Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Federal Publications

Key Workplace Documents

4-3-2008

Retirement and Survivor Annuities for Former Spouses of Federal Employees

Patrick Purcell
Congressional Research Service; Domestic Social Policy Division

Follow this and additional works at: http://digitalcommons.ilr.cornell.edu/key_workplace

Part of the Human Resources Management Commons

This Article is brought to you for free and open access by the Key Workplace Documents at DigitalCommons@ILR. It has been accepted for inclusion in Federal Publications by an authorized administrator of DigitalCommons@ILR. For more information, please contact jdd10@cornell.edu.

Retirement and Survivor Annuities for Former Spouses of Federal Employees

Abstract
[Excerpt] A former spouse of a federal employee may be entitled to a share of the employee's retirement annuity under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS) if this has been authorized by a state court decree of divorce, annulment, or legal separation. An employee also may voluntarily elect a survivor annuity for a former spouse. A state court can award a former spouse a share of the employee's retirement annuity, a survivor annuity, or both. A court also can award a former spouse of a federal employee a portion of the employee's Thrift Savings Plan (TSP) account balance as part of a divorce settlement. This report will be updated as legislative developments warrant.

Keywords
retirement, benefits, federal employees, spouses, survivor, divorced, settlement, public policy, legislation

Disciplines
Business | Human Resources Management

Comments
Suggested Citation
Purcell, P. (2008). *Retirement and survivor annuities for former spouses of federal employees* (RS22856). Washington, DC: Congressional Research Service. http://digitalcommons.ilr.cornell.edu/key_workplace/502/

This article is available at DigitalCommons@ILR: http://digitalcommons.ilr.cornell.edu/key_workplace/502

Order Code RS22856
April 3, 2008

CRS Report for Congress

Retirement and Survivor Annuities for Former Spouses of Federal Employees

Patrick Purcell
Specialist in Income Security
Domestic Social Policy Division

Summary

A former spouse of a federal employee may be entitled to a share of the employee's retirement annuity under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS) if this has been authorized by a state court decree of divorce, annulment, or legal separation. An employee also may voluntarily elect a survivor annuity for a former spouse. A state court can award a former spouse a share of the employee's retirement annuity, a survivor annuity, or both. A court also can award a former spouse of a federal employee a portion of the employee's Thrift Savings Plan (TSP) account balance as part of a divorce settlement. This report will be updated as legislative developments warrant.

Most civilian federal employees participate in one of two federal retirement systems. In general, employees hired before 1984 are covered by the Civil Service Retirement System (CSRS) and those who were hired in 1984 or later are covered by the Federal Employees' Retirement System (FERS).[1] Employees enrolled in CSRS do not pay Social Security taxes and do not earn Social Security benefits while employed by the federal government. Employees enrolled in FERS pay Social Security taxes and earn Social Security benefits. Employees in either system can contribute to the Thrift Savings Plan, but only employees enrolled in FERS receive employer matching contributions.

As governmental plans, CSRS and FERS are not subject to the *Employee Retirement Income Security Act of 1974* (ERISA, P.L. 93-406), which governs many aspects of employer-sponsored retirement plans in the private sector.[2] ERISA establishes certain

[1] Federal employees covered by CSRS were given the opportunity to switch to FERS during open seasons held in 1987 and 1998. For more information on CSRS and FERS, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*, by Patrick Purcell.

[2] Section 4(b)(1) of ERISA (29 USC § 1003(b)(1)) exempts governmental plans from the law.

rights for the spouses and former spouses of participants in private-sector plans.[3] To protect spouses and former spouses, ERISA requires that

- the default form of benefit in a defined benefit pension plan must be a joint and survivor annuity with at least a 50% survivor benefit;
- a retirement plan must comply with the terms of a qualified domestic relations order (QDRO) issued by a state court that divides retirement benefits between the parties to a divorce;
- the written consent of both spouses must be secured in order for a married participant in a defined contribution plan to name anyone other than his or her spouse as the beneficiary if the participant were to die; and
- the default form of annuity in a defined contribution plan that offers this form of benefit must be a joint and survivor annuity.

