



a New Day for Federal Service

Court Ordered Benefits

A Brief Overview May 2014



a New Day for Federal Service

Questions for Webinar Participants

- During the presentation please send all questions to: Benefits@opm.gov
 - Subject line: Court Ordered Benefits
- We'll respond individually to any we do not get to during the webcast

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Agenda

Former spouse benefits under the:

- Civil Service Retirement System (CSRS);
- Federal Employees Retirement System (FERS);
- Federal Employees Health Benefits (FEHB) Program;
- Federal Employees Group Life Insurance (FEGLI) Program; and,
- Other OPM insurance plans (FEDVIP, FLTCP and FSA).

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Background


- OPM published new regulations on court orders in 1992...Title 5, Code of Federal Regulations (CFR) Part 838.
- Published the Handbook for Attorneys on Court-Ordered Retirement, Health Benefits and Life Insurance.
- OPM's role is ministerial.
- The role of mediator belongs to the State courts.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Benefits Payable

A court order may independently affect any of three types of retirement benefits paid by OPM:


- Employee annuity payments;
- Refunds of employee contributions; and,
- Survivor annuities.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Court Order Acceptable for Processing

A court order means 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

Court Order Acceptable for Processing means a court order that meets the regulatory requirements to affect an employee annuity, a refund of employee contributions, or to award a former spouse survivor annuity.


A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Court Order Acceptable for Processing

(Cont.)

To affect an employee annuity or refund of retirement contributions, a court order must:


- Specify a CSRS or FERS benefit, refer to Title 5 CFR Part 838 and use language acceptable under that part;
- Expressly state that the former spouse is entitled to a portion of the employee annuity or refund;
- Expressly direct OPM to pay the former spouse directly (or be silent on the payer);

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Court Order Acceptable for Processing

(Cont.)

- Provide sufficient instructions and information for OPM to compute the amount of the former spouse's share of the employee annuity or refund; and,
- In the case of a portion of employee annuity (apportionment), specify the type of annuity for application of formula, percentage or fraction.
- Net annuity, gross annuity, or self-only annuity


A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Court Order Acceptable for Processing

(Cont.)

To award a former spouse survivor annuity, a court order must:

- Specify a CSRS or FERS benefit, refer to Title 5 CFR Part 838 and use language acceptable under that part;
- Expressly state that the former spouse is awarded a former spouse survivor annuity or direct an employee or annuitant to elect to provide a former spouse survivor annuity;

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Court Order Acceptable for Processing

(Cont.)

- Provide sufficient instructions and information for OPM to compute the amount of the former spouse survivor annuity; **and**,
- Be issued prior to the date of retirement or death (whichever is earlier) of the employee or be awarded in the first order dividing the marital property of the retiree and the former spouse.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

What Benefits Can Be Affected By a Court Order?

A court order related to a divorce, legal separation, or annulment can –

- 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 (except in the case of legal separation)


A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

What Benefits Can Be Affected By a Court Order?

(Continued)

A court order related to a divorce, legal separation, or annulment can—

- Permit a former spouse to continue coverage under the Federal Employees Health Benefits Program (FEHBP)
- Require an employee to cover his or her children under the FEHBP
- Require an employee or retiree to assign his or her Federal Employees' Group Life Insurance (FEGLI) coverage to a former spouse or children

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

What Benefits Can Be Affected By a Court Order?

(Continued)

A court order related to a divorce, legal separation, or annulment can

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 (spousal support), child support, or to pay monetary judgments awarded in child abuse cases

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

What Benefits Cannot Be Affected By a Court Order?

A court order related to a divorce, legal separation, or annulment **cannot-**


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

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Do the Same Rules Apply to Private Sector Employees?

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 the private sector pensions are governed by the Employee Retirement Income Security Act (ERISA). However, CSRS and FERS are governmental plans and are exempt from ERISA


A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Do the Same Rules Apply to Private Sector Employees?

