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Inform the court of limitations on payments under § 831.1713 applicable to the case; and

Notify the court of the effect of any court order to provide guidance.

While OPM is awaiting guidance from the court, the retiree will be paid his or her share of the annuity. The former spouse's share may be distributed only in accordance with paragraphs (d) and (e) of this section.

(b) If no response (or an inadequate response) is received from the court within 60 days from the date of the request for guidance, the full annuity will be restored to the retiree effective on the date of the annuity check due after the date of the former spouse.

Disbursement will be made only after the completion of any reconsideration and appeals procedures required by § 831.109.

Payment of all or part of the former spouse's share may be made to one of the following—

The retiree; or
A child or children of the retiree (or a court-appointed representative of the benefit of such children); or
The court (or other State, county or municipal agency which serves as a trustee and disbursing agent for the

The request for guidance required by this section will be sent by registered mail, return receipt requested, addressed to the clerk of the court. A copy of the request for guidance will be sent by certified mail, return receipt requested, to the retiree and to the court-appointed representative of the estate of the former spouse (if an address is avail-

§ 831.1713 Limitations.

Employee retirement benefits are subject to apportionment by court order only while the former employee or Member is living. Payment of apportioned amounts will be made only to the former spouse and/or the child or children of the former employee or Member. Payment will not be made to the former spouse if the following:

The heirs or legatees of the former spouse; or

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(2) The creditors of the former employee or Member, or the former spouse; or

(3) Other assignees of the former employee or Member, or the former spouse.

(b) The amount of payment under this subpart will not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars.

(c) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence of a special schedule of accrual or payment of amounts due the former spouse.

(d) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse will also resume.

(e) Since the former spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 831.1714 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the **FEDERAL REGISTER** a notice of the guidelines it uses in interpreting court orders. Upon publication of the notice in the **FEDERAL REGISTER** of such guidelines, they will become an appendix to this subpart.

§ 831.1715 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to a court order if such payment is made in accordance with the provisions of this subpart.

§ 831.1716 Receipt of multiple court orders.

In the event that OPM receives two or more qualifying court orders—

(a) When there are two or more former spouses, the court orders will be honored in the order in which they

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were issued to the maximum extent possible under §§ 831.614 and 831.1706.

(b) Where there are two or more court orders relating to the same former spouse, the one issued last will be honored.

§ 831.1717 Cost-of-living adjustments.

In cases where the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases unless the court directs otherwise.

§ 831.1718 Settlements.

The former spouse may request that an amount be withheld from the retirement benefits that is less than the amount stipulated in the court order. This lower amount will be deemed a complete fulfillment of the obligation of OPM for the period in which the request is in effect.

APPENDIX A TO SUBPART Q OF PART 831—GUIDELINES FOR INTERPRETING STATE COURT ORDERS DIVIDING CIVIL SERVICE RETIREMENT BENEFITS

UNITED STATES OF AMERICA**OFFICE OF PERSONNEL MANAGEMENT****COMPENSATION GROUP**

Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

Recent inquiries and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which the Office of Personnel Management will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

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I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's share effective at the time of divorce will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which would have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount shown as gross annuity on civil service annuity master record printouts, i.e., the annuity payable after any applicable survivor deduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction the decree must contain language to the effect that the division is to be made on the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 831.1703.

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing formula in a decree is a month.

1. This policy is based on the provision of section 8332 of title 5, United States Code, which allows credit for service for years or

twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to $\frac{1}{4}$ of the fraction whose numerator is 12,863 years and whose denominator is the total service on which the annuity is based would be computed by taking $\frac{1}{4}$ of the quotient obtained by dividing 12,863 by the total service measured in years and twelfth parts.

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service and unused sick leave has been used in the annuity computation, the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirement; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Contributions

A. Orders which are unclear about whether they are dividing an annuity or contribution will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits became payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be limited to division of the amount which the employee has paid into the Civil Service Retirement and Disability Fund.

Office of Personnel Management**§ 831.1801****V. Orders Directing the Annuitant To Make Payment**

A. Orders which specifically direct the retiree to pay a portion of retirement benefits to a former spouse will be honored unless the retiree objects to direct payment by the Office of Personnel Management, but will not be honored even if the retiree raises only a general objection to payment by the Office of Personnel Management.

B. Orders which direct or imply that the Office of Personnel Management is to make payment of a portion of retirement benefits, or are neutral about the source of payment, will be honored unless the retiree can demonstrate that the order is invalid.