Retirement benefits for federal employees are governed by chapters 83 (CSRS) and 84 (FERS) of Title 5 of the United States Code. These chapters establish rights of the spouse or former spouse of a current or former federal employee that are similar in many respects to those established by ERISA for private-sector plans; however, there are a few important differences. For example, like ERISA, Title 5 requires the default form of benefit under CSRS and FERS to be a joint and survivor annuity, and both ERISA and Title 5 require the written consent of the participant and spouse in order to waive the survivor annuity. On the other hand, while both ERISA and Title 5 allow a pension to be divided between the parties to a divorce, the laws differ with respect to when pension payments to the former spouse can begin. Under ERISA, a court can require a plan to begin paying benefits to the former spouse when the plan participant has reached the earliest retirement age under the plan, regardless of whether the participant has yet retired.[4] In contrast, even if a state court decree of divorce or annulment has awarded a share of a federal employee's retirement annuity to a former spouse, Title 5 prohibits payment of any part of a CSRS or FERS annuity to a former spouse until the employee has separated from federal service, is eligible to receive a CSRS or FERS annuity, and has applied for an annuity.[5]

Another difference between ERISA and Title 5 is in the designation of beneficiaries in defined contribution plans. ERISA requires a married participant in a defined contribution plan to secure the written consent of his or her spouse in order to name anyone other than the spouse as the plan beneficiary in the event of the participant's death. In contrast, federal regulations allow a participant in the Thrift Savings Plan for federal employees to name anyone as the plan beneficiary in the event of the participant's death "without the knowledge or consent of any person, including his or her spouse."[6]

---

[3] ERISA §§ 205-206 (29 USC §§ 1055-1056).

[4] ERISA § 206(d)(3)(E); 29 USC § 1056(d)(3)(E).

[5] See the Code of Federal Regulations at 5 CFR § 838.211. This regulation implements 5 USC §§ 8345(j) and 8467(a), which allow OPM to make payments to a former spouse only of amounts "which would otherwise be made to an employee, Member [of Congress] or annuitant."

[6] 5 CFR § 1651.4.

Civil Service Retirement System (CSRS)

A state court decree of divorce, annulment, or legal separation can award a former spouse of a federal employee either a share of the employee's retirement annuity, a survivor annuity, or both types of annuity. To award a former spouse both a share of the employee's retirement annuity and a survivor annuity, the court order must specify both benefits. The Office of Personnel Management (OPM) will pay only the benefits that are specified in the court order.

Division of a Retirement Annuity under CSRS

Section 8346 of Title 5 generally exempts CSRS from the proceedings of state courts.[7] However, Section 8345 of Title 5 allows a former spouse of a federal employee to be awarded a share of the employee's CSRS retirement annuity in accordance with the terms of a state court decree of divorce, annulment, or legal separation or a property settlement pursuant to such decree.[8] OPM will divide the retired employee's monthly annuity as directed by the court order and pay the specified share to the former spouse. Only payments made after OPM receives the court order will be divided between the employee and his or her former spouse. OPM will not execute a court order dividing a federal employee's retirement annuity until the employee has separated from federal service, is eligible for an annuity, and has applied for an annuity. The right of a former spouse to receive a share of a retired federal employee's retirement annuity terminates when the retired employee dies. In order for the former spouse to receive a survivor annuity, either the retiree must have elected a survivor annuity for the former spouse or a court order must specify that the former spouse is to receive a survivor annuity.

Former Spouse Survivor Annuity under CSRS

A former spouse of a deceased federal employee may receive a CSRS survivor annuity if the employee elected a survivor annuity for the former spouse or if a state court decree of divorce, annulment, or separation requires a survivor annuity.[9] A CSRS survivor annuity is 55% of the single-life annuity that the retired worker would have received.[10] In order to fund the joint and survivor annuity, the retired worker's annual pension is reduced by 2.5% of the first $3,600 plus 10% of the annuity above that amount. This entitles the worker's spouse or former spouse to a survivor annuity equal to 55% of the worker's full annuity before the reduction for survivor benefit is taken into account.

