

Federal Civil Service Retirement System Domestic Relations Orders.

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Domestic Relations Orders

This discussion is based on Troyan 's experience in preparing more than 800 Domestic Relations Orders against the Federal Retirement System. Note that there are two Federal Retirement Systems. CSRS, covers individuals hired before 1/1/84 and FERS, covers individuals hired after 12/31/83. An Order against either of these Retirement Systems is not termed a "QDRO", the correct term is "COAP", Court Order Acceptable for Processing. If ERISA or QDRO terminology is employed in your Order, OPM (Office of Personnel Management) automatically rejects your Order unless the following language appears therein:

The Court has considered the requirements and standard terminology provided in part 838 of Title 5, Code of Federal Regulations. The terminology used in the provisions of this order that concern benefits under the Civil Service Retirement System or the Federal Employees Retirement System are governed by the standard conventions established in that part.

Your Order may provide either a formula award to a FORMER SPOUSE (do not use the term Alternate Payee) or a monthly benefit, fixed as of a date certain (your jurisdiction's end of marriage date). If you elect to use a Traditional Coverture Fraction (see Practice Aid "Drafting The Allocation of Benefit Provision"), then the award must be termed a "pro-rata" award. OPM will interpret pro-rata as follows:

The Former Spouse will receive 50% of "the portion designated in the order" of the actual benefit calculated as of the date of the actual retirement of the Member. The portion designated in the Order will be interpreted as:
Numerator- the months of credited service during the period of marriage up to the cutoff date. Denominator- the total months of credited service up to the date of the Member's retirement.

Alternatively, if your agreement provided the Former Spouse with a "Specific Dollar Award" (see Practice Aid "Drafting The Allocation of Benefit Provision"), as of the end of marriage date, then your Order must provide:

The Former Spouse is not to share in any pre-retirement COLA or pay adjustment, from the date so specified up to the date of the Member's retirement.

Unlike ERISA Defined Benefit Plan's, a COAP, may provide that the Former Spouse is to receive a fixed amount, e.g. \$80,000.00. Absent additional clarifying language, OPM will pay the Former Spouse one half of the

Member's Gross Annuity until the sum specified has been paid. If the Former Spouse dies and the COAP so provides any unpaid balance will be paid in the same manner to his/her estate or to his/her children. Absent language dealing with this potential for a reversion, the unpaid balance reverts to the Member. Alternatively, and again unlike an ERISA Defined Benefit Plan a COAP will pay to a Former Spouse one monthly amount for one period and another sum for a second period, e. g. \$500.00 per month until the Member attains age 65 and thereafter \$250.00 per month. The Referencing Event for the adjustment must be a statistic in the OPM data base (such as the Member's date of birth).

The informed practitioner also recognizes that the impact of the 1992 Regulations (57 FR 33570) was to give OPM broad latitude in the establishment of guidelines for Court Orders. This knowledge is essential to adroit crafting of the awards clause in a manner consistent with the interests of your client. Troyan is familiar with these Regulations. For example: if the allocation of benefits provision of your Order is silent on Post-retirement COLA, then the Former Spouse automatically participates in this valuable benefit. To bar a Former Spouse's participation in this entitlement your Order must affirmatively and specifically state that the Former Spouse is not to participate in post-retirement COLA.

Regarding Survivor Annuities

OPM will accept either a fractional survivor benefit award or a full survivor benefit award (55% of the Member's Self Only annuity) to the Former Spouse, provided your Order contains specific language as to the procedure to be used to compute the "Former Spouse Survivor Annuity" (do not use the ERISA term Joint & Survivor Annuity). Avoid use of expressions akin to the following:

The Former Spouse is to receive as a Survivor Benefit, 50% of the "Marital/Community Portion" of the Member's benefit. The expression "Marital/Community Portion" is not treated in the CFR, and the term "Member's benefit" is too vague in view of the various forms of "Member benefits" covered in the statutes (See Title 5 USCA Chapters 83 & 84).

The informed practitioner is aware of the fact that this survivor annuity has a cost (expressed as a reduction in benefit). For a discussion of "Actuarial Equivalence" see Practice Aid "Actuarial Equivalence". Absent clear language regarding the allocation of the cost of this annuity, OPM automatically allocates cost on a pro-rata basis using the Member's "Gross Annuity", for this calculation. The "Gross Annuity" is the "Self-Only Annuity" less the cost of the Survivor Annuity. The prudent attorney will specify how the cost of the Survivor Annuity is to be allocated between spouses.

Drafting Alert:

If the practitioner fails to specify which annuity is to be divided, then OPM automatically applies the "Gross Annuity."

ALERT:

Attorneys must be clear on the following circumstance and outcome:

The parties are divorced, and there is no mention of survivor benefits in the Property Settlement Agreement.

The Member then dies or retires before any COAP seeking to remedy this omission is dated and executed.

Result:

The benefit is permanently lost to the Former Spouse (*Newman v. Love*, U.S. Ct. of Appeals, 962 F.2d 1008). For any circumstance involving items one and two above, the controlling date is the date of the first writing dividing marital/community property.

Finally, unlike an Order against an ERISA Defined Benefit Plan, a COAP may provide that while the Member is alive but subsequent to the death of the Former Spouse payments due the Former Spouse may be continued to her estate or her children.