must receive the missing items within 15 days after the date of the notice or OPM cannot comply with the court order.

**§ 838.423 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 a refund of employee contributions, 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;

(iii) Whether OPM has a record of unrefunded employee contributions on the employee;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of a refund of employee contributions; and

(vi) That, if the former spouse disagrees with the formula, the former spouse must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee or separated employee—

(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) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of the refund of employee contributions; 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; and

(vii) 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.

(b) The failure of OPM to provide, or of the employee or separated employee or the former spouse to receive, the information specified in this section does not affect the validity of payment under the court order.

**§ 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.**

(a) An employee or separated employee who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

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

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

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee 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**

**§ 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—

(a) The former spouse files a court order acceptable for processing that affects or bars the refund of employee contributions with OPM no later than the last day of the second month before the payment of the refund; or

(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.

(b) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

**Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions**

**§ 838.501 Purpose and scope.**

This subpart regulates the requirements that a court order directed at or barring a refund of employee contributions must meet to be a court order acceptable for processing.

(a) A court order is directed at a refund of employee contributions if it awards a former spouse a portion of a refund of employee contributions.

(b) A court order bars a refund of employee contributions if it prohibits payment of a refund of employee contributions to preserve a former spouse's court-awarded entitlement to a portion of an employee annuity or to a former spouse survivor annuity.

**§ 838.502 Expressly dividing a refund of employee contributions.**

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it expressly awards a former spouse a portion of a refund of employee contributions as provided in paragraph (b) of this section.

(b) To expressly award a former spouse a portion of a refund of employee contributions 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 § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of a refund of employee contributions using terms that are sufficient to identify the refund of employee contributions as explained in § 838.612.

**§ 838.503 Providing for payment to the former spouse.**

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it provides for OPM to pay a portion of a refund of employee contributions to the former spouse as provided in paragraph (b) of this section.

(b) To provide for OPM to pay a portion of a refund of employee contributions to the former spouse as required by paragraph (a) of this section, the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the employee or separated employee to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the refund of employee contributions awarded to the former spouse.

(c) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that the court order provide for OPM to pay the former spouse, OPM strongly recommends that the court order expressly direct OPM to pay the former spouse directly.

**§ 838.504 OPM computation of formulas.**

(a) A court order directed at a refund of employee contributions is not a court

order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can compute the amount of the former spouse's share of the refund of employee contributions using only the express language of the court order, subparts A, D, and F of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information that OPM can compute the amount of the former spouse's share of the refund of employee contributions as required by paragraph (a) of this section requires that the court order state the former spouse's share as—

(1) A fixed amount;

(2) A percentage or a fraction of the refund of employee contributions; or

(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.

#### § 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.

#### Subpart F—Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

##### Regulatory Structure

#### § 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.

##### 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).

#### § 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 divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(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.

(2) *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 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.

**§ 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.

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee's retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse's share of an employee annuity provides that the former spouse is entitled to the application of COLA's after the date of the employee's retirement in the manner described in § 838.241.

(ii) To award COLA's 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 COLA's occurring between the specified date and the date of the employee's retirement.

(iii) To prevent the application of COLA's that occur after the employee annuity begins to accrue to the former spouse's share of the employee annuity, the decree must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply COLA's occurring after the date of the employee's retirement.

**§ 838.623 Computing lengths of service.**

(a) Sections 838.242 and 838.441 contain information on how OPM calculates lengths of service.

(b) Unless the court order otherwise expressly directs—

(1) For the purpose of describing a period of time to be excluded from any element of a computation, the term *military service* means military service as defined in section 8331(13) of title 5, United States Code, and does not include civilian service with the Department of Defense or the Coast Guard; and

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

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

(2) When a court order contains a formula for dividing employee annuity that requires a computation of

"creditable service" (or some other phrase using "credit" or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows:

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

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

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

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

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

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

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

**§ 838.624 Distinguishing between formulas and fixed amounts.**

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

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

#### § 838.625 Types of annuity.

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

- (1) Disposable annuity; and
- (2) Retirement check.

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

- (1) Life rate annuity;
- (2) Unreduced annuity; and
- (3) Annuity without survivor benefit.

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

#### Model Paragraphs

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

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

- Identification of the benefits;
- Instructions that OPM pay for 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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##### 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]."