The sum of CSRS survivor annuities paid to the employee's spouse at the time of death and all former spouses cannot exceed 55% of the single-life annuity to which the

---

[7] 5 USC § 8346(a).

[8] Paragraph (j) of 5 USC § 8345 was added by P.L. 95-36 (September 15, 1978).

[9] 5 USC § 8341(h)(1), added by P.L. 98-615 (November 8, 1984). If the employee has remarried, his or her current spouse must consent to the election of a survivor annuity for the former spouse.

[10] See CRS Report RS21029, *Survivor Benefits for Families of Civilian Federal Employees and Retirees*, by Patrick Purcell.

annuitant was entitled.[11] If the full amount of a survivor annuity has been awarded to a former spouse through a court order, the employee's current spouse is not entitled to receive a survivor annuity unless the former spouse has died or remarried before age 55. A survivor annuity paid to a former spouse of a federal employee terminates when the former spouse dies or if he or she remarries before age 55.[12] If the remarriage ends in death, divorce, or annulment, the annuity restarts in the same amount. An employee's election to provide a survivor annuity, or a court order awarding a survivor annuity to a former spouse, can be modified only before the employee retires or dies.[13] A court order awarding a survivor annuity to a former spouse of an employee will not be honored by OPM if the former spouse previously waived his or her right to a survivor annuity.[14]

If an employee separating from federal service elects to receive a refund of his or her contributions to the retirement system, he or she forfeits the right to receive a CSRS annuity. Section 8342 of Title 5 allows a state court to block payment of a refund if a former spouse has been awarded a share of the employee's annuity or a survivor annuity.[15]

Federal Employees' Retirement System (FERS)

Division of a Retirement Annuity under FERS

Section 8470 of Title 5 generally exempts FERS from the proceedings of state courts.[16] However, Section 8467 allows a FERS retirement annuity to be divided between a federal annuitant and a former spouse, pursuant to a state court decree of divorce, annulment, or legal separation.[17] OPM will divide the retired employee's monthly annuity as directed by the court order and pay the specified share to the former spouse. Only payments made after OPM receives the court order will be divided between the employee and his or her former spouse. OPM will not execute a court order dividing a federal employee's retirement annuity until the employee has separated from federal service, is eligible for an annuity, and has applied for an annuity. The right of a former spouse to receive a share of a retired federal employee's retirement annuity terminates when the retiree dies. In order for the former spouse to receive a survivor annuity, either the retiree must have elected a survivor annuity for the former spouse or a court order must specify that the former spouse is to receive a survivor annuity.

Former Spouse Survivor Annuity under FERS

Section 8445 of Title 5 allows a federal employee to elect a FERS survivor annuity for a former spouse, and it permits a state court to award a former spouse of a federal

---

[11] 5 USC § 8341(h)(2).

[12] 5 USC § 8341(h)(3).

[13] 5 USC § 8341(h)(4).

[14] 5 USC § 8341(h)(5).

[15] 5 USC § 8341(j) was added by P.L. 98-615 and amended by P.L. 99-251 (February 27, 1986).

[16] 5 USC § 8470(a).

[17] 5 USC § 8467(a).

employee a survivor annuity in the event that the employee predeceases the former spouse.[18] A survivor annuity under FERS is equal to 50% of the single-life annuity to which the retired worker would have been entitled. The joint and survivor annuity is funded by reducing the retiree's single-life annuity amount by 10%. In return for this reduction, the worker's spouse or former spouse is entitled to a survivor annuity equal to 50% of the worker's full annuity before the reduction is taken into account.