(Continued)

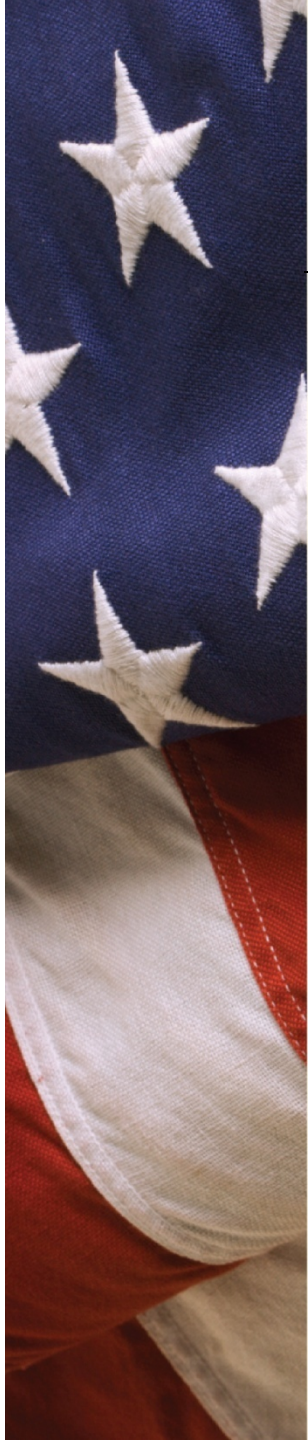
- Court orders affecting FEHB are governed by part 890, title 5, Code of Federal Regulations
- Court orders affecting FEGLI are governed by 5 CFR part 870

Note: Court orders used to divide private sector pension plans, called Qualified Domestic Relations Orders or “QUADROS” – **may not** be valid under FERS or CSRS

A vertical strip on the left side of the slide shows a close-up of the American flag, featuring white stars on a blue field and red and white stripes.

Where Do Attorneys Find the Rules that Apply to Federal Benefits?

- CSRS benefits – sections 8341, 8342, 8345, 8346, 5 USC
- FERS benefits – sections 8401, 8445, 8467, 8470, 5 USC
- CSRS & FERS benefits – part 838, 5 CFR
- Former Spouse & FEHB – sections 8901, 8905, 5 USC
- Assignments of FEGLI – section 8706, 5 USC & part 870, 5 CFR
- Court orders & Beneficiaries – section 8705, 5 USC & subpart H, part 870, 5 CFR


A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Where Do Attorneys Find the Rules that Apply to Federal Benefits?

(Continued)

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.*

A vertical strip of an American flag is visible on the left side of the page, showing the stars and stripes.

Where Do Attorneys Find the Rules that Apply to Federal Benefits?

(Continued)

Garnishments:

OPM's regulations on garnishments may be found in parts 581, 582, 5 CFR

Thrift Savings Plan:

Please note that a different agency, the Federal Retirement Thrift Investment Board, administers the Thrift Savings Plan (TSP) for Federal employees

Regulations governing TSP court orders are in subparts G & I, part 1650, 5 CFR. You may visit the TSP website for additional information: www.tsp.gov

Military Retired and Retainer Pay:

Court orders affecting this benefit are administered by the Defense Finance and Accounting Services agency. You may visit the DFAS website at www.dfas.mil for additional information

Rules governing military benefits are governed by Title 10 US Code ,Part 2, Chapter 71, §1408

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

When Can a Court Require Withholdings from CSRS or FERS Benefits?

- A court order can apportion or divide a CSRS or FERS benefit in connection with 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.

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

When Can a Court Require Withholdings from CSRS or FERS Benefits?

When it states the former spouse's share 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 OPM files

Payment to a former spouse under a court order may not exceed the net annuity. (§838.211)

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

When Can a Court Require Withholdings from CSRS or FERS Benefits?

(Continued)

Apportionment ends:

Payments to a former spouse from a retiree's annuity end with the retiree's death.

Survivor Benefits:

Payable upon the death of the retiree. This benefit must be elected by the retiree, or ordered by the court.