##### ¶ 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]."

##### ¶ 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]."

**¶ 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]."

**¶ 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 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]."

**¶ 205-210 [Reserved].**

**¶ 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]."

**¶ 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.

"[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. When COLA's are applied to [employee]'s retirement benefits, the same COLA applies to [former spouse]'s share. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

**¶ 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]."

**300 Series—Types 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.

**¶ 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]."

**¶ 302-310 [Reserved].**

**¶ 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 States Government. Starting when [employee] reaches age 62, [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, where monthly annuity means the amount of [employee]'s monthly annuity computed as though [employee] had retired on an immediate, nondisability annuity on the commencing date of [employee]'s annuity based on disability. In computing the amount of the immediate annuity, the United States Office of Personnel Management will deem [employee] to have been age 62 at the time that [employee] retired on disability. 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]."

#### 400 Series—Refunds of Employee Contributions

Court orders that award a former spouse a portion of a future employee annuity 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 separates before becoming eligible to retire and requests a refund of employee contributions. 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.

##### §401 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 portion of the employee annuity.

"The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

##### §402 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 sentence on the beginning date of the marriage is unnecessary if the beginning is stated elsewhere in the order. The award of a prorata share is used only as an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. Note that a refund of employee contributions voids the employee's rights to an employee annuity and the former spouse's right to any portion of that annuity.

"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]."

#### 500 Series—Death of the former spouse.

##### §501 Full annuity restored to the retiree.

No special provision is necessary to restore the entire annuity to the retiree upon the death of the former spouse. Unless the court order expressly provides otherwise, OPM will pay the former spouse's share to the retiree after the death of the former spouse.

##### §502 Former spouse share paid to children.

Using the following paragraph will award the former spouse's share of an employee annuity to the children, including any adopted children, of the employee and former spouse.

"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."

The language may be modified to terminate the payments to the children when they reach a stated age. A court order that includes such a provision for termination must include sufficient information (such as the children's dates of birth) to permit OPM to determine when the children's interest terminate. OPM will not consider evidence outside the court order (and normal OPM files) to establish the children's dates of birth.

##### §503 Former spouse share paid to the court.

Using the following paragraph will provide for payment of the former spouse's share of an employee annuity to the court after the death of the former spouse. This would allow a court officer to administer the funds.

"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 this court at the following address:

"[Insert address and where checks should be sent. The address may be up to six lines and should include sufficient information for court officials to credit the correct account.]"

#### Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

##### Regulatory Structure

##### § 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 and 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 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.

#### Limitations of Survivor Annuities

##### § 838.711 Maximum former spouse survivor annuity.

(a) Under CSRS, payment under a court order may not exceed the amount provided in § 831.614 of this chapter.

(b) Under FERS, payments under a court order may not exceed amount provided in § 842.613 of this chapter plus the basic employee death benefit as defined in § 843.102 of this chapter.

#### Application and Processing Procedures

##### § 838.721 Application requirements.

(a) (1) A former spouse (personally or through a representative) must apply in writing to be eligible for a former spouse survivor annuity based on a court order acceptable for processing. No special form is required to give OPM notice of the court order.

(2) OPM may require an additional application after the death of the employee, separated employee, or retiree. This additional application will be on a form prescribed by OPM.

(b)(1) The application letter under paragraph (a)(1) of this section must be accompanied by—

(i) A certified copy of the court order;

(ii) 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;

(iii) 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;

(iv) The current mailing address of the former spouse;

(v) If the employee has not retired or died, the mailing address of the employee; and

(vi) A statement in the form prescribed by OPM certifying—

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

(B) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage before age 55; and

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

(2) OPM may subsequently require recertification of the statements required by this paragraph.

