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WHEN DIVORCE HAPPENS... Things to Think About

A GUIDE FOR PERSONNELISTS AND EMPLOYEES

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References:

References	Topic / Issue Covered
Title 5, United States Code (U.S.C.)	
Section 8341	Survivor Annuities under the Civil Service Retirement System (CSRS)
Section 8342	Lump-sum benefits; designation of beneficiary; order of precedence under CSRS
Section 8345	Payment of benefits; commencement, termination, and waiver of annuity under CSRS
Section 8346	Exemption from legal process; recovery of payments under CSRS
Section 8401	Definitions under the Federal Employees Retirement System (FERS)
Section 8424	Lump-sum benefits; designation of beneficiary; order of precedence under FERS
Section 8445	Rights of a former spouse under FERS
Section 8467	Court orders under FERS
Section 8470	Exemption from legal process; recovery of payments under FERS
Title 5, Code of Federal Regulations (C.F.R.)	
Part 838	Court Orders Affecting Retirement Benefits under CSRS and FERS
Part 870 Subpart H	Order of Precedence and Designation of Beneficiary under the Federal Employees' Group Life Insurance (FEGLI)
Part 870 Subpart I	Assignments of Life Insurance under FEGLI
Part 890 Subpart H	Benefits for Former Spouses under the Federal Employees Health Benefits (FEHB) Program
The Office of Personnel Management (OPM) Website	
http://www.opm.gov/retire/pubs/handbook/C005.pdf	CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 5
http://www.opm.gov/retire/pubs/pamphlets/ri83-116.pdf	Handbook for Attorneys on Court-Ordered Retirement, Health Benefits, and Life Insurance under CSRS, FERS, FEHB, and FEGLI
http://www.opm.gov/insure/health/reference/handbook/FEHB31.asp	Federal Employees Health Benefits (FEHB) Program: A Handbook for Enrollees and Employing Offices, Chapter on Former Spouses
http://www.opm.gov/insure/life/index.asp	Federal Employees' Group Life Insurance (FEGLI) Program: A Handbook for Employees, Annuitants, Compensationers, and Employing Offices, Order of Precedence and Designation of Beneficiary Section, Court Orders

http://www.opm.gov/forms/pdfimage/RI84-1.pdf	Court-ordered Benefits for Former Spouses
The Thrift Savings Plan (TSP) Website	
www.tsp.gov/forms/tspbk11w.pdf	Information About Court Orders

Information for Personnelists:

Courts can issue orders that award benefits to legally separated spouses, former spouses, and children of current employees, former employees, and retirees under CSRS, FERS, FEHB, FEGLI and TSP. Often we are approached about issues concerning court orders and feel uncomfortable addressing them. Employing offices should **not advise** an employee, employee's spouse, or an attorney on how to construct a court order, or **review drafts** and **make determinations** on a court order. We should be able to advise where to find information and answer general questions.

Chapter 5 of OPM's CSRS and FERS Handbook is a good reference to review the requirements that must be satisfied for OPM to honor a court order. In addition, the chapter contains model language to use in court orders. OPM has also published a "Handbook for Attorneys on Court-Ordered Retirement, Health Benefits, and Life Insurance Under the Civil Service Retirement Benefits, Federal Employees Retirement Benefits, Federal Employees Health Benefits, and Federal Employees Group Life Insurance Program". The Attorney Handbook can be found at <http://www.opm.gov/retire/pubs/pamphlets/ri83-116.pdf>.

For information or determination of benefits from the court order, the court order should be sent to: OPM, Office of Retirement Programs, Court Order Benefit Section, P.O. Box 17, Washington, DC 20044-0017. The court order may be faxed to (202) 606-0785. The phone number is (202) 606-0222. When sending the court order, the former spouse should include their full name, complete mailing address, a certified copy of the court order granting benefits, and a signed statement that the court order has not been amended, superseded, or set aside; and identifying information concerning the employee or retiree, including his/her full name, date of birth, Social Security number, and mailing address. OPM's legal experts review the court orders and make the determination on whether or not the orders are valid. Employing offices cannot make any determination nor allow an enrollment in FEHB (except Temporary Continuation of Coverage (TCC)), unless a determination is received from OPM.

