

(2) That the former spouse will notify the Associate Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage. The Associate Director may subsequently require recertification of these statements.

**§ 838.1006 Amounts payable.**

(a) Money held by an executive agency or OPM that may be payable at some future date is not available for payment under court orders unless all of the conditions necessary for payment of the money to the former employee or Member have been met, including, but not limited to—

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

(2) Application for payment of the money by the former employee or Member; and

(3) The former employee's or Member's immediate entitlement to payment of the money subject to the order.

(b) Waivers of employee or Member annuity payments under the terms of section 8345(d) 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 before the expiration of the 30-day notice period provided by § 838.1008.

(c) Payment under a court order may not exceed—

(1) In cases involving employee or Member annuities, the net annuity.

(2) In cases involving lump-sum payments (refunds), the amount of the lump-sum credit.

(3) In cases involving former spouse annuities, the amount provided in § 831.641 of this chapter.

(d) In cases in which court orders award former spouse annuities—

(1) Except as provided in paragraph (d)(2) of this section, former spouse annuities based on qualifying court orders will commence and terminate in accordance with the court order.

(2) A court order will not be honored to the extent it would require an annuity to commence prior to the day after the employee, Member, or retiree dies,

or the first day of the second month beginning after the date on which OPM receives written notice of the court order together with the additional information required by § 838.1005. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8341(h)(3)(B) of title 5, United States Code.

(3) A court order will not be honored to the extent it is inconsistent with any joint designation or waiver previously executed under § 831.614 of this chapter with respect to the former spouse involved.

[50 FR 20077, May 13, 1985, as amended at 51 FR 31936, Sept. 8, 1986. Redesignated and amended at 57 FR 33596-33598, July 29, 1992; 58 FR 52882, Oct. 13, 1993]

**§ 838.1007 Preliminary review.**

(a)(1) Upon receipt of a court order and documentation required by § 838.1005 affecting the future civil service retirement benefits of an employee or Member who is living and has not applied for benefits under CSRS, the Associate Director will notify the former spouse that OPM has received the court order and documentation. The court order and documentation will be filed for further review when the employee or Member dies or funds become available under § 838.1006.

(2) When OPM has received a court order and documentation required by § 838.1005 affecting an employee or Member who retires, dies, or applies for a lump-sum benefit, the Associate Director will determine whether the court order is a qualifying court order under § 838.1004.

(3) Upon receipt of a court order and necessary documentation required by § 838.1005 affecting employee retirement benefits that are available under § 838.1006 or awarding a former spouse annuity to a former spouse of an employee who retired under CSRS or died, the Associate Director will determine whether the court order is a qualifying court order under § 838.1004.

(b) Upon preliminary determination that the court order is qualifying, the Associate Director will give the notifications required by § 838.1008.

(c) Upon preliminary determination that the court order is not qualifying,