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

(a) If OPM receives a court order acceptable for processing that awards a former spouses survivor annuity based



on the service of a living retiree, 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; and
  - (iii) 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 monthly benefit; and
- (2) The retiree—
  - (i) That the former spouse has applied for benefits under this subpart;
  - (ii) That the court order is acceptable for processing and that OPM must comply with the court order;
  - (iii) Of the date on which OPM received the court order;
  - (iv) Of the amount and commencing date of the reduction in the retiree's annuity;
  - (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—
  - (i) That the court order is acceptable for processing;
  - (ii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and
  - (iii) 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 before the employee or separated employee retires or dies; and
- (2) The employee or separated employee—
  - (i) That the former spouse has applied for benefits under this subpart;
  - (ii) That the court order is acceptable for processing and that OPM must comply with the court order;
  - (iii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and
  - (iv) That, if he or she—
    - (A) Contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; or
    - (B) Disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before he or she retires or dies.
  - (d) The failure of OPM to provide, or of the employee, separated employee, or retiree, the former spouse, or anyone else to receive, the information specified in this section does not affect—
    - (1) The validity of payment under the court order; or
    - (2) The commencing date of the reduction in employees annuity or the commencing date of the former spouse entitlement as determined under § 838.731.

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

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

§ 838.103 or does not meet one or more of the requirements of subpart H of this part.

**§ 838.724 Contesting the validity of court orders.**

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

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

**§ 838.725 Amended court orders.**

OPM will not honor an amended court order that awards, increases, reduces, or eliminates a former spouse survivor annuity unless the amended court order is issued by the court on a day before the date of retirement or the date of death of the employee or separated employee.

**§ 838.726 Effect on employee and retiree election rights.**

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

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

**Payment Procedures**

**§ 838.731 Commencing date of payments.**

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

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

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

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

**§ 838.732 Termination of entitlement.**

(a) A former spouse survivor annuity (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) or the right to a future former spouse survivor annuity based on a court order acceptable for processing terminates in accordance with the terms of the court order but no later than the last day of the month before the former spouse remarries before age 55 or dies.

(b) If the employee dies before the former spouse remarries before age 55 or dies, the former spouse's entitlement to the FERS basic employee death benefit as defined in § 843.602 of this chapter based on a court order acceptable for processing terminates in accordance with the terms of the court order.

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

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

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

(2) If paragraph (a)(1) of this section does not obligate the entire entitlement lost by 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

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

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

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

OPM will not honor court orders awarding lump-sum payments (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) to a former spouse upon the death of an employee or retiree.

**§ 838.735 Cost-of-living adjustments.**

(a) OPM applies cost-of-living adjustments to all former spouse survivor annuities in pay status at the time of the adjustment and in the amount provided by Federal statute.

(b) OPM will not honor provisions of a court order that alters the time or amount of cost-of-living adjustment or that attempts to prevent OPM from applying cost-of-living adjustments to a former spouse survivor annuity in pay status.

**Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities**

**§ 838.801 Purpose and scope.**

This subpart regulates the requirements that a court order awarding a former spouse survivor annuity must meet to be a court order acceptable for processing.

**§ 838.802 CSRS limitations.**

(a) A court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the marriage terminated on or after May 7, 1985.

(b) In the case of a retiree who retired under CSRS before May 7, 1985, a court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the retiree was receiving a reduced annuity to provide a survivor annuity to benefit that spouse on May 7, 1985.

**§ 838.803 Language not acceptable for processing.**

(a) 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.

(b) 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.

**§ 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 § 838.802; and

(2)(i) Expressly state that the former spouse is entitled to a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912; or

(ii) Expressly direct the retiree to elect to provide a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912.

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

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can determine the amount of the former spouse's monthly benefit using only the express language of the court order, subparts A, G and I of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information for OPM to compute the amount of a former spouse survivor annuity as required by paragraph (a) of this section, if the court order uses a formula to determine the former spouse survivor annuity, it must not use any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order awarding a former spouse survivor 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 survivor annuity.

**§ 838.806 Amended court orders.**

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if it is issued after the date of retirement or death of the employee and modifies or replaces the first order terminating the marital relationship between the employee or retiree and the former spouse.

(b) For purposes of awarding, increasing, reducing, or eliminating a former spouse survivor annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse survivor annuity, the court order must be—

(1) Issued on a day prior to the date of retirement or date of death of the employee; or

(2) The first order terminating the marital relationship between 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 terminating the marital relationship between 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) In this section, the *first order terminating the marital relationship between the retiree and the former spouse* means the original written order that first ends (or first documents an oral order ending) the marriage, and does not include—

(1) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the court order making the amendment, explanation, clarification, or interpretation; or

(2) Any court order issued under reserved jurisdiction or any other court orders issued subsequent to the original written order terminating the marriage that divide marital property (even if no division of marital property was made in the court order terminating the marriage) 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.