Refund of Contributions:

A court order may provide that all or part of a refund of employee retirement contributions be paid to the former spouse.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

When Can a Court Require Withholdings from CSRS or FERS Benefits?


(Continued)

Block Refund:

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.

Applying for Benefits:

Information about sending a court order to OPM and applying for benefits as a former spouse is provided later in this discussion.

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.


How Can Survivor Benefits be Provided for a Former Spouse?

Court Order

A monthly survivor annuity may be payable after the death of the employee or annuitant if provided by a court order.

Survivor Election

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 vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

How Can Survivor Benefits be Provided for a Former Spouse?

(Continued)

A court cannot order a former spouse survivor annuity 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.

A vertical strip of an American flag is visible on the left side of the page, showing the stars and stripes.

How Can Survivor Benefits be Provided for a Former Spouse?

(Continued)


Death of Employee

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 CSRS or FERS coverage.

If the employee has been divorced, certified copies of the divorce decree and supporting documents must accompany an application for survivor benefits.

Under CSRS, a survivor annuity is payable.

Under FERS, a survivor annuity benefit is payable if the employee has 10 years of creditable service. The Basic Employee Death Benefit (BEDB) may be payable to the former spouse if specified by the court order.

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

How Can Survivor Benefits be Provided for a Former Spouse?

(Continued)

Separated Former Employee

If a separated former employee dies before retirement under CSRS, no survivor annuity is 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.

A vertical strip of an American flag is visible on the left side of the slide, showing the blue field with white stars and the red and white stripes.

How are Current Spouses' Survivor Benefits Effected by a Court Order Awarding Benefits to a Former Spouse?

CSRS

The maximum possible combined total of all current and former spouse survivor annuities equals 55 % of the rate of a self-only annuity under CSRS


A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

How are Current Spouses' Survivor Benefits Effected by a Court Order Awarding Benefits to a Former Spouse?

FERS

The maximum possible annuity is 50% under FERS.

A court order awarding a survivor annuity to a former spouse reduces or eliminates the survivor annuity that can be paid to the current spouse of the annuitant at the time of death.

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

How are Current Spouses' Survivor Benefits Effected by a Court Order Awarding Benefits to a Former Spouse?

Insurable Interest

- 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 (only if the current spouse has consented to an election not to provide a regular current spouse survivor annuity).

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Restrictions on Modifying 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 laws 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 retirement.

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

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 (spousal support),
- Child support, or
- Child abuse judgment enforcement (The Child Abuse Accountability Act (P.L. 103-358))

The garnishment must conform to all State law requirements for garnishment actions involving private employers and is subject to the limitations in title 5, CFR, section 581


A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Federal Employees Health Benefits (FEHBP)

Former Spouse Eligibility

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: the former spouse is not eligible to retain coverage under the employee's family enrollment as they are no longer an eligible family member.

The image shows a vertical strip of an American flag on the left side of the page, featuring white stars on a blue field and red and white stripes.

Federal Employees Health Benefits (FEHBP)

(Continued)

Handbook

The former spouse or their attorney should review the information in the Attorney's Handbook, described earlier, and contact the employee's personnel office

TCC

A former spouse who does not qualify for FEHBP may apply for Temporary Continuation of Coverage (TCC)

Conversion

A former spouse who loses coverage may convert to a non-FEHB individual policy with their insurance carrier

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Federal Employees Dental & Vision Insurance Program (FEDVIP)

Non-Eligibility

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.)

A vertical strip of an American flag is visible on the left side of the page, showing the stars and stripes.

Federal Long Term Care Insurance Program (FLTCIP)

Cannot Apply

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.

