

# COURT ORDERED BENEFITS FOR FORMER SPOUSES

Federal employees should be aware that retirement and insurance benefits can be affected by court orders. A court order related to divorce or separation can have the following effects:

Divide a Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS) annuity;

Divide a refund of CSRS or FERS employee retirement contributions;

Provide a survivor annuity payable upon the death of an employee or retiree;

Permit a former spouse to continue coverage under the Federal Employees Health Benefits (FEHB) program and

Require an employee or retiree to assign his or her Federal Employee's Group Life Insurance (FEGLI) coverage to a former spouse or children. In addition, retirement benefits may be garnished for alimony, child support or in cases involving child abuse.

The rules governing Federal employees retirement benefits are in title 5 of the United States Code, and title 5, part 838, of the Code of Federal Regulations. Court orders that affect private sector pensions are governed by the Employee Retirement Income Security Act (ERISA). However, CSRS and FERS are exempted from ERISA as governmental plans. The regulations covering both CSRS and FERS benefits contain extensive model language that the U.S. Office of Personnel Management (OPM) encourages attorneys to use in preparing court orders.

The court order must expressly direct OPM to pay a portion of the monthly CSRS or FERS benefits. The spouse's share must be stated as a fixed amount, a percentage or a fraction of the annuity or a formula whose value is readily apparent from the face of the order and information in our files. The amount cannot exceed the amount payable to the retiree after deductions for taxes and insurance. Payments to a former spouse from a retiree's annuity end with the retiree's death. For the former spouse to receive payments after the retiree's death, the retiree must elect or the court order must provide for a survivor annuity. A court ordered survivor annuity is not available unless the marriage lasted at least 9 months. A court order may provide for all or part of a refund of employee retirement contributions to be paid to the former spouse. A court order also may block payment of a refund, but only if the order directs OPM not to pay the refund and the order also grants a survivor annuity or a portion of a retiree annuity to a legally separated or former spouse. The maximum possible combined total of all current and former spouse survivor annuities equals 55 percent of the rate of a self-only annuity under CSRS. The maximum possible annuity is 50 percent under FERS. A court order awarding a survivor annuity to a former spouse reduces the maximum that can be paid to the spouse married to the annuitant at the time of death. An insurable interest election can be made at retirement to provide a current spouse with additional survivor benefits if the retiree is in good health.

A former spouse who is awarded a portion of a CSRS or FERS annuity or a survivor annuity by a qualifying court order may be eligible to enroll for health benefits coverage under FEHB under certain conditions.

A court order may require assignment of FEGLI benefits to a former spouse or children – but the individual, not the employing agency or OPM must execute the proper form. The form for making an assignment is RI 76-10, Assignment of Federal Employees' Group Life Insurance. A divorce does not affect a designation of beneficiary that was filed at some earlier time. An employee or retiree who has designated a now former spouse to receive life insurance or retirement lump sum benefits must file new designations in order for any benefits that become payable to go to someone else. Designations of beneficiary may be changed at any time.

The employing agency is the proper source of employment and pay information about service with that agency, if needed during the divorce. Requested information that the agency can provide in response to a subpoena signed by a judge or a release signed by the employee, includes a statement of retirement coverage, the amount of money withheld by the agency to the employee's credit in the retirement fund and an annuity estimate using service to date. Agencies can prepare estimates of benefits that the employee has already earned. However, an employing agency cannot determine the proper division of benefits between spouses or the present value of employee annuity. In order to claim court ordered benefits from OPM, the former spouse or legal representative is responsible for the following items:

- Filing a certified copy of the court order and all other required supporting information with OPM;

- Keeping OPM advised of current mailing addresses of both the former spouse who is claiming benefits and the Federal employee/retiree whose benefits are being affected;

- Notifying OPM of any changes in circumstances that could affect entitlement to benefits; and

- Submitting all disputes with the employee/retiree to the appropriate State court for resolution.

Upon determining that an order is acceptable, OPM will inform the former spouse that the court order is acceptable, of the date spousal benefits begin to accrue (if known), of the monthly benefit and formula used to compute it and that if he or she disagrees, a clarifying court order must be obtained. OPM will inform the employee, retiree or other interested party that the former spouse has applied for benefits, that the court order is acceptable for processing, the date payment will commence, amount and formula. If someone contests the validity or amount, he or she must submit a court order invalidating or amending the one submitted by the former spouse.