(b) The amount of the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, may be paid—

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

(2) By reduction of the employee annuity.

(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.

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

**Regulatory Structure**

**§ 838.901 Purpose and scope.**

(a) This subpart regulates the meaning of terms necessary to award a former spouse survivor annuity in a court order, and for OPM to determine whether a court order awarding a former spouse survivor annuity is a court order acceptable for processing and the amount of the former spouse survivor annuity.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse survivor annuity.

(2) This subpart informs the legal community about the definition to be applied to terms used in court orders, to permit the resulting orders to be more carefully drafted, using 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 survivor annuity.

(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.

### Identification of Benefits

#### § 838.911 Identifying the retirement system.

(a) To satisfy the requirements of § 838.804(b)(1), a court order must contain language identifying the retirement system affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" survivor benefits, or "survivor 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 and Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.804(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of § 838.804(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 § 838.804(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 survivor annuity under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.804(b)(1).

(d) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(1), 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.

#### § 838.912 Specifying an award of a former spouse survivor annuity.

(a) To satisfy the requirements of § 838.804(b)(2), a court order must specify that it is awarding a former spouse survivor annuity. The court order must contain language such as "survivor annuity," "death benefits," "former spouse survivor annuity under 5 U.S.C. 8341(h)(1)," etc.

(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 expect 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.

### Computation of Benefit

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

(a) A court order that contains no provision stating the amount of the former spouse survivor annuity provides the maximum former spouse survivor annuity permitted under § 831.614 or § 842.613 of this chapter and satisfies the requirements of § 838.805.

(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 CSRS 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.

(2) The reduction in the employee annuity will be computed as though the court order provided a former spouse survivor annuity of \$1 per month.

(d)(1) A court order that awards a former spouse survivor annuity while authorizing the employee or retiree to elect a lesser former spouse survivor annuity upon the employee's or retiree's remarriage satisfies the requirements of § 838.805, and provides the former spouse survivor annuity at the rate initially provided in the court order but does not allow the employee or retiree



to elect a lesser benefit for the former spouse.

(2) To provide full survivor annuity benefits to a former spouse while authorizing the employee or retiree to elect a lesser former spouse survivor annuity benefit in order to provide survivor annuity benefits for a subsequent spouse, the court order must provide for a reduction in the former spouse survivor annuity upon the employee's or retiree's election of survivor annuity benefits for a subsequent spouse.

(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.

#### § 838.922 Prorata share defined.

(a) *Prorata share* means the fraction of the maximum survivor annuity allowable under § 831.614 or § 842.613 of this chapter 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 a survivor annuity by using that term and identifying the date when the marriage began satisfies the requirements of § 838.805 and awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

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

(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.

#### 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.

(b) A former spouse who has been awarded a former spouse survivor annuity by a court order that gives the former spouse the right to elect a former spouse survivor annuity may irrevocably elect not to be eligible for a former spouse survivor annuity based on 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—

(1) Must be in writing and in the form prescribed by OPM;

(2) Is effective on the first day of the month following the month in which OPM receives the election; and

(3) Is irrevocable once it has become effective.

(d) The reduction in an employee annuity based on a court order that gives the former spouse the right to elect a former spouse survivor annuity terminates on the last day of the month in which OPM receives the former spouse's election under paragraph (b) of this section.

##### § 838.933 Payment of the cost of a former spouse survivor annuity.

(a) A court order that unequivocally awards a former spouse survivor annuity and directs the former spouse to pay for that benefit satisfies the requirements of § 838.805, and—

(1) If the former spouse has also been awarded a portion of the employee annuity then the cost of the survivor benefit will be deducted from the former spouse's share of the employee annuity (if sufficient to cover the total cost—there will be no partial withholding); otherwise,

(2) The reduction will be taken from the employee annuity and collection from the former spouse will be a private matter between the parties.

(b) A court order that conditions the award of a former spouse survivor annuity on the former spouse's payment of the cost of the benefit satisfies the requirements of § 838.805 only if a court order acceptable for processing also awards the former spouse a portion of the employee annuity sufficient to cover the cost.

#### 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]."

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.

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##### 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.

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."

##### § 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."

##### § 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]."

##### § 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 exceed 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 section 838.735.