In order to award CSRS or FERS benefits, the order must be issued by any court in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, or any Indian Court. 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. There is no percentage limitation on how much of a retirement annuity payment can be awarded to a former spouse. However, the payment may not exceed the "net annuity" or

the amount of the lump-sum credit in cases involving refunds of contributions. Net annuity means the amount payable after deducting for any amounts that include:

- ◆ Debts owed by the retiree to the U.S. (applies to CSRS and FERS)
- ◆ Health benefit premiums (applies to CSRS and FERS)
- ◆ Life insurance premiums (applies to CSRS and FERS)
- ◆ Medicare premiums (applies to CSRS and FERS)
- ◆ Court ordered payable amounts (applies to CSRS and FERS)
- ◆ Federal, state, or local income tax (applies to CSRS; except FERS the Federal tax deduction is not included)

The maximum combined total of all current and former spouse survivor annuities payable is 55% if CSRS or 50% if FERS. A court order may state any percentage or fixed amount up to the maximum.

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. The survivor annuity ends if the former spouse remarries before age 55 unless the marriage to the retiree lasted for at least 30 years. (Note: The surviving spouse (or former spouse with a court order) of a separated FERS employee with at least 10 years of creditable service may be awarded survivor benefits if the retirement contributions were not refunded. This does not apply to CSRS employees who have separated.)

Benefits under CSRS or FERS can be garnished for alimony, child support or in cases of child abuse. Garnishment orders for annuitants should be sent to OPM at the following address: Office of Personnel Management, Office of Retirement Programs, Court Order Benefit Section, P.O. Box 17, Washington, DC 20044-0017.

An employee who has a former spouse entitled by a court order to a portion of the employee's or survivor annuity **may not elect the alternative annuity**, regardless of when the marriage ended.

The Employee Retirement Income Security Act (ERISA) and Qualified Domestic Relations Order (QDRO):

The Employee Retirement Income Security Act (ERISA) was designed to cover apportionment of 401 retirement plans. A Qualified Domestic Relations Order (QDRO) is an instrument used by courts to divide retirements under ERISA. Federal law exempts CSRS and FERS from ERISA. TSP is not a 401 plan; therefore, an ERISA or a QDRO is not required.

Information for Employees:

A court order (divorce decree) can affect any of the following:

- ◆ Annuity payments
Your monthly retirement checks once you retire are payable to your former spouse while you are living and ends when you die.
- ◆ Survivor benefits
Payable to your spouse or former spouse when you die.
- ◆ FERS Basic Employee Death Benefit (BEDB)
If a FERS employee dies while still employed, the amount payable from the lump sum death benefit.
- ◆ Refund of contributions
If you resign and want to withdraw your CSRS or FERS contribution—and give up your right to a CSRS or FERS retirement—the court could award a portion or all to your former spouse.
- ◆ Lump sum death benefit
No survivor annuity payable and you die before you have received payments equal to the amount you have paid into the retirement fund.
- ◆ Federal Employees Health Benefits (FEHB)
May permit former spouse to continue coverage through spouse equity. (5 C.F.R. 890, subpart H, 5 U.S.C. 8901 and 8905)
- ◆ Federal Employees' Group Life Insurance (FEGLI)
May require you to assign your FEGLI coverage or name as beneficiary your former wife and children. (5 C.F.R. 870, subparts H and I, 5 U.S.C. 8705 and 8706).
- ◆ Thrift Savings Plan (TSP)
May require payment to your former spouse or children from your TSP account. (5 C.F.R. 1650, subpart G and I, "Information about Court Orders," TSP BK11, found on TSP website, www.tsp.gov)

Federal Employees Health Benefits (FEHB):

As an employee, you have 31 days before to 60 days after your divorce to make changes to your health insurance program. The effective date is the beginning date of the pay period after your election is received by your employing office.

