

**§ 838.1101**

E. Orders that fail to state the amount of the former spouse annuity will be interpreted as providing the maximum former spouse annuity.

F. Orders awarding a former spouse annuity of less than \$12 per year are qualifying court orders. Such orders will be interpreted to provide an initial rate of \$1 per month plus all cost-of-living increases occurring after the date of the order. The reduction in the retiree's annuity will be computed as though the order provided a former spouse annuity of \$1 per month.

G. Orders that provide full survivor annuity benefits to a former spouse with the contingency that the employee or annuitant may elect a lesser benefit for the former spouse upon his or her remarriage will be interpreted to provide only a full survivor annuity benefit to the former spouse. In order to provide full survivor annuity benefits to a former spouse with the contingency that the employee or annuitant may provide a lesser survivor annuity benefit to the former spouse in order to provide survivor annuity benefits for a subsequent spouse, the order should allow a reduction in the former spouse benefit contingent upon the employee's or annuitant's election of survivor annuity benefits for a subsequent spouse. A reduction in the amount of survivor benefits provided to the former spouse will not be permitted 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. (See 5 CFR 838.1004(b).)

[55 FR 9105, Mar. 12, 1990. Redesignated and amended at 57 FR 33596-33597, July 29, 1992]

**Subpart K—Court Orders Under the Child Abuse Accountability Act**

SOURCE: 59 FR 66637, Dec. 28, 1994, unless otherwise noted.

**REGULATORY STRUCTURE**

**§ 838.1101 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 child abuse judgment enforcement orders.

(b) This subpart prescribes—

(1) The circumstances that must occur before employee annuities or refunds of employee contributions are available to satisfy a child abuse judgment enforcement order; and

(2) The procedures that a child abuse creditor must follow when applying for

**5 CFR Ch. I (1-1-05 Edition)**

a portion of an employee annuity or refund of employee contributions based on a child abuse judgment enforcement order.

**AVAILABILITY OF FUNDS**

**§ 838.1111 Amounts subject to child abuse judgment enforcement orders.**

(a)(1) Employee annuities and refunds of employee contributions are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the employee annuity or refund of employee contributions to the former employee have been met, including, but not limited to—

(i) Separation from the Federal service;

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

(iii) Immediate entitlement to an employee annuity or 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 child abuse judgment enforcement orders.

(3) OPM cannot pay a child abuse creditor a portion of an employee annuity before the employee annuity begins to accrue.

(b) 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 child abuse judgment enforcement order if such waivers are postmarked or received before the date that OPM receives the child abuse judgment enforcement order.

**APPLICATION, PROCESSING, AND PAYMENT PROCEDURES AND DOCUMENTATION REQUIREMENTS**

**§ 838.1121 Procedures and requirements.**

(a) Except as otherwise expressly provided in this part, the procedures and requirements applicable to legal process under part 581 of this chapter apply to OPM's administration of child abuse judgment enforcement orders.

(b)(1) OPM will accept for processing any legal process under part 581 of this chapter that appears valid on its face.

(2)(i) After OPM has determined that a child abuse judgment enforcement order is valid on its face, OPM will not entertain any complaint concerning the validity of the order. Such complaints must be presented to authorities having jurisdiction to review the validity of the legal process.

(ii) OPM will not delay compliance with a child abuse judgment enforcement order based on any complaint concerning the validity of the order unless instructed to do so by an appropriate authority under the law of the jurisdiction issuing the legal process, the office of the United States Attorney for the jurisdiction issuing the legal process, or the U.S. Department of Justice.

(c)(1) The address for service of a child abuse judgment enforcement order is provided in appendix A to subpart A of this part.

(2)(i) OPM considers service of legal process by mailing or delivery of the child abuse judgment enforcement order to the designated address appropriate service notwithstanding more formal requirements imposed on creditors under State law.

(ii) OPM will execute forms required under a State procedure to waive any right to more formal procedures for service of legal process than specified in paragraph (c)(2)(i) of this section.

## **PART 839—CORRECTION OF RETIREMENT COVERAGE ERRORS UNDER THE FEDERAL ERRONEOUS RETIREMENT COVERAGE CORRECTIONS ACT**

### **Subpart A—General Provisions**

Sec.

839.101 What is the Federal Erroneous Retirement Coverage Corrections Act?

839.102 Definitions.

### **Subpart B—Eligibility**

#### **GENERAL PROVISIONS**

839.201 Do these rules apply to me?

#### **ELECTION OPPORTUNITY**

839.211 If these rules apply to me because I had a qualifying retirement coverage

error, can I choose which retirement plan I want to be in?

839.212 May I make a retirement coverage election if I received a refund of my retirement deductions after I was corrected to FERS?

839.213 May I make a retirement coverage election if I withdrew all or part of my TSP account after I was corrected to FERS?

839.214 Am I disqualified from making an election of retirement coverage under the FERCCA if I withdrew my TSP account after I retired under FERS?

839.215 May I make a retirement coverage election under the FERCCA if I received a payment as settlement of my claim for losses because of a qualifying retirement coverage error?

#### **PREVIOUS ELECTION OPPORTUNITY**

839.221 If my qualifying retirement coverage error was that I was put into FERS by mistake and then, after the error was discovered, I chose my current retirement coverage, can I now make another election?

#### **COURT-ORDERED BENEFITS FOR FORMER SPOUSES**

839.231 Can I make an election if my former spouse is entitled to a portion of my retirement benefits by qualifying court order?

839.232 If a deceased employee's survivors include both a current spouse and a former spouse, or spouses who are eligible for survivor annuities, must all of them consent to an election of FERS?

#### **ELECTIONS**

839.241 Am I eligible to make an election under the FERCCA if I had a qualifying retirement coverage error and none of the conditions mentioned in 839.212 through 839.232 apply to me?

839.242 Do these rules apply to me if I had multiple errors?

### **Subpart C—Employer Responsibility to Notify Employees**

839.301 What should I do if I am not sure whether I am or was in the wrong retirement plan?

839.302 Will my employer give me a written explanation?

839.303 Is my employer required to find employees with a retirement coverage error?