"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."

##### § 705-710 [Reserved].

##### § 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.

"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 percentage or fraction] percent of the [employee's] annuity."

##### § 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.

"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 [employee's] employee annuity computed as follows:

"[Insert formula.]"

##### § 713-720 [Reserved].

##### § 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.

"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 percentage or fraction] of the maximum possible survivor annuity.

*§722 Award based on a stated formula or 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.]"

*§723-750 [Reserved.]*

*§751 Changing amount of former spouse survivor 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]."

*§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]."

**800 Series—Paying the Cost of a Former Spouse Survivor Annuity**

A court order awarding a former spouse survivor annuity requires that the employee annuity be reduced. The reduction lowers the gross employee annuity. The costs associated with providing the former spouse survivor annuity must be paid by annuity reduction. Under section 838.807, if the former spouse is awarded a portion of the employee annuity sufficient to pay the cost associated with providing the survivor annuity, the former spouse's share may be reduced to pay the cost.

**§ 801 Costs to be paid from the employee annuity.**

No special provision on payment of the costs associated with providing the former spouse survivor annuity is necessary if the court intends the cost to be taken from the employee annuity.

**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 spouse'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.

**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*

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."

*§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 as 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]."

2. Subpart Q of part 831 consisting of §§ 831.1701 through 831.1718 and appendices A and B are redesignated as subpart J of part 838, §§ 838.1001 through 838.1018 and appendices A and B of subpart J, respectively.

3. Newly redesignated § 838.1001 is removed and reserved; newly redesignated § 838.1010 is removed; and § 831.2009 is redesignated as § 838.1010.

4. In newly redesignated § 838.1002, paragraphs (c) and (d) are revised to read as follows:

**§ 838.1002 Relation to other regulations.**

(c) Subpart F of part 831 of this chapter, subpart F of part 842 of this chapter, and subpart C of part 843 of this chapter contain information about entitlement to survivor annuities.

(d) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about entitlement to lump-sum death benefits.

5. Newly redesignated § 838.1012 is revised to read as follows:

**§ 838.1012 Death of the former spouse.**

(a) Unless the qualifying court order expressly provides otherwise, the former spouse's share of employee retirement benefits terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee retirement benefits reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a qualifying court order or an amended qualifying court order that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

- (1) The court;

(2) An officer of the court acting as a fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

**§§ 838.1003, 838.1004, 838.1006, 838.1007, 838.1009, 838.1010, 838.1011, 838.1016 Appendix A to Subpart J, Appendix B to Subpart J [Amended]**

6. In the list below, for each section and paragraph indicated in the left two columns, remove the section reference indicated in the third column where it appears in the paragraph, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
838.1003	"Qualifying court order"	831.1704	838.1004.
838.1004	(c)(1)(i)	831.1709	838.1009.
838.1004	(c)(1)(ii)	831.1708	838.1008.
838.1006	(b)	831.1708	838.1006.
838.1006	(d)(2)	831.1705	838.1005.
838.1007	(a)(1)	831.1705	838.1005.
838.1007	(a)(1)	831.1706	838.1006.
838.1007	(a)(2)	831.1705	838.1005.
838.1007	(a)(2)	831.1704	838.1004.
838.1007	(a)(3)	831.1705	838.1005.
838.1007	(a)(3)	831.1706	838.1006.
838.1007	(a)(3)	831.1704	838.1004.
838.1007	(b)	831.1708	838.1008.
838.1009	(a)(1)	831.1708	838.1008.
838.1009	(b)	831.1706	838.1006.
838.1010	(e)	831.1705	838.1005.
838.1010	(f)(2)(ii)	831.1705	838.1005.
838.1011	(a)(3)	831.1705	838.1005.
838.1011	(b)(2)(ii)	831.1705	838.1005.
838.1016	(a)	831.1706	838.1006.
Appendix A to subpart J	I.A.2	5305	5303.
Appendix A to subpart J	I.C.1	831.1704(b)	838.1004(b).
Appendix A to subpart J	I.F.	Subpart Q of part 831	Subpart J of part 838.
Appendix A to subpart J	II.C.	831.1703	838.1003.
Appendix A to subpart J	II.E.	831.1703	838.1003.
Appendix A to subpart J	V.D.	831.1704(b)	838.1004(b).
Appendix A to subpart J	VI.B.	831.1704(b)	838.1004(b).
Appendix A to subpart J	III.G.	831.1704(b)	838.1004(b).

