

§ 838.734

(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.

[57 FR 33574, July 29, 1992, as amended at 58 FR 52882, Oct. 13, 1993]

§ 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 § 843.102 of this chapter) to a former spouse upon the death of an employee or retiree.

[57 FR 33574, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993]

§ 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 adjustments or that attempts to prevent OPM from applying cost-of-living adjustments to

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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) *Qualifying Domestic Relations Orders.* (1) 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 unless the court order expressly states that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(2) When a court order is required by paragraph (a)(1) of this section to state that the provisions of a court order concerning CSRS or FERS benefits are governed by this part the court order must—

(i) Expressly refer to part 838 of Title 5, Code of Federal Regulations, and

(ii) Expressly state that the provisions of the court order concerning CSRS or FERS benefits are drafted in accordance with the terminology used in this part.

(3) Although any language satisfying the requirement of paragraph (a) (2) of

this section is sufficient to prevent a court order from being unacceptable under paragraph (a)(1) of this section, OPM recommends the use of the language provided in ¶001 in appendix A to subpart F of this part to state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(4) A court order directed at employee annuity that contains the language described in paragraph (a)(2) of this section must also satisfy all other requirements of this subpart to be a court order acceptable for processing.

(b) *Employee annuity cannot continue after the death of the retiree.* 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 § 838.911; 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 dividing the marital property of 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—