
Introduction

Summary of Topics Covered in This Book	xix
Who Is the Federal Civilian Workforce?	xx
What Are the Benefits That Are Divisible in Divorce?	xxi
Overview of Federal Government Pension Systems	xxii

Summary of Topics Covered in This Book

This book will introduce the major features of the largest federal government pension systems—the Federal Employees Retirement System (FERS), the Civil Service Retirement System (CSRS), the Foreign Service Retirement and Disability System (FSRDS), and the Foreign Service Retirement System (FSRS)—and the federal government’s defined contribution plans (the largest being the Thrift Savings Plan) and how to divide them in divorce. Specifically, this book primarily addresses how a federal employee and his or her spouse or former spouse may obtain funds from a retirement plan, by distribution, by withdrawal, or by court order.

This book covers each benefit at the three possible points when there could be a federal employee divorce:

- a. During active employment
- b. After the employee has separated from service but before he or she is eligible for retirement
- c. After retirement

This book also addresses issues related to death benefits, including pension survivor annuities, beneficiary designations, life insurance, and insurable interests.

This book discusses issues ancillary to pension division in divorce, such as maintaining health insurance after divorce and the effect of remarriage.

Some federal benefits, such as certain retirement benefits, are available to a former spouse only by court order. Other federal benefits require that a spouse make an election and take specific action within a specified timeframe to avail him- or herself of the benefit, and a court order can neither grant nor deny these benefits, such as Federal Employees Health Benefits continuation coverage.

PRACTICE TIP

Here's a list of information that can be helpful to collect from the client or to request from the other party and that may impact the division of federal benefits:

- History of any federal employment during the marriage or prior, by either party, including dates of service
- Identification of the correct pension system
- Information about any prior military service
- Any breaks in service
- The employing department or agency
- Whether either party has made a deposit to repay a prior refund or for military service
- Whether the employee has been married before;
- Copy of any prenuptial agreement
- A review of the employing agency benefits webpage
- Whether the spouse is on the federal employee's FEHB health insurance

This book also includes information regarding lesser-known protections and benefits offered to federal employees, retirees, and their spouses, such as leave, disability, long-term care insurance, and resources for victims of domestic violence.

This book also briefly reviews litigation considerations such as determining income, garnishment, and obtaining documents from a federal agency.

Who Is the Federal Civilian Workforce?

Federal civilian employment in the United States and U.S. territories as of September 2017 numbered 1,847,469.¹ According to the Office of Personnel Management (OPM), 1,274,956 CSRS or FERS employees retired and became annuitants from fiscal year 2000 to fiscal year 2013.²

Various categories of people could have interests in benefits discussed in this book, for example:

- Current federal employees
- Former federal employees with a future entitlement to a pension (deferred annuitant)
- Annuitants (former employees currently retired and in pay status)

1. *Data, Analysis & Documentation*, OFF. OF PERSONNEL MGMT. (Sept. 2017), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/#note1>.

2. *Retirement Statistics*, OFF. OF PERSONNEL MGMT., <https://www.opm.gov/retirement-services/retirement-statistics/> (last visited Nov. 11, 2020).

- Former employees who did not vest in their pensions yet could return to government employment
- Current or former spouses of any of the above
- Minor or dependent adult children of a current or former federal employee

A person with former or current military service may in the future become a civilian employee and could make a deposit to acquire the military service years toward his or her federal pension or could combine a current military pension with a future federal pension.

Due to the expansive nature of the foregoing list, it is important to collect the right information at an initial consultation.

Federal government contractors are not government employees and therefore are not entitled to government retirement benefits or other benefits provided for federal employees.

A review of the careers or benefits page of the employing agency website is important. There are many quasigovernmental agencies whose employees do not participate in FERS, CSRS, or the TSP. The lawyer should not assume that an employee of such an entity has a TSP or a FERS pension. Therefore, the lawyer should closely examine the employee's paystub to identify employee and/or employer contributions to a retirement account and the type of account.

There are some governmental agencies that do not participate in FERS or TSP. This may be due to funding reasons. For example, some employees of the Smithsonian Institution are Smithsonian Trust employees, and as such, they receive separate and distinct benefits and do not participate in FERS/CSRS or TSP. Other employees of the Smithsonian Institution fully participate in these federal government retirement benefits. Employees of the FDIC and National Credit Union Administration have retirement savings plans in addition to their pension and TSP entitlements. These are only examples. The attorney will need to make the appropriate inquiries and research what benefits are available to the employee.

PRACTICE TIP

Check the employing agency website under "careers" or "benefits" to learn the range of retirement and other benefits that the employee may have available to him or her.

What Are the Benefits That Are Divisible in Divorce?

State law defines what is marital or community property and the rules for property division in divorce. Federal law determines whether and how a spouse may get direct access to federal benefits, such as a pension, at divorce. Pursuant to federal law, retirement accounts are generally inalienable, may not be assigned, and are not attachable except in certain limited circumstances.³ The federal preemption doctrine emanates from the Supremacy Clause, article VI, clause 2, of the United States Constitution, which provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3. See Chapter 16.

Federal statutes and regulations create the authority for a state court to enter an order directed to the Office of Personnel Management (OPM), or other federal entity, to divide or otherwise allocate federal benefits at divorce. 5 C.F.R. § 838.101 *et seq.* regulates OPM's handling of court orders affecting the CSRS or the FERS, both of which are administered by OPM, and details the effect that terms of such court orders will be given. State courts may enter orders affecting Foreign Service pensions pursuant to 22 U.S.C. § 4060.

In general, for the defined benefit plans, the employee annuity, the survivor annuity, the annuity supplement, and the cost of living adjustments can be divided. A court order can also prohibit or divide a refund of employee contributions.

A court order cannot mandate a continuation of health insurance coverage, but it can make health insurance available as an ancillary benefit, if certain conditions are met.

A court order can require that an employee cover his or her children under his or her health insurance.

A court order regarding a federal employee's life insurance under the Federal Employees' Group Life Insurance (FEGLI) program can (a) assign the life insurance benefit to a former spouse or children or (b) require an employee to name his or her former spouse or children as beneficiaries.

A court order may also garnish retirement benefits for alimony, child support, or an award in a case involving child abuse.

A court order related to a divorce or separation cannot mandate coverage for a divorced spouse for dental or vision benefits under the Federal Employees Dental and Vision Insurance Program (FEDVIP) plan or long-term care insurance.

Overview of Federal Government Pension Systems

31 U.S.C. § 9502 defines the term "government pension plan" to mean a pension, annuity, retirement, or similar plan established or maintained by an agency for any of its officers or employees, regardless of the number of participants.

The plans subject to 31 U.S.C. § 9502 fall into three general categories:

- 1) Agency plans
- 2) Nonappropriated fund activity plans
- 3) Federal reserve and farm credit plans

Agency plans cover employees of executive, legislative, and judicial organizations that are generally recognized as agencies and are generally funded by annual appropriations.

This book covers the two largest and most prominent federal government pension systems for civilian employees under the Civil Service Retirement and Disability Fund (consisting of the CSRS and FERS pensions). This book also covers the Foreign Service Retirement and Disability Fund, which provides benefits to members of the Foreign Service under the FSRDS or the newer FSPS. This book also briefly covers the Federal Reserve Employees' Benefits System.

The above pension systems all fund defined benefit pension plans that provide a monthly annuity to the retired employee for his or her life or a reduced annuity to the employee for life with a survivor annuity to his or her surviving spouse for the spouse's life. The amount of the pension payments made to the retiree, and to the surviving spouse, is determined through a calculation that includes years of service and salary. As governmental plans, federal pensions are exempt from the Employee Retirement and Income

Security Act (ERISA),⁴ the federal law that governs the administration of most private employer retirement plans.

According to the Congressional Budget Office,

[i]n 2016, the federal government spent \$91 billion on retirement benefits for most of its civilian employees: \$70 billion for CSRS pensions for civilian retirees and their survivors; \$13 billion for FERS pensions for civilian retirees and their survivors; and \$8 billion for contributions to TSP. Those expenditures were partially offset by \$3 billion in revenues from employees' contributions to the CSRS and FERS pension plans.⁵

Nonappropriated fund activity plans cover employees of organizations, such as post exchanges and commissaries, that provide morale, welfare, and recreation services to military components. In large part, these organizations are designed to be self-sufficient and operate with revenues generated from their activities.

The Federal Reserve and farm credit plans cover employees of federal reserve and farm credit system entities, which also operate with revenues generated from their activities.

In addition to the Civil Service Retirement and Disability Fund (CSRS and FERS), Federal Reserve Employees' Benefits System, and Foreign Service Retirement and Disability Fund, which are covered by this book, according to a 1996 General Accounting Office official report,⁶ agencies, nonappropriated fund activities, and federal reserve and farm credit entities offered an additional 31 federal defined benefit pension plans.⁷ In total, these 34 plans covered more than ten million current employees, separated employees entitled to benefits, and retirees. Fifteen of the 34 defined benefit plans were agency plans. Nonappropriated fund activities, the Federal Reserve, and farm credit entities operated the other 19. Since 1996, it appears that no centralized list of federal pensions has been published by the federal government.

According to the same 1996 General Accounting Office official report, the following federal pension systems existed at that time. Of these 34 systems identified, 97 percent of the participants belonged to FERS, CSRS, or the military pension system:

1. Civil Service Retirement and Disability Fund (CSRS and FERS)
2. Federal Reserve Employees' Benefits System
3. Foreign Service Retirement and Disability Fund
4. Military Retirement System⁸
5. Coast Guard Military Retirement System
6. Public Health Service Commissioned Corps Retirement System
7. National Oceanic and Atmospheric Administration Corps Retirement System
8. Comptrollers' General Retirement Plan

4. 29 U.S.C. §§ 1001(23), 1003(b)(1), 1051.

5. *Options for Changing the Retirement System for Federal Civilian Workers*, CONG. BUDGET OFF. (Aug. 29, 2017), <https://www.cbo.gov/publication/53003>.

6. U.S. GOV'T ACCOUNTABILITY OFF., GAO/AIMD-96-6, *PUBLIC PENSIONS: SUMMARY OF FEDERAL PENSION PLAN DATA* (1996).

7. Since this report, there appears to be no comprehensive summary of all federal government pensions that includes nonappropriated funds, and it seems that the farm credit plans may have been condensed and combined.

8. The most comprehensive resource for military pensions is MARK E. SULLIVAN, *THE MILITARY DIVORCE HANDBOOK: A PRACTICAL GUIDE TO REPRESENTING MILITARY PERSONNEL AND THEIR FAMILIES* (3d ed. 2019).

9. Court of Federal Claims Judges' Retirement System
10. U.S. Court of Veterans Appeals Judges' Retirement Plan
11. Judicial Officers' Retirement Fund
12. Judicial Retirement System
13. Judicial Survivors' Annuities System
14. United States Tax Court Retirement Plan
15. United States Tax Court Survivors' Annuity Plan
16. Tennessee Valley Authority Retirement System
17. Retirement Annuity Plan for Employees of Army and Air Force Exchange Service
18. Supplemental Deferred Compensation Plan for Members of the Executive Management Program (Army and Air Force Exchange Service)
19. U.S.A.F. Nonappropriated Fund Retirement Plan for Civilian Employees
20. United States Army Nonappropriated Fund Retirement Plan
21. Retirement Plan for Civilian Employees of United States Marine Corps Morale, Welfare, and Recreation Activities and Miscellaneous Nonappropriated Fund Instrumentalities
22. Navy Exchange Service Command Retirement Plan
23. U.S. Navy Nonappropriated Fund Retirement Plan for Employees of Civilian Morale, Welfare, and Recreation Activities
24. Norfolk Naval Shipyard Pension Plan
25. Western Farm Credit District Employees' Retirement Plan
26. Ninth Farm Credit District Pension Plan
27. Farm Credit District of Springfield Group Retirement Plan
28. Farm Credit District of Baltimore Retirement Plan
29. Seventh Farm Credit District Retirement Plan
30. First South Production Credit Association Retirement Plan
31. Farm Credit District of Columbia, SC Retirement Plan
32. Farm Credit District of Texas Pension Plan
33. Twelfth Farm Credit District Retirement Plan
34. National Bank for Cooperatives Retirement Plan