**§§ 838.1002, 838.1003, 838.1006, 838.1007, 838.1009, 838.1010, 838.1016 [Amended]**

7. In the list below, for each section and paragraph indicated in the left two columns, add the words "of this chapter" after the section reference indicated in the third column where it appears in the paragraph:

Section	Paragraph	Section reference
838.1002	(b)	831.106.
838.1002	(g)	831.109.
838.1003	"Former spouse annuity"	831.603.
838.1006	(c)(3)	831.614.
838.1006	(d)(3)	831.607.
838.1007	(c)	831.109.
838.1009	(a)(2)	831.109.
838.1010	(e)(2)	831.2007(c).
838.1010	(g)(1)	831.603.

Section	Paragraph	Section reference
838.1016	(a)	831.614.

**PART 831—RETIREMENT**

**Subpart F—Survivor Benefits**

8. The authority citation for part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.204 also issued under sec. 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508; § 831.303 also issued under sec. 7001(b) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508; § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under sec. 1(3), E.O.

11228, 3 CFR 1964-1965 Comp.; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Public Law 99-251; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Public Law 100-203; § 831.2203 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508.

9. In section 831.603, the definition of "qualifying court order" is revised to read as follows:

**§ 831.603 Definitions.**

*Qualifying court order* means a court order that awards a former spouse annuity and that satisfies the requirements of section 8341(h) of title 5,



United States Code, for awarding a former spouse annuity.  
\* \* \* \* \*

#### Subpart Q—[Removed and reserved]

10. The heading for subpart Q "Court Orders Affecting Retirement Benefits" of part 831 is removed and the subpart is reserved.

#### Subpart V—Alternative Forms of Annuity

11. In § 831.2203, paragraph (b) is revised to read as follows:

##### § 831.2203 Eligibility.

\* \* \* \* \*

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter may not elect an alternative form of annuity.  
\* \* \* \* \*

#### PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

12. The authority citation for part 841 continues to read as follows:

**Authority:** 5 U.S.C. 8461; Section 841.108 also issued under 5 U.S.C. 552a; Subpart D also issued under 5 U.S.C. 8423; Section 841.504 also issued under 5 U.S.C. 8422; Section 841.507 also issued under section 505 of Pub. L. 99-335; Subpart J also issued under 5 U.S.C. 8469.

#### Subpart H—Waiver of Benefits

13. In § 841.802, the definition of "qualifying court order" is revised to read as follows:

#### § 841.802 Definitions.

\* \* \* \* \*

*Qualifying court order* means a court order acceptable for processing as defined in section 938.103 of this chapter.  
\* \* \* \* \*

#### Subpart I—Court Orders Affecting Retirement Benefits

14. Subpart I of part 841 is removed and reserved.

#### PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

15. The authority citation for part 842 continues to read as follows:

**Authority:** 5 U.S.C. 8461(g); Sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Section 842.105 also issued under 5 U.S.C. 8402(c)(1); Section 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508; Sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; Section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; section 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508; Subpart H also issued under 5 U.S.C. 1104.

#### Subpart F—Survivor Elections

16. In § 842.602, the definition of "qualifying court order" is revised to read as follows:

##### § 842.602 Definitions.

\* \* \* \* \*

*Qualifying court order* means a court order that awards a former spouse annuity and that satisfies the

requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.  
\* \* \* \* \*

#### Subpart G—Alternative Forms of Annuity

17. In § 842.703, paragraph (b) is revised to read as follows:

##### § 842.703 Eligibility.

\* \* \* \* \*

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter may not elect an alternative form of annuity.  
\* \* \* \* \*

#### PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

18. The authority citation for part 843 continues to read as follows:

**Authority:** 5 U.S.C. 8461; Sections 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; Section 843.309 also issued under 5 U.S.C. 8442; Section 843.406 also issued under 5 U.S.C. 8441.

19. In § 843.102, the definition of "qualifying court order" is revised to read as follows:

##### § 843.102 Definitions.

\* \* \* \* \*

*Qualifying court order* means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.  
\* \* \* \* \*

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