After your divorce, your former spouse cannot continue to receive FEHB coverage under your self and family enrollment. On the date of the divorce, the former spouse's coverage is terminated. The FEHB program has a 31-day temporary extension of coverage at no cost. At the end of the 31-day period, your former spouse can enroll in TCC for up to 36 months after losing coverage under your self and family Coverage. The former spouse pays both the employee share and the employer share of the FEHB premium, along with a 2% administrative charge. If your former spouse wants TCC, you or your former spouse should let your employing office know within 60 days of the divorce so they can send him/her an offer letter. The former spouse must enroll in TCC within 60 days of the divorce or within 65 days of the letter offering the TCC, whichever is later.

If your former spouse is awarded part of your annuity or part of a survivor annuity, he/she can enroll in the FEHB Program as a former spouse under the Spouse Equity Act of 1984. The eligibility requirements are:

- ◆ Divorced during your employment or receipt of annuity
- ◆ Covered as a family member under an FEHB enrollment at least one day during the 18 months before your marriage ended (This requirement is also met if both you and your former spouse each have self only FEHB enrollments.)
- ◆ Entitled to a portion of your annuity or to a former spouse survivor annuity
- ◆ Not remarried before age 55. (Does not apply if the spouse was married to the employee for 30 or more years.)

The former spouse pays 100% of the cost (employer and employee premiums) and the coverage may continue for an unlimited time (as long as they are entitled to a survivor benefit). The former spouse should contact the employing office for instructions. The certified court order must be sent to OPM for approval. If approved, a letter from OPM will indicate that the court order is acceptable and the former spouse may enroll. If it is not approved, the former spouse cannot enroll under the Spouse Equity Act. Due to this process, former spouses should enroll in TCC and upon approval by OPM, enroll through the employing office under the Spouse Equity provisions. The former spouse should be informed that there are time frames that must be honored so a timely notification to the employing office is very important. The former spouse has 60 days to apply after the date of OPM's notice of his/her eligibility to enroll based on the court order.

A court order may state that you must provide the former spouse with health insurance. Since the former spouse no longer meets the definition of a family member on your self and family coverage, you may pay the premiums directly to the National Finance Center (NFC) for your former spouse's FEHB coverage under TCC or Spouse Equity.

If approved because the court order provided an apportionment of the former spouse's annuity, upon the retiree's death, the former spouse entitlement to FEHB ends. If approved because the court order provided for a survivor annuity, FEHB ends if the former spouse loses entitlement to the survivor annuity (such as, marriage before age 55).

Federal Employees' Group Life Insurance (FEGLI):

If your divorce decree states that you must keep a certain amount of life insurance and name your former spouse as beneficiary, you can:

- ◆ Give a certified copy of the divorce decree to your employing office for filing in your Official Personnel Folder (OPF). If the employing office receives the certified copy before you die, it will take precedence over a designation of beneficiary or the normal order of precedence.
- ◆ Make an irrevocable assignment of your FEGLI. An assignment automatically cancels a prior designation of beneficiary. Under the FEGLI law, an insured person may change his or her designation of beneficiary at any time. Assignment of FEGLI coverage to a former spouse, however, provides a means for ensuring that the FEGLI benefits awarded to a former spouse cannot be circumvented by a change in beneficiary.
- ◆ Consider purchasing private life insurance in the dollar amount required.

Survivor Benefits:

The amount of survivor benefits can be a minimum of \$1 a month up to a maximum of 55% of your basic annuity if you are covered under CSRS. If covered under FERS, the court can award the former spouse any percentage up to a maximum of 50%. A minimum amount may be given so that the former spouse will be entitled to FEHB. Court orders cannot change the fact that the former spouse loses his/her survivor benefits if remarried before age 55. If your former spouse withholds information of his/her remarriage, the penalty can be \$5,000 and 10 years in prison for falsification. Court orders can be changed before you retire or die; however, after you retire or die, they cannot be modified to affect survivor benefits.

Refund of Contributions:

A court order can prevent payment of a refund to a separated employee (before becoming eligible to retire and wants his/her CSRS or FERS money refunded) to protect a survivor benefit or apportionment awarded by the court. If the employee dies, and there is no survivor annuity payable, a lump sum of the retirement contributions can be ordered to be paid to the former spouse, spouse, or child.

