



**Court-ordered Benefits for  
Former Spouses Under CSRS, FERS,  
FEHB, and FEGLI**



The information in this publication is a non-technical summary of the relevant laws and regulations dealing with the subject. It should not be relied upon as a sole source of information. For further information concerning court-ordered benefits for former spouses, your attorney should obtain the *Handbook for Attorneys on Court-ordered Retirement, Health Benefits, and Life Insurance Under the Civil Service Retirement System, Federal Employees Retirement System, Federal Employees Health Benefits Program and Federal Employees' Group Life Insurance Program*, RI 38-116, Revised Jan. 95.

Retirement &  
Insurance  
Service

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1900 E Street, NW  
Washington, DC 20415-0001

RI 84-1  
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### **Titles of Other CSRS and FERS Pamphlets:**

- **CSRS & FERS Pamphlets** - Federal Payment That May Be Available to Federal Employees and Their Families When Employees are Injured or Die on the Job (RI 84-2)
- **CSRS & FERS Pamphlets** - Life Events and Your Retirement and Insurance Benefits (For Employees) (RI 84-3)

### **Titles in the CSRS Retirement Facts Series:**

- **Retirement Facts #1** - The Civil Service Retirement System (RI 83-1)
- **Retirement Facts #2** - Military Service Credit Under the Civil Service Retirement System (RI 83-2)
- **Retirement Facts #3** - Deposits and Redeposits Under the Civil Service Retirement System (RI 83-3)
- **Retirement Facts #4** - Disability Retirement Under the Civil Service Retirement System (RI 83-4)
- **Retirement Facts #5** - Survivor Benefits Under the Civil Service Retirement System (RI 83-5)
- **Retirement Facts #6** - Early Retirement Under the Civil Service Retirement System (RI 83-6)
- **Retirement Facts #7** - Computing Retirement Benefits Under the Civil Service Retirement System (RI 83-7)
- **Retirement Facts #8** - Credit for Unused Sick Leave Under the Civil Service Retirement System (RI 83-8)
- **Retirement Facts #9** - Refunds Under the Civil Service Retirement System (RI 83-9)
- **Retirement Facts #10** - Voluntary Contributions Under the Civil Service Retirement System (RI 83-10)
- **Retirement Facts #11** - Information for Separating CSRS Employees Who Are Not Eligible for an Immediate Annuity (RI 83-11)

- **Retirement Facts #12** - Information About Reemployment for CSRS Annuitants (RI 83-18)
- **Retirement Facts #13** - CSRS Offset Retirement (RI 83-19)
- **Retirement Facts #14** - Law Enforcement and Firefighter CSRS Retirement (RI 83-20)

**Titles of Federal Employees Retirement System (FERS) Pamphlets:**

- **FERS Pamphlet** - FERS (RI 90-1)
- **FERS Pamphlet** - Information for Separating FERS Employees Who Are Not Eligible for an Immediate Annuity (RI 90-11)
- **FERS Pamphlet** - Information About Reemployment for FERS Annuitants (RI 90-18)

**Titles of Health and Life Insurance Pamphlets:**

- Temporary Continuation of Coverage (TCC) under the Federal Employees Health Benefits Program (RI 79-27)
- FEGLI\* Booklet (RI 76-21)

\* Federal Employees' Group Life Insurance

## **What Benefits can be Affected by a Court Order?**

*A court order related to a divorce or separation can—*

1. Divide a Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS) annuity;
2. Divide a refund of CSRS or FERS employee retirement contributions;
3. Provide a survivor annuity payable upon the death of an employee or retiree;
4. Permit a former spouse to continue coverage under the Federal Employees Health Benefits (FEHB) program; and
5. Require an employee or retiree to assign his or her Federal Employees' 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 information in this pamphlet is a brief description of the rules governing court orders for retirement, FEHB, and FEGLI benefits.

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## **Do the Same Rules that Apply to Private Sector Employees Apply to Federal Employees and Retirees?**

No. 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.

Court orders that are used to divide private sector pension plans, called Qualified Domestic Relations Orders or "QUADROS", may not be valid under the FERS or CSRS. For example, under ERISA, the former spouse's share of the benefit can begin when the employee reaches the minimum retirement age, even if the employee is still working. However, this benefit is not available under the CSRS or FERS because court orders cannot affect a retirement benefit until the benefit is actually payable to the former Federal employee. This means that the employee must be eligible for the benefit and must have made a proper application for the benefit.