APPENDIX B TO SUBPART Q OF PART 831—GUIDELINES FOR INTERPRETING STATE COURT ORDERS AWARDING SURVIVOR ANNUITY BENEFITS TO FORMER SPOUSES

UNITED STATES OF AMERICA**OFFICE OF PERSONNEL MANAGEMENT****COMPENSATION GROUP**

Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

Recent inquiries and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Section 8339(j) of title 5, United States Code, provides for reduced annuities to provide "former spouse annuities." Section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8339(j) annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will auto-

matically terminate upon remarriage before age 55. To provide a section 8339(j) annuity, the order must use terms such as "former spouse annuity," "section 8339(j) annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8339(k). These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The election may also be eliminated to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8339(j) annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8339(k) will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8339(j)," the section reference will control.

[51 FR 31936, Sept. 8, 1986]

Subpart R—Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund

AUTHORITY: 5 U.S.C. 8347.

SOURCE: 51 FR 45443, Dec. 19, 1986, unless otherwise noted.

EFFECTIVE DATE NOTE: Subpart R (consisting of §§ 831.1801 through 831.1808) was revised at 51 FR 45443, Dec. 19, 1986, effective January 20, 1987. For the convenience of the user, the text remaining in effect until January 20, 1987, follows the text of this subpart.

§ 831.1801 Purpose.

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Civil Service Retirement and Disability Fund (the Fund). This subpart also prescribes the procedures

§ 841.911

§ 841.911 Payment only to former spouses and separated spouses.

(a) Payments under this subpart may only be made to a former spouse, a separated spouse, or the representative of a former or separated spouse.

(b) No payment under this subpart may be made after the death of the former spouse or separated spouse.

(c) Upon the death of a former spouse or separated spouse receiving a portion of employee retirement benefits under this subpart, the former spouse's or separated spouse's share will revert to the retiree unless it is needed to comply with another qualifying court order awarding benefits to a living former spouse or separated spouse.

§ 841.912 Limitations.

(a) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence in the order of a special schedule of accrual or payment of amounts due the former spouse or separated spouse.

(b) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse or separated spouse will also resume.

(c) Because the former spouse or separated spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse or separated spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 841.913 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the FEDERAL REGISTER a notice of the guidelines it uses in interpreting court orders.

§ 841.914 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to a court order if such

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payment is made in accordance with the provisions of this subpart.

§ 841.915 Receipt of multiple court orders.
Except as provided in § 841.909, in the event that OPM received two or more qualifying court orders—

(a) When there are two or more former spouses, or a former spouse and a separated spouse, the court orders will be honored in the order in which they were issued to the maximum extent possible under section 8445(b) of title 5, United States Code, and § 841.905.

(b) When there are two or more court orders relating to the same former spouse or separated spouse, the one issued last will be honored.

§ 841.916 Cost-of-living adjustments.

In cases where the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases payable to the retiree unless the court order directs otherwise.

APPENDIX A TO SUBPART I OF PART 841—GUIDELINES FOR INTERPRETING STATE COURT ORDERS DIVIDING EMPLOYEE RETIREMENT BENEFITS

These guidelines explain the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse or a separated spouse a specific dollar amount from the annuity will be interpreted as excluding cost-

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of living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's or separated spouse's share effective at the time of divorce or separation will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which would have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's or separated spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount of the annuity payable after any applicable survivor reduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction the decree must contain language to the effect that the division is to be made on the self-only annuity, the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 841.902.

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing a formula in a decree is a month.

1. This policy is based on the provision of section 8411(a)(1) of title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the an-

nuity equal to $\frac{1}{2}$ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking $\frac{1}{2}$ of the quotient obtained by dividing 12.863 by the total service measure in years and twelfth parts.

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8401(31) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service and unused sick leave has been used in the annuity computation (i.e., benefits under Part 845 of this chapter), the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirement; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Refund of Contributions

A. Orders which are unclear about whether they are dividing an annuity or a refund of contributions will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits become payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be limited to division of the amount which the employee has paid into the Civil Service Retirement Fund.

APPENDIX B TO SUBPART I OF PART 841—GUIDELINES FOR INTERPRETING STATE COURT ORDERS AWARDING SURVIVOR ANNUITY BENEFITS TO FORMER SPOUSES

These guidelines explain the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of OPM, but also for

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the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Sections 8417 and 8445 of title 5, United States Code, provides for "former spouse annuities." Sections 8420 and 8444 of title 5, United States Code, provide for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8417 reductions or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8417 reduction or section 8445 annuity, the order must use terms such as "former spouse annuity," "section 8417 reduction," "section 8445 annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8420 or 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The election may also be eliminated to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8445 annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8420 or 8444 will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8445," the section reference will control.

5 CFR Ch. I (1-1-87 Edition)**PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY****Subpart A—Coverage**

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