Military Retired Pay:

The rules for court-ordered former spouse benefits under the Uniform Code are different from the CSRS and FERS rules. Before the 1997 National Defense Authorization Act (Public Law 104-201) was passed, if a military retiree came to work for the government and decided to waive military retired pay to combine the military service with the civilian service, and a former spouse had been awarded benefits from the military retirement, then the former spouse was out of his/her share from the military retirement. Now the military retiree must consent to OPM deducting and paying a former spouse an amount equal to what was being deducted and paid by the Military Finance Center. If the member does

not consent, he/she cannot combine the military with the civilian service. OPM will deem the consent, unless the person indicated otherwise.

A court order (divorce decree) cannot affect any of the following:

◆ Federal Employees Dental and Vision Insurance Plan (FEDVIP)

Make a former spouse of an employee or annuitant eligible for FEDVIP. Information can be found www.opm.gov.

Require an agency or retirement system to enroll an employee or an annuitant in a FEDVIP Plan to cover his or her dependent children.

◆ Federal Long Term Care Insurance Program (FLTCIP)

Make a former spouse a qualified relative eligible to enroll in the Federal Long Term Care Insurance Program.

Frequently Asked Questions and Answers:

1. Now that I am divorced, may I change my FEHB carrier?

Yes, divorce is a qualifying life event that allows you to change from one plan or option to another. To do this, you should complete and submit a SF 2809 to your employing office or use the appropriate agency automated system to make the change within 60 days of the divorce.

2. I still have children to cover under my FEHB and want to keep the same plan. How do I take just my spouse's name off of my health insurance?

You should call your insurance company and tell them. There is no requirement to complete a new SF 2809 or make a change in your agency's automated system.

3. If I keep Family Coverage (Option C) under my FEGLI and my ex-spouse dies, will I receive money for his/her death?

No, FEGLI family coverage only covers eligible family members. An ex-spouse is not an eligible family member.

4. What about my beneficiary forms?

If you have designated your former spouse for your TSP (TSP-3), FEGLI (SF 2823), Unpaid Compensation (SF 1152), and/or CSRS (SF 2808)/FERS (SF 1ea3102) retirement lump sum payment, you will need to fill out a new designation of beneficiary for each program. The event (divorce) does not change your beneficiary form(s). However, if a survivor benefit is payable (i.e. a children's benefit), the beneficiary form is not followed.

5. What is a certified copy of a court order?

A certified copy of a court order is a copy of the order signed and certified by an official of the court that issued the order, verifying that it is a true copy of the original.

6. Can I elect a survivor annuity for my former spouse?

Yes, you can elect a survivor benefit for your former spouse so long as the former spouse meets the definition of a former spouse (i.e. has not remarried prior to age 55). If you are married now, you must have the consent of your current spouse to elect a benefit for your former spouse if there is no court order providing for the benefit.

7. Does the court-ordered former spouse benefits increase by cost-of-living adjustments?

If the court order awards adjustments to an apportionment or to a survivor annuity before the date of retirement and after, the survivor benefit will increase accordingly. Unless the court order directly orders otherwise, a court order that awards a former spouse a portion of an employee annuity either on a percentage basis or by use of a fraction or formula, the former spouse's share of the employee annuity will be adjusted to maintain the same percentage or fraction whenever the employee annuity changes. However, when the court order awards a former spouse a specific dollar amount from the employee annuity, this prevents the former spouse from benefiting from salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.

8. If I have provided an apportionment, which ends upon my death, is the former spouse allowed to continue FEHB after the apportionment ends?

No. Once the former spouse loses entitlement to the apportionment, they cannot continue FEHB. The former spouse will have the option to convert their FEHB.

9. I currently have self and family FEHB coverage for my spouse and children and have a legal separation agreement. I want to take my spouse off my policy prior to the divorce. How do I go about removing my spouse from my policy?

If you are separated, your spouse continues to be an eligible family member and is entitled to be covered under your FEHB self and family coverage. When the divorce is final, he/she will no longer be an eligible family member.

10. I am divorced and have a court order requiring me to provide health insurance to my former spouse and children. Since my former spouse is currently covered, I plan to keep my former spouse on my FEHB. My children are living with my former spouse. Is this correct?