***Be sure that the person who is drafting a court order that is intended to affect a Federal employee or annuitant's CSRS or FERS benefit is familiar with CSRS/FERS rules.***

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## **Where Does My Attorney Find the Rules that Apply to Court Orders Affecting CSRS, FERS, FEHB, and FEGLI Benefits?**

The provisions of law that govern CSRS benefits are in sections 8341, 8342, 8345, and 8346, of title 5 of the United States Code. The law governing FERS benefits is in sections 8401, 8424, 8445, 8467, and 8470 of title 5 of the United States Code. The regulations covering both CSRS and FERS benefits are in Part 838 of title 5, Code of Federal Regulations. The regulations contain extensive model language that OPM encourages attorneys to use in preparing court orders.

A former spouse may be able to continue FEHB coverage if he or she meets the requirements in sections 8901 and 8905 of title 5 of the United States Code concerning health benefits. The regulations are in subpart H of Part 890 of Title 5 of the Code of Federal Regulations.

Legislation effective in 1994 amended section 8706 of title 5, United States Code, to permit assignments of FEGLI coverage. Interim regulations are found in Volume 60, No.192 (51883) of the Federal Register, and amend Parts 870, 871, 872 and 874 of Title 5 of the Code of Federal Regulations. They are contained in the 1996 printing of the Code of Federal Regulations.

These provisions of law, along with the retirement and FEHB regulations are contained in *A Handbook for Attorneys on Court-ordered Retirement, Health Benefits, and Life Insurance Under the Civil Service Retirement System, Federal Employees Retirement System, Federal Employees Health Benefits Program, and Federal Employees' Group Life Insurance Program*, RI 38-116. The booklet comes with a computer diskette that contains the model language in 3 common word processor formats, as well as the printed version in the text.

This booklet can be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. The order processing code is 7612 and the number is S/N 006-000-01408-9. You can order by telephone at 202-512-1800.

The Handbook also is available on OPM's electronic bulletin board, OPM Mainstreet. Information on how to access Mainstreet is provided at the end of this pamphlet.

OPM's regulations on garnishment may be found in Parts 581 and 582 of Title 5, Code of Federal Regulations.

Please note that a different agency, the Federal Retirement Thrift Investment Board (the Board) administers the Thrift Savings Plan for Federal employees. The Board's regulations governing court orders are in subparts G and I of part 1650 of Title 5, Code of Federal Regulations. A recent pamphlet, *Information About Court Orders*, TSP BK 11 is available from the Thrift Savings Plan, 1250 H Street NW, Washington DC 20005.

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### **When Can a Court Require Money to be Withheld from a CSRS or FERS Benefit?**

A court order can apportion or divide a CSRS or FERS benefit as a result of a divorce, legal separation or annulment of marriage.

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 by 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 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.

Information about sending a court order to OPM and applying for benefits as a former spouse is provided on page 8 of this pamphlet.

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## **How Can Survivor Benefits be Provided for a Former Spouse?**

A monthly survivor annuity may be payable to a former spouse after the death of the employee or annuitant if provided by court order. In addition, a retiring employee may voluntarily elect a fully or partially reduced annuity to provide a former spouse survivor annuity. However, if the employee has remarried, this election may only be made if the current spouse consents to it.

A court-ordered survivor annuity is not available unless the marriage lasted at least 9 months.

### **A former spouse survivor annuity ends if the former spouse remarries before becoming age 55.**

If death occurs as an employee, a court-ordered survivor benefit is payable to a former spouse if the employee completed at least 18 months of creditable civilian service, and dies while under CSRS or FERS retirement coverage.

Under CSRS, a survivor annuity is payable.

Under FERS, a lump sum death benefit is payable, and a survivor annuity is also payable if the employee has 10 years of creditable service.

If a separated former employee dies before retirement under CSRS, no survivor annuity can be paid to a former spouse, despite the terms of the court order. In certain limited circumstances, under FERS, a survivor annuity for a former spouse may be payable if a separated former employee dies before retirement.

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## **What is the Effect of Court-Ordered Benefits Awarded to a Former Spouse on Survivor Benefits for a Current 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. 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.

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## **Restrictions on Modification of Survivor Benefits after Retirement**

It is very important that provisions intended to award a survivor annuity both reflect the intent of the parties and conform to law and OPM regulations. While orders can be changed before the employee retires or dies, in general they cannot be modified to affect survivor benefits after the employee retires or dies.

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## **Garnishment of CSRS and FERS Benefits**

Garnishment is a legal process under State law for enforcing existing legal obligations. CSRS or FERS benefits can be garnished only for alimony, child support, or in cases of child abuse. The garnishment must conform to all State law requirements for garnishment actions involving private employers, and is subject to the limitations in Title 5, Code of Federal Regulations, section 581.