Can Continue

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.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Life Insurance

Assignment of Insurance

PL 103-336, effective 10/3/94 – allowed employees or retirees to assign their life insurance coverage in FEGLI, to another person, a firm or a trust. The person 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 vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Life Insurance

A court order may require assignment of FEGLI benefits to a former spouse or children – the employee or retiree – not the employing agency or OPM, must execute the proper form. The form is ***RI 76-10, Assignment of Federal Employees' Group Life Insurance.***

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Life Insurance

(Continued)

Court Order over Order of Precedence

PL 105-205, effective 7/22/98 – 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

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Life Insurance

Designation of Beneficiary

PL 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.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Life Insurance

(Continued)

Certified Copy Required

- For this statutory provision to apply, a certified copy of the court order must have been received in the appropriate office on or after 7/22/1998, and 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.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

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 a new designation in order for any benefits that become payable to go to someone else.



Designations of Beneficiary for Life Insurance and Retirement Contributions

Designations of beneficiary may change at any time, unless there is a court order in effect.

Designation of Beneficiary Forms for FEGLI:


CSRS and FERS – SF 2823

Designation of Beneficiary Forms for Lump Sum Benefits

CSRS – SF 2808, FERS – SF 3102

Designation of Beneficiary for Unpaid Employee Compensation

CSRS and FERS – SF 1152

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

What is the Role of the Employee's Agency?

- The employing agency is the proper source of employment and pay information about service with the Federal gov't while an active employee (holder of the OPF during employment).
- OPM does not receive records until after an employee separates from employment.
- The employing agency handles health insurance enrollments for former spouses and receives premiums, as well as any assignments of life insurance an employee may make. Premiums are for full cost of insurance (rate plus government share).

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

What is the Role of the Employee's Agency?

(Continued)

Requested information - The Agency may provide, in response to a subpoena signed by a judge, or release signed by the employee, 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 ONLY prepare estimates of benefits the employee has already earned.

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

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

What is the Role of OPM?

- OPM's role is strictly ministerial.
- OPM makes determinations regarding the acceptability of court orders and rights to benefits.
- OPM informs 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
- OPM informs 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 as soon as possible.

Note: If the order is not acceptable, the parties must return to State court to seek any necessary modifications. OPM does not interpret the intent of the court order.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

What is the Role of OPM?

(Continued)

- 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.

The image shows a vertical strip on the left side of the slide, featuring a close-up of the American flag's stars and stripes. The stars are white and five-pointed, set against a dark blue background. Below the stars, the red and white stripes of the flag are visible.

The Role of Affected Parties

- Apply for benefits via correspondence along with a certified copy of the divorce decree, legal separation and/or court order and **all** other required supporting information to OPM (e.g. property settlement, marital separation agreements referenced and incorporated into final decrees);
- Keep OPM advised of current mailing addresses and living status of both the former spouse who is claiming benefits and the Federal employee/retiree whose benefits are being affected;
- Notify OPM of any changes in circumstances that could affect entitlement to benefits; and
- Submit all disputes with the employee/retiree to the appropriate State court for resolution.
- The former spouse should file the above information as soon as possible.

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Applications

- **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 on his/her behalf.

A vertical strip of an American flag is visible on the left side of the slide, showing the stars and stripes.

Applications

(Continued)

- **Unless a court order is already on file at OPM, the application letter must be accompanied by a court-certified copy of the 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.

A vertical strip of the American flag is visible on the left side of the slide, showing the stars and stripes.

Applications

(Continued)

- **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

A vertical strip of an American flag is visible on the left side of the slide, showing the blue field with white stars and the red and white stripes.

Applications

(Continued)

- **When a court order is subject to termination upon remarriage** no payment can be made without a further statement that remarriage has not occurred

A vertical strip of the American flag is visible on the left side of the page, showing the stars and stripes.

Applications

(Continued)

Mail these materials to the –

U.S. Office of Personnel Management
Retirement Services
PO BOX 17
Washington DC 20044-0017

For Court Order Benefits information, call –

(888) 767 – 6738



How to Contact OPM

By telephone:

Customer Service Representatives are available on all Federal work days from 7:30 am to 7:45 pm, Eastern time

You may also leave a message – **(888) 767–6738**

By email – retire@opm.gov

On the internet – www.opm.gov/retire