Since you are divorced, your former spouse is no longer an eligible family member, regardless of the court order and cannot be covered under your FEHB. Your former spouse may enroll in TCC, or if the spouse has an annuity right, upon approval from OPM, may enroll in FEHB under the Spouse Equity Act. You may pay the premium

of your former spouse's coverage (TCC or Spouse Equity) directly to NFC to satisfy the court order. If the children are your biological or adopted children, then you can cover the children under your self and family enrollment in FEHB regardless of where the children live. If the children are your spouse's biological children, coverage must be provided through TCC (and maybe your spouse's self and family policy) or some other private insurance.

Glossary:

Amounts of Payment: The amount of the payment will not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars. The maximum payable amount will be 55% percent under CSRS of the employee's annuity, 50% under FERS.

Alternative Form of Annuity: Retirees who have a life-threatening illness or other critical medical condition can choose to receive an alternative form of annuity. If married, spouse must consent to the election. Please note that you cannot elect an alternative annuity if you have a former spouse who is entitled by court order to a portion of your annuity or a survivor annuity.

Apportionment: A court-ordered amount of a retiree's annuity payable to a former spouse while the retiree is living and ends with the retiree's death.

Basic Employee Death Benefit: A benefit payable to the spouse or former spouse of a deceased FERS employee with at least 18-months of civilian creditable service.

Child Abuse Creditor: An individual who applies for benefits under CSRS or FERS based on a child abuse judgment enforcement order.

Child Abuse Judgment Enforcement Order: A court or administrative order requiring OPM to pay a portion of an employee's annuity or a refund of employee contributions to a child abuse creditor as a means of collection of a "judgment rendered for physically, sexually, or emotionally abusing a child" as defined in sections 8345(j) (3) (B) and 8467(c) (2) of title 5, U.S.C.

Civil Service Retirement System (CSRS): The retirement system for Federal employees described in sub-chapter III of chapter 83 of title 5, U.S.C.

Commencing Date of Payments: A court order acceptable for processing is effective against an employee's annuity and will begin to accrue with the first day of the second month after OPM receives the court order.

Court Order: Any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or any Indian Court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

Employee Annuity: The recurring payments under CSRS or FERS made to a retiree.

ERISA: The Employees Retirement Income Security Act, 29 U.S.C. 1001 et seq.

Federal Employees Retirement System (FERS): The retirement system for Federal employees described in chapter 84 of title 5, U.S.C.

Former Spouse: (1) In connection with a court order affecting an employee's annuity or a refund of employee contributions: a living person whose marriage to an employee has been subject to a divorce, annulment of marriage, or legal separation resulting in a court order, or (2) In connection with a court order awarding a former spouse survivor annuity: a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service covered by CSRS or FERS, and whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.

Former Spouse Survivor Annuity: A recurring benefit under CSRS or FERS, that is payable to a former spouse after the employee's or retiree's death.

Garnishment: A legal process under state law for enforcing existing legal obligations.

Gross Annuity: The amount of monthly annuity payable after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, gross annuity also includes any lump sum payments made to the retiree through voluntary contributions under CSRS.

Net Annuity: The amount of monthly annuity payable after deducting from the gross annuity any amounts that are: owed by the retiree to the U.S.; deducted for FEHB premiums; deducted for FEGLI premiums; deducted for Medicare premiums; properly withheld for Federal income tax purposes; and properly withheld for State income tax purposes, deducted for amount payable to another person based on a court order acceptable for processing.

Prorata Share: Half of the fraction whose numerator is the number of months of Federal creditable civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

Qualifying Domestic Relations Orders (QDRO): 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 subpart C of part 838, title 5, C.F.R.

Retiree: A former employee or member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee.

Separated Employee: A former employee or member who has separated from a position in the Federal Government covered by CSRS and FERS, and is not currently employed in such a position, and who is not a retiree.

Termination of Payments: A former spouse portion of an employee annuity stops accruing at the earliest of the date on which the terms of the court order require termination; receipt of a court order that invalidates, vacates or sets aside the court order; receipt of an amended court order; the death of a retiree; or the death of the former spouse.