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## **Health Benefits Coverage**

A former spouse who is awarded a portion of a CSRS or FERS annuity or a survivor annuity by a qualifying court order, even though the benefit is not yet payable, may be eligible to enroll for health benefits coverage under the Federal Employees Health Benefits (FEHB) Program under certain conditions. Note that the former spouse is **not** eligible to retain coverage under the employee's family enrollment.

The former spouse or his or her attorney should review the FEHB information in the Attorneys Handbook described earlier in this pamphlet, and contact the employee's personnel office concerning information about a former spouse health benefits enrollment.

FEHB coverage may also be temporarily continued under the temporary continuation of coverage authority. For information, you or your representative should ask your personnel office for a copy of *Temporary Continuation of Coverage (TCC) under the Federal Employees Health Benefits Program*, RI 79-27.

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## **Life Insurance**

Effective October 3, 1994, Public Law 103-336 allows an employee or retiree who is enrolled in the Federal Employees' Group Life Insurance (FEGLI) program, to assign insurance to another person, a firm or a trust (an "assignee"). Assigning benefits transfers ownership of FEGLI coverage to the assignee. The individual who makes the assignment no longer has control over the insurance coverage and can no longer designate beneficiaries. Assignment is irrevocable, and applies to Basic, Option A, and Option B insurance.

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 forms.

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## **Designations of Beneficiary for Life Insurance and Retirement Contributions**

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 FEGLI 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 FEGLI designation form is an SF 2823. For CSRS retirement monies, the form is an SF 2808. For FERS, this form is an SF 3102. Employees may obtain these forms from their servicing personnel office. Retirees may obtain them from OPM by calling (202) 606-0500. (TDD (202) 606-0551).

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## **What is the Role of the Employee's Agency?**

The employing agency is the proper source of employment and pay information about service with that agency, if needed during divorce. OPM does not receive records until after an employee leaves employment. However, if the employee had a previous employment in a different Federal agency, information about contributions to the Retirement Fund prior to present service is available from OPM. The employing agency handles FEHB enrollments for former spouses, and receives premiums as well as assignments of FEGLI that an employee may make.

Requested information which 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 system coverage under CSRS or FERS, 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 (which must be determined by a private actuary). Also agencies do not provide estimates that involve speculation, or attempt to advise an employee, spouse, or attorney about how to draft a court order.

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## **What is the Role of the U.S. Office of Personnel Management (OPM)?**

OPM authorizes payments in accordance with clear, specific, and express provisions of court orders acceptable for processing under the applicable provisions of law and regulation. If the order is not acceptable, the parties must return to State court to seek any necessary modifications.

To claim court-ordered benefits from OPM, the former spouse or legal representative is responsible for-

- 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.

- 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 (if appropriate), 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.

The former spouse should file the above information as soon as possible. Do not wait for the employee to retire, even if the spousal benefit begins years in the future. The former spouse and employee will be notified of the above information after the order is reviewed.

### **Applications**

1. A former spouse must personally (or through a representative) apply in writing to be eligible for a court awarded portion of an employee annuity. No special form is required.
2. Unless a court order is already on file at OPM, the application letter must be accompanied by a court certified copy of the court order directing payment from the employee's or retiree's CSRS or FERS retirement benefit, as well as any other documents issued as part of the court action. Included with this must be a certification from the former spouse or his/her representative that the order is currently in force and has not been amended, superseded, or set aside.
3. There must be sufficient information to identify the employee or retiree, including full name, retirement claim number (if known), date of birth, and social security number. OPM also needs the applicant's current address and that of the employee if he/she has not retired or died.
4. When a court order is subject to termination upon remarriage no payment can be made without a further statement that remarriage has not occurred.

These materials should be sent to the U.S. Office of Personnel Management, Office of Retirement Programs, Court Ordered Benefits Branch, Post Office Box 17, Washington, DC 20044-0017.

## **Access to the Handbook for Attorneys on OPM Mainstreet**

The telephone number to access OPM Mainstreet is 202-606-4800. Your communications software should be set to the following:

Baud: Up to 14,400  
Parity: None  
Data bits: 8  
Stop bit: 1

The Handbook for Attorneys is available from the main menu. Follow the instructions below.

Select:

(1) Forums: Areas of Special Interest

*then*

(J) Retirement and Insurance Services

*then*

(A) For Benefits Officers

*then*

(B) Benefits Administration Letters

*then*

(1) Retirement Related Policy and Process Issues

The Handbook for Attorneys can be downloaded at this point. The file name is Court.Zip. The Handbook is in a compressed format, and must be uncompressed using the PKUNZIP utility program.