



Court-Ordered Benefits for Former Spouses

Civil Service Retirement System
Federal Employees Retirement System
Federal Employees' Group Life Insurance
Federal Employees Health Benefits

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a New Day for Federal Service

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Introduction

This informative booklet is for Federal employees or their spouses who want general information about how their retirement and insurance could be affected by a court order related to a divorce or separation. Attorneys who prepare court orders involving such benefits should be aware of laws and regulations pertaining to court orders, which are available as described on pages 2 and 3.

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 Program (FEHBP).
5. Require an employee to cover his or her children under the FEHBP.
6. Require an employee or retiree to assign his or her Federal Employees' Group Life Insurance (FEGLI) coverage to a former spouse or children.
7. Require an employee to name his or her former spouse or children as beneficiaries under FEGLI.

In addition, retirement benefits may be garnished for alimony, child support, or for cases involving child abuse.

What Benefits Cannot Be Affected by a Court Order?

A court order related to a divorce or separation cannot —

1. Make a former spouse of an employee or annuitant eligible for Federal Employees Dental and Vision Insurance Program (FEDVIP) benefits;
2. Require an agency or retirement system to enroll an employee or annuitant in a FEDVIP plan to cover his or her children;
3. Make a former spouse a qualified relative eligible to enroll in the Federal Long Term Care Insurance Program.

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, the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) are governmental plans and are exempt from ERISA.

Court orders used to divide private sector pension plans, called Qualified Domestic Relations Orders or "QUADROS," may not be valid under 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 CSRS or FERS because court orders cannot affect a retirement benefit until the benefit is actually payable to the former Federal employee. This means the employee must be eligible for the benefit and must have made a proper application for the benefit.

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

Court orders affecting Federal Employees Health Benefits (FEHB) are governed by part 890 of title 5, Code of Federal Regulations (CFR). Court orders affecting Federal Employees' Group Life Insurance (FEGLI) are governed by 5 CFR part 870.

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 OPM encourages attorneys to use in preparing court orders.

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

Assignments of Federal Employees' Group Life Insurance (FEGLI) are authorized by section 8706 of title 5, United States Code. Regulations are found in subpart I, part 870, title 5, Code of Federal Regulations. Court orders and beneficiaries are found in section 8705 of title 5 United States Code. Regulations are found in subpart H, part 870, title 5, Code of Federal Regulations.

These provisions of law, along with the retirement, health insurance, and life insurance regulations, are contained in RI 38-116, *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*. The Handbook is available on the OPM website at www.opm.gov/retirement-services/publications-forms/pamphlets.

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, part 1650, title 5, Code of Federal Regulations. A pamphlet, *Court Orders and Powers of Attorney*, TSP BK 11 is available from the Thrift Savings Plan, P.O. Box 385021, Birmingham, AL 35238. The website for the Thrift Savings Plan is www.tsp.gov.

When Can a Court Require Money be Withheld from a Civil Service Retirement System (CSRS) or Federal Employees Retirement System (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 that all or part of a refund of employee retirement contributions 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 11 of this pamphlet.

What Happens if Military Service is Used for Civilian Retirement Credit and There is a Court Order Awarding a Former Spouse a Portion of the Retiring Employee's Military Retired Pay?

Receipt of military retired pay often bars credit for the military service for Civil Service Retirement or Federal Employees Retirement unless the retiring employee elects to waive the military retired pay and have the military service added to civilian service in computing the civilian annuity.

If the employee's military retired pay is subject to a court order awarding a former spouse a portion of the military retired pay, the retiring employee cannot receive credit for the military service for Civil Service Retirement or Federal Employees Retirement without first consenting for OPM to continue payment to the former spouse. OPM must pay the amount the military pay center would pay the former spouse if military retired pay continued.

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 be made only 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 age 55, unless the employee and the former spouse were married for 30 years or longer.

If an employee dies, 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 the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (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. Under FERS, in certain limited circumstances, a survivor annuity for a former spouse may be payable if a separated former employee dies before retirement.

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 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 employee who is in good health can make an insurable interest survivor election at retirement to provide a current spouse with additional survivor benefits.

Restrictions on Modification of Court-Ordered 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 regulations. While court orders can be changed before the employee retires or dies, in general court orders cannot be modified to affect survivor benefits after the employee retires or dies after retiring.

Garnishment of Benefits

Garnishment is a legal process under State law for enforcing existing legal obligations. Benefits under CSRS and FERS 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.

Federal Employees Health Benefits Program (FEHBP)

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 FEHBP.

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 FEHBP information in the Attorneys' Handbook described earlier in this pamphlet and contact the employee's personnel office concerning information about a former spouse FEHBP enrollment.

A former spouse who does not qualify for FEHBP under the Spouse Equity provisions of the law may apply for Temporary Continuation of Coverage (TCC). For information, you or your representative should read RI 79-27, *Temporary Continuation of Coverage (TCC) under the Federal Employees Health Benefits Program*, found at www.opm.gov/healthcare-insurance/healthcare/temporary-continuation-of-coverage/.

A former spouse who loses coverage as a family member because the marriage ended is eligible to convert to a non-FEHB individual policy with his or her insurance carrier.

Federal Employees Dental and Vision Insurance Program (FEDVIP)

Former spouses of employees or annuitants are not eligible for FEDVIP, even if a court order gives them FEHB eligibility.

A court order cannot require an agency or retirement system to enroll an employee or annuitant in a FEDVIP plan to cover his/her children if he/she refuses to do so.

(The Federal Employees Health Benefits Children's Equity Act of 2000 only applies to the FEHB Program.)

Federal Long Term Care Insurance Program (FLTCIP)

A former spouse is not a qualified relative of an employee or annuitant, and therefore is not eligible to apply for or enroll in coverage under the FLTCIP. A court order cannot make a former spouse eligible to apply or enroll.

A spouse who is already enrolled in FLTCIP as a qualified relative may continue FLTCIP coverage if he/she subsequently loses qualified relative status (such as upon divorce) as long as the Carrier receives the required premium when due.

Federal Employees' Group Life Insurance (FEGLI) Program

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 Federal Employees' Group Life Insurance (FEGLI) benefits to a former spouse or children — the employee or retiree, not the employing agency or the U.S. Office of Personnel Management (OPM), must execute the proper form. The form for making an assignment is RI 76-10, *Assignment of Federal Employees' Group Life Insurance*. It is available from agency personnel offices.

Effective since July 22, 1998, Public Law 105-205 requires that provisions of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement agreement relating to such a court decree be followed instead of the statutory order of precedence for payment of benefits under FEGLI.

For this statutory provision to apply, a certified copy of the court order must have been received in the appropriate office before the death of the insured individual. For active employees, the appropriate office is their employing agency. For annuitants, the appropriate office is OPM. For compensationers, during the first 12 months of nonpay status the appropriate office is their employing agency; after separation or the completion of 12 months in nonpay status, the appropriate office is OPM.

Public Law 105-205 also prohibits an insured individual from changing his/her designation of beneficiary, unless the person(s) named in the court order agrees or unless the court order is subsequently modified.

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 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, unless there is a court order in effect.

The insurance designation form is Standard Form (SF) 2823. For Civil Service Retirement System retirement monies, the form is SF 2808. For Federal Employees Retirement System, this form is SF 3102. Employees may obtain these forms from their servicing personnel office. Retirees may obtain them from the U.S. Office of Personnel Management by calling 1-888-767-6738 [TTY 1-855-887-4957]. Also, designation forms are available on OPM's website (www.opm.gov/forms/standard-forms).

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 separates from employment. However, if the employee had a previous employment in a different Federal agency, information about contributions to the Retirement Fund during earlier service is available from OPM. The employing agency handles health insurance enrollments for former spouses and receives premiums, as well as assignments of life insurance an employee may make.

Requested information 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, 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 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). Agencies do not provide estimates that involve speculation or attempt to advise an employee, spouse, or attorney about how to draft a court order.

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 an order is acceptable, OPM will —

- Inform the former spouse 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 if he or she disagrees, a clarifying court order must be obtained.
- Inform the employee, retiree, or other interested party the former spouse has applied for benefits, the court order is acceptable for processing, the date payment will commence (if appropriate), amount, and formula. If an individual 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 apply in writing to be eligible for a court-awarded portion of an employee's annuity. No special form is required. If the former spouse is incompetent, a representative may apply in his or her behalf.
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 retirement benefit, along with 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.

Mail these materials to the:

U.S. Office of Personnel Management
Retirement Services Program
Court Ordered Benefits Branch
Post Office Box 17
Washington, DC 20044-0017.

To call the Court Ordered Benefits Branch dial 1-888-767-6738 and ask to be transferred to that branch.

How to Contact OPM

By telephone - Call our toll-free number 1-888-767-6738 [TTY 1-855-887-4957]. Customer Service Representatives are available at these numbers on all Federal work days from 7:30 a.m. to 7:45 p.m. Eastern time. At any other time of day, you may leave a message.

By email - Our address is retire@opm.gov.

On the internet - Our address is www.opm.gov/retirement-services.

By U.S. Mail - Our address for general correspondence is:

Office of Personnel Management
Retirement Operations Center
Post Office Box 45
Boyers, PA 16017-0045

Additional Information

Additional information about the Federal Employees Health Benefits Program (FEHBP) is available at www.opm.gov/healthcare-insurance/healthcare. Both the FEHBP Handbook and the Frequently Asked Questions links have information on former spouses.

You may obtain copies of the pamphlets listed below from your personnel office or from the U.S. Office of Personnel Management's (OPM) website www.opm.gov/retirement-services/publications-forms/pamphlets.

Pamphlets applicable to employees in both the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) are:

- Life Events and Your Retirement and Insurance Benefits (*For Employees*) (RI 84-3)
- Thinking About Retirement? (RI 83-11)

The pamphlets in the Civil Service Retirement System Retirement Facts Series are:

- ***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 83-13)
- ***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)

Publications for employees who are under the Federal Employees Retirement System (FERS) are:

- FERS Brochure (*An Overview of Your Benefits*) (RI 90-1)
- **FERS Facts #1** - Information for Separating FERS Employees Who Are Not Eligible for an Immediate Annuity (RI 90-11)
- **FERS Facts #2** - Information About Reemployment for FERS Annuitants (RI 90-18)

You may obtain copies of the pamphlets listed below from the U.S. Office of Personnel Management by calling the Retirement Information Office toll-free number, 1-888-767-6738 or by writing to:

Office of Personnel Management
Retirement Operations Center
Post Office Box 45
Boyers, PA 16017-0045

Pamphlets on the Federal Employees Health and Life Insurance Programs are:

- Guide to Federal Benefits for Federal Civilian Employees (RI 70-1)
- Federal Employees' Group Life Insurance Booklet (RI 76-21)

Notes



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
Retirement Services
1900 E Street, NW
Washington, DC 20415

www.opm.gov/retirement-services/publications-forms