

elect to receive either the annuity under the other retirement system, or the CSRS annuity.

(2) Where the annuitant, under the provisions of paragraph (b)(1) of this section, elects to receive annuity from the other retirement system in lieu of the CSRS or FERS annuity, the CSRS or FERS annuity terminates as of the commencing date of the other annuity, and any overpayment of CSRS annuity will be offset from the other annuity and paid to OPM.

(c) *Recomputation.* Where simultaneous receipt of annuities from more than one retirement system is barred by paragraph (a)(2), but not by paragraph (a)(1), of this section, the CSRS or FERS annuity may be recomputed to exclude credit for service credited in determining entitlement to, or the amount of, the annuity from the other retirement system, effective as of the commencing date of the annuity from the other retirement system for Federal employees, and the recomputed CSRS or FERS annuity may be paid simultaneous with, or for the same period as, the annuity from the other retirement system for Federal employees.

(d) *Forfeiture.* Where an annuitant's coverage as an employee under another retirement system, whether by election or by operation of law or regulation, results in forfeiture of annuity rights under CSRS or FERS, the CSRS or FERS annuity will terminate as of the effective date of coverage.

(e) *Survivors.* The rules detailed in this section in regard to dual entitlement to annuity benefits under CSRS or FERS and another retirement system also apply to dual entitlement to survivor benefits under CSRS or FERS and another retirement system, unless the particular circumstance is otherwise governed by specific provision of statute or regulation.

(f) *Agency responsibilities.* The agency responsible for administering another retirement system must—

(1) Promptly notify OPM of an election of coverage under that retirement system by a reemployed CSRS or FERS annuitant, or the coverage of a reemployed CSRS annuitant under that retirement system by election or operation of law or regulation, when such

coverage affects the annuitant's entitlement to CSRS annuity;

(2) Promptly notify OPM when a reemployed annuitant separates with entitlement to an annuity under the other retirement system that cannot, under the provisions of paragraph (a) of this section, be paid simultaneous with, or during the same period as, the CSRS annuity; and

(3) Reimburse OPM for overpayments of annuity resulting from a failure to comply with paragraphs (b) (1) and (2) of this section.

§ 837.803 Cancellation of retirement by judicial or administrative authority.

(a) *Cancellation of retirement action.* A separation from employment on which an application for retirement is based may only be canceled by the former employing agency in response to a direct and final order of a judicial or administrative body charged with the responsibility of reviewing the legality of the separation, and authorized to make such order, or by agreement between the annuitant and the former employing agency in resolution of a grievance, complaint, dispute, appeal or other action, involving an allegedly erroneous separation, before such authority.

(b) *Agency notification to OPM.* Upon receiving a final order requiring cancellation of the annuitant's separation or after the annuitant and the agency agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(c) *Collection of erroneously paid retirement benefits.* (1) If OPM determines that an overpayment of annuity or lump-sum credit has occurred and the employee is entitled to receive back pay because of the canceled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by § 550.805(e) of this chapter.

(2) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b) or 8470(b). If there is no back

pay or the back pay is insufficient to recover the entire payment, the employee may request that OPM waive the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

§ 837.804 Finality of elections under this subpart.

Except as otherwise provided by this subpart, an election of coverage under, or annuity from, another retirement system, in lieu of CSRS or FERS coverage or annuity, or the election between simultaneous entitlements under CSRS or FERS, is final and conclusive for the period of simultaneous entitlement to coverage or annuity.

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.
- 838.136 Administrative appeal rights.

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.