

§ 838.611

5 CFR Ch. I (1–1–23 Edition)

and that OPM will treat the terminology used in the court order in the manner stated in the appendix.

IDENTIFICATION OF BENEFITS

§ 838.611 Identifying the retirement system.

(a) To satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1), a court order must contain language identifying the retirement system to be affected. For example, “CSRS,” “FERS,” “OPM,” or “Federal Government” benefits, or benefits payable “based on service with the U.S. Department of Agriculture,” etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits or Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to the entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse a portion of an employee annuity or a refund of employee contributions under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

§ 838.612 Distinguishing between annuities and contributions.

(a) A court order that uses terms such as “annuities,” “pensions,” “retirement benefits,” or similar terms, without distinguishing between phased retirement annuity payable to a phased retiree, or composite retirement annuity payable to a phased retiree upon

entry into full retirement status, and employee annuity payable to a retiree, satisfies the requirements of §§ 838.303(b)(2) and 838.502(b)(2) for purposes of dividing any employee annuity or a refund of employee contributions.

(b)(1) A court order using “contributions,” “deductions,” “deposits,” “retirement accounts,” “retirement fund,” or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity beginning on the date the employee annuity commences or the date of the court order, whichever comes later, until the specific dollar amount is reached.

[79 FR 46627, Aug. 8, 2014]

COMPUTATION OF BENEFITS

§ 838.621 Prorata share.

(a) *Pro rata share* means one-half of the fraction whose numerator is the number of months of Federal 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 through the day before the effective date of phased retirement or separation for retirement, as applicable to the annuity calculation. In the computation of the division of phased retirement annuity and a composite retirement annuity, a pro rata share will be computed through the day before the effective date of an employee's phased retirement for the computation of the division of a phased retirement annuity and then recomputed for division of the composite retirement annuity under §§ 831.1742 and 848.502.

(b) A court order that awards a former spouse a prorata share of an employee annuity or a refund of employee contributions by using the term

“prorata share” and identifying the date when the marriage began satisfies the requirements of §§ 838.305 and 838.504 and awards the former spouse a prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee’s phased retirement or retirement awards the former spouse a pro rata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the “value” of an annuity as of a specific date before retirement, without specifying what “value” is, awards the former spouse a prorata share as defined in paragraph (a) of this section.

[57 FR 33574, July 29, 1992, as amended at 79 FR 46627, Aug. 8, 2014]

§ 838.622 Cost-of-living and salary adjustments.

(a)(1) A court order that awards adjustments to a former spouse’s portion of an employee annuity stated in terms such as “cost-of-living adjustments” or “Cola’s” occurring after the date of the decree but before the date of phased retirement or retirement provides increases equal to the adjustments described in or effected under 5 U.S.C. 8340 or 8462.

(2) A court order that awards adjustments to a former spouse’s portion of an employee annuity stated in terms such as “salary adjustments” or “pay adjustments” occurring after the date of the decree provides increases equal to the adjustments described in or effected under 5 U.S.C. 5303, until the date the individual enters phased retirement status or retires.

(b)(1) Unless the court order directly and unequivocally 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 provides that the former spouse’s share of the employee annuity will be adjusted to maintain the same percentage or fraction whenever the employee annuity changes as a result of—

(i) Salary adjustments occurring after the date of the decree and before the employee retires; and

(ii) Cost-of-living adjustments occurring after the date of the decree and after the date of the employee’s retirement.

(2) A court order that awards a former spouse a specific dollar amount from the employee annuity 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.

(c)(1)(i) Except as provided in paragraph (b) of this section, a court order that contains a general instruction to calculate the former spouse’s share effective at the time of divorce or separation entitles the former spouse to the benefit of salary adjustments occurring after the specified date to the same extent as the employee.

(ii) To prevent the application of salary adjustments after the date of the divorce or separation, the court order must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply salary adjustments after the specified date in computing the former spouse’s share of the employee annuity.

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee’s phased retirement or retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse’s share of an employee annuity, provides that the former spouse is entitled to the application of cost-of-living adjustments after the date the individual enters phased retirement status or retires (if the employee does not enter phased retirement status first), in the manner described in § 838.241.

(ii) To award cost-of-living adjustments between a specified date and the employee’s phased retirement or retirement, the court order must specifically instruct OPM to adjust the former spouse’s share of the employee annuity by any cost-of-living adjustments occurring between the specified date and the date the employee enters phased retirement status or retires (if the employee does not enter phased retirement status first).