

§ 838.1008

5 CFR Ch. I (1–1–05 Edition)

the former spouse will be notified of the basis for the determination and the right to reconsideration under § 831.109 of this chapter.

[50 FR 20077, May 13, 1985. Redesignated and amended at 57 FR 33596–33598, July 29, 1992]

§ 838.1008 Notifications.

(a) In a case in which the court order affects employee retirement benefits:

(1) The Associate Director will notify the employee, Member, or retiree that a court order has been received that appears to require that a portion of his or her retirement benefits be paid to a former spouse and provide the employee, Member, or retiree with a copy of the court order. The notice will inform the former employee or Member—

- (i) That OPM intends to honor the court order; and
- (ii) Of the effect that the court order will have on the former employee or Member's retirement benefits; and
- (iii) That no payments will be made to the former spouse for a period of 30 days from the notice date to enable the former employee or Member to contest the court order.

(2) The Associate Director will notify the former spouse—

- (i) That OPM intends to honor the court order; and
- (ii) Of the amount that the former spouse is entitled to receive under the court order, and in cases that award a portion of the benefits on a percentage basis or by a formula, how the amount was computed; and
- (iii) That payment is being delayed for a period of 30 days to give the former employee or Member an opportunity to contest the court order.

(b) In a case in which the court order awards a former spouse annuity—

(1) The Associate Director will notify the retiree, if living, or, if the employee, Member, or retiree is dead, his or her surviving spouse, or the person entitled to the lump-sum death benefit under section 8342 of title 5, United States Code, if possible, that a court order has been received that requires the payment of a former spouse annuity. The notice will include a copy of the court order. The notice will state—

- (i) That OPM intends to honor the court order; and

(ii) The effect it will have on the potential retirement benefit of the person receiving the notice; and

(iii) That any objection to honoring the court order must be filed within 30 days from the notice date.

(2) The former spouse will be notified—

- (i) That OPM intends to honor the court order; and
- (ii) Of the amount of survivor annuity that he or she will be entitled to receive and how the amount was computed; and
- (iii) That anyone adversely affected has a period of 30 days in which to contest the court order.

(c) In a case in which the court order affects employee retirement benefits and awards a former spouse annuity all of the notices under paragraphs (a) and (b) of this section will be provided.

§ 838.1009 Decisions.

(a)(1) When the individual does not respond within the 30-day notice period provided for by § 838.1008, the court order will be honored in accordance with the notification.

(2) When a timely response to the notification is received, the Associate Director will consider the response. The former spouse's claim will be denied and the former spouse will be notified of the right to request reconsideration under § 831.109 of this chapter whenever it is shown that—

- (i) The court order is not a qualifying court order; or
- (ii) The court order is inconsistent with a contemporaneous or subsequent court order.

(b) If any person who may lose benefits if OPM honors the court order objects to payment based on the validity of the court order and the record contains reasonable support for the objection, he or she will be granted 30 days to initiate legal action to determine the validity of the objection. If funds are available under § 838.1006 and evidence is submitted that legal action had been started before the 30 days have expired, money will continue to be withheld, but no payment will be