An employee may provide for the equivalent of no more than one FERS spouse survivor annuity.[19] The sum of FERS survivor annuities paid to the employee's spouse at the time of death and all former spouses cannot exceed 50% of the single-life annuity to which the annuitant was entitled. If the full amount of a survivor annuity has been awarded to a former spouse through a court order, the employee's current spouse is not entitled to receive a survivor annuity unless the former spouse has died or remarried before age 55. A survivor annuity terminates when the spouse or former spouse dies or if he or she remarries before age 55.[20] If the remarriage ends in death, divorce, or annulment, the annuity restarts in the same amount. An election to provide a FERS survivor annuity or a court order awarding a FERS survivor annuity to a former spouse can be modified only before the employee retires or dies.[21] A court order awarding a survivor annuity to a former spouse of an employee will not be honored by OPM if the former spouse previously waived his or her right to a survivor annuity.[22]

If an employee participating in FERS dies after having completed at least 18 months of service, but fewer than 10 years of service, his or her spouse is eligible for a lump-sum survivor benefit equal to one-half of the employee's annual basic pay plus a lump-sum payment (approximately $28,090 in 2008).[23] This lump-sum survivor benefit may be paid to a former spouse or divided between a current and former spouse, pursuant to a state court order.[24] If an employee dies after completing at least 10 years of service, the surviving spouse (or former spouse, pursuant to a court order) receives a lump sum and an annuity equal to 50% of the annuity that the employee had earned at the time of his or her death.

A separating employee who elects to receive a refund of contributions to the retirement system forfeits the right to receive a FERS annuity. A state court can block this refund if a former spouse has been awarded a share of the employee's FERS retirement annuity or a FERS survivor annuity.[25]

---

[18] 5 USC § 8445(a).

[19] 5 USC § 8445(b).

[20] 5 USC § 8445(c).

[21] 5 USC § 8445(d).

[22] 5 USC § 8445(e).

[23] 5 USC § 8442(b)(1)(A). The lump-sum amount is indexed annually to the rate of inflation.

[24] 5 USC § 8445(f).

[25] 5 USC § 8424(b).

Thrift Savings Plan

Designation of Beneficiary

An employee or former employee can designate a beneficiary or beneficiaries who will receive his or her TSP account balance in the event of the participant's death. This must be done by filing Form TSP-3 with the Federal Retirement Thrift Investment Board. The Thrift Board is not authorized to recognize wills or other estate planning documents. A married participant is not required to designate his or her spouse as the beneficiary of the TSP account, nor is the spouse's consent required to designate someone other than the spouse as the beneficiary of the TSP account.[26]

Distributions and Loans

A married FERS participant must obtain his or her spouse's written consent before

- receiving a loan from his or her TSP account;[27]
- receiving an in-service distribution from the TSP;
- withdrawing money from the TSP after leaving federal employment.[28]

CSRS participants are not required to obtain the spouse's written consent, but the spouse will be notified by the TSP before a loan is approved or in the event of an in-service or post-employment withdrawal from the TSP. The spouse of a married FERS participant is legally entitled to a joint and survivor annuity with 50% survivor benefit from the TSP. The participant's spouse must waive his or her right to that annuity in writing before the participant can withdraw money from the TSP. The TSP is authorized to recognize state court orders of divorce, annulment, or legal separation and property settlements pursuant to a court order. The TSP also is authorized to recognize state court orders respecting payment of alimony and child support.[29]

Social Security

Federal employees enrolled in FERS participate in Social Security. The former spouse of a worker is eligible for a Social Security spouse's benefit at age 62 if the couple were married for at least 10 years, and if the worker is receiving, or is entitled to, Social Security benefits. If the former spouse of the worker remarries, he or she generally cannot collect benefits on the worker's record unless the marriage ends by death, divorce, or annulment. The divorced spouse of a worker insured by Social Security can receive widow or widower benefits if the couple were married at least 10 years. Survivor benefits terminate if the divorced spouse remarries before age 60 unless the later marriage ends, by death, divorce, or annulment. Remarriage does not affect Social Security survivor benefits being paid to the children of a deceased worker.

---

[26] 5 CFR § 1651.4.

[27] This consent does make the spouse a co-signer or legally responsible for repaying the loan.

[28] 5 USC § 8435.

[29] 